

Response to Comments on
National Pollutant Discharge Elimination System (NPDES) Permit
For Discharges from the
City of Post Falls
Municipal Separate Storm Sewer System
NPDES Permit No. IDS028231

September 2020

U.S. Environmental Protection Agency, Region 10

Table of Contents

Introduction..... 3

State Certification under Clean Water Act §401..... 3

Edits to the Final Permit..... 3

 Table 1. Edits to Final Permit..... 3

Response to Comments..... 4

 General Topics..... 4

 Comments on FS for Permit #IDS028231..... 4

 Applicability; Limitations and Conditions (Permit Parts 1 and 2)..... 6

 Public Education and Outreach on Stormwater Impacts (Permit Part 3.1)..... 8

 Illicit Discharge Detection and Elimination (Permit Part 3.2)..... 10

 Post-Construction Stormwater Management for New Development and Redevelopment (Permit Part 3.4)..... 12

 Pollution Prevention/Good Housekeeping for MS4 Operations (Permit Part 3.5)..... 13

 PCB Monitoring (Permit Part 6.2.6)..... 16

 Compliance Responsibilities-Standard NPDES Permit Conditions (Permit Part 7)..... 18

 Definitions (Permit Part 9)..... 19

 Permit Appendix B-1..... 20

Appendix A: Idaho Department of Environmental Quality’s Final Certification under Clean Water Act §401..... 21

Introduction

On May 8, 2020, the U.S. Environmental Protection Agency Region 10 (EPA) proposed a draft National Pollutant Discharge Elimination System (NPDES) permit for discharges from the municipal separate storm sewer system (MS4) owned and/or operated by the City of Post Falls (City) in Kootenai County, Idaho. The permit document #IDS028231 will be referred to in this document as “the Permit.” The public comment period ended on June 22, 2020.

This document provides EPA responses to comments received on the proposed Permit. Comments are broadly organized by topic in the order the issue appears in the Permit. In general, EPA summarizes each comment, and where appropriate for clarity EPA groups similar comments into one statement. In some cases, EPA includes the comment verbatim. Where indicated, EPA has made changes to the final Permit. The Administrative Record contains copies of each comment letter, as well as information considered by EPA during the permit development process.

State Certification under Clean Water Act §401

On June 12, 2020, the Idaho Department of Environmental Quality (IDEQ) provided EPA with a final Clean Water Act (CWA) Section 401 certification that includes conditions that must be included in the Permit pursuant to CWA Section 401(d), 33 U.S.C. § 1341(d). A copy of the final certification is provided in Appendix A of this document. Final certification conditions are included in the Permit. See Table 1.

Edits to the Final Permit

Several comments and/or responses refer to discussion from EPA’s Fact Sheet (FS) supporting the draft Permit. It is EPA Region 10 policy not to revise the FS discussion based on public comment; instead, upon Permit issuance EPA considers this Response to Comments document as an appendix to the FS which clarifies issues as necessary.

EPA has made minor editorial changes throughout the Permit text for clarity and/or grammatical correction. Major editorial changes have been made to the following Permit Parts in response to comments and IDEQ certification, as identified in Table 1 below:

Table 1. Edits to Final Permit

Edits Based on Public Comments Received:	
Minor editorial revisions	See Responses #3, 4, 6
Part 2.5.4	See Response #13
Part 2.6.2	See Response #14
Part 3.1	See Response #17
Part 3.5.3.2	See Response #30
Permit Appendix B-1	See Response #42
Edits Based on Recent EPA and IDEQ Actions:	
Part 9 Definition of <i>Green Infrastructure</i>	Revised consistent with the new definition in the Water Infrastructure Improvement Act. See Response #40.
Part 9 Definition of <i>Waters of the United States (U.S.)</i>	Revised to align with EPA’s final Navigable Waters Protection Rule defining “waters of the U.S.,” effective June 22, 2020. See Response #41.

Parts 2.5.7, 3.2.7.1, and 4.3; Appendix A.2	Conditions of IDEQ's <i>Final §401 Water Quality Certification for the City of Post Falls Municipal Separate Storm Sewer Systems; NPDES Permit #IDS028231</i> , dated June 12, 2020. See Appendix B of this document.
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Response to Comments

Comments were received from the parties listed below, and are credited to their author/organization using the abbreviations indicated:

- Association of Idaho Cities (AIC)
- City of Post Falls (City)
- Washington Department of Ecology (WDOE)

General Topics

1. **(AIC):** AIC has discussed the proposed Permit with the City of Post Falls and has been engaged in a general Idaho MS4 Permittees' review of the proposed Permit and the City's comments. Please accept this letter as a statement of concurrence and support for the comments that have been submitted.

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

2. **(WDOE):** WDOE appreciates U.S. EPA's efforts to reissue and update the NPDES Permits to the Cities of Post Falls and Coeur d'Alene (Permittees). We are confident that the implementation of comprehensive Stormwater Management Programs (SWMP) will assist these two Permittees in reducing pollutants in their stormwater discharges, and improve the water quality of the upper Spokane River and Lake Coeur d'Alene, which serves as the headwaters for the stretch of the Spokane River running through Spokane, Lincoln, and Stevens Counties in the State of Washington.... We are strongly supportive of EPA's efforts to improve stormwater management throughout the State of Idaho. We commend and acknowledge the effort it takes to develop Permits that put into place consistent practices to improve water quality.

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

3. **(City): Subject: Consistent Term Usage:** The Draft Permit states throughout the document the terms, "*Idaho state law*", "*Idaho State law*", and "*Idaho law*." The City requests the document be updated for consistency using only one of these terms when referencing this subject.

Response: Comment noted. EPA revised the Permit to use the phrase *Idaho state law*.

4. **(City): Schedule - page 2, Section 5:** The Schedule Section 5 as shown on Page 2 of the Draft Permit states "*[i]mplement at least two (2) pollutant reduction activities*." This sentence should be revised to read "*Implement at least one (1) pollutant reduction activity*." to align with Part 4.3 of the Permit.

Response: Comment noted. EPA revised the Permit accordingly.

Comments on FS for Permit #IDS028231

5. **(City): FS References to WDOE Water Quality Standards:** Remove references to the WDOE water quality standards [WQS] and the impaired section of the Spokane River on the Washington (WA) side. WDOE is not the regulatory authority for Idaho dischargers, nor are WA's water quality criteria the same as Idaho's. Information obtained from WDOE and used for EPA's justification for additional requirements for the Permittee should be removed. WDOE has the opportunity to review the permit

to ensure downstream WQS will be met, as part of the 401 Certification process. It cannot not be assumed that the WDOE recommendations for dischargers into the WA sections of the Spokane River which are impaired for polychlorinated biphenyls (PCBs) are appropriate to apply to Permittees in the non-listed sections. See also Comments #33a. – 33.e.

Response: It is EPA Region 10 policy not to revise the FS based on public comment.

EPA is prohibited from issuing a NPDES permit that does not ensure compliance with the applicable water quality requirements of all affected states. See 40 CFR §122.4(d). Since WA is immediately downstream of the Coeur d'Alene UA, it is an affected state with applicable water quality requirements. Downstream water quality impairments require that EPA include terms and conditions in the Permit to reflect appropriate water quality-based requirements for impairment parameters. See 40 CFR §122.44 (d)(4) & (d)(5). As explained in FS Appendix 5.2, at FS pages 51-52, WDOE considers the Spokane River to be impaired for PCBs. EPA's currently approved monitoring method for PCBs (Method 8082) is not sufficiently sensitive to address PCBs and its congeners in water at concentrations comparable to WA's WQS. Therefore, in Table 4.3 of the Permit, EPA has included PCBs as an impairment pollutant for the Spokane River; Permit Part 4.3 requires that the City *consider* addressing PCBs in solids from catch basins through its pollutant reduction activities.

EPA also notes that WDOE has submitted comments to EPA that state that upstream Idaho sources can affect WA's downstream water quality.

