

**Response to Comments on  
the Modification of the  
National Pollutant Discharge Elimination System (NPDES) Permit  
For Discharges from the  
City of Lewiston & Lewis-Clark State College Municipal Separate Storm Sewer Systems  
(Lewiston & LCSC MS4s)  
NPDES Permit No. IDS028061**

June 2021

U.S. Environmental Protection Agency, Region 10

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## Introduction

On September 15, 2020, the U.S. Environmental Protection Agency Region 10 (EPA) issued a National Pollutant Discharge Elimination System (NPDES) permit for discharges from the municipal separate storm sewer systems (MS4s) owned and/or operated by the City of Lewiston (City) and Lewis-Clark State College (LCSC) in Nez Perce County, Idaho. These entities are collectively referred to in this document as “Lewiston/LCSC” or the “Permittees,” and the Permit document #IDS028061 is referred to as “the Permit.” The Permit became effective on November 1, 2020 and expires on September 30, 2025.

On May 24, 2021, as a result of Endangered Species Act (ESA) Section 7 consultation with the National Marine Fisheries Service (NMFS), EPA proposed to modify the Permit to require additional pollutant reduction activities.<sup>1</sup> EPA explained its rationale in its Modification Fact Sheet that the proposed revisions address the reasonable and prudent measures identified by NMFS in its Biological Opinion dated May 5, 2021.

EPA held a limited public comment period on the proposed modifications from May 24, 2021 to June 23, 2021. During the comment period, EPA met by telephone with the City on May 27, 2021, to answer clarifying questions regarding the draft Permit modification.

This document provides EPA responses to comments received on the proposed modification. EPA summarizes each comment, and/or includes the comment verbatim. Where indicated, EPA has made changes to the final Permit. The Administrative Record contains the comment letter and information considered by EPA during the permit modification.

## State Certification under Clean Water Act §401

On June 21, 2021, the Idaho Department of Environmental Quality (IDEQ) provided EPA with a final Clean Water Act (CWA) Section 401 certification that reconfirms permit conditions that must be included in the Permit pursuant to CWA Section 401(d), 33 U.S.C. § 1341(d). These conditions were not subject to EPA’s proposed modification and are already reflected in the Permit. A copy of the final certification is provided in Appendix A of this document.

## Edits to the Final Permit

EPA has revised Permit Part 4.4 in response to comments received; see Responses #4, #9, and #10.

## Response to Comments

The City submitted the following comments in an email dated June 1, 2021, and a letter dated June 23, 2021.

### ***General Comments***

1. The following web map link reflects the City’s progress implementing its Stormwater Rapid Assessment project.  
<https://webadaptor.cityoflewiston.org/portal/apps/webappviewer/index.html?id=6d40e628ff784dfa8b834a61b1fb8b7> . By accessing the "Layer List" button near the top right and selecting the "Stormwater Base," one can see the drainage components that have been mapped; by selecting a

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<sup>1</sup> EPA concurrently proposed to modify the Idaho Transportation Department-District #2 MS4 Permit #IDS028258 as a result of the same NMFS Biological Opinion.

pipe (particularly in the North Lewiston area), one can scroll through the attributes, and find video playback of the specific pipe inspection.

**Response:** Comment noted. No change has been made to the Permit as a result of this comment.

2. The City of Lewiston appreciates EPA's invitation to comment on the proposed modifications to the MS4 permit that we share with Lewis Clark State College. Available budgets for street maintenance in general and stormwater in particular are extremely constrained for Idaho municipalities. For example, Caldwell has implemented a residential development moratorium in the midst of the 2021 real estate market due to restrictions on the ability of municipalities to collect the property taxes necessary for basic municipal services including stormwater. The proposed modifications, Permit Parts 4.4.1 and 4.4.2, present fiscal and schedule impacts to the City and the residents who reside here.

**Response:** Comment noted. No change has been made to the Permit as a result of this comment.

3. It appears the rush to propose modifications was to meet the deadline of EPA handing primacy to the Idaho DEQ at the end of June 2021. The quality of any work product is reduced when it is rushed, and in this case, it may have been aggravated by COVID work restrictions and challenges of remote and improvised processes. Any damage of this hurried rush to meet the arbitrary date would be [borne] by the permittee in the form of onerous, ambiguous or unworkable modifications.

