



## Fact Sheet

NPDES Permit Number:	IDS028070
Date:	October 25, 2019
Public Comment Period Expiration Date:	December 10, 2019
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**The U.S. Environmental Protection Agency (EPA) Proposes to Re-Issue a  
National Pollutant Discharge Elimination System (NPDES) Permit  
for Stormwater Discharges To:**

**City of Idaho Falls and Idaho Transportation Department-District #6**

The EPA Region 10 proposes to reissue a NPDES permit authorizing the discharge of stormwater from all municipal separate storm sewer system (MS4) outfalls owned and/or operated by the City of Idaho Falls and Idaho Transportation Department-District #6 (ITD6). These entities are referred to collectively in this document as “the Permittees.” Permit requirements are based on Section 402(p) of the Clean Water Act (CWA), 33 U.S.C. § 1342(p), and EPA regulations for permitting municipal stormwater discharges (40 CFR §§ 122.26, 122.30-35, and 123.35; see also 64 FR 68722 [Dec. 8, 1999] and 81 FR 89320 [Dec. 9, 2016]).

The Permit requires the continued implementation of a cooperative, comprehensive stormwater management program (SWMP), and outlines the control measures to be used by the Permittees to reduce pollutants in their stormwater discharges to the maximum extent practicable (MEP), protect water quality, and satisfy the appropriate water quality requirements of the CWA. Annual reporting is required to reflect the status of the SWMP implementation.

This Fact Sheet includes:

- information on public comment, public hearing, and appeal procedures;
- descriptions of the regulated MS4 discharges to be covered under the Permit; and
- explanation of the control measures and other Permit terms and conditions.

The EPA requests public comment on all aspects of the Permit.

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

The EPA will request that the Idaho Department of Environmental Quality (IDEQ) certify the permit for these MS4s under Section 401 of the CWA, 33 U.S.C. § 1341. Questions or comments regarding the certification should be directed to:

Idaho Department of Environmental Quality  
ATTN: Troy Saffle, Water Quality Manager  
900 N. Skyline Drive, Suite B  
Idaho Falls, ID 83402  
(208) 528-2650

### **Public Comment and Opportunity for Public Hearing**

Persons wishing to comment on, or request a Public Hearing for, the draft Permit must do so in writing by the expiration date of the public comment period. A request for Public Hearing must state 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 the EPA as described in the Public Comments Section of the attached Public Notice.

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

### **Documents Available for Review**

The draft Permit, and other information is 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>. The draft Permit and related materials can be reviewed in person by contacting the EPA Region 10 Operations Office in Boise or in Region 10's Regional Office in Seattle, between 8:30 a.m. and 4:00 p.m. (Mountain Time), Monday through Friday:

**U.S. Environmental Protection Agency,  
Region 10  
Idaho Operations Office**  
950 W. Bannock Street, Suite 900  
Boise, ID 83702  
(208) 378-5746

**U.S. Environmental Protection Agency,  
Region 10  
Water Division**  
1200 Sixth Avenue, Suite 155, WD-19-C04  
Seattle, Washington 98101  
(800) 424-4372, and request x-0523

For questions regarding the Permit or 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

ACM	Alternative Control Measure
BMP	Best Management Practice
CFR	Code of Federal Regulations
CGP	Construction General Permit, i.e., the most current version of the <i>NPDES General Permit for Stormwater Discharges from Construction Activities in Idaho</i>
CWA	Clean Water Act
CZARA	Coastal Zone Act Reauthorization Amendments
EFH	Essential Fish Habitat
ESA	Endangered Species Act
EPA	United States Environmental Protection Agency, Region 10
FR	Federal Register
GI	Green Infrastructure
GSI	Green Stormwater Infrastructure
IDAPA	Idaho Administrative Procedures Act
IDEQ	Idaho Department of Environmental Quality
ITD6	Idaho Transportation Department – District #6
LA	Load Allocation
LID	Low Impact Development
mg/L	Milligrams per Liter
MEP	Maximum Extent Practicable
MS4	Municipal Separate Storm Sewer System
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NOAA	National Oceanic and Atmospheric Administration
NPDES	National Pollutant Discharge Elimination System
O&M	Operation and Maintenance
SWMP	Stormwater Management Program
SWPPP	Stormwater Pollution Prevention Plan
TMDL	Total Maximum Daily Load
US	United States
USC	United States Code
USFWS	U.S. Fish and Wildlife Service
WD	Water Division
WLA	Wasteload Allocation
WQS	Water Quality Standards

## 1 Introduction

Stormwater is the surface runoff that results from rain and snow melt. Urban development alters the land’s natural infiltration and human activity generates a host of pollutants that can accumulate on paved surfaces. Uncontrolled stormwater discharges from urban areas can negatively impact water quality. The National Pollutant Discharge Elimination System (NPDES) regulations establish permit requirements for discharges from certain municipal separate storm sewer systems (MS4s) located in Census-defined Urbanized Areas. Appendix 1 of this Fact Sheet details the types of pollutants typically found in urban stormwater and explains the regulatory background for the MS4 permit program.

The terms “municipal separate storm sewer” and “small municipal separate storm sewer system” are defined at 40 CFR §122.26(b)(8) and (b)(16), respectively. MS4s include any publicly-owned conveyance or system of conveyances used for collecting and conveying stormwater that discharge to waters of the United States. MS4s are designed for conveying stormwater only, and are not part of a combined sewer system, nor part of a publicly owned treatment works. Such a system may include roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains. In Idaho, various public entities own and/or operate MS4s, including, but not limited to: cities and counties; local highway districts; Idaho Transportation Department; and colleges and universities.

The U.S. Environmental Protection Agency (EPA) is reissuing the Permit authorizing stormwater discharges from the regulated small MS4s located in the Idaho Falls Urbanized Area owned and/or operated by the City of Idaho Falls (City) and/or the Idaho Transportation Department - District #6 (ITD6). This Fact Sheet explains the rationale for the proposed Permit terms and conditions for these MS4 discharges.

Other entities may have responsibilities to manage MS4 discharges in the Idaho Falls Urbanized Area (UA); however, this Fact Sheet addresses requirements and responsibilities for the City and ITD6 only. If other Idaho entities own and/or operate a MS4 in the UA, they must seek NPDES permit coverage for those MS4 discharges by submitting a MS4 permit application.

### 1.1 Permittees and Permit History

In accordance with Clean Water Act (CWA) Section 402(p), 33 U.S.C. § 1342(p), and 40 CFR § 122.32, the Permit is being reissued on a system-wide basis for the MS4s owned and/or operated by the operators listed below that are located within the boundaries of the Idaho Falls UA as defined by the Year 2000 and Year 2010 Decennial Census. See Appendix 2 for maps of the Idaho Falls UA.

<b>Operator</b>	<b>Physical Address</b>	<b>Mailing Address</b>
City of Idaho Falls	380 Constitution Way Idaho Falls, ID 83205	Public Works P.O. Box 50220 Idaho Falls, ID 83205
Idaho Transportation Department-District 6	206 North Yellowstone, Rigby, ID 83442	P.O. Box 97 Rigby, ID 83442-0097

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The EPA issued NPDES Permit #IDS028070 for discharges from the City and ITD6 MS4s in May 2007; the Permit expired in April 2012.

On October 31, 2011, the Permittees submitted a timely and complete joint application for the reissuance of NPDES Permit #IDS028070. Pursuant to 40 CFR § 122.6, the permit was administratively continued upon the expiration date of the permit. Therefore, the permit remains in effect until a new permit is reissued. The City and ITD6 continue to implement their stormwater management program (SWMP) activities and submit Annual Reports in compliance with the administratively continued Permit.

In the administratively continued Permit, the EPA referred to the group as “Co-Permittees,” a term defined in the federal regulations as “*a permittee to a NPDES permit that is only responsible for Permit conditions relating to the discharge for which it is the operator.*” The EPA recognizes the ongoing cooperative working relationship between the entities, but collectively refers to both entities in the current draft Permit and this Fact Sheet as “Permittees.”

In 2016 and 2017, the EPA was working on a general permit that would cover all small regulated MS4 discharges in Idaho. During this period of time, the EPA received comments from the Permittees and other stakeholders on two versions of the draft general permit. The EPA has subsequently decided to issue individual permits instead of a general permit. However, the information received, in conjunction with the permit renewal application and Annual Reports, has been used to inform the current draft Permit. All of these materials are available as part of the Administrative Record.

## **1.2 Idaho NPDES Program Authorization**

On June 5, 2018, the EPA approved Idaho's application to administer the Idaho Pollutant Discharge Elimination System (IPDES) program. The Idaho Department of Environmental Quality (IDEQ) will be taking the IPDES program in phases over a four-year period in accordance with the Memorandum of Agreement (MOA) between IDEQ and the EPA, and subject to EPA oversight and enforcement. IDEQ will obtain permitting authority for the stormwater phase on July 1, 2021. At that time, all documentation required by the permit will be sent to IDEQ rather than to the EPA and any decision under the permit stated to be made by the EPA or jointly between the EPA and IDEQ will be made solely by IDEQ. Permittees will be notified by IDEQ when this transition occurs.

## **1.3 Description of Permittees' MS4s and Discharge Locations**

- City of Idaho Falls: The City's MS4 consists of storm water retention and detention basins, as well as open irrigation channels, and closed conduits. The retention basins allow runoff to evaporate or infiltrate into the ground. Detention basins allow storm runoff to be stored for a period of time allowing sediments to settle out; thereafter, the runoff water is pumped into irrigation channels that drain to the Snake River. In the older areas of the City, storm water is collected and conveyed through open channels and conduits to the Snake River.
- Idaho Transportation Department – District 6: ITD6 maintains a constructed MS4 that drains runoff from US-20, US-26 and Interstate 15 and discharges to ditches leading to the Snake River or other adjacent drainages, to detention ponds, or directly to the City's MS4.

#### 1.4 Stormwater Management Program Accomplishments<sup>1</sup>

Since 2007, the Permittees have successfully implemented a variety of local outreach programs, regulatory requirements, assessment tools, and guidance materials through which they effectively manage pollutants in discharges from their MS4s, including:

- Intergovernmental coordination through cooperative and maintenance agreements;
- Multiple outreach and public participation activities including a public informational webpage, educational utility mailers, regularly scheduled Household Hazardous Water Collection, Adopt-A-Canal and Adopt-a-Highway programs, 5<sup>th</sup> and 6<sup>th</sup> grade educational efforts during the Idaho Falls Water Festival that focus on building comprehensive awareness of stormwater impacts;
- Ordinances, policies, protocols, and code enforcement processes to respond to illicit discharges into the MS4s;
- Current mapping of the MS4 outfall and service area throughout the Permit Area that are used to inform the Permittees' asset management systems in support of MS4 maintenance activities;
- Stenciling 100% of the MS4 inlets throughout the City's service areas with educational markers that read "Only Rain in the Drain;"
- Ongoing education and training for City and ITD staff responsible for maintenance activity and/or in-field construction oversight;
- Ordinances that require the control of construction related sediment and erosion for all ground disturbing activities that disturb 4,000 square feet or more including appropriate guidance for those site operators that require compliance with the statewide *NPDES General Permit for Storm Water Discharges from Construction Activity*, #IDR120000 (Construction General Permit or CGP);
- Specifications for appropriate erosion and sediment controls at construction sites, including requirements for contractor education and certification;
- Ordinances and other requirements for onsite retention and detention of stormwater from all new development and redevelopment projects;
- Operation and maintenance practices that are protective of water quality; and
- Ongoing evaluation of street and catch basin cleaning practices to optimize effectiveness.

#### 1.5 Permit Development

The NPDES permitting authority must include terms and conditions in each successive MS4 permit that meet all of the requirements of 40 CFR § 122.34(a)(2) *"based on its evaluation of the current permit requirements, record of permittee compliance and program implementation progress, current water quality conditions, and other relevant information."* The permitting authority must consider adjustments in the form of modified permit requirements, where necessary, to reflect current water quality conditions, best management practices (BMP) effectiveness, and other current relevant information. The permitting authority cannot reissue the same permit conditions for subsequent five-year

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<sup>1</sup> See: Idaho Falls & ITD6 Annual Report. 2019.