6. **(City): Editorial corrections to the FS:** In *Acronyms*: use consistent text size for all acronyms on that page. On FS page 9, revise sentence to read "*[i]nput from stakeholders and the Permittees on...EPA's preliminary draft MS4 general permit(s), which were not issued; ...*". Correct the punctuation in FS Section 1.7.2, Table 3; and FS Section 2.4.1, second bullet. Add missing words: "to" and "with" in FS Section 3.5, third and fifth paragraphs respectively. In FS section *References Used in this Permitting Decision*, remove hyperlinks from titles for EPA 2012, EPA 2012b, and EPA 2014a. Hyperlinks are inactive for Center Watershed Protection and U.S. Geological Survey and EPA, 2015 references.

Response: Comments noted. It is EPA Region 10 policy not to revise the FS based on public comment. EPA regrets these typographical errors but notes that the corrections identified do not alter EPA's intent. Documents cited in the References section are available as part of the Administrative Record for the Permit.

7. **(City): FS Section 2.4.2 -Discussion of Illicit Discharge Detection and Elimination**, FS page 20: revise sentence to read "*... The Permittee must respond to reports within two (2) working days and maintain records regarding actions taken.*" Part 3.2.4.2 of the Draft Permit states two (2) working days for responding to complaints or reports from the public.

Response: Comment noted. It is EPA Region 10 policy not to revise the FS based on public comment. No change has been made to the Permit.

8. **(City): FS Section 2.7.2 – Discussion of Monitoring and/or Assessment Activities**, FS page 31: Second paragraph states, "*[b]ased on the downstream impairment of the Spokane River for polychlorinated biphenyls (PCBs), Part 6.2.6 contains direction for Permittees to consider continued PCB monitoring/assessment activities associated with their MS4 discharges to the Spokane River. Additional discussion of the rationale for this requirement is provided in Appendix 5.2 of this Fact Sheet.*"

Revise last sentence to read "*... Additional discussion...for this consideration is provided in Appendix 5.2 of this Fact Sheet.*" Replace the term "requirement" with "consideration" or "recommendation" as this is suggestion for Permittees to consider and is not identified as a requirement.

Response: Comment noted. It is EPA Region 10 policy not to revise the FS based on public comment. As explained in the FS at page 31, *“Where the Permittee elects to assess PCB loading in sediment collected from catch basins, the Permittee must use EPA Method 8082 for measuring PCBs in solids. Alternatively, the Permittee may identify and propose some other means of assessing the amount of PCB loading that may be conveyed through their MS4 discharges.”* (Emphasis added). See also Responses # 34.b – e.

Applicability; Limitations and Conditions (Permit Parts 1 and 2)

9. **(City): Permit Part 1.1 - Permit Area:** The City appreciates the statement in Part 1.1: *“[p]ermit covers all areas within the Coeur d’Alene Urbanized Area (UA) (see Part 9, Definitions) served by the municipal separate storm sewer system (MS4) owned and/or operated by the City of Post Falls (Permittee).”* The City interprets the terms “jurisdiction” and “Permittee’s jurisdiction” to be synonymous with Permit Area thus limiting references to jurisdiction to the Permit Area, i.e., those areas being served by the MS4. This interpretation is based on the fact the CWA authorizes EPA to regulate the discharge of pollutants into navigable waters from a point source. The Act does not convey broad-ranging authority to regulate geographic areas that do not discharge pollutants to surface waters, or to regulate a point source in a manner unrelated to its discharge. The City requests it be made clear the permit does not apply to locations that do not have the potential to discharge to surface waters of the U.S.

Response: The City correctly interprets all references to “Permittee’s jurisdiction” to be limited to those areas of the City within the Coeur d’Alene UA that are served by the City’s MS4. See also FS Section 1.3, page 7. No change has been made to the Permit.

10. **(City): Permit Part 2.1 - Compliance with WQS** states*“[i]f monitoring or other information shows that a pollutant in the Permittee’s MS4 discharge is causing or contributing to an excursion above the applicable Idaho WQS, the Permittee must comply with the notification and other requirements in Part 5... ”*

This sentence should be revised to read either, *“[i]f monitoring ~~or other information~~ shows that a pollutant in the Permittee’s MS4 discharge is causing or contributing to an excursion above the applicable Idaho WQS, the Permittee must comply with the notification and other requirements outlined in Part 5 ...”* or *“[i]f monitoring ~~or~~ and other information show that a pollutant in the Permittee’s MS4 discharge is causing or contributing to an excursion above the applicable Idaho WQS, the Permittee must comply with the notification and other requirements outlined in Part 5 ...”*

The term “other information” lacks clear definition and the City does not believe other information, on its own, would be sufficient to confirm an excursion above Idaho WQS.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. Common usage of the word “information” means “facts provided or learned about something.” Examples of information that could warrant the Permittee’s compliance with Permit Part 5 include visual observations of chronic illicit discharge for which the source cannot be identified, and/or a structural BMP failure, the Permittee’s repair of which would require additional capital expenditure.

11. **(WDOE): Permit Part 2.4.5.1 – Categories of Non-Stormwater Discharges:** This section lists the types of stormwater discharges allowed under the Permit, provided the discharge is not a source of pollution to waters of the U.S. as defined in Part 2.5.4.2. WDOE is specifically concerned about uncontaminated water line flushing; discharges from potable water sources; dechlorinated swimming

pool discharges and fire hydrant flushing. The Permit text is insufficient to ensure that the aforementioned types of discharges do not negatively affect Idaho and WA's shared receiving waters. The Permit does not address dechlorination and flow control for water line flushing, discharges from potable water sources, and fire hydrant flushing activities. The quantity and flow velocity in these types of discharges can often be significant, causing resuspension of sediments in the stormwater system and, ultimately, depositing the sediments in receiving waters. Sedimentation in our rivers, lakes, and streams increases turbidity; obstructs sunlight and inhibits photosynthesis of aquatic plants; reduces biologically available oxygen; increases water temperature; and carries other pollutants like nutrients, heavy metals, and bacteria with it. Further there is no mention of thermal or flow control requirements for swimming pool discharges in the draft Permit. It is important that swimming pool, spa, and hot tub discharges be thermally controlled to prevent an increase in temperature of the receiving waters and, as previously stated, flow-controlled to prevent resuspension of sediments in the stormwater system.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. As noted, such flows are conditionally authorized provided they are not a source of pollution as defined in Part 2.5.4.2. Further, Permit Part 2.5.7 requires the Permittee to select BMPs from IDEQ's most recent *Idaho Catalog of Stormwater Best Management Practices* (April 2020); this document contains prescriptive requirements for the disposal of swimming pool discharges. See: <https://www.deq.idaho.gov/water-quality/wastewater/stormwater/>

In addition, requirements for public water line flushing for responsible entities is found in the IDEQ *Guidance for Public Water System Disposal of Water from Construction, Maintenance, and Operations* (April 2014); see: <https://www.deq.idaho.gov/media/1117311/pws-disposal-guidance-0414.pdf>. This document addresses both dechlorination and recommends appropriate disposal alternatives that do not require discharge to the MS4.

- 12. (WDOE): Permit Part 2.5.3 – SWMP Document** states that the Permittee's SWMP document must be completed and updated three times total during the Permit term: December 1, 2021; December 1, 2022; and with the Notice of Intent to Reapply (i.e., April 3, 2025). A Permittee's SWMP is a "living" document that includes standard operating procedures, protocols, and other materials that provide details about how and when different BMPs are completed, and the responsible persons or departments. The SWMP is a reference for managers, staff, contractors, and other parties tasked with implementing, documenting, and managing aspects of the Permit. A complete and up-to-date SWMP helps ensure access to local stormwater program information, and can help promote timely response to problems and inquiries; accountability for program implementation; effective communication and coordination; sound decision-making and Informed allocation of resources. With this in mind, WDOE recommends that the Permittee's required frequency for submitting annually at a minimum, and as needed in instances where activities change over time to meet new or changing permit conditions.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. EPA recognizes the significance of a SWMP document, and notes that the City currently maintains its SWMP document on its website. Page 15 of the FS states that *"the requirement for the Permittee to maintain a SWMP Document is an enforceable condition of the Permit...the contents of the SWMP Document are not directly enforceable as requirements of the Permit. As a result, the Permittee 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."* Thus, the permit only requires that the City submit the SWMP three times during the

permit term; however, the City can and should update the SWMP as necessary to describe how the stormwater management activities are being implemented in compliance with the Permit.