**Response:** Comment noted. No change has been made to the Permit as a result of this comment.

4. No effort was made to investigate the sediment removal or management currently in place within the City's MS4. Since 9/27/2019 when our current asset management system was put in place, the City has removed and disposed of 1,153.36 tons of sediment and other debris from catchbasins, sumps, inlets, and street sweeping. Approximately 90 large dump truck loads. This is not an estimated number but a scaled weight. It would add considerable complication to be able to segregate street sweepings from the other components, the inevitable result being less sediment removed from the system or prevented from washing into the system with street sweeping. It would be regrettable if the modifications result was better reporting at the expense of more sediment removal.

**Response:** Street sweeping, combined with stormwater collection and conveyance systems maintenance, is a necessary part of the municipal operations needed to reduce the discharge of sediment and other pollutants into receiving waters. It is not EPA's intention to require Permittees to segregate street sweepings from other materials cleared from catchbasins, sumps and inlets. The Permittees may report the quantity of sediment and other materials removed from the MS4, including streets and roads, by scaled weight. See edits to Part 4.4.1 described in Response #10.

5. Additionally, the City of Lewiston is roughly halfway through our Stormwater Rapid Assessment project that is cleaning and video inspecting all of the reasonably accessible buried pipe networks. Links to the online GIS system documenting this project, including linked video inspections have been sent to both Misha Vakich [sic] at EPA region 10 and David Arthaud at NOAA. [*Editor's note: see Comment #1*]. The perception that the City would somehow be "getting away with something" under the unmodified permit is not accurate. The public would rightly be impressed with how much has been accomplished on constrained public budgets in the last decade.

**Response:** No change has been made to the Permit in response to this comment. During the development of the final Lewiston/LCSC MS4 Permit and the associated Biological Evaluation supporting EPA's issuance of the Permit, EPA was unaware of the City's extensive Stormwater Rapid Assessment project and other stormwater management program components that the City was actively conducting prior to Permit issuance. As a result of ESA consultation, EPA has modified the Permit to direct Permittees to actively remove sediment accumulation from its MS4 infrastructure in all drainage basins within the Lewiston Urbanized Area. The City is proactively working to accomplish this work, and EPA applauds the City's impressive and significant progress to date. EPA encourages the City to continue prioritizing the Stormwater Rapid Assessment project in all of the City's drainage basins.

6. The City requests that the modifications in Permit Parts 4.4.1 and 4.4.2 be entirely removed consistent with EPA and US Fish & Wildlife analysis. Both EPA's own experts concluded in their own analysis of the original unmodified permit. *"Using the information presented in Sections 5.6 and 5.7, EPA concludes that its issuance of NPDES Permit #IDS028061 to the City of Lewiston and Lewis-Clark State College, and NPDES Permit #IDS028258 to Idaho Transportation District #2 is not likely to adversely affect Chinook salmon EFH and Coho salmon EFH in the Action Area."* [See: p.183 of EPA's August 2020 Biological Evaluation and Essential Fish Habitat Assessment for Endangered Species Act Section 7 Consultation National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permits Located in the Lewiston, Idaho Urbanized Area: City of Lewiston & Lewis-Clark State College (NPDES Permit No. IDS028061) Idaho Transportation Department District #2 (NPDES Permit No. IDS028258)] US Fish and Wildlife's own experts concurred. Bear in mind that these conclusions were reached without knowledge of the ongoing sediment removal efforts on the ground! Only NOAA reached the novel conclusion that the proposed modifications were required.

**Response:** EPA modified the Permit to include Parts 4.4.1. and 4.4.2 in order to fulfill its obligations under Section 7 of the Endangered Species Act. EPA's Biological Evaluation analyzed potential consequences to ESA-listed species and designated critical habitat under the jurisdiction of both the U.S. Fish and Wildlife Service (USFWS) and NMFS, and determined that the issuance of the Permit and resulting discharges were not likely to adversely affect the listed-species in the area. USFWS concurred with this determination for the bull trout, but NMFS did not concur for the other listed salmonids and initiated formal consultation (50 CFR 402.14) on the action. As a result of the formal consultation process, on May 5, 2021, NMFS issued a final (signed) Biological Opinion (*Endangered Species Act Section 7(a)(2) Biological Opinion, and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for National Pollution Discharge Elimination System Municipal Stormwater Permits (IDS028061 and IDS028258), Lewiston, Idaho; NMFS No: WCRO-2020-02609.*) NMFS' Biological Opinion determined that additional permit requirements were necessary to minimize take of the ESA-listed species under their jurisdiction and included nondiscretionary, reasonable and prudent measures (RPMs). See: 50 CFR §§ 402.09 and 402.02.