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permit term(s) without considering whether more progress can or should be made in meeting water quality objectives (especially in areas where the receiving waters are not attaining the applicable water quality standards).<sup>2</sup>

For the City of Idaho Falls and ITD6 MS4 Permit, the EPA has considered a variety of information in order to develop the Permit terms and conditions, including but not limited to:

- NPDES Permit #IDS028070 as issued in 2007, and other EPA issued MS4 permits in Idaho;
- Permit renewal application submitted by the Permittees in 2011;
- IDEQ's 2016 *Integrated Report*, describing IDEQ's assessment of waters in the portion of the Snake River within the Idaho Falls Urbanized Area;
- Annual Reports submitted by the Permittees as required by the prior Permit;
- Updated Urbanized Area maps and boundaries based on the Year 2010 Census;
- Input from stakeholders and the Permittees on the EPA's preliminary draft MS4 general permit(s), which were not issued;
- EPA guidance and national summary information regarding MS4 permits,<sup>3</sup> including:
  - o *Compendium Part 1: Six Minimum Control Measure Provisions*, November 2016;
  - o *Compendium Part 2: Post Construction Performance Standards*, November 2016;
  - o *Compendium Part 3: Water Quality-Based Requirements*, April 2017;
  - o *Summary of State Post Construction Stormwater Standards*, July 2016; and the
  - o *MS4 Permit Improvement Guide*, April 2010.
- Conclusions and recommendations from the National Research Council Report entitled *Urban Stormwater Management in the United States*, dated October 2008;
- Technical developments in the field of stormwater management, including recent research and information on effective and feasible methods for the onsite management and treatment of stormwater using practices commonly referred to as "low impact development" (LID), "green infrastructure" (GI) and/or "green stormwater infrastructure" (GSI) techniques.
- Other MS4 permits issued by the EPA for regulated MS4s in Washington, Puerto Rico, Massachusetts, and New Mexico, as well as MS4 permits issued by other state NPDES permitting authorities.

A partial list of references supporting the development of the City of Idaho Falls and ITD6 MS4 Permit is provided in Part 6 of this Fact Sheet; additional references are available in the Administrative Record for the Permit.

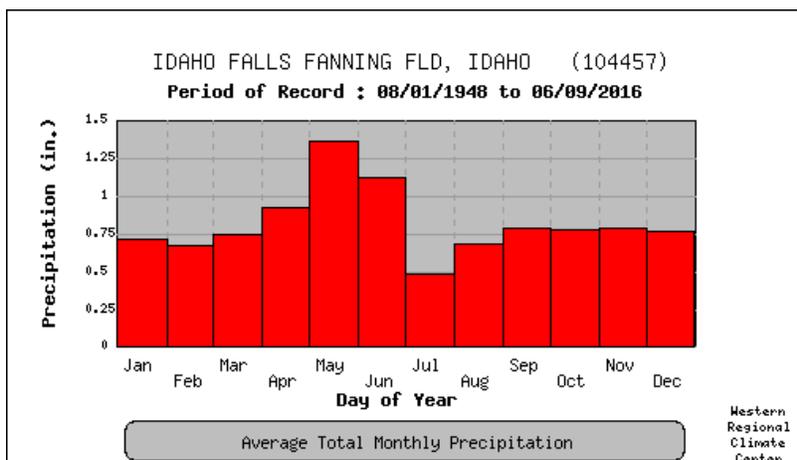
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<sup>2</sup> See 40 CFR §122.34(a), EPA 2016a and EPA 2016b.

<sup>3</sup> EPA documents listed here are available at <https://www.epa.gov/npdes/stormwater-discharges-municipal-sources>

### 1.6 Average Annual Precipitation in the Idaho Falls Urbanized Area

The National Oceanic and Atmospheric Administration's (NOAA's) Western Regional Climate Center maintains historical climate information for various weather stations throughout the western United States. The Permit Area has an annual average precipitation of approximately 9.9 inches, and an annual average snowfall of 35.3 inches.



### 1.7 Receiving Waters

The EPA intends to reissue the Permit authorizing discharges from the MS4s owned and/or operated by the Permittees in the Idaho Falls Urbanized Area to waters of the United States that includes the portion of the Snake River in the Idaho Falls Subbasin, HUC 17040201. All discharges to waters of the U.S. located in the Permit Area must also comply with any conditions that may be imposed by the State as part of its water quality certification pursuant to CWA Section 401, 33 U.S.C. § 1341. See also Section 3.7 of this Fact Sheet.

IDEQ has classified the portion of the Snake River receiving these regulated MS4 discharges as fresh water with the following designated uses:

<b>Designated Beneficial Uses for Waters Receiving Regulated MS4 Discharges in the Idaho Falls Urbanized Area</b>		
<b>Receiving Water</b>	<b>Citation from IDAPA</b>	<b>Designated Beneficial Uses*</b>
Snake River [Snake River - Dry Bed Creek to River Mile 791 (T01N, R37E, Sec. 10)]	58.01.02.150.03	Cold water aquatic life, salmonid spawning, primary contact recreation, and domestic water supply

\*All waters in Idaho must also be protected for industrial and agricultural water supply, wildlife habitats, and aesthetics.

#### 1.7.1 Antidegradation

The EPA is required under Section 301(b)(1)(C) of the CWA, 33 U.S.C. § 1311(b)(1)(C)

and implementing regulations (40 CFR §§ 122.4(d) and 122.44(d)) to establish conditions in NPDES permits that ensure compliance with State water quality standards, including antidegradation requirements. The State of Idaho has an EPA-approved antidegradation policy as well as antidegradation implementation procedures (IDAPA 58.01.02.051). The EPA expects that IDEQ will provide an antidegradation analysis in the CWA §401 certification. Once the EPA has received a final §401 certification, the EPA will review the antidegradation analysis to ensure that it is consistent with CWA Section 301(b)(1)(C).

**1.7.2 Water Quality and Total Maximum Daily Loads**

Any waterbody that does not, and/or is not, expected to meet the applicable State water quality standards is described as “impaired” or as a “water quality-limited segment.” Section 303(d) of the CWA requires States to identify impaired water bodies in the State and develop TMDL management plans for those impaired water bodies. TMDLs define both wasteload allocations (WLAs) for point sources and load allocations (LAs) for non-point sources that specify how much of a particular pollutant can be discharged from both regulated and unregulated sources, respectively, such that the waterbody will again meet State water quality standards.

IDEQ’s 2016 *Integrated Section 303(d)/Section 305(b) Report* (2016 Integrated Report) describes Idaho’s ongoing efforts to monitor, assess, track, and restore the chemical, physical, and biological integrity of Idaho’s waters as required by CWA Section 303(d).<sup>4</sup>

As summarized in the table below, IDEQ’s 2016 Integrated Report identifies no impaired waters in the Idaho Falls Urbanized Area receiving the MS4 discharges covered by the Permit.

<i>Status of Waters Receiving Regulated MS4 Discharges</i>			
Receiving Water	Waterbody Assessment Unit	Impairment Pollutants	TMDL Status
Snake River	ID17040201SK001_04 and ID17040201SK001_05 <i>Snake River - Dry Bed Creek to River Mile 791</i>	Not Assessed.	Not applicable.

**2 Basis for Permit Conditions**

**2.1 General Information**

NPDES permits for regulated small MS4s must include terms and conditions to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements under the CWA. At a minimum, MS4 permit terms and conditions must satisfy the requirements set forth 40 CFR § 122.34(a) through (e).

<sup>4</sup> The IDEQ’s 2016 Integrated Report is available online at: <https://www.deq.idaho.gov/water-quality/surface-water/monitoring-assessment/integrated-report.aspx>.

MEP is the statutory standard that describes the level of pollutant reduction that MS4 operators must achieve. What constitutes MEP “should continually adapt to current (*water quality*) conditions and BMP effectiveness and should strive to attain water quality standards.”<sup>5</sup> Neither the CWA nor the stormwater regulations provide a precise definition of MEP, which provides for maximum flexibility in MS4 permitting.

The EPA has described the iterative process of imposing the MS4 standard, including what is necessary to reduce pollutants to the MEP, over consecutive permit terms as: (1) the NPDES permitting authority defining clear, specific, and measurable NPDES permit requirements; (2) the MS4 Permittees implementing the required actions as part of a comprehensive program; and (3) the NPDES permitting authority and MS4 Permittees evaluating the effectiveness of BMPs used to date, current water quality conditions, and other relevant information.<sup>6</sup>

All MS4 permits must include terms and conditions that are “clear, specific, and measurable,” and consist of narrative, numeric, and/or other types of requirements. Examples include: implementation of specific tasks or practices; BMP design requirements; performance requirements; adaptive management requirements; schedules for implementation, maintenance, and/or frequency of actions.<sup>7</sup>

In order to comply with the MS4 standard during the Permit term, the EPA has defined the stormwater management program (or SWMP) control measures and evaluation requirements that the Permittees must implement. The Permit describes these requirements in more detail than was previously required in the prior administratively continued Permit to ensure that the terms and conditions are “clear, specific, and measurable.” To reduce the discharge of pollutants from the MS4s to the MEP, each Permittee must implement and enforce the control measures outlined in Permit Part 3 (*SWMP Control Measures*). Where a Permittee’s MS4 discharge(s) may be contributing to an ongoing excursion above an applicable water quality standard, and a long-term solution is needed to address the MS4 contribution, the Permit establishes an adaptive management process in Permit Part 5 (*Required Response to Excursions of Idaho Water Quality Standards*). Evaluation and reporting requirements are outlined in Permit Part 6 (*Monitoring, Recordkeeping and Reporting*).

## **2.2 Discharges Authorized By the Permit**

Permit Part 1.2 conditionally authorizes municipal stormwater discharges, and certain types of non-stormwater discharges, from the Permittees’ MS4s within the Permit Area, provided that the Permittees comply with the Permit’s terms and conditions. Where monitoring or other information shows that a pollutant in a Permittees’ MS4 discharge is causing or contributing to an ongoing excursion above the applicable Idaho water quality standard, the Permittees must comply with the notification and other adaptive management requirements in Permit Part 5 (*Required Response to Excursions of Idaho Water Quality Standards*). See also Section 2.6 of this Fact Sheet.

The Permit outlines conditions and prohibitions related to snow disposal (Permit Part 2.2); stormwater discharges associated with industrial and construction activities (Permit Part

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<sup>5</sup> EPA 1999, pages 68753-68734/

<sup>6</sup> EPA 2016 pages 89338.-89339; 40 CFR 122.34(a)(2)

<sup>7</sup> See 40 CFR 122.34(a).

2.3); and discharges unrelated to precipitation events (i.e., “non-stormwater discharges;” Permit Part 2.4) that are similar to requirements in the administratively continued Permit.

The EPA acknowledges that, in some urban Idaho watersheds, non-stormwater sources (in the form of landscape irrigation, springs, rising ground waters, and/or groundwater infiltration) are routinely present during dry weather discharges from the MS4(s). The Permit requires Permittees to determine whether a detected dry weather MS4 discharge is an “allowable” discharge. Section 2.4.2 of this Fact Sheet discusses the related dry weather outfall screening requirements included as Permit Parts 3.2.5 and 3.2.6.

### **2.3 Permittee Responsibilities**

Permit Part 2.5 outlines Permittee responsibilities. In general, each Permittee is independently responsible for Permit compliance related to their MS4 and associated discharges.

40 CFR § 122.33(b)(2)(iii) allow regulated MS4 entities to jointly apply as a group to obtain discharge authorization under an individual permit. Once a permit is issued to the group, each entity is responsible for compliance with the Permit’s terms and conditions. A written agreement between the parties is required to clarify agreed-upon roles and responsibilities. The Permittees maintain both a cooperative agreement and a maintenance agreement that outlines their respective roles and responsibilities; the Permittees may need to update or renew these existing agreements to comply with the provisions of the updated Permit.