- 13. (City): Permit Part 2.5.4 - SWMP Information and Statistics** states, "*[t]he Permittee must track activities and document program outcomes to illustrate progress on the respective SWMP control measure (e.g., the number of inspections, official enforcement actions, and/or types of public education actions, etc.), and cite relevant information and statistics, reflecting the specific reporting period, in each Annual Report.*" The word *statistics* should be removed. Statistics goes beyond the requirements of the Phase II rules which state Annual Reports should contain "results of information collected and analyzed, including monitoring data, if any, during the reporting period" (Section 122.34(c)(3)(ii).)

Response: EPA agrees to revise Permit Part 2.5.4 to remove the words "and statistics" from the title and text of this provision."

- 14. (City): Permit Part 2.6.2- Actions to Address Discharges to Impaired Waters and Permit Part 4.3 - Pollutant Reduction Activity:** Draft Permit Part 2.6.2 states "*[t]he Permittee must submit a written description of at least two (2) Pollutant Reduction Activities to address impairment pollutants identified in Part 4.3.*" Permit Part 4.3 requires the implementation of at least one (1) pollutant reduction activity designed to reduce lead, zinc, and total phosphorus, from the MS4 into the Spokane River. For consistency, revise sentence as follows "*... at least ~~two (2)~~ one (1) Pollutant Reduction Activity to address impairment pollutants identified in Part 4.3.*"

Response: EPA agrees and has revised Permit Part 2.6.2 accordingly.

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

- 15. (City): Part 3.1.7.2 - Engineers, Site Designers, and/or Other Appropriate Audience Training** states, "*[a]t least twice during the Permit term, the Permittee must provide opportunity and/or conduct training sufficient to educate and ensure that engineers, site designers, and/or other locally appropriate audiences working in their jurisdiction are aware and informed of appropriate selection, design, installation, use, and maintenance of permanent stormwater controls imposed by the Permittee as described in Part 3.4.3.*"

This sentence should be revised to read, "*[a]t least twice during the Permit term, the Permittee must provide educational materials for design professionals working within their jurisdiction pertaining to the Permittee's requirements for appropriate selection, design, installation, and use of required construction site control measures.*"

Permittees should not be responsible for training professionals. It is the responsibility of the design professional to maintain adequate training to develop proper plans which meet the requirements of the approving entities and of applicable regulations. Permittees are unable to "ensure" that design professionals are aware of any particular issue but are able to provide educational materials to inform them.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. Providing educational materials is a minimal level of effort and should be a part of meeting the intent of this requirement. EPA clarifies that the Permittee is not responsible for training professionals; however, EPA expects that the Permittee will seek to offer regular, local opportunities for design professionals to learn about such matters. EPA notes that there are other regulated MS4 permittees in the Coeur d'Alene UA and the Spokane River watershed with whom the City may work with to provide training opportunities. For example, the City may

collaborate in programs such as the Stormwater Erosion and Education Program (SEEP). Co-sponsored by the University of Idaho in the five northern Idaho counties, SEEP provides an ongoing training and educational program regarding erosion prevention, sediment control planning and stormwater management practices and methods, applications and effectiveness. See: <https://www.uidaho.edu/cda/outreach/seep/about-us>

- 16. (City): Permit Part 3.1.5 - Assessment (of Education and Outreach Activities)** states, "[t]he Permittees must begin to assess, or participate in one or more efforts to assess, the understanding of the relevant messages and adoption of appropriate behaviors by their target audience(s). The resulting assessments must be used to direct future storm water education and outreach resources most effectively."

These studies are difficult to perform well, results are often highly variable from year to year. Requiring decisions to be made upon potentially inaccurate surveys may ultimately result in a less effective program. Further, as Permittees will be developing new outreach efforts, it will be too early to properly evaluate the effectiveness of the program during this permit cycle. The assessment and adjustment requirement should be removed from this permit and deferred to the next permit cycle to allow the programs time to develop.

Response: EPA has not revised the text as suggested; no change has been made to the Permit as a result of this comment. As explained on page 18 of the FS " ...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.....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." [Emphasis added]

EPA's intends for the Permittee to build-in a means of measuring success or failure regarding their selected education activity(ies). Such measurement/assessment may be scaled to the activity and need not be as extensive as envisioned by the commenter. EPA encourages the City to consult watershed partners and other MS4 Permittees in Idaho to find common goals and shared activities.

- 17. (WDOE): Permit Part 3.1 – Public Education and Outreach on Stormwater Impacts** requires Permittees to conduct an ongoing public education, outreach, and involvement program based on stormwater issues of significance. WDOE is concerned that the draft Permits do not definitively state that both Permittees must continue their existing Education and Outreach (E&O) Program during the first year of the Permit term while at the same time, preparing for the new E&O requirements that are described under *Parts 3.1.2 – 3.1.8*. As such, we request that EPA provide clarification that this is either implied in the draft Permits or add the necessary language to the Permits to ensure that both Permittees are continuing to implement their existing E&O Programs from Permit issuance through October 1, 2021.

Response: EPA agrees, and has revised the Permit Part 3.1 as follows:

The Permittee must continue to conduct, or contract with other entities to conduct, an ongoing public education, outreach, and involvement program based on stormwater issues of significance in the Permittee's jurisdictions.

Illicit Discharge Detection and Elimination (Permit Part 3.2)

- 18. (City): Permit Part 3.2.2 - MS4 Map and Outfall Inventory:** Requirements for the MS4 Map and Outfall Inventory are excessive and unnecessary to carry out a successful MS4 program. Phase II Jurisdictions are, by definition, small entities. It is unreasonable to task small entities with the creation of an overly detailed GIS map which would not provide benefit to any users. Additionally, some of the requested information is not pertinent to the permitted MS4 system. Part 3.2.2.6 requires "*[l]ocations and characteristics of any MS4 outfalls with ongoing dry weather flows identified by the Permittee as being caused by irrigation return flows and/or groundwater seepage.*"

Characteristics are not appropriate to track in GIS. It may be appropriate to require Permittees to maintain these records, but the method of tracking should be left to the Permittee.

Response: Comment noted. EPA has not revised the text as suggested; no change has been made to the Permit. Given the City's MS4 system drains approximately 28.6 acres to two MS4 outfalls, maintaining a complete and accurate City MS4 map in GIS format is neither onerous or excessive. The Permit does not require information listed in Permit Parts 3.2.2.1 – 3.2.2.7 to be summarized in a GIS format. EPA agrees that certain MS4 outfall characteristics are not appropriate for tracking in a GIS format; however, the characteristics listed in Permit Part 3.2.2.6 should instead be maintained in the Outfall Inventory also required by Permit Part 3.2.2.

- 19. (City): Permit Part 3.2.7 - Prevention and Response to Spills to the MS4** states "*[t]he Permittee must respond to, contain, and clean up any spill of sewage and other material that may discharge into the MS4 from any source...in the Permit Area to the extent allowable pursuant to authority granted the individual Permittee under Idaho law.*" The City interprets Part 3.2.7 to limit response, containment, and cleanup activities to areas which are publicly owned or operated by the Permittee within the Permit Area. The City should not be expected to enter private property to clean spills or complete repairs to privately owned infrastructure except in emergency situations. Consistent with Part 3.2.7, the City would respond to spills regardless of source to ensure pollutants do not migrate from private property to the MS4 and ultimately to waters of the U.S.

Response: EPA agrees, and clarifies that Permit Part 3.2.7 limits response, containment, and cleanup activities to areas which are publicly owned or operated by the Permittee within the Permit Area. No change has been made to the Permit.

- 20. (City): Permit Part 3.2.8 - Proper Disposal of Used Oil and Toxic Materials** states, "*[t]he Permittee must coordinate with appropriate local entities to educate the Permittee's employees and members of the public of the proper management, disposal, or recycling of used oil, vehicle fluids, toxic materials, and other household hazardous wastes in the Permittee's jurisdiction.*" This section should be removed from the Illicit Discharge Detection and Elimination section and incorporated into the Education, Outreach and Public Involvement section of the Permit, as a Target Audience or Topic under 3.1.4.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. EPA clarifies that Permit Part 3.1.4 lists optional target audiences from which the Permittee must select; in contrast, Permit Part 3.2.8 contains a mandatory requirement to continue appropriate education and outreach regarding proper household hazardous waste disposal.

- 21. (WDOE) Permit Part 3.2.3 – Ordinance and/or Other Regulatory Mechanisms** requires the Permittee to prohibit and eliminate, at a minimum, non-stormwater discharges to the MS4 through enforcement of an ordinance or other regulatory mechanism. WDOE appreciates that EPA listed illicit discharges in Part 3.2.3.3 that the Permittee must prohibit through ordinance or regulatory

mechanism. WDOE is concerned the list may not be fully exhaustive. To ensure *all* non-stormwater discharges that are neither *Allowed* nor *Conditionally Allowed* are accounted for in the ordinance or regulatory mechanism, WDOE recommends an additional bullet be added to Part 3.2.3.3 of the draft Permit stating, “All other non-stormwater discharges not covered under Part 2.4.5.1 of this Permit.”

Response: EPA has not revised the text as suggested; no change has been made to the Permit. Permit Part 2.4 sufficiently limits the discharges that are authorized under the Permit. That Permit Part states: “The Permittee is not authorized to discharge non-stormwater from the MS4, except where such discharges satisfy one of the following conditions: ...”

- 22. (WDOE) Permit Part 3.2.4.2 – Response to Complaints or Reports from the Public** states, “*The Permittee must respond to and investigate all complaints or reports of illicit discharges as soon as possible, but no later than within two (2) working days.*” The Permit does not state that complaints or reports of spills, in addition to illicit discharges, should be investigated as soon as possible or within two (2) working days. To fully protect the MS4 and receiving waters, WDOE requests language be included to require the Permittee to respond immediately to any complaint or report of illicit discharge or spill that could be a threat to human health, welfare, or the environment, as this is not also currently implied nor addressed in the Permits.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. See Response #23.

- 23. (WDOE) Permit Part 3.2.7 – Prevention and Response to Spills to the MS4:** This provision directs the Permittee to respond to spill but does not give a timeline and/or deadline to respond. Part 3.2.7.1 requires Permittees to report spills within a particular timeframe, as directed under Part 7.9, but does not clarify when Permittees are to respond to the described spills. WDOE requests that a specific response time, to be described as “immediate”, be included in these parts of the Permits in order to ensure there is no ambiguity as to when Permittees must address these types of spills to the MS4.

Response: EPA has not revised the text in either Permit Part 3.2.4.2 or 3.2.7 as suggested; no change has been made to the Permit. Consistent with the relevant condition of IDEQ’s final CWA Section 401 certification of the Permit in Appendix B, EPA revised Permit Part 3.2.7.1 and Permit Appendix A-2 to direct that all spills of hazardous material, deleterious material or petroleum products which may impact waters (ground and surface) of the state shall be immediately reported to IDEQ and EPA.

- 24. (WDOE) Permit Parts 3.2.9, 3.3.7, 3.4.7. and 3.5.10 – Provisions regarding Staff Training:** These Parts each state the Permittee must ensure all persons responsible for implementing the described requirements are trained or qualified to conduct such activities. WDOE agrees the Permittee should provide training for new staff within the first six (6) months of employment. While initial orientation and training of employees is critical, it is also important that they receive follow-up training, as needed, to address any changes in municipal procedures, techniques, and/or Permit requirements. WDOE recommends a statement be added to each of these parts stating as such.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. The first sentences in each Part cited in this comment states “*The Permittee must ensure that all persons responsible for the [relevant control measure components] as required by this Part are trained or otherwise qualified to conduct such activities.*” This provision requires the permittee to properly train all responsible persons and requires additional/follow-up training to ensure that responsible individuals are qualified to conduct relevant activities. Thus, the commenter’s concerns are addressed in the permit as written.

Post-Construction Stormwater Management for New Development and Redevelopment (Permit Part 3.4)

- 25. (City): Permit Part 3.4.2 - Ordinance and/or other regulatory mechanism** states, "[r]equired permanent stormwater controls must be sufficient to retain onsite the runoff volume produced from a 24-hour, 95th percentile storm event; or sufficient to provide the level of pollutant removal greater than the pollutant removal expected by using onsite retention of runoff volume produced from a 24 hour, 95th percentile storm event."

This sentence should be revised to read, "[r]equired permanent storm water controls must be sufficient to retain onsite the runoff volume produced from a 24-hour, 95th percentile storm event, or local jurisdiction equivalent standard; or sufficient to provide the level of pollutant removal greater than the pollutant removal expected by using onsite retention of runoff volume produced from a 24 hour, 95th percentile storm event, or local jurisdiction equivalent standard."

The Fact Sheet is not clear as to the regulatory basis for selecting the "volume of water from storms \leq 95th percentile event" and the City requests the ability to develop equivalent standards for use in developing appropriate local ordinances and regulatory mechanisms.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. Permit Part 2.6 (*Alternative Control Measure Requests*) specifies the procedure by which the City may identify any "local equivalent" to a requirement in Permit Part 3. The City can identify its existing ordinance as its "alternative control measure." FS Section 2.1 at pages 13-14 discusses EPA's regulatory basis for establishing the control measures in the reissued MS4 Permit; and FS Appendix 4 at pages 46-49 specifically outlines EPA's rationale for the onsite retention requirement in Permit Part 3.4.2. See also FS at page 25, where EPA states: "*The City of Post Falls storm water management code requires all new development projects to handle on-site runoff with grassed swales or equivalent means of on-site disposal. The City of Post Falls storm water management code, Chapter 13.44, can be found on-line at: https://codelibrary.amlegal.com/codes/postfallsid/latest/postfalls_id/0-0-0-3466. The City's continued implementation of their code is fully consistent with Permit Part 3.4.2.*"

- 26. (WDOE) Permit Part 3.4.5 – Permanent Stormwater Controls Inspection and Enforcement** requires the Permittee to inspect high priority permanent stormwater controls at new development and redevelopment sites that result in land disturbance of greater than or equal to one (1) acre, including construction project sites less than one acre that are part of a larger common plan of development or sale that would disturb one (1) acre or more, that discharge to the MS4. The Permittee must also establish a prioritization system to "identify sites for inspections of permanent stormwater controls installation and operation." Further, according to Part 3.4.5.1 –Permittees must identify "high priority" controls and inspect them at least once annually. It is not clear to WDOE that that the Permit explicitly requires the Permittee to inspect all permanent stormwater controls that discharge to the MS4; only that the Permittees establish an "inspection prioritization system," and inspect "high priority" controls. Does this mean "low priority" permanent stormwater controls may/will never be inspected? WDOE requests clarification of the draft Permit language in this respect.

WDOE believes it is essential that all permanent structural stormwater controls at new and redevelopment sites be inspected to protect the MS4 and, in turn, water quality. As such, WDOE requests that the Permittee be required to inspect all other permanent stormwater controls (i.e., those not categorized as "high priority") on a recurring interval of some kind, and offer a suggestion

comparable to the Eastern WA Phase II Municipal Stormwater Permit requirement of “once every 5 years.”

Response: EPA has not revised the text as suggested; no change has been made to the Permit. See Response #27.

27. (City): Permit Part 3.4.6 - Operation and Maintenance (O&M) of Permanent Stormwater Controls outlines an inventory tracking system to manage operational condition of permanent storm water controls within the Permittee's jurisdiction. The prescriptive requirements of this Part are too extensive and time consuming for Phase II jurisdictions. Specifically, the final sentence of Part 3.4.6 should be removed; the tracking of "*O&M requirements; activity and schedule; responsible party; and any applicable self-inspection schedule*" will be accomplished through the completion of the Stormwater Management Program Document and associated "database inventory to track and manage the operational condition of permanent storm water controls."

Response: EPA has not revised the text as suggested; no change has been made to the Permit. Permit Part 3.4.6 is not too extensive or time consuming such that it precludes the City's compliance. The City has two (2) MS4 outfalls discharging to the Spokane River, and therefore has a finite number of permanent stormwater controls in its 28.6 acres of impervious area that discharges to the MS4. See City's description of its MS4 at FS Section 1.3 at page 7.