Permit Part 2.5.3 allows a Permittee (or Permittees) to implement one or more of the control measures by sharing responsibility with an outside entity other than another MS4 Permittee. The Permittee(s) must enter into a written agreement with the outside entity in order to minimize any uncertainty about the other entity’s responsibilities to the Permittee. The Permittee(s) remains responsible for compliance with the Permit obligations in the event the outside entity fails to implement the control measure (or any component thereof).<sup>8</sup>

Permit Part 2.5.4 requires the Permittees to maintain adequate legal authority to implement and enforce the required SWMP control measures as allowed and authorized pursuant to applicable Idaho law.<sup>9</sup> Without adequate legal authority, or other mechanisms that allow control over what enters or discharges from the MS4, the Permittee(s) cannot perform vital stormwater management functions, such as conducting inspections, requiring installation and proper operation of pollutant control measures within its jurisdiction, and/or enforcing such requirements. The EPA recognizes that highway departments and other special purpose entities do not have formal ordinance authority under Idaho law. In such cases, the EPA expects the Permittees to control pollutants into and from the MS4 by using all relevant regulatory mechanisms available pursuant to applicable Idaho law.

Permit Part 2.5.5 requires each Permittee (or the Permittees in partnership) to develop, and update as necessary, a written SWMP Document.<sup>10</sup> The SWMP Document summarizes the

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<sup>8</sup> See 40 CFR §122.35.

<sup>9</sup> See EPA 2010.

<sup>10</sup> See 40 CFR §122.34(b) and discussion of the relationship between the SWMP and required permit terms and conditions in *EPA 2016b* at pages 89339-89341. In contrast, the purpose of the Annual Report is to summarize the Permittee’s activities during the previous reporting period, and to provide an assessment or review of the Permittee’s compliance with the Permit.

physical characteristics of the MS4 and describes how the Permittee conducts the required SWMP control measures within its jurisdiction. The EPA has provided a suggested format for the SWMP Document as an appendix to the Permit and notes that other MS4 Permittees have already developed such documents that can be used as examples.<sup>11</sup> The SWMP Document address three audiences and purposes:

1. General Public – The SWMP Document serves to inform and involve the public in implementation of the local SWMP;
2. EPA and IDEQ – The SWMP Document provides the permitting authority a single document to review to understand how the MS4 Permittees will implement its SWMP and comply with Permit requirements; and
3. Elected officials and local staff – The SWMP Document can potentially be used by the Permittees as an internal planning or briefing document.

The SWMP Document should also describe the Permittees' unique implementation issues such as cooperative or shared responsibilities with other entities.

The requirement for the Permittees to develop a SWMP Document is an enforceable condition of the Permit. However, the contents of the SWMP Document are not directly enforceable as requirements of the Permit. As a result, the Permittees may create and subsequently revise the SWMP Document, as necessary, to describe how the stormwater management activities are implemented in compliance with the Permit. Therefore, updates to the SWMP Document may occur without EPA or IDEQ review and approval.

The first iteration of the MS4 Permittees' SWMP Document must be available to the EPA, IDEQ, and the public on a publicly available website (required by Permit Part 3.1.8) no later than the due date of the 1st Year Annual Report. The SWMP Document(s) must be subsequently updated, as needed, to reflect the Permittees' current implementation of their control measures and submitted with the Permit Renewal Application, as required by Permit Part 8.2, no later than 180 days prior to the expiration date of the Permit.

Permit Part 2.5.5 requires the Permittees to track indicator statistics and information to document and report on SWMP implementation progress.

Permit Part 2.5.6 requires the Permittees to provide adequate financial support, staffing, equipment, and other support capabilities to implement the SWMP control measures and other Permit requirements. The Permittee(s) demonstrate compliance with this provision by fully implementing the requirements of the Permit. Permittees are not required to keep track of, or report, their implementation costs, though it might be appropriate and helpful for the Permittees to track their program investment in some manner. The Permit does not require specific staffing or funding levels, thus providing flexibility and incentive for Permittees to

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<sup>11</sup> See, for example, SWMP plan documents authored by the City of Coeur d'Alene ([http://www.cdaid.org/files/Engineering/Storm\\_waterManagementPlan.pdf](http://www.cdaid.org/files/Engineering/Storm_waterManagementPlan.pdf)); City of Nampa (<http://www.cityofnampa.us/DocumentCenter/View/1513>); and Boise State University ([http://www.partnersforcleanwater.org/media/182277/2014\\_boise\\_state\\_university\\_swmp.pdf](http://www.partnersforcleanwater.org/media/182277/2014_boise_state_university_swmp.pdf)). Other examples include the Cities of Bellevue, WA; Tacoma, WA; and/or available through the Permit's Administrative Record.

adopt the most efficient methods to comply with Permit requirements. The EPA encourages Permittees to establish stable funding sources for ongoing SWMP implementation and enter cooperative working relationships with other regulated small MS4s. Technical resources, such as the *Water Finance Clearinghouse* developed by the EPA's Water Infrastructure and Resiliency Finance Center,<sup>12</sup> are available to help Permittees identify sustainable funding solutions. The EPA supports comprehensive long-term planning to identify investments in stormwater infrastructure and system management that complement other community development initiatives and promote economic vitality.

Permit Part 2.5.8 requires Permittees to extend their stormwater management control measures to all areas under their direct control when new areas served by the MS4 are annexed, or when areas previously served by the MS4 are transferred to another entity. Permittees must report changes in ownership or operational authority to the EPA and IDEQ through the SWMP Document and Annual Reports. Permittees are reminded to make associated revisions to MS4 system maps or other records as soon as possible.

### **2.3.1 Alternative Control Measure Requests**

The Permit requires the implementation of SWMP control measures, or control measure components. Where Permittees must revise or update SWMP control measures, or control measure components, full implementation must be accomplished no later than 180 days prior to the Permit expiration date. To provide implementation flexibility, the Permit allows the Permittee(s) the discretion to submit requests to implement one or more Alternative Control Measures (ACM).

As outlined in Permit Part 2.6.1, the Permittee(s) may submit supplemental or individualized documents, plans, or programs that are deemed equivalent to a comparable SWMP control measure, or control measure component, in Permit Part 3, along with supporting rationale and information. Requests for ACM(s) must be submitted no later than two years after the Permit effective date.<sup>13</sup> Upon determining that the ACM request(s) is equivalent to a comparable Permit SWMP control measure, or control measure component, and results in a modification of the Permit terms and conditions, the Permitting Authority will provide opportunity for public comment and, if requested, a public hearing. The Permitting Authority will consider all comments received on the ACM and resulting change in permit terms and conditions before issuing a final agency decision.<sup>14</sup>

The opportunity for ACM(s) relative to any SWMP control measure, or control measure component, in Permit Part 3 offers the Permittee(s) maximum flexibility for SWMP implementation. For example, the Permittees may request the EPA and IDEQ to consider an alternative means of implementing a SWMP control measure as a whole (such as the Construction Site Runoff control measure specified by Part 3.3); or, the Permittees may request the EPA consider an alternative SWMP *control measure component*, such as the specific requirement in Part 3.3.3 (*Construction Site Runoff Control Specifications*).

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<sup>12</sup> See: <https://www.epa.gov/waterfinancecenter>

<sup>13</sup> Pursuant to Permit Part 8.1, no provision is stayed until the modification process to recognize the ACM is complete.

<sup>14</sup> EPA 2016b.

## 2.4 SWMP Requirements

Permit Part 3 contains clear, specific, and measurable requirements to address the minimum control measures in 40 CFR § 122.34(a) and (b) that serve to reduce pollutants to the MEP. For each control measure, the EPA has outlined specific tasks, BMPs, design requirements, performance requirements, adaptive management requirements, schedules for implementation and maintenance, and/or frequency of actions. Each minimum control measure is comprised of actions and activities that the EPA refers to as *SWMP control measure components*.

The EPA considered the existing programs implemented by the City and ITD6 during development of the Permit terms and conditions.<sup>15</sup> The EPA has incrementally refined each SWMP control measure component from the prior MS4 permit to iteratively clarify the MS4 permit standard for the Permittees and establish expectations for the level of effort necessary to reduce pollutants in MS4 discharges.

The EPA recognizes that each regulated MS4 is unique and that each operator has different circumstances that guide their approach to stormwater management and pollutant control. To address these unique circumstances, the Permit allows implementation flexibility while setting consistent expectations through clear, specific, and measurable permit requirements.

### 2.4.1 Public Education, Outreach, and Involvement

Permit Part 3.1 addresses the required SWMP control measure for public education, outreach, and involvement requirements consistent with 40 CFR §§ 122.34(b)(1) and (b)(2). Public education, outreach, and involvement are essential parts of any plan to reduce stormwater pollutants because the daily activities of people contribute significantly to the types and sources of pollutants in urban settings. As citizens learn about the impacts of their actions on local water resources, they are more likely to change their behaviors.

The prior MS4 permit contained public education and involvement requirements, and the Permittees continue to conduct a range of education and public involvement activities related to their local programs.<sup>16</sup> The EPA strongly encourages cooperative outreach efforts and intends to allow the Permittees to choose which public education and involvement activities to continue or initiate.

When scoping their intended activities, the EPA also recommends that MS4 Permittees consider the recommendations found in the EPA document *Promising Practices for Permit Applicants Seeking EPA-Issued Permits: Ways to Engage Neighboring Communities*. See also Section 3.1 of this Fact Sheet.

The Permit contains the following public education, outreach, and involvement SWMP control measure components:

- Permit Part 3.1.1 establishes a compliance deadline of one year from the Permit effective date for Permittees to begin, or update and continue, their public education, outreach, and involvement activities in the Permit Area. This provision also contains a

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<sup>15</sup> See 40 CFR § 122.34(a)(2).

<sup>16</sup> See: Idaho Falls and ITD6 MS4 Annual Reports, available on the City of Idaho Falls webpage, <https://www.idahofallsidaho.gov/370/Stormwater>

requirement that the Permittee(s) must submit any ACM Request under this Section within 180 days of the effective date of the Permit.

- Permit Part 3.1.2 specifies requirements for the Public Education, Outreach and Involvement Program. To the extent allowable, pursuant to the authority granted the individual Permittees under Idaho law, the Permittees must work to educate and engage interested stakeholders in the development and implementation of the SWMP control measures.
- Permit Part 3.1.3 requires the Permittees to distribute and/or offer a minimum of eight educational messages to at least one of the four audiences listed in Part 3.1.4 during the Permit term.
- Permit Part 3.1.4 identifies target audiences (i.e., General Public; Business/Industrial/Commercial/Institutions; Construction/Development Professionals; and Elected Officials, Land Use Policy and Planning Staff). For each audience, the Permit includes a non-exclusive list of suggested topics for the Permittees to consider as its focus during the Permit term.
- Permit Part 3.1.5 requires Permittees to assess, or to participate in an effort to assess, the understanding and adoption of behaviors by the target audience(s). A vital, yet challenging, component of successful education programs is the assessment of whether the Permittees' efforts are achieving the goals of increasing public awareness and behavior change to improve water quality. The EPA recognizes and encourages the long-term nature of such assessment activities, and notes that there may be opportunities for Permittees to work together within the State, or with other organizations, on specific MS4 topics if they choose to do so.
- Permit Part 3.1.6 requires Permittees to maintain records of their education, outreach, and public involvement activities.
- Permit Part 3.1.7 requires Permittees to provide educational opportunities related to certain SWMP control measures at least twice during the Permit term. Permittees are encouraged to plan opportunities in a manner that the relative success of their educational efforts can be articulated as required by Permit Part 3.1.5.
- Permit Part 3.1.8 requires the Permittees to maintain and promote at least one publicly-accessible website to provide relevant SWMP information to the public. Relevant SWMP information includes the Permittee's SWMP Document, links to relevant public education material, and easily identifiable (and up to date) Permittee contact information such that members of the public may easily call or email to report spills or illicit discharges, and/or ask questions, etc. The City has established a storm water educational webpage which can be viewed at: <https://www.idahofallsidaho.gov/370/Stormwater>.