Pollution Prevention/Good Housekeeping for MS4 Operations (Permit Part 3.5)

28. (WDOE): Permit Part 3.5 – Pollution Prevention/Good Housekeeping for MS4 Operations states: “The [Permittee] must properly operate and maintain the MS4 and its facilities, using prudent pollution prevention and good housekeeping as required by this Part, to reduce the discharge of pollutants through the MS4.” Part 3.5.3 further states “... the Permittee “must ensure that those [operations and maintenance] procedures are conducted in a manner to protect water quality...”

WDOE recognizes that a robust operations and maintenance program is essential to the goal of preventing and reducing runoff from municipal operations. Using pollution prevention and good housekeeping and developing procedures is a fraction of what is typically accounted for in an MS4's Operations and Maintenance (O&M) Plan. Permittees' O&M Plans should include, at a minimum:

- a. An inventory of facilities and associated O&M activities;
- b. A schedule of O&M activities;
- c. Specific Best Management Practices (BMPs) that, when applied to the activities and facilities, will protect water quality and reduce the discharge of pollutants to the maximum extent practicable;
- d. Procedures for implementing said BMPs; *and*
- e. Departments/employees responsible for BMP inspection and maintenance.

Consistent with WDOE's comments on previous draft Permits submitted to the U.S. EPA in 2019, we recommend the Permittee be required to implement full Operations & Maintenance (O&M) Plan that fully and formally outline the specific procedures and control measure components that the Permittee will take to minimize impacts to water quality from its own facilities and activities.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. The Permit as written already requires a full O&M Plan, the requirements of which are identified in Permit Part 3.5. Documentation of this is required in the City's SWMP document; See Permit Part 2.5.3. Further, Permit Part 2.5.7 requires the Permittee to select BMPs from IDEQ's most recent *Idaho Catalog of Stormwater Best Management Practices* (April 2020); this document

contains requirements for O&M plans to summarize O&M activities. See:
<https://www.deq.idaho.gov/water-quality/wastewater/stormwater/>

- 29. (WDOE): Permit Part 3.5.2 – Inspection and Cleaning of Catch Basins and Inlets** requires the Permittee to “inspect all Permittee-owned or operated catch basins and inlets in the MS4 at least once every five (5) years and take all appropriate maintenance or cleaning action based on those inspections.” Consistent with our comments on previous draft Permits submitted to the U.S. EPA in 2019, WDOE reiterates concerns that the proposed frequency of catch basin and inlet inspections of “once every five (5) years” is insufficient to ensure that the facilities continue to function as designed. The Eastern WA Phase II Municipal Stormwater Permit establishes a recurring catch basin inspection schedule of at least once every two (2) years, and that Permittees are to clean them if the inspections indicate cleaning is warranted. WDOE therefore requests the inspection frequency be comparable to that currently required for Eastern WA Permittees.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. Given the relative number of catch basins owned and operated by the Permittee within the Permit Area, EPA believes the frequency identified in the Permit is sufficient.

- 30. (City): Permit Part 3.5.3.2 - Operation and Maintenance Procedures for Streets, Roads, Highways and Parking Lots** states, “[f]or each type of maintenance activity, practice, or facility, the Permittee must specific schedules for inspection and maintenance, and appropriate pollution prevention/good housekeeping actions.” This sentence should be revised to read, “[f]or each type of maintenance activity, practice, or facility, the Permittee must specify schedules for inspection and maintenance, and appropriate pollution prevention/good housekeeping actions.”

Response: Consistent with editorial revisions made to the comparable Permit provision in the recently reissued NPDES Permit #IDS028207 (*North Idaho Highway District MS4s*) and NPDES Permit #IDS028070 (*City of Idaho Falls and Idaho Transportation Department District 6 MS4s*), EPA has revised the text to add the verb “establish” such that Part 3.5.3.2 now reads:

For each type of maintenance activity, practice, or facility, the Permittees must establish specific schedules for inspection and maintenance, and appropriate pollution prevention/good housekeeping actions.

- 31. (City): Permit Part 3.5.3.3 - Operation and Maintenance Procedures for Streets, Roads, Highways and Parking Lots** states, “[w]here site conditions allow, the Permittee must consider and utilize water conservation measures for all landscaped areas as part of these updated O&M procedures to prevent landscape irrigation water from discharging through the MS4.”

Remove this sentence Part 3.5.5.3. Water conservation practices are laudable but do not seem to fall under storm water permit requirements or EPA's jurisdiction. As these areas are "landscaped areas" they are not impervious and are not discharging to the MS4. Reduction in water use would not have an effect on reduction of pollutants through the MS4.

Response: EPA has not revised the text as requested; no change has been made to the Permit. Reducing the volume of landscape irrigation water through the MS4 will eliminate a potential (or actual) source of pollutants, and therefore supports the pollutant reduction goals for the Spokane River. The Permit conditionally authorizes discharges from the Permittee’s MS4 that are categorized as allowable non-stormwater discharges. Landscape irrigation water is an allowable non-stormwater discharge listed in Permit Part 2.4, conditionally authorized on the premise that no pollutants are added or transported via the irrigation water. Overwatering landscaped areas provides transport opportunity for excess sediment (and associated pollutants adsorbed to the

sediment), and excess nutrients. In areas where the City's MS4 discharges to the phosphorus-impaired Spokane River, it is reasonable to expect the City to watch for and consider landscape irrigation water that routinely drains into the MS4. Permit Part 3.5.3.3 directs the City to consider water conservation measures for irrigating its City owned areas in order to avoid/reduce pollutants potentially discharging through the MS4. At a minimum, the City should consider reorienting the watering in such areas to benefit the plants and eliminate overwatering.

- 32. (City): Permit Part 3.5.7 - Requirements for Pesticide, Herbicide, and Fertilizer Applications** states, "*[t]he Permittee must implement practices to reduce the discharge of pollutants to the MS4 associated with the Permittee's application and storage of pesticides, herbicides and fertilizers in the Permit area.*" Revise sentence to read, "*[t]he Permittee must minimize, to the extent practicable, the discharge of pollutants to the MS4....*" The wording in the Draft Permit seems to assume dischargers are causing pollutants to be discharged.

Response: EPA has not revised the text as requested; no change has been made to the Permit. The City correctly interprets the phrase "implement practices" to mean that the City must minimize the discharge of pollutants associated with the City's (or its representatives') application and storage of pesticides, herbicides and fertilizers to the extent practicable in areas that are served by the City's MS4. See FS Section 2.4.5 at page 27. See also Permit Part 9, definition of the word "minimize."

- 33. (City): Permit Part 3.5.9 – Litter Control** states, "*[t]hroughout the Permit term, the Permittee must implement effective methods to reduce litter in its jurisdiction. The Permittee must work cooperatively with others, as appropriate, to control litter on a regular basis, and after major public events, in order to reduce the discharge of pollutants to receiving waters.*"

The phrase "implement effective methods" is ambiguous. The Permittee's SWMP should outline a plan which involves the reduction of litter. This sentence should be revised to read, "*[t]hroughout the Permit term, the Permittee must implement methods to minimize litter, to the extent practicable, in its jurisdiction....*"

Response: EPA has not revised the text as requested; no change has been made to the Permit. The City correctly interprets the phrase "implement effective methods" to mean that EPA expects the City to minimize litter to the extent practicable in areas that are served by the City's MS4. EPA further agrees that the City's SWMP document should outline the plan to reduce litter and prevent the conveyance of trash and other material through the MS4.

PCB Monitoring (Permit Part 6.2.6)

34. (City): Subject: Comments on Conditions Related to PCBs

- a. The City provided comments on the proposed Phase II general permit for small MS4s in 2016. The City recognizes and appreciates that EPA has removed many of the problematic aspects of the proposed general permit. The City agrees that the general approach embodied in the Draft Permit reflects a sound, legally supported, and achievable manner in which to protect water quality.