#### **2.4.2 Illicit Discharge Detection and Elimination**

Permit Part 3.2 contains requirements for the Permittees to address illicit discharges and spill response within their jurisdictions. At a minimum, the EPA requires the Permittees to maintain the ability to prohibit, detect, and eliminate illicit discharges from their MS4s.

The purpose of this SWMP control measure is to require the Permittees to provide ongoing surveillance and deterrence to prevent pollutant loadings caused by illicit discharges into the Permittee's MS4. Illicit discharges can enter the MS4 through direct connections (e.g.,

wastewater piping mistakenly or deliberately connected to the storm drains), or through indirect connections (e.g., infiltration into the MS4 from cracked sanitary systems, spills collected by drain inlets, or discarded paint or used oil dumped directly into a drain). Both types of illicit discharge can contribute excessive pollutants into the MS4 and, as a result, can negatively affect water quality. Investigating for and eliminating such illicit discharges from entering the MS4 improves water quality.

Permittees are responsible for the quality of the discharges from their MS4 and, therefore, have an interest in locating and discontinuing any uncontrolled non-stormwater discharges into and from their MS4. To ensure that pollutants from non-stormwater discharges are adequately controlled, Permittees should continue to work cooperatively and use their collective abilities to address illicit discharges in their jurisdictions.

The Illicit Discharge Detection and Elimination (IDDE) control measure components required by 40 CFR § 122.34(b)(3) direct Permittees to manage illicit discharges to the MS4 by:

- Maintaining a map of the MS4 showing the location of all outfalls and names of the receiving waters;
- Effectively prohibiting discharges of non-stormwater to the MS4 through the use of an ordinance or other regulatory mechanism, and provide for enforcement of that prohibition as needed;
- Implementing a program to detect and address non-stormwater discharges, including procedures to identify problem areas in the community, determine sources of the problem(s), remove the source if one is identified, and document the actions taken; and
- Informing public employees, businesses, and the general public of the hazards associated with illicit discharges and improper disposal of waste and publicize appropriate public reporting of illicit discharges when they occur.

The Permittees have a program to prohibit, detect, and respond to illicit discharges, as appropriate, in their jurisdictions. The EPA encourages the Permittees to continue working together to share expertise and knowledge to fully implement this SWMP control measure through the control measure components described below:

- Permit Part 3.2.1 establishes a compliance deadline of 180 days before the Permit expiration date for the Permittees to update their existing IDDE program activities, and/or to fully impose any new SWMP control measure components outlined in this Part. The EPA believes this timeframe is justified to allow Permittees adequate opportunity to adjust their existing programs, as necessary, and to ensure all the SWMP control measure components are sufficiently addressed in the Permit Area.
- Permit Part 3.2.2 continues to require the Permittees to maintain a current MS4 map, along with a new requirement for the Permittees to provide an accompanying inventory of the features that comprise the MS4 system. The EPA has refined the content of the MS4 Map and Outfall Inventory and requires updated materials to be submitted as part of the Permit Renewal Application, pursuant to Permit Part 8.2. The purpose of the MS4 Map and Outfall Inventory is to record and verify MS4 outfall locations, including relevant descriptive system characteristics. The EPA expects each Permittee to know the locations and characteristics of all outfalls that it owns/operates through mapping their infrastructure and associated assets. Permittees are encouraged to couple the outfall

inventory with other SWMP control measures, such as the operation and maintenance requirements in Permit Part 3.5, to help inform their inspection and/or maintenance prioritization.

Additionally, Permit Part 3.2.2 requires the Permittees to identify and characterize any MS4 outfall(s) with ongoing dry weather flows as a result of irrigation return flows and/or groundwater seepage. Knowing both the location and characteristics of such outfall(s) is an important data point in areas where the MS4 discharges to receiving waters. The City of Idaho Falls states in their 2019 Annual Report that approximately 98% of MS4 outfalls have been screened during dry weather flow, and to date, no inventoried outfalls have contained flow during non-storm event inspections. The MS4 Map and Outfall Inventory can be collectively reassessed by the EPA, IDEQ, and the Permittees at the time of the Permit renewal to tailor future control measures in the next permit term in efforts to address potential non-stormwater discharges that may be contributing pollutants to the receiving waters.

- Permit Part 3.2.3 requires Permittees to prohibit non-stormwater discharges into the MS4 through enforcement of an ordinance or other legal mechanism to the extent allowable under Idaho state law. Part 3.2.3 identifies minimum prohibitions that the EPA expects Permittees to enforce within its jurisdiction. The EPA reviewed the local ordinances and regulatory mechanisms currently imposed by the Permittees and believes the existing ordinances/mechanisms can fully prohibit the flows listed in Part 3.2.3. The EPA clarifies that it is unnecessary for the ordinance/legal mechanism to cite all the individual prohibitions listed, provided that the Permittees' legal mechanism can be used to address such discharges if they are found discharging to the MS4. This provision provides a minimum expectation for the local ordinance/legal mechanism to prohibit all possible non-stormwater discharges that negatively impact water quality.
- Permit Part 3.2.4 describes the EPA's expectations for the Permittees' Illicit Discharge Complaint Reporting and Response Program. The Permittees must maintain and advertise a publicly accessible and available means to report illicit discharges. The Permittees must respond to reports within two (2) days and maintain records regarding actions taken. These programs can be promoted to the public in concert with the public education requirements in Permit Part 3.1. Staff assigned to handle calls should be trained in stormwater issues and emergency response in order to gather and transfer the right information to responders. Conducting an investigation as soon as possible after the initial complaint is crucial to the success of this program.
- Permit Part 3.2.5 requires the Permittees to conduct a dry weather analytical and field screening monitoring program to identify non-stormwater flows from MS4 outfalls during dry weather. Additionally, this program must emphasize screening activities to detect and identify illicit discharges and illegal connections, and to reinvestigate potentially problematic MS4 outfalls throughout the Permit Area. The EPA has added prescriptive requirements to (1) prioritize visual screening of at least 50 outfalls per year throughout the Permittee's jurisdiction (Permit Part 3.2.5.2); (2) use appropriate screening and monitoring protocols when flows are identified during dry weather (Permit Part 3.2.5.3.); and (3) ensure proper recordkeeping/documentation (Permit Part 3.2.5.4.).

Data collected through the Permittees' regular screening of their outfalls during dry weather, and through the public reporting of illicit discharges and connections, can reveal important trends in the types of pollutants generated within and transported into

the MS4. Permit Part 3.2.2.6. requires that the Permittees locate and map the occurrences of illicit discharges in order to target appropriate response actions over time. The EPA recommends that samples taken during dry weather screening be analyzed for pH, total chlorine, detergents, total copper, total phenols, fecal coliform bacteria, and/or turbidity to assist in source identification.

Appropriate threshold limits for dry weather monitoring results are important to distinguish pollutant spikes from normal background conditions at a particular outfall. For example, through its Stormwater Investigation Manual, the Ada County Highway District established threshold levels that, when exceeded, result in retesting to determine whether the sample was an isolated event or an ongoing water quality issue. The Permittees should also consider establishing a visual baseline for each outfall type to aid in determining what constitutes “normal” dry weather flows, and to distinguish between background conditions (uncontaminated ground water infiltration, for example) versus abnormal, non-stormwater flows that are prohibited by the Permit.

As previously noted, the Permittees currently conduct a dry weather screening program, and have not identified flow from the MS4 outfalls during non-storm event inspections.

- Permit Part 3.2.6 requires mandatory follow-up actions for recurring illicit discharges (identified through complaint reports and/or the Permittees screening activities). Response activities must begin within 30 days of identifying elevated concentrations of screening parameters and action must be taken to eliminate problem discharges within 60 days. Specific timelines are included to direct timely initiation of actions to reduce or fully eliminate a known or newly identified problem.

Due to the diverse nature and sources of water quality impacts in urban settings in Idaho, both the EPA and IDEQ are concerned about inputs of irrigation return flows and/or groundwater seepage through MS4s. Permit Part 3.2.6 requires Permittees to list identified MS4 outfall locations where irrigation return flows and/or groundwater seepage are present during dry weather (see also Permit Part 3.2.2.6.). This is a first, interim step towards an assessment of water quality impacts resulting from these specific non-stormwater discharges. For any MS4 outfall where ongoing dry weather discharges are identified by the Permittees as associated with irrigation return flows and/or groundwater seepage, the term “appropriate action” in Permit Part 3.2.6 means, at a minimum, documentation in the Annual Report of the MS4 outfall location, and the Permittees’ determination of the source as either irrigation return flows or groundwater seepage. The EPA encourages the Permittees to take action to eliminate such flows if it is identified as a source of pollutants pursuant to Permit Part 2.4.5.2. At a minimum, a summary list of all such outfall locations must be submitted with the Permit Renewal Application. This information will be collectively reassessed by the EPA, IDEQ, and the Permittee(s) at the time of the permit renewal to tailor future control measures to appropriately address non-stormwater discharges that may be contributing excess nutrient loads to receiving waters.

- Permit Part 3.2.7 requires the Permittees to respond to spills and maintain appropriate spill prevention and response capabilities as appropriate within their jurisdiction. Through coordination with state and/or local agencies (under this provision, “agencies” refers to the organizations responsible for spill response), the goal is to provide maximum water quality protection at all times.

- The EPA has included an explicit requirement directing the Permittee to notify the appropriate IDEQ regional office, Idaho State Communications Center, and/or the National Response Center, as specified by IDEQ in comments submitted on the EPA's 2017 draft MS4 General Permit.<sup>17</sup>
- Permit Part 3.2.8 requires coordination with appropriate agencies to ensure the proper disposal of used oil and toxic materials by employees and the public. In concert with the education and outreach provisions in Permit Part 3.1, the Permittees should consider continuing their successful outreach and public education efforts on proper recycling and disposal of used oil and household hazardous waste in their jurisdictions.
- Permit Part 3.2.9 requires the Permittees to appropriately train 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.

### **2.4.3 Construction Site Stormwater Runoff Control**

This SWMP control measure requires Permittees to control construction site runoff discharges into their MS4s. 40 CFR § 122.34(b)(4) requires Permittees to use an ordinance or regulatory mechanism to require proper construction site controls for sediment, erosion, and waste management at sites with land disturbance of one (1) or more acres. Additionally, construction activities disturbing less than one (1) acre are subject to this regulation if that activity is part of common plan of development or sale that exceeds one (1) acre. Other mandatory control measure components are procedures for site plan review that considers potential water quality impacts; procedures for site inspection and enforcement; and procedures for the receipt and consideration of information submitted by the public.

Construction activities (such as clearing vegetation and excavating, moving, and compacting earth and rock) significantly change the land surface. The consequences of construction activities during rainfall events includes: reduced stormwater infiltration, increased runoff volume and intensity, and higher soil erosion rates. While sediment and other pollutants are readily mobilized by precipitation during land disturbance activity, such discharges can be effectively prevented through the use of reasonable and effective erosion and sedimentation controls. Examples include the use of construction sequencing and vegetative- or non-vegetative stabilization techniques.<sup>18</sup>

Local ordinances and requirements are key to ensuring that construction site operators use appropriate techniques to prevent pollutant discharges to the MS4s. Although discharges from all construction sites disturbing one or more acres in Idaho are independently subject to the *NPDES General Permit for Storm Water Discharges from Construction Activity*, #IDR120000 (Construction General Permit or CGP), it is appropriate for the MS4 operators to directly impose local construction site management requirements to prevent construction-related pollutants from entering the MS4s.

The following summarizes the control measure components under Permit Part 3.3. (*Construction Site Stormwater Runoff Control*):

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<sup>17</sup> IDEQ 2017.

<sup>18</sup> EPA 1999, pages 68758-68759; EPA 2009a, pages 7-3 through 7-26.

- Permit Part 3.3.1 establishes a compliance deadline of 180 days before the Permit expiration date for Permittees to update their existing programs, if needed, or to impose any new or revised control components in the Permit Area. This provision also defines the date by which any ACM Request must be submitted.
- Permit Part 3.3.2 outlines the expected scope of the Permittees' legal mechanism to reduce and prevent runoff from construction sites in its jurisdiction that disturb one (1) acre or more.
- Permit Part 3.3.3 requires written specifications to define appropriate site level controls for construction activities within the Permittee's jurisdiction. The EPA clarifies that the type and extent of site-level erosion, sediment, and waste management controls will likely be different depending on site size and location. Therefore, the Permittees have the discretion to determine how best to control sediment and other pollutants in runoff from different sized construction sites.
- Permit Part 3.3.4 requires a preconstruction site plan review process to address construction site activity that will result in land disturbance of one (1) or more acres and includes consideration of public input. This review can be conducted using a checklist or similar process to consider and address potential water quality impacts from the site activities.
- Permit Part 3.3.5 requires that the Permittees conduct prioritized construction site inspections and to enforce the applicable local requirements as needed. At a minimum, the Permittees must inspect and enforce their requirements at construction sites occurring in their jurisdictions that disturb one (1) or more acres.
- Permit Part 3.3.6 requires the Permittees to have a written enforcement response policy or plan to guide and prioritize their oversight, inspection, and enforcement efforts.
- Permit Part 3.3.7 requires the Permittees to provide proper training for construction staff conducting plan review and inspections.

The EPA believes the existing construction site runoff control programs conducted by the City of Idaho Falls and ITD6 are fully consistent with the requirements outlined above. Thus, at the very least, the Permittees should continue to implement their current program.

#### **2.4.4 Post-Construction Stormwater Management from New Development and Redevelopment**

Permit Part 3.4 requires Permittees to continue to implement and enforce a program to control runoff from new development and redevelopment sites, including projects involving streets and roads.

Pursuant to 40 CFR § 122.34(b)(5), the prior MS4 Permit for the City of Idaho Falls and ITD6 required these controls at sites disturbing one (1) or more acres and at sites less than one (1) acre, which are part of a common plan of development or sale that exceeds one (1) acre. The Permittee(s) must address runoff from new development and redevelopment project sites using a locally appropriate combination of structural and/or non-structural BMP

requirements.<sup>19</sup> Further, the Permittee(s) must enforce the requirements using an ordinance or other regulatory mechanism, to the extent allowable under state or local law, and ensure the adequate long-term operation and maintenance of these BMPs.<sup>20</sup> The Permittees have been adequately implementing such requirements within their jurisdictions.

The Permit uses the term “permanent stormwater controls” instead of “post-construction stormwater management controls” to mean those controls that will treat or control pollutants in stormwater runoff from the development site on a permanent basis after construction is complete. This terminology is consistent with other MS4 permits issued by the EPA Region 10 since 2012.

- Permit Part 3.4.1 establishes a compliance deadline of 180 days before the Permit expiration date for Permittees to update their existing Post-Construction Stormwater Management control program, and, if needed, to impose any new SWMP control measure components in the Permit Area. This timeframe is justified to allow Permittees the flexibility to adjust their existing programs as necessary. This provision also defines the date by which any ACM Request(s) must be submitted.
- Permit Part 3.4.2 requires the Permittees to update their legal regulatory mechanism to incorporate an onsite stormwater retention standard or require a treatment equivalent to the onsite retention standard, for new development and redevelopment sites. The purpose of this requirement is to prevent the creation of excess stormwater discharges, and pollutant loadings, from the impervious surfaces associated with urban development. Use of onsite stormwater management controls at such sites will reduce pollutants in regulated MS4 discharges to the MEP and proactively protect Idaho receiving waters by ensuring that water quality protections continue over the long term. Additional rationale for including the requirement for onsite retention of stormwater runoff from new development and redevelopment is provided in Appendix 3 of this Fact Sheet.

The EPA believes the City of Idaho Falls’ requirements for onsite retention and detention of runoff from new and redevelopment sites meets the requirement for onsite retention/treatment equivalent in Permit Part 3.4.2. On a statewide level, ITD has adopted its *ITD Best Management Practices Manual* and *ITD Standard Specifications for Highway Construction* for managing stormwater associated with its projects, and that when implemented is consistent with Permit Part 3.4.2.

Permit Part 3.4.2 also allows for alternative mitigation in situations where complete onsite retention of the target runoff volume is infeasible. The Permittees may apply an alternative standard if it is deemed to be equally protective, or more protective, of the onsite stormwater management design standard as articulated in the Permit. For example, alternative local compliance with the Permittees’ calculated stormwater management design standard could take the form of off-site mitigation or payment in lieu programs. The Permittees could consider creating an inventory of appropriate alternative stormwater management techniques, and/or using planning mechanisms (such as completed sub-watershed plans or other appropriate means) to identify priority areas within sub-watersheds of their jurisdiction(s) where off-site mitigation, and/or public

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<sup>19</sup> “Non-structural requirements” include, but are not limited to, planning, zoning, and other local requirements such as buffer zones. “Structural controls” include, but are not limited to, the use of storage, infiltration basins, or vegetative practices such as rain gardens or artificial wetlands. See: 40 CFR§122.34(b)(5)(iii).

<sup>20</sup> See EPA 2012; EPA 2009; and 40 CFR §122.34(b)(5).

stormwater mitigation projects, could be implemented.

- Permit Part 3.4.3 requires the Permittees to maintain written specifications for the permanent stormwater controls allowed by the Permittees at development sites within their jurisdiction. These specifications must be utilized at sites disturbing at least one (1) acre or more.
- Permit Part 3.4.4 requires Permittees to review and approve site plans for permanent stormwater controls at sites resulting from land disturbance of one (1) or more acres. Specific standards are a critical component of the program, but even the best local requirements must be supported by a review component to ensure that the locally established performance standards are met. To comply with this requirement, the Permittees must have the authority to withhold approvals when it determines that the controls at a specific site are not designed to meet established standards for permanent stormwater control.
- Permit Part 3.4.5 outlines the requirement for the Permittees to inspect and enforce their requirements for permanent stormwater controls at sites resulting from land disturbance of one (1) or more acres. Inspection of permanent control measures is key to ensuring water quality protection over the long term. Without periodic inspection or maintenance, the permanent controls can instead become pollutant sources, rather than a means of prevention. An effective local inspection process, combined with appropriate enforcement if necessary, ensures that onsite controls are built according to approved plans and specifications, and use proper materials and installation techniques. The EPA expects the Permittees to prioritize their inspection and enforcement to include any new permanent stormwater controls installed after the Permit effective date.
- Permit Part 3.4.6 requires the Permittees to ensure the long-term operation and maintenance (O&M) of permanent stormwater controls through the use of a database inventory to track and manage the operational condition of permanent stormwater controls within its jurisdiction. This database inventory can take the form of a computerized maintenance management system or asset management system that allows for the electronic logging of O&M tasks. Ongoing O&M is necessary to ensure that the BMPs will perform as designed over time. Inadequate maintenance of existing stormwater management controls is a primary shortcoming for most local stormwater management programs across the country. As with any infrastructure, deferred maintenance can increase costs and negatively affect receiving waters. Unmaintained BMPs will ultimately fail to perform their design functions and can become a nuisance and/or pose safety problems.<sup>21</sup> The Permittees must track those permanent controls that are known to them, or for which they accept ownership, beginning no later than the Permit effective date.
- Permit Part 3.4.7 requires the Permittees to ensure that their staff are sufficiently trained and/or qualified to review site plans for permanent stormwater controls, and/or for inspecting the installation and operation of permanent stormwater controls.

#### **2.4.5 Pollution Prevention and Good Housekeeping for MS4 Operations**

As noted above, O&M is an integral part of any SWMP and, when coupled with good housekeeping and pollution prevention principles, reduces the risk of water quality

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<sup>21</sup> NRC 2008; Shaver, et al 2007.

problems from MS4 discharges. The minimum requirements for this control measure are set forth in 40 CFR § 122.34(b)(6). The administratively continued MS4 permit for the City of Idaho Falls and ITD6 required the implementation of an O&M program “intended to prevent or reduce pollutant runoff from municipal operations;” to develop an employee training program; and to prepare site-specific stormwater pollution prevention plans (SWPPPs) at the Permittees’ own maintenance buildings and similar facilities.

Permit Part 3.5 requires the Permittees to properly operate and maintain their MS4s, actively manage runoff from Permittee-owned and/or operated facilities and conduct their municipal activities to prevent or reduce the discharge of pollutants from the MS4.

The Permittees must continue to focus on maintenance of their MS4s to protect water quality. Due to the diverse nature of the Permittees’ MS4 facilities, which include not only the streets and parking lots, but also stormwater ponds, underground pipes, drainage ditches, etc., ensuring appropriate inspection and maintenance schedules are in place for each type of infrastructure/facility is both relevant and necessary. O&M procedures should include some manner or protocol for testing and safely disposing of waste materials and any associated decant water collected from catch basins or other MS4 infrastructure.

Individual SWMP control measure components under the Pollution Prevention/Good Housekeeping control measure in Part 3.5 are reasonable, practicable, and consistent with other MS4 permits issued by the EPA Region 10 since 2012. The specific requirements are summarized below:

- Permit Part 3.5.1 establishes a compliance deadline of 180 days before the Permit expiration date for Permittees to update their existing runoff control program(s), and/or to impose any new program components, in the Permit Area. The EPA believes this timeframe is justified to allow Permittees adequate opportunity to adjust their existing programs, as necessary, and ensure the required actions are sufficiently addressed in the Permit Area. This provision also defines the date by which any ACM Request(s) must be submitted.
- Permit Part 3.5.2 outlines requirements for the inspection of all of the Permittees catch basins and inlets within the MS4 service area at least once every five years and requires appropriate cleaning and/or maintenance activities based on the findings of those inspections.

Because roads and streets function as an integral part of the drainage conveyance systems within the Idaho Falls Urbanized Area and other Urbanized Areas of Idaho, the EPA has included explicit provisions for appropriate stormwater management through O&M activities for roads, streets, highways and parking lots.

- Permit Part 3.5.3 requires Permittees to review and update their O&M procedures for streets, roads, highways, and parking lots that are owned, operated, and/or maintained by the Permittees to ensure procedures continue to be protective of water quality and reduce the discharge of pollutants through the MS4. Permit Part 3.5.3.3 further requires that Permittees consider using water conservation measures for all landscaped areas associated with streets, roads, highways, and parking lots to prevent landscape irrigation water from discharging through the MS4. Excessive landscape watering can contain fertilizers and other compounds that, when discharged through the MS4 can increase nitrogen and phosphorus loading to impaired waters. Landscape irrigation can be

considered an allowable non-stormwater discharge when it is not a source of pollution under the Idaho WQS. See Permit Part 2.4.