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

- b. The City remains concerned that the Draft Permit could be interpreted as requiring conditions related to PCBs, a group of banned substances that are ubiquitous in the environment and essentially unrelated to any activities of the City or its residents. While the FS and Draft Permit contain references to PCBs, the Permit does not require that the City take any action related to PCBs. Permit Part 4.3 requires the City to adopt at least one activity to reduce lead, zinc, and total phosphorus, and states... "*[w]hen choosing pollutant reduction activities, the Permittee must also consider that other pollutants, such as polychlorinated biphenyls (PCBs) are causing impairment in Spokane River downstream of the ID/WA border.*" Draft Permit at 37-38 (Emphasis added). These sentences create ambiguity. On the one hand, the City is required to adopt an activity to reduce lead, zinc, and total phosphorus, while on the other the City is required to consider downstream PCB impairments. (Note: The ambiguity in the Draft Permit is heightened by the FS at page 12, which discusses PCBs but which does not appear to impose any PCB-related conditions other than to "consider" PCBs while undertaking required actions. See also FS at page 31 ("*Permit 6.2.6 contains direction for the Permittee to consider continued PCB monitoring/assessment activities associated with their MS4 discharges to the Spokane River.*" and "*Where the Permittee elects to assess PCB loading... the Permittee must use EPA Method 8082 for measuring PCBs in solids.*"). The City interprets these statements as requiring the City to implement a pollutant reduction activity to reduce lead, zinc, and total phosphorus, while encouraging the City to select a pollutant reduction activity that also might incidentally reduce PCB discharges. The City requests that the final permit clarify that the City is not required to take any action related to PCBs.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. EPA has included PCBs in Permit Table 4.3 based on the downstream impairment of the Spokane River in WA. See Response #5. The City correctly interprets Permit Part 4.3 that the City must "*...define and implement at least one (1) pollutant reduction activity designed to reduce lead, zinc and total phosphorus from the MS4 into the Spokane River. When choosing pollutant reduction activities, the Permittee must also consider that other pollutants, such as polychlorinated biphenyls (PCBs) are causing impairment in Spokane River downstream of the ID/WA border.*" [Emphasis added] See also Response #8. There is no need to revise the permit language as the provision is clear as to its intent.

- c. To the extent the Draft Permit does impose pollutant-reduction or any other requirement related to PCBs, such requirement would be inconsistent with the CWA, at a minimum, for the following reasons: 1) The FS refers to what it characterizes as an "EPA Plan" outlining actions to identify and address PCB pollution sources in the Spokane River. FS at page 51. This document, however, is not a regulation or other legally binding document. It is a letter sent

by EPA to the WDOE that contains non-binding recommendations to "*help.... WDOE establish enforceable and defensible permit conditions that can reasonably be expected to result in reductions in [PCB] loading to the Spokane River.*" Letter to Jim Bellaty from Michael Lidgard (July 13, 2015). This letter cannot serve as the basis for any conditions in the Draft Permit.

Response: No change has been made to the text in response to this comment. The document cited in FS Appendix 5.2, *EPA's Plan for Addressing PCBs in the Spokane River, Defendants' Response to the Remand by the Court, Sierra Club, et al. v. McLerran, No. C11-1759-BJR (July 14, 2015)*, is not regulation. Instead, it provides EPA's intent on how EPA intends on addressing reduction of PCBs in the Spokane River. As such, consistent with this intent, EPA has included conditions in the permit that, at a minimum, prompt the Permittee to consider addressing PCBs in catch basin solids cleaned from its MS4 in areas draining to the Spokane River.

- d. Application of WA's water quality standards upstream would not fully respect Idaho's primary role in establishing water quality standards under the CWA. "*EPA prefers that states maintain primary responsibility and establish their own WQS in keeping with the text and structure of the CWA.*" 85 Fed. Reg. 28494, 28495 (May 13, 2020). EPA has approved Idaho's water quality standards, including those for PCBs, and in doing so has confirmed that Idaho's water quality standards "provide for the attainment and maintenance of the water quality standards of downstream waters." 40 CFR § 131. 10(b). By meeting Idaho's water quality standards, the City will fully comply with the CWA-including the requirement to protect downstream waters-as interpreted and applied by Idaho and EPA, consistent with the text and structure of the CWA. By contrast, applying WA's water quality standards upstream would place WA in the primary role of interpreting and applying the CWA in Idaho. (Note: That is an illogical and untenable result. The FS at page 10 cites 40 CFR § 122.4 for the proposition that "NPDES permit conditions must also meet the applicable water quality requirements of affected states . . . which may include downstream States." This regulation does not require or permit wholesale adoption of downstream states' water quality standards in upstream states. It merely prohibits issuance of NPDES permit that would violate affected states' water quality standards. Here no data suggests that the City's discharge would violate any water quality standards making the regulation irrelevant here.

Response: No change has been made to the Permit in response to this comment. See FS Appendix 5.2. Downstream water quality impairments require that EPA include terms and conditions in the Permit to reflect appropriate WQBELs for impairment parameters. See 40 CFR §122.44 (d)(4) & (d)(5).

Based on available information regarding the presence of PCBs and its congeners in MS4 discharges that are similar to the City's MS4 discharges, EPA reasonably concludes that PCBs are potentially present in MS4 discharges in the Spokane River watershed. See, for example:

WDOE and WA Department of Health, 2015. *PCB Chemical Action Plan*. February 2015. Available at:

<https://fortress.wa.gov/ecy/publications/documents/1507002.pdf>

City of Spokane, 2015. *PCBs in Municipal Products*. Available at:

<https://www.spokanecounty.org/DocumentCenter/View/3407/Study---PCBs-in-Municipal-Products-PDF?bidId=>

WDOE 2011. Spokane River PCB Source Assessment 2003-2007. April 2011

WDOE Publication No. 11-03-013 Available at:

<https://fortress.wa.gov/ecy/publications/documents/1103013.pdf>

Great Falls, Montana, City of. *MS4 Wet Weather Sampling and Analysis Plan*. October 2018. At:

https://greatfallsmt.net/sites/default/files/fileattachments/public_works/page/129991/swmp_attachment_a_ms4_wet_weather_sampling_and_analysis_plan.pdf

MS4 discharge data collected between 2009- 2018 by the City using Method 8082 shows non-detectable levels of PCBs using that monitoring method. However, there is evidence that PCBs and its congeners are likely present in urban stormwater discharges. Any addition of PCBs to the downstream impairment would therefore affect the downstream state waters. Therefore for the reasons outlined in FS Appendix 5.2, it is therefore appropriate for EPA to include permit terms in the City's MS4 Permit that, at a minimum, suggest that the Permittee consider addressing PCBs in catch basin solids cleaned from its MS4 in areas draining to the Spokane River.

- e. EPA cannot impose water quality-based effluent limitations ("WQBELs") without performing a reasonable potential analysis. See, e.g. , 64 Fed. Reg. 68722 at 68790 (Dec. 8, 1999) (noting that in the absence of a TMDL the permitting authority must conduct a reasonable potential analysis to determine whether WQBELs are required); 40 CFR § 122.44(d)(l) (setting forth requirement for reasonable potential analysis); U.S. Environmental Protection Agency, NPDES Permit Writers ' Manual at page 6-23 (noting that EPA uses reasonable potential analyses "to determine whether a WQBEL is required"). The FS does not contain a reasonable potential analysis for PCBs, and therefore the Draft Permit cannot impose any WQBEL based on PCBs. (Note: Indeed, EPA's FS appears to establish that the City's MS4 discharges do not have the reasonable potential to cause or contribute to an excursion above PCB water quality standards. FS page 51 ("*All of the City's data collected using [EPA-approved Method 8082] between 2009-2018 showed non-detectable levels of PCBs in the MS4 discharges.*"). In conclusion, the City respectfully requests EPA clarify that the Draft Permit does not impose any condition and does not require any action, regarding PCBs. If EPA interprets the Draft Permit as imposing any conditions, or requiring any action, regarding PCBs, the City requests that those conditions be removed in the final permit.

Response: See Responses # 34.b and 34.d. EPA has not revised the text as suggested; no change has been made to the Permit. EPA is not establishing WQBELs; instead, EPA is including permit conditions that provide suggested BMP activity to address the downstream impairment and ensure protection of affected state waters.

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

- 35. (City): Subject: Upset Conditions (Part 7.11):** It is unclear to the City if an upset is likely to occur in an MS4 system. This section should be removed for clarity if it is not needed.