- Permit Part 3.5.4 requires Permittees with street, roads, and highway maintenance responsibilities to ensure that road material stockpiles (such as sand, salt, or sand with salt stockpiles) are managed in a manner that prevents pollutants from discharging to the MS4 or into any receiving water. Permittees without street maintenance responsibilities do not have an obligation to comply with this provision. An inventory of all such street materials must be maintained. No later than 180 days prior to the Permit expiration date, as part of the Permit Renewal Application required by Permit Part 8.2, the Permittees must assess their Material Storage Locations for water quality impacts and must describe any structural or non-structural improvements made by the Permittees to prevent runoff from discharging to the MS4 or directly to a receiving water.
- Permit Part 3.5.5 requires Permittees with street, road, highway, and parking lot responsibilities to document the adequacy of their sweeping activities through a sweeping management plan. Permittees without street maintenance responsibilities do not have an obligation to comply with this provision.
- Permit Part 3.5.6 requires the Permittees to review and update their O&M procedures for a variety of other typical municipal activities to ensure procedures protect water quality and reduce the discharge of pollutants through the MS4.
- Permit Part 3.5.7 requires Permittees to ensure that their staff, and others operating in public areas owned and/or operated by the Permittees, are appropriately handling and/or using pesticides, herbicides, and fertilizers within the Permit Area. This provision is consistent with the *NPDES General Permit for Discharges from The Application of Pesticides, for the State of Idaho*, NPDES Permit No. IDG870000.
- Permit Part 3.5.8 requires Permittees to manage onsite materials at their maintenance yards and to prevent pollutants in runoff through use of SWPPPs. Plans developed for such locations can use the basic SWPPP framework identified in various EPA guidance materials and may follow a “template plan” to establish basic requirements that can be tailored to the location/responsible staff.
- Permit Part 3.5.9 requires Permittees to work cooperatively to reduce litter in their jurisdictions to prevent the conveyance of trash and other material through the MS4.
- Permit Part 3.5.10 requires the Permittees to ensure that all staff responsible for the stormwater infrastructure management and O&M activities are trained and/or otherwise qualified to conduct such activities with attention to prevent potential water quality impacts.

## **2.5 Requirements for Excursions above the Idaho Water Quality Standards**

Permit Part 5 sets forth requirements for Permittees to report and address excursions above the Idaho WQS as directed by Permit Part 2.1. The EPA has outlined an adaptive management approach for use when there are ongoing discharges from the MS4 that cause or contribute to excursions above the applicable Idaho WQS and are not being addressed by other SWMP control measure requirements.

Permit Part 5 also provides Permittees with the opportunity to use adaptive management principles to scope corrective action steps to address ongoing, prolific pollutant source(s). Where such solutions may involve structural controls, require capital expenditures, and/or

that necessitate long term planning and implementation schedules, Permit Part 5 provides opportunity for the Permittee(s) to define and articulate such long-range investment plans.

The EPA supports robust, long-term planning for stormwater management by MS4 communities and recognizes that the most successful stormwater planning uses multi-benefit approaches to solve stormwater pollution control challenges. It also recognizes that for a plan to be more affordable, communities need to make financial investments over a time horizon of sufficient length to allow for cost efficiencies through working with other municipal programs.<sup>22</sup>

Any Permittee that submits information pursuant to Permit Part 5 will be prompted to report on their incremental progress towards their identified milestones in both their Annual Report, and as part of a complete Permit Renewal Application.

## **2.6 Monitoring, Recordkeeping and Reporting Requirements**

Consistent with 40 CFR § 122.34(d), Permit Part 6 requires that the Permittees evaluate program compliance, keep records, and submit Annual Reports. Furthermore, Section 308 of the CWA, federal regulation 40 CFR § 122.44(i), and subsequent EPA guidance requires monitoring to determine compliance with terms and conditions of a NPDES permit.

### **2.6.1 Compliance Evaluation**

Permit Part 6.1 requires the Permittees to assess their compliance with the Permit requirements annually and to document the evaluation through the submittal of an Annual Report. Although the regulations allow less than annual monitoring in a second term MS4 permit, the EPA has instead provided a concise "fillable PDF" Annual Report format for MS4 Permittees to use during the Permit term. The five-year permit term will coincide with the EPA's national transition to online reporting for MS4 permits; this transition is expected to be accomplished no later than December 2020.<sup>23</sup> To maintain reporting continuity during this transition, the EPA believes it appropriate to retain annual reporting in the Permit. Once primacy for the NPDES stormwater permit program is transferred to IDEQ, the Permittees may request different reporting frequencies in the subsequent MS4 permit, pursuant to 40 CFR § 122.34(d)(3).

### **2.6.2 Monitoring and/or Assessment Activities**

The EPA is not requiring the Permittees to conduct wet weather or other water quality monitoring as part of their SWMP implementation efforts. However, if the Permittees voluntarily decide to conduct analytical monitoring or other types of quantitative assessment activities, Permit Part 6.2 contains monitoring/assessment planning and quality assurance provisions and other applicable requirements pertaining to such monitoring. Implementing monitoring and assessment activities can allow the Permittees to evaluate the effectiveness of stormwater management actions and justify budgets that support stormwater management programs. While many MS4 program goals are output-based (e.g. number of stormwater treatment practices installed, number of educational brochures distributed), which can be useful from a program accounting standpoint, such measurements often cannot be used to quantify changes in water quality resulting from

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<sup>22</sup> EPA 2016g.

<sup>23</sup> See EPA 2015c.

MS4 program activities.<sup>24</sup>

### **2.6.3 Recordkeeping and Reporting**

Permit Part 6.3 requires the Permittees to keep all records associated with the Permit for a period of at least five years and submit such records only when requested by the Permitting Authority. The Permittee(s) must ensure that SWMP materials are available to the public, and they may charge a reasonable fee for copies and/or require a member of the public to provide advance notice of their request. As previously noted, Permit Part 3.1 requires the Permittees to provide their SWMP Document(s) to the public electronically via one or more dedicated websites.

Permit Part 6.4 describes the overall reporting requirements, including the schedule and required content for the Annual Reports. .At a minimum, Permittees must submit Annual Reports of progress to both the EPA and IDEQ using the recommended Annual Report format provided in the Permit Appendix no later than 61 days after the close of relevant reporting period. The Annual Report format will prompt the Permittees for appropriate information according to compliance dates specified in the final Permit.

The EPA clarifies that, based on the joint responsibility provisions in Permit Part 2.5.2, it is necessary that both City of Idaho Falls and ITD6 to each submit appropriately signed and certified Annual Report(s), as is currently done in other Idaho MS4 permits where ITD is a co-permittee with other entities.

No later than December 21, 2020, all NPDES reports submitted in compliance with an applicable permit must be submitted electronically through the EPA's national electronic reporting system. However, the MS4 Permit program is one of the last types of NPDES permits to be accommodated by this new system.<sup>25</sup> Until the electronic system is available, the Permittees must submit signed versions of their Annual Reports to the EPA and IDEQ addresses provided in the Permit.

## **2.7 Standard Permit Conditions**

Permit Parts 7 and 8 contain standard regulatory language that must be included in all NPDES permits. The standard regulatory language addresses compliance responsibilities and other general requirements. Although certain provisions may not strictly apply to MS4 facilities (for example, the upset or bypass provisions), it is mandatory that each of the standard provisions be included in a NPDES permit. Such provisions were previously included in the prior MS4 permit. The EPA notes that 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.

### **2.7.1 Duty to Reapply**

In accordance with 40 CFR §122.46(a), NPDES permits are in effect for a fixed term not to exceed five (5) years. Permit Part 8.2 requires any MS4 Permittee, intending to continue its operational control and management of MS4 discharges after the Permit expiration date, to submit an application no later than 180 days before the Permit expiration date.

Because there are no NPDES application forms for the MS4 permit program, Permit Part

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<sup>24</sup> CWP 2009.

<sup>25</sup> EPA 2015c.

8.2.1 describes the expected content of a complete Permit Renewal Application. The deadline for the Permit Renewal Application (180 days before the Permit expiration date) corresponds to the Permit's implementation/compliance dates; therefore, as part of any request for continued permit coverage, the Permittees must submit the attachments listed in Permit Part 8.2.1 to demonstrate how they have complied with the current Permit requirements.

All MS4 Permittees are expected to submit a 5th Year Annual Report by the Permit expiration date, using the format provided in Appendix B of the Permit. In the event that a new permit is not issued on or before the Permit expiration date, any Permittee that has submitted a complete Permit Renewal Application in accordance with Part 8.2, may be authorized to continue discharging under an administratively continued Permit pursuant to 40 CFR § 122.6. If the permit is administratively continued, the Permittees must continue to adhere to the terms and conditions of the Permit, which includes submitting Annual Report(s) by the anniversary of the Permit expiration date until coverage under a reissued or replacement Permit is available.

### **3 Other Legal Requirements**

#### **3.1 Environmental Justice**

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, directs each federal agency to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high, and adverse human health or environmental effects of its programs, policies, and activities.” The EPA strives to enhance the ability of overburdened communities to participate fully and meaningfully in the permitting process for EPA-issued permits, including NPDES permits. “Overburdened” communities can include minority, low-income, tribal, and indigenous populations, or communities that potentially experience disproportionate environmental harms and risks. As part of an agency-wide effort, the EPA Region 10 will prioritize enhanced public involvement opportunities for EPA-issued permits that may involve activities with significant public health or environmental impacts on already overburdened communities. For more information, please visit <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>

As part of the permit development process, the EPA Region 10 conducted a screening analysis to determine whether the Permit action could affect overburdened communities. The 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 Idaho Falls Urbanized Area is identified as an area where potentially overburdened communities reside. In order to ensure that individuals in this area are able to participate meaningfully in the NPDES permit process, the EPA will distribute the notice of the public comment period broadly, and will 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.

The EPA encourages all 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>.

### 3.2 Endangered Species Act

The Endangered Species Act (ESA) Section 7(a)(2) requires federal agencies to consult with the National Oceanic and Atmospheric Administration – National Marine Fisheries Service (NOAA Fisheries) and the U.S. Fish and Wildlife Service (USFWS) regarding potential effects an action may have on listed endangered species.

The EPA reviewed current endangered and threatened species maps, species lists, and other available information from both NOAA Fisheries and USFWS, and has determined that issuance of the Permit for discharges from the City of Idaho Falls and ITD6 MS4s will have no effect on any listed endangered or threatened species or designated critical habitat; therefore, for this Permit action, consultation is not required. The EPA reached this conclusion based on the following information:

1. There are no anadromous fish in the Upper Snake River basin; based on the location of the MS4 discharges, the EPA determines that consultation with NOAA Fisheries is not required, because issuance of the Permit in the Idaho Falls Urbanized Area will have no effect on any threatened or endangered species under NOAA Fisheries jurisdiction.
2. The EPA reviewed the species list from USFWS, which indicates that the Yellow-billed Cuckoo (*Coccyzus americanus*) is considered a threatened species that may occur within the Idaho Falls Urbanized Area boundary; however, the Idaho Falls Urbanized Area is not part of the proposed critical habitat for the Yellow-billed Cuckoo.<sup>26</sup>

The Yellow-Billed Cuckoos (YBCs) was federally listed as threatened under the Endangered Species Act on 11/03/2014 (See: 79 FR 59991- 60038, October 3, 2014). The YBC is a medium sized brown bird, about 12 inches long and weighing about two ounces. YBCs use wooded habitat with dense cover and water nearby, including woodlands with low, scrubby, vegetation, overgrown orchards, abandoned farmland, and dense thickets along streams and marshes. In the West, nests are often placed in willows along streams and rivers, with nearby cottonwoods serving as foraging sites.<sup>27</sup>

However, "...western yellow-billed cuckoos rarely occur in or near highly populated areas...." Further, "*In Idaho, the yellow-billed cuckoo is a rare visitor and local breeder that occurs in scattered drainages primarily in the southern portion of the state..... [and] are generally absent from heavily forested areas and large urban areas.*"<sup>28</sup>

Because the activities resulting from the EPA's issuance of the Permit will always occur in the densely populated urbanized area, such activities are unlikely to disturb YBCs or

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<sup>26</sup> USFWS Species List (Idaho Falls UA/Bonneville Co.), Consultation Event Code: 01EIFW00-2019-E-03756 (9/2/2019).

<sup>27</sup> See: USFWS Species Profile at: [http://ecos.fws.gov/tess\\_public/profile/speciesProfile.action?spscode=B06R](http://ecos.fws.gov/tess_public/profile/speciesProfile.action?spscode=B06R)

<sup>28</sup> See: USFWS 2014 at 79 FR 60012 (Oct. 3, 2014); and undated information published by Idaho Fish and Game at: <http://fishandgame.idaho.gov/ifwis/cwcs/pdf/Yellow-billed%20Cuckoo.pdf>

their habitat. The EPA's permit requires consistent and ongoing activities to control pollutants discharged from the MS4, and therefore will not affect species that do not live in the aquatic environment. The EPA believes there is no exposure risk for these birds from MS4 discharges occurring in the Idaho Falls Urbanized Area. Therefore, the EPA has determined that the permit authorizing discharges from the regulated MS4s in the Idaho Falls Urbanized Area will have no effect on the Yellow Billed Cuckoo, and that consultation is not required for this action.

### **3.3 Essential Fish Habitat**

Essential Fish Habitat (EFH) is the waters and substrate (sediments, etc.) necessary for fish spawning, breeding, feeding, or growing to maturity. The Magnuson-Stevens Fishery Conservation and Management Act requires the EPA to consult with the NOAA-Fisheries if a proposed action has the potential to adversely affect (by reducing the quality and/or quantity of) EFH. Based on the location of the Idaho Falls Urbanized Area, EPA has determined that the issuance of the Permit will not affect any EFH species in the vicinity of the MS4 discharges; therefore, consultation is not required for this action.

### **3.4 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). Historic Properties include prehistoric or historic districts, sites, buildings, structures, or objects that are included in, or are eligible for inclusion in, the National Register of Historic Places. See 36 CFR §802(e). Federal undertakings include the EPA's issuance of a NPDES permit.

The EPA has 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, the EPA believes that the actions associated with the Permit 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. If any permitted entity engages in any activity which meets all of the following criteria, then they must consult with and obtain approval from the State Historic Preservation Office prior to initiating the activity:

- The permitted entity is conducting the activity in order to facilitate compliance with the MS4 Permit;
- The activity includes excavation and/or construction; and
- The activity disturbs previously undisturbed land.

Examples of actions that may meet the above criteria include but are not limited to: retention/detention basin construction; storm drain line construction; infiltration basin construction; dredging; and stabilization projects (e.g., retaining walls, gabions). The

requirement to submit information on plans for future earth disturbing is not intended for activities such as maintenance and private development construction projects.

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

Regulations at 40 CFR §122.49, list the 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 information regarding potential impacts, development, and analysis of options to avoid or minimize impacts; and development and analysis of measures to mitigate adverse impacts.

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

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

### **3.6 Permit Dates**

The Permit will expire five years from the Permit effective date. As proposed, the Permit assumes an effective date of October 1, 2020. Compliance dates for SWMP control measure implementation, Annual Report submittals, etc., are tentatively identified in the Permit (in the upfront *Schedule* and in pertinent text) based on the final Permit's effective date.

During discussions Idaho stakeholders in late 2016 and early 2017 regarding preliminary draft MS4 documents, the EPA was reminded to remain cognizant of local government budget planning cycles (based on a fiscal year calendar October – September) when establishing implementation deadlines in the Permit. In response, the EPA has calculated the MS4 Permit compliance dates assuming an effective date of October 1.

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

Section 401 of the CWA required the 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, the EPA will request that IDEQ certify the permit for these MS4s. Questions or comments regarding the IDEQ's CWA §401 certification should be directed to the IDEQ's Idaho Falls Regional Office at (208) 528-2650.

## 4 References Used in this Permitting Decision

The following is a partial list of references supporting the development of the Permit; additional references are available in the Administrative Record for the permit action.

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## APPENDIX 1 – STATUTORY AND REGULATORY OVERVIEW

### Pollutants Typically Found in Urban Runoff

Stormwater is the surface runoff that results from rain and snow melt. Urban development alters the landscape's natural infiltration, and human activity generates pollutants that accumulate on paved or impervious surfaces. Uncontrolled pollutants and flow associated with stormwater discharges from urban areas can negatively affect water quality. Contaminants enter stormwater from a variety of sources in the urban landscape. Urban stormwater is often a contributing factor where there is a water quality standard impairment in a particular waterbody. Stormwater or urban runoff typically contains a mixture of pollutants, including the following major constituents:

- Sediment;
- Nutrients (nitrogen and phosphorus);
- Chlorides;
- Trace metals;
- Petroleum hydrocarbons;
- Microbial pollution;
- Organic chemicals (pesticides, herbicides, and industrial); and
- Temperature.<sup>29</sup>

An increase in impervious surface cover will increase the amount of runoff. Effects of runoff generally takes one of two forms. First, an increase in the type and quantity of pollutants in stormwater runoff, where these pollutants become suspended in runoff and are carried to receiving waters, and can impair the aquatic life uses of these waters. The second kind of runoff effect occurs by increasing the quantity of water delivered to the waterbody as a result of storms. Increased impervious surface area (such as, parking lots, driveways, and rooftops) interrupts the natural process of gradual percolation of water through vegetation and soil, and the water that would percolate under natural conditions may instead be discharged through the MS4. The effects of this alteration include streambank scouring and downstream flooding, which can affect aquatic life and damage property.<sup>30</sup>

### Statutory and Regulatory Background for the MS4 Permit Program

The federal Clean Water Act (CWA) Section 402(p), 33 U.S.C. § 1342(p) and the National Pollutant Discharge Elimination System (NPDES) stormwater regulations establish permit requirements for regulated MS4 discharges. Section 402(p)(3)(B) of the CWA, 33 U.S.C. §1342(p)(3)(B) requires any NPDES permit for MS4 discharges to effectively prohibit non-precipitation related flows from entering the MS4, and require controls to reduce the discharge of pollutants to the maximum extent practicable (MEP), including management practices, control techniques, and system design and engineering methods, and such other provisions determined to be appropriate by the NPDES permitting authority.

Definitions of relevant terms, such as “*municipal separate storm sewer*,” and “*small MS4*,” are found at 40 CFR §122.26(b). In general, a *municipal separate storm sewer* includes any publicly - owned conveyance or system of conveyances that discharges to waters of the United States, is

<sup>29</sup> Shaver, Horner, et al. 2007; EPA 1990; EPA 1999a and EPA 1999b.

<sup>30</sup> Novak, et al 2015, page 61; Novak, et al 2016.

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designed or used for collecting and conveying stormwater, is not a combined sewer, and is not part of a publicly owned treatment works. A *municipal separate storm sewer system*, or MS4, includes roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and/or storm drains.<sup>31</sup>

In 1990, EPA developed the first phase of federal stormwater regulations as directed by the CWA. The “Phase I” regulations established NPDES permit application and related requirements for discharges from large MS4s and medium MS4s. The Phase I regulation identified the large- and medium MS4s nationally based on the 1990 Census population. Based on the 1990 Census in Idaho, the Phase I stormwater regulations automatically designated MS4 operators discharging within the boundaries of Garden City and Boise as medium MS4s.<sup>32</sup>

In 1999, EPA developed the “Phase II” stormwater regulations, and designated additional small MS4s as needing NPDES permits. Regulated small MS4s include any MS4 discharge not already covered by Phase I that is located (partially or wholly) within an Urbanized Area (UA) as defined by the latest decennial Census. Regulated small MS4s in Idaho are located in Census-defined UAs of Coeur d’Alene; Lewiston; Nampa; Boise; Pocatello; and Idaho Falls. The Phase II regulation also defines regulated small MS4s as those systems with a UA that serve military bases or other properties owned by the United States; colleges and universities; large hospital or prison complexes; and highway systems.<sup>33</sup> In Idaho, public entities own and/or operate regulated small MS4s in UAs, include cities and counties; local highway districts; ITD; and state or community colleges and universities.

The Phase II regulation includes authority for EPA (or states that administer the NPDES program as the permitting authority) to require NPDES permits for other unregulated stormwater discharges by a designation process.<sup>34</sup>

Permits for MS4 discharges must include terms and conditions to reduce the discharge of pollutants from the MS4 to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act.<sup>35</sup> The MS4 permittee must control pollutants in their MS4 discharges to the MEP by addressing the six “minimum control measures,” i.e., public education and outreach, public participation and involvement, illicit discharge detection and elimination, construction site runoff control, post construction runoff control, and pollution prevention and good housekeeping. The operator may seek NPDES permit coverage under an available general permit, or the operator may apply for an individual permit.<sup>36</sup>

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<sup>31</sup> See: 40 CFR §122.26(b); 122.32(a); and EPA 1990.

<sup>32</sup> In December 2000, EPA issued a single individual NPDES permit (#IDS027561) for the Phase I MS4 discharges owned/operated by six co-permittees operating in Garden City and Boise, ID; EPA reissued Permit #IDS027561 effective January 2013 -January 2018.

<sup>33</sup> See: 40 CFR §§ 122.26(b)(16) and 122.30 through 37; and EPA 1999. U.S. Census maps for the Coeur d’Alene, Lewiston (ID)-Clarkston (WA), Nampa, Boise, Pocatello, and Idaho Falls UAs are available at [http://www2.census.gov/geo/maps/dc10map/UAUC\\_RefMap/ua/](http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/).

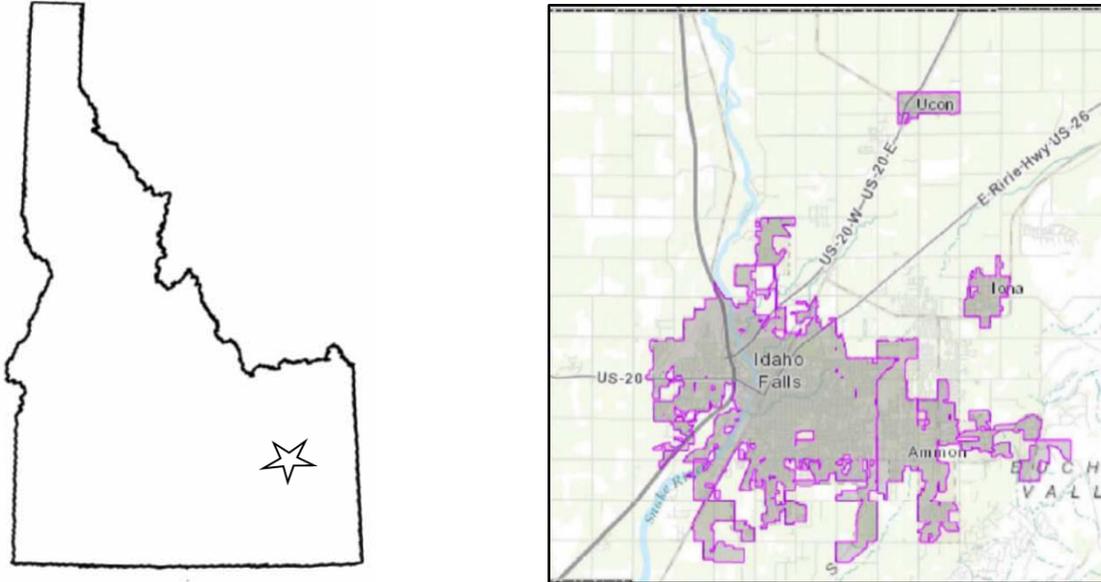
<sup>34</sup> See: 40 CFR § 122.26(a)(9)(i)(C) and (D)

<sup>35</sup> See: CWA Section 402(p)(3); 40 CFR §122.34(a); EPA 2016a and 2016b. EPA now refers to this phrase as the *MS4 permit standard*.

<sup>36</sup> See: 40 CFR § 122.34(b) and additional discussion in Section III of this Fact Sheet.