Response: EPA has not revised the text as requested; no change has been made to the Permit. NPDES regulations at 40 CFR §§122.41 through 122.43 require the provisions reflected in Permit Parts 7 and 8 to be included in all NPDES permits. Specifically, 40 CFR §122.41 states:

The following conditions apply to all NPDES permits. ... All conditions applicable to NPDES permits shall be incorporated into the permits either expressly or by reference. If

incorporated by reference, a specific citation to these regulations ...must be given in the permit.

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

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

In prior Phase II MS4 permits previously issued in Idaho, EPA erred by not including all mandatory provisions as required by 40 CFR §§122.41 through 122.43. As explained in the Fact Sheet, “if a particular provision in Permit Parts 7 or 8 does not apply to the Permittees MS4 discharges or facilities, the Permittees do not need to comply with that provision.” See FS Section 2.8, page 32.

Definitions (Permit Part 9)

- 36. (City): Subject: Definitions (Part 9) Impairment pollutants:** The Draft Permit defines Impairment pollutants as "any pollutant identified by IDEQ or WDOE as a cause of impairment of any water body that receives MS4 discharges authorized under this Permit. Remove WDOE from this definition as WDOE is not the regulatory authority for Idaho dischargers, nor are WA's water quality criteria the same as Idaho's.

Response: See Response #5. EPA appropriately includes reference to WDOE in this definition. EPA has not revised the text as suggested; no change has been made to the Permit.

- 37. (City): Subject: Definitions (Part 9) Impaired waters:** The Draft Permit defines Impaired waters as "any water body that does not meet applicable water quality standards for one or more beneficial uses by one or more pollutants. For the purposes of this Permit, impaired water includes any water body that IDEQ includes in its 2016 Integrated Rep01t, as a "Category 4a" water of the state for which a total maximum daily load has been completed and approved; as a "Category 4b" water of the state that have pollution control requirements in place other than a TMDL and are expected to meet standards; and/or as a "Category 5" water of the state where a TMDL is necessary. The term impaired water also includes any interstate surface water body that originates in Idaho and flows into Washington that the Washington Department of Ecology categorizes as Category 4a, 4b, or 5 in its latest Water Quality Assessment 305(b) Report and 303(d) List as approved by EPA on July 22, 2016."

Please remove the second sentence "[t]he term impaired water also includes any interstate surface water body that originates in Idaho and flows into Washington that the Washington Department of Ecology categorizes as Category 4a, 4b, or 5 in its latest Water Quality Assessment 305(b) Report and 303(d) List as approved by EPA on July 22, 2016." WDOE is not the regulatory authority for Idaho dischargers, nor are WA's water quality criteria the same as Idaho's.

Response: See Responses #5 and 36. EPA has not revised the text as suggested; no change has been made to the Permit.

- 38. (City): Subject: Definitions (Part 9) Owner/Operator:** The Draft Permit defines *Owner or operator* as "the owner or operator of any 'facility or activity' subject to regulation under the NPDES program." Please define the terms owner and operator separately to differentiate between them. They are used to describe separate entities in the Permit.

Response: EPA has not revised the text as suggested; no change has been made to the Permit. The Permit definition of “Owner or operator” is directly taken from the NPDES regulations at 40

CFR 122.2. This definition was also set forth in the previous permit that was issued in November 2008.

- 39. (City): Subject: Definitions (Part 9) Pollutants of Concern:** The Draft Permit defines *Pollutant(s) of concern* as "any pollutant identified by IDEQ or WDOE as a cause of impairment of any water body that receives MS4 discharges authorized under this Permit."

Please remove WDOE from this definition as WDOE is not the regulatory authority for Idaho dischargers, nor are WA's water quality criteria the same as Idaho's.

Response: See Responses #5, 35, and 36. EPA has not revised the text as suggested; no change has been made to the Permit.

- 40. Subject: Definitions (Part 9) Green Infrastructure:** The Water Infrastructure Improvement Act (WIIA) was signed into law on January 14, 2019. WIIA amends Sections 309, 402, and 502 of the CWA, and includes a definition of green infrastructure. See: CWA Section 502(27), 33 U.S.C. 1362(27), at: <https://www.epa.gov/sites/production/files/2019-10/documents/waterinfrastructureimprovementact.pdf>. EPA has revised the definition of green infrastructure in the Permit to read as follows:

Green infrastructure is defined in Section 502 of the CWA and means the range of measures that use plant or soil systems, permeable pavement or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, or evapotranspire stormwater and reduce flows to sewer systems or to surface waters.

- 41. Subject: Definitions (Part 9) Waters of the United States:** EPA and the Department of the Army published the final Navigable Waters Protection Rule (NPWR) defining "waters of the United States" in the Federal Register on April 21, 2020; the NPWR became effective on June 22, 2020. EPA has revised the definition of waters of the United States in the Permit to read as follows:

Waters of the United States or waters of the U.S. means those waters defined in 40 CFR §120.2.

Permit Appendix B-1

- 42. (City): Subject: Permit Appendix B.1 (Organization):** The Organization portion of the SWMP Document Template indicates "[a] Permittee's initial SWMP Document must be posted to the Permittee's publicly accessible website no later than December 1, 2020 - See Permit Part 2.5.5."

Consistent with the Permit, this sentence should be revised to read "A Permittee's initial SWMP Document must be posted to the Permittee's publicly accessible website no later than December 1, 2021 - See Permit Part 2.5.3."

Response: Comment noted. EPA has revised Permit Appendix B.1 as suggested the commenter.

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



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

2110 Ironwood Parkway • Coeur d'Alene, ID 83814 • (208) 769-1422
www.deq.idaho.gov

Brad Little, Governor
John Tippetts, Director

June 12, 2020

Misha Vakoc, Municipal Stormwater Permit Coordinator
Permitting, Drinking Water and Infrastructure Branch - Water Division
U.S. EPA Region 10
1200 6th Avenue, Suite 155
Mail Code WD-19-H16
Seattle, WA 98101-3188

Subject: FINAL §401 Water Quality Certification for the City of Post Falls Municipal Separate Storm Sewer System (MS4); NPDES Permit # IDS028231

Dear Ms. Vakoc:

On May 3, 2020, the Coeur d'Alene Regional Office of the Idaho Department of Environmental Quality (DEQ) received the proposed final draft of the above-referenced permit for the City of Post Falls Municipal Separate Storm Sewer System (MS4). Section 401 of the Clean Water Act requires that states issue certifications for activities which are authorized by a federal permit and which may result in the discharge to surface waters. In Idaho, the DEQ is responsible for reviewing these activities and evaluating whether the activity will comply with Idaho's Water Quality Standards, including any applicable water quality management plans (e.g., total maximum daily loads). A federal discharge permit cannot be issued until DEQ has provided certification or waived certification either expressly, or by taking no action. This letter is to inform you that DEQ is issuing the attached §401 Water Quality Certification subject to the terms and conditions contained therein.

Please direct any questions to Chantilly Higbee at 208.666.4605 or Chantilly.Higbee@deq.idaho.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Redline".

Daniel Redline, Regional Administrator
Coeur d'Alene Regional Office

c: Loren Moore, DEQ State Office



Idaho Department of Environmental Quality Final §401 Water Quality Certification

June 12, 2020

NPDES Permit Number(s): City of Post Falls Municipal Separate Storm Sewer System (MS4); NPDES Permit # IDS028231

Receiving Water Body: Spokane River

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

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

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

Antidegradation Review

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

- **Tier I Protection.** The first level of protection applies to all water bodies subject to Clean Water Act jurisdiction and ensures that existing uses of a water body and the level of water quality necessary to protect those existing uses will be maintained and protected (IDAPA 58.01.02.051.01; 58.01.02.052.01). Additionally, a Tier I review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).
- **Tier II Protection.** The second level of protection applies to those water bodies considered high quality and ensures that no lowering of water quality will be allowed unless deemed necessary to accommodate important economic or social development (IDAPA 58.01.02.051.02; 58.01.02.052.08).
- **Tier III Protection.** The third level of protection applies to water bodies that have been designated outstanding resource waters and requires that activities not cause a lowering of water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

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

Pollutants of Concern

The City of Post Falls MS4 discharges the following pollutants of concern: sediment, nutrients (nitrogen and phosphorus), heat, chlorides, metals, petroleum hydrocarbons, microbial pollution (*Escherichia coli*), and organic chemicals (pesticides and industrial chemicals). Terms and conditions of the permit and this certification require permittees to reduce pollutant loading to the maximum extent practicable.