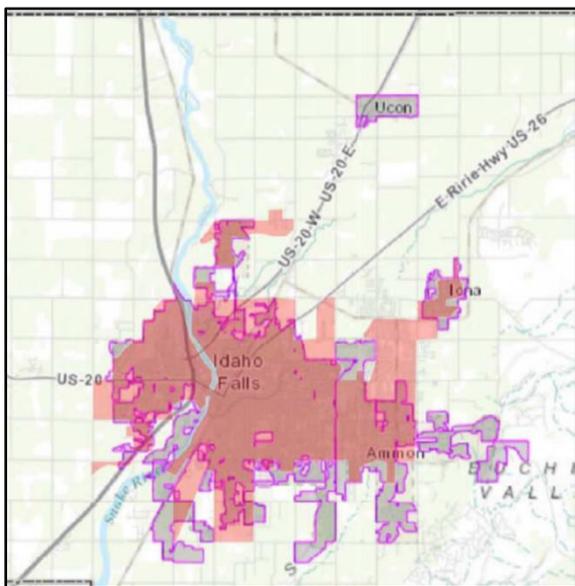
**APPENDIX 2 – PERMIT AREA MAPS: IDAHO FALLS URBANIZED AREA**

**Figure 3.A:** City Boundaries for the greater Idaho Falls Area

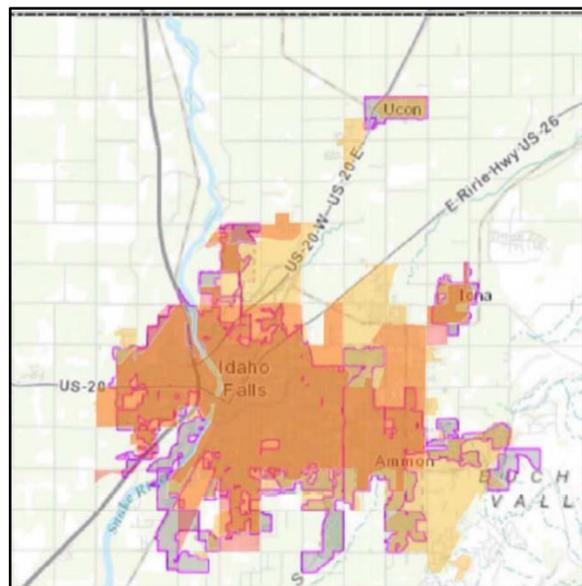


<b>Idaho Falls Urbanized Area</b>	Census 2000	<a href="http://www2.census.gov/geo/maps/urbanarea/uaoutline/UA2000/ua40996/ua40996_01.pdf">http://www2.census.gov/geo/maps/urbanarea/uaoutline/UA2000/ua40996/ua40996_01.pdf</a>
	Census 2010	<a href="http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua40996_idaho_falls_id/">http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua40996_idaho_falls_id/</a>

**Figure 3.B:** City and Year 2000 UA Boundaries for the Idaho Falls Urbanized Area



**Figure 3.C:** Combined City, Year 2000 UA, and Year 2010 UA Boundaries for the Idaho Falls Urbanized Area



## **APPENDIX 3 – RATIONALE FOR THE ONSITE STORMWATER RETENTION STANDARD OR TREATMENT EQUIVALENT IN PERMIT PART 3.4**

The requirements in Permit Part 3.4 will improve upon the site design specifications, guidelines, and other policy documents that are currently required by MS4 Permittee jurisdictions in Idaho. The purpose of requiring an onsite stormwater design standard in this and other Idaho MS4 permits is to reduce pollutants in regulated MS4 discharges to the MEP and improve upon the protection of water quality in Urbanized Areas of Idaho by helping to maintain or restore stable hydrology in adjacent receiving waters.

The EPA believes the onsite retention and detention requirements currently imposed by the City of Idaho Falls and ITD6 meets the intention of the Permit Part 3.4.2. The following discussion provides additional background on EPA’s rationale for including this requirement being necessary to meet the MS4 permit standard for Idaho.

It is well understood nationally that uncontrolled runoff from new development and redeveloped areas negatively affects receiving water bodies.<sup>37</sup> Pavement and other impervious surfaces in urban settings prevent infiltration of precipitation, and the resulting runoff increases both in volume and velocity, which in turn causes the erosion of stream banks and scouring of streambeds. Fine sediments and pollutants from automobiles, landscape pesticides, and fertilizers enter waterbodies, and can damage fish spawning areas and other aquatic habitat. Where traditional stormwater management practices typically employ engineered, end-of-pipe practices, (that tend to control only peak flow rates and total suspended solids concentrations), such conventional practices typically fail to address widespread and cumulative hydrologic modifications within a watershed that increase runoff volumes and rates, causing excessive erosion and stream channel degradation. Traditional practices also fail to treat runoff for nutrients, pathogens, and metals pollutants typically found in urban settings.<sup>38</sup>

Permanent stormwater control measures that involve prevention- such as product substitution, better site design, downspout disconnection, and conservation of natural areas - as well as watershed and land use planning, can dramatically reduce both the volume of runoff and pollutant loads from new development and redevelopment. In particular, site-level stormwater control measures that harvest, infiltrate, and evapotranspire stormwater runoff are critical to reducing the volume and pollutant loading associated with smaller storms.<sup>39</sup>

“Green Infrastructure” (GI) or “green stormwater infrastructure” (GSI), are terms used to describe the type of permanent stormwater management techniques that are cost-effective, sustainable, and environmentally friendly. Such techniques, including site level “Low Impact Development” (LID) practices, at new development or redevelopment projects involve both stormwater management and land development strategies emphasizing conservation and integration of natural features with small scale engineered hydrologic controls to more closely mimic predevelopment hydrologic function. A comprehensive approach to long-term stormwater management using GI/GSI, and LID seeks to:

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<sup>37</sup> EPA 1983; EPA 1999.

<sup>38</sup> Shaver, et al., 2007. Holz, 2008; and Horner, 2008.

<sup>39</sup> NRC 2008.

- Preserve, protect and enhance natural landscape features, such as undisturbed forests, meadows, wetlands, and other undisturbed areas that provide natural stormwater management;
- Reduce overall land consumption, and use land efficiently, to reduce total watershed or regional impervious cover;
- Recycle land by directing new development to already degraded land, e.g., parking lots, vacant buildings, abandoned malls; and
- Direct stormwater into the ground near where it fell through infiltration, prevent rainfall from falling to the ground through interception, return water back to the atmosphere through evapotranspiration, and/or otherwise manage storm water through reuse techniques.<sup>40</sup>

Since 2008, the EPA has encouraged MS4 jurisdictions to employ a volume-based approach to stormwater management at new development and redevelopment sites. This approach includes requirements for the design, construction, and maintenance of permanent stormwater practices that manage rainfall onsite, to generally prevent the off-site discharge of precipitation from all rainfall events below a certain size. The EPA considers a volume-based stormwater management approach to be appropriate in this and other MS4 permits in Idaho because such techniques are widely acknowledged as a means of preventing pollutants from entering the receiving water; further, such techniques directly address the need to maintain and, where necessary, restore predevelopment hydrology for duration, rate, and volume of stormwater flows.

Many GSI/LID strategies involve bioretention, or infiltrating runoff through soil. Bioretention practices include use of porous pavements, green roofs, bioswales, and rain gardens. Various studies confirm the effectiveness of GSI/LID practices to reduce contaminants, restore hydrology, and protect the health of aquatic species. Research and on-the-ground experience suggests that all LID practices can perform effectively in a wide variety of geographic areas as long as procedures for proper design, implementation, and maintenance are established and followed.<sup>41</sup>

Many MS4 Permittees in Idaho currently require onsite retention and infiltration practices at development sites in their jurisdictions and integrate aspects of a GSI/LID approach for such new development and redevelopment sites. Based on evidence that such GSI/LID approaches are indeed practicable for use in Idaho communities, the EPA is now requiring such site design approaches in this and other MS4 permits in Idaho to better address post-construction stormwater discharges.

The Permit requires the Permittees to use local ordinances or regulatory mechanisms to require the volume of water from storms  $\leq$  95<sup>th</sup> percentile event to be managed entirely onsite, and not discharged to surface waters, in order to fully protect Idaho receiving waters. The *95<sup>th</sup> percentile rainfall event* is the rainfall event that is greater than 95% of all rainfall events over a period of record (typically using a minimum 30-year period of record). In general, this calculation excludes extremely small rain events that are  $\leq$  0.1 of an inch of rainfall or less (because such small rainfall events typically do not result in any measurable runoff due to absorption, interception, and evaporation by permeable, impermeable, and vegetated surfaces).<sup>42</sup>

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<sup>40</sup> See: American Rivers 2013; EPA 2006; EPA 1999, at pages 68725 – 68728 and 68759; EPA 2008; and EPA 2009.

<sup>41</sup> For example, see Ahiablame, et al, 2012; Spromberg, J.A. et al. 2016; and McIntyre, J.K, et al. 2016; and other references in the Administrative Record.

<sup>42</sup> See: Hirschman and Kosco, 2008.

The EPA has previously calculated example target design storm volumes, as illustrated below. Using available 24-hour precipitation data through 2012 from the National Oceanic and Atmospheric Administration, the EPA analyzed the average rainfall depth occurring in the Idaho MS4 Permit Areas. See Table A below. In the Urbanized Areas of Idaho, approximately 95% of all storms result in rainfall volumes of approximately 0.82 inches or less, ranging between 0.57 inches to 0.82 inches.

**Table A: Analysis of the 95th Percentile Storm Runoff Volumes for Idaho MS4 Permit Areas**

Urbanized Area/ Permit Area	Rainfall Depth (in)	NOAA Station Location; Period of Record
	95 <sup>th</sup>	
Coeur d' Alene	0.81888	COEUR D ALENE, ID (GHCND:USC00101956); 1895-2012
Moscow	0.8188	MOSCOW U OF I, ID (GHCND:USC00106152); 1893-2012
Caldwell	0.6102	BOISE AIR TERMINAL, ID (GHCND:USW00024131); 1940-2012
Nampa	0.5708	NAMPA 2 NW, ID US ZIP:83687; 1948-2012
Boise	0.6102	BOISE AIR TERMINAL, ID (GHCND:USW00024131); 1940-2012
Lewiston	0.6299	LEWISTON NEZ PERCE CO AIRPORT, ID (GHCND:USW00024149); 1940-2012
Pocatello	0.6495	POCATELLO REGIONAL AIRPORT, ID (GHCND:USW00024156); 1939-2012
Idaho Falls	0.688	IDAHO FALLS, ID 83402 ZIP:83402; 1913-2012

The EPA recommends the 95<sup>th</sup> percentile storm volume be calculated for the Idaho Falls Urbanized Area at the start of the Permit term and revisited at the time of permit renewal so that a consistent standard is applied for the duration of the Permit term.

Including a stormwater design standard for onsite stormwater retention in this and other MS4 Permits, expressed as a calculated runoff volume, serves to acknowledge the predicted, incremental increase in storm event volumes in Idaho Falls and other areas of Idaho. The EPA believes such a design standard is preferable to using a single, static statewide rainfall amount (e.g, “0.6 inches total rain”), or a volume calculated from a statistical storm frequency return interval using historic rainfall data.

The EPA has evaluated the potential extreme storm event return interval for 24-hour storm events in each of the MS4 Permit Areas in Idaho.<sup>43</sup> The evaluation reflects estimated changes in rainfall

<sup>43</sup> EPA Region 10’s analysis of the extreme storm event return interval for the Idaho MS4 Permit Areas is available as part of the Administrative Record. EPA used a risk assessment application designed to help water utilities in adapting to extreme weather events through a better understanding of current and long-term weather conditions; it is available online at <https://www.epa.gov/crwu/build-resilience-your-utility>.

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patterns over 30-year averages, centered around the years 2035 and 2060, as compared to historical or present-day conditions. Under all evaluated scenarios, the predicted trends in Idaho MS4 Permit Areas show a general increase in ambient temperatures throughout the calendar year, and increased storm magnitude for all return frequencies (i.e., the 5 year, 10 year, ..., and 100 year events). The evaluation also suggests significantly decreased summer precipitation statewide, balanced by increased precipitation during other seasons. Expressing the stormwater design standard for onsite storm water retention in Permit Part 3.4 as a calculated runoff volume therefore defines a practicable and feasible performance standard for permanent stormwater control at new development and redevelopment that will protect Idaho water quality over the long term.