Receiving Water Body Level of Protection

The City of Post Falls MS4 discharges to the Spokane River within the Upper Spokane Subbasin assessment units (AU) 17010305PN003_04 (Spokane River – Post Falls Dam to Idaho/Washington border and 17010305PN004_04 (Spokane River – Coeur d'Alene Lake to Post Falls Dam). These AUs have the following designated beneficial uses: cold water aquatic life, salmonid spawning, primary contact recreation, and domestic water supply. In addition to these uses, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100).

According to DEQ's 2016 Integrated Report, the Spokane River AUs are not fully supporting their aquatic life use. Causes of impairment include phosphorus, lead, and zinc.

The contact recreation beneficial use for the Spokane River is assessed and fully supported. As such, DEQ will provide Tier I protection (IDAPA 58.01.02.051.01) for the aquatic life use and Tier II protection (IDAPA 58.01.02.051.02) in addition to Tier I for the contact recreation use for the Spokane River.

Protection and Maintenance of Existing Uses (Tier I Protection)

A Tier I review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing and designated uses and the level of water quality necessary to protect existing and designated uses shall be maintained and protected. In order to protect and maintain existing and designated beneficial uses, a permitted municipal separate storm sewer system (MS4) discharge must reduce the discharge of pollutants to the maximum extent practicable (MEP). The terms and conditions contained in the City of Post Falls MS4 permit and this certification will reasonably assure that permittees reduce pollutants to the MEP.

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

that supports existing and designated beneficial uses. Discharge permits must contain limitations that are consistent with wasteload allocations in the approved TMDL.

Prior to the development of the TMDL, the WQS require the application of the antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04).

The cold water aquatic life use in the Spokane River is not fully supported due to excess lead, zinc, and phosphorus (2016 Integrated Report). A subbasin assessment and TMDL for lead and zinc has not yet been developed for the Spokane River; however this effort is underway. A TMDL for phosphorus has not yet been developed but recent new lower phosphorus effluent limits for municipal dischargers are being implemented. Support status will be re-evaluated in the future and if found necessary, a new TMDL will be developed. Prior to the development of TMDLs for the Spokane River, the WQS require the application of the antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04). The permit requirement to execute a comprehensive stormwater management program that includes targeted pollution reduction activities and pollutant assessment and monitoring in each impaired AU by the City of Post Falls, is consistent with the TMDL.

In general, the permit contains clear, specific and measureable provisions for the continued implementation of specific controls, management practices, control techniques, and system design and engineering methods to achieve the requirements of the permit. The provisions in this MS4 permit are at least as stringent as those established in the previous individual MS4 permit for the City of Post Falls MS4 permit.

The following list contains specific terms and conditions of the permit (Part 2-5) aimed at providing a Tier I level of protection for the Spokane River:

- a prohibition on snow disposal directly into surface waters;
- specific prohibitions for non-stormwater discharges;
- a requirement to develop/revise a stormwater management plan that includes five control measures:
 - a) public education and outreach,
 - b) illicit discharge detection and elimination,
 - c) construction site stormwater runoff control,
 - d) post-construction stormwater management for new development and redevelopment,
 - e) pollution prevention/good housekeeping for MS4 operations;
- quantitative monitoring/assessment of pollutants removed by BMPs in conjunction with their required maintenance;
- requirements for the City of Post Falls to implement pollutant reduction activities; and
- the stipulation that if either EPA or DEQ determine that an MS4 causes or contributes to an excursion above the water quality standards, the permittee must take a series of actions to remedy the situation.

In summary, the terms and conditions contained in the City of Post Falls MS4 permit provide reasonable assurance that the permittee will reduce discharge of pollutants to the maximum extent practicable. Therefore, DEQ has determined the permit will protect and maintain existing and designated beneficial uses in the Spokane River in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

High-Quality Waters (Tier II Protection)

The Spokane River is considered high quality for recreational uses. As such, the water quality relevant to these uses must be maintained and protected, unless a lowering of water quality is deemed necessary to accommodate important social or economic development.

To determine whether degradation will occur, DEQ must evaluate how the permit issuance will affect water quality for each pollutant that is relevant to recreational uses of the Spokane River. Pollutants relevant to recreational uses include the following: microbial pollution, nutrients, metals, petroleum hydrocarbons, and organic chemicals. Pollutants relevant to aquatic life uses include the following: sediment, heat, nutrients, metals, chlorides, petroleum hydrocarbons, and organic chemicals.

For a reissued permit or license, the effect on water quality is determined by looking at the difference in water quality that would result from the activity or discharge as authorized in the current permit and the water quality that would result from the activity or discharge as proposed in the reissued permit or license (IDAPA 58.01.02.052.06.a). NPDES permits for regulated small MS4s must include terms and conditions to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements under the Clean Water Act. "Maximum extent practicable" is the statutory standard that describes the level of pollutant reduction that MS4 operators must achieve. To achieve these goals, the current and proposed MS4 permits implement minimum control measures and rely on iterative practices to identify and reduce discharge of pollutants. Permittees' implementation of these practices must be documented in annual reports to EPA and DEQ review and is subject to on-site inspections (Fact Sheet Section 1.4). EPA also determined that additional pollutant reduction activities were required for the City of Post Falls.

This permit reissues the city's MS4 permit. Due to the nature of MS4 permits, implementing their requirements results in a continual discovery of pollutant sources, use and refinement of BMPs, feedback from BMP implementation and maintenance, additional knowledge through training opportunities, and investigating and resolving complaints. This level of scrutiny and effort combined with requirements to address pollution sources typically leads to improved water quality the longer the permit is in effect. It also generally results in minimal or no adverse change in water quality significant to recreational and aquatic life uses. Although there is no water quality monitoring requirement in the previous permit, the proposed permit contains monitoring and assessment expectations for these MS4s (Permit Section 4.2). A multitude of case studies illustrate that the use of best management practices (which include stormwater management program elements, permit prohibitions, and other permit conditions) have a measurable positive effect on water quality or a biological metric.¹ In addition, the City of Post Falls is required to conduct one pollutant reduction activity (Permit Section 4.3.2) targeting pollutants causing

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

impairments in the Spokane River. EPA oversight through review of annual reports and periodic inspections should ensure such correct BMP design, construction, and maintenance. At a minimum, water quality conditions should be maintained from current conditions. Therefore, DEQ has reasonable assurance that the discharge of pollutants from the City of Post Falls MS4 in compliance with the terms of the proposed permit and this certification will not cause significant degradation requiring further Tier II analysis.

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

Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law

Best Management Practices

Best management practices (BMPs) must be designed, implemented, and maintained by the permittee to fully protect and maintain the beneficial uses of waters of the United States and to improve water quality at least to the maximum extent practicable.

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

Pollutant Reduction Activities in the Spokane River

In carrying out the requirements of Part 4.3 of the permit, the City of Post Falls must define and implement at least one (1) pollutant reduction activity designed to reduce lead, zinc and total phosphorus from the MS4 into the Spokane River.

Reporting of Discharges Containing Hazardous Materials or Deleterious Material

All spills of hazardous material, deleterious material or petroleum products which may impact waters (ground and surface) of the state shall be immediately reported. Call 911 if immediate assistance is required to control, contain or clean up the spill. If no assistance is needed in cleaning up the spill, contact the Coeur d'Alene Regional Office at 208-769-1422 during normal working hours or Idaho State Communications Center after normal working hours. If the spilled volume is above federal reportable quantities, contact the National Response Center.

For immediate assistance: Call 911

National Response Center: (800) 424-8802

Idaho State Communications Center: (800) 632-8000

Other Conditions

This certification is conditioned upon the requirement that any material modification of the permit or the permitted activities—including without limitation, any modifications of the permit to reflect new or modified TMDLs, wasteload allocations, site-specific criteria, variances, or other new information—shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401.

Right to Appeal Final Certification

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

Questions or comments regarding the actions taken in this certification should be directed to Chantilly Higbee, Coeur d’Alene Regional Office at 208-769-1422 or via email at Chantilly.Higbee@deq.idaho.gov.



Daniel Redline
Regional Administrator
Coeur d’Alene Regional Office