No change has been made to the Permit as a result of this comment.

7. EPA cannot provide a single example of another permittee that had a similar requirement in their MS4 permit. Even though what makes Lewiston unusual or unique is that the Corps of Engineers levee pond system provides exceptionally robust end of pipe treatment for sediment removal compared to typical MS4s. The comments from the City to EPA throughout the permitting process lay this out in great detail and are included here by reference. It is a great concern to us that the [U.S. Army] Corps of Engineers (USACOE) continue to provide that stormwater sediment treatment in their MS4 system. This makes it difficult for a well-informed observer to reach any conclusion

other than that the proposed modifications are an arbitrary preference of some in NOAA and not grounded in any identifiable need in the City of Lewiston or the Snake and its tributaries. There are many other MS4 permittees discharging to the Snake and Columbia River in Idaho, Washington, and Oregon. It is a good bet that not one approaches the City of Lewiston in the extensive sediment removal proved by the Levee Pond system. How then is it reasonable that the only permits to ever have this or similar requirements would be Lewiston and our region's [Idaho Transportation Department] district?

**Response:** NPDES permits are developed to address the particular discharges that they regulate and the waterbody into which that the effluent is discharged. As explained in Response to Comment #6, in this case EPA engaged in ESA consultation with the NMFS and USFWS regarding the issuance of the Lewiston/LCSC MS4 permit and the Idaho Transportation Department District #2 MS4 permit. As a result of consultation with NMFS, EPA proposed these modifications to incorporate the RPMs from NMFS' Biological Opinion. See Response #6. In developing the response to this comment, however, EPA compiled a list of references illustrating sediment removal and outfall disconnection activities for the commentor. See Appendix C.

8. It should additionally be taken into consideration that in this drastically truncated timeline, that when the NOAA BiOp was made available on May 5, 2021. The contact the permittees were directed to did not respond to our email from that day until May 21, 2021.

**Response:** Comment noted. No change has been made to the Permit as a result of this comment.

#### ***Comments Specific to Modified Text in Permit Part 4.4***

9. Riparian areas appropriate for permittee acquisition and protection have already been acquired and protected by the Corps of Engineers as a part of the Lower Granite Dam project. *[Editor's note: See Appendix B for a map provided by the City, illustrating federal land ownership by the Corps of Engineers].* There is no frontage to the Snake River, Clearwater River, Lindsay Creek or Granite Lake in the City Limits that is not federally owned. The City will not be able to acquire it. Fortunately, as discussed above, the Corps of Engineers disconnected nearly all of the City of Lewiston's outfalls, designed and constructed an elaborate system of vegetated swales, stormwater treatment wetlands, skimming ponds to remove petroleum and other floatables, and sediment removal ponds. This system is far in excess of what would have been practicable for a municipality to construct.

For reasons outlined above, the City requests that Permit Part 4.4.2 be amended to read as follows:

##### 4.4.2 Riparian Zone Management and Outfall Disconnection

*No later than April 3, 2025, the Permittees must facilitate an onsite meeting with the Permitting Authority (EPA or Idaho DEQ) to tour the Corps of Engineers owned riparian zone project and discuss its function and its operational and maintenance needs. A map to document the Corps' system shall be included in the 5th Year Annual Report.*

**Response:** Permit Part 4.4.2 is entitled *Riparian Zone Management and Outfall Disconnection*, and the purpose of this provision is to have the Permittee consider areas in its jurisdiction where existing runoff discharges can be eliminated through the better site design and/or retrofits that use vegetated areas, riparian buffers or other green infrastructure techniques to reduce or eliminate existing discharges. If, as the City states, there are no available areas "appropriate for

Permittee acquisition and protection” in any area under the City’s direct control, the City may document that fact in its Permit Renewal Application as required by Part 8.2.

The commenter does not indicate that the existing text in Part 4.4.2 should be deleted. In light of the unique nature of the drainage system in the Permit Area, EPA agrees to add the suggested text to Permit Part 4.4.2, but will not include the reference to EPA in recognition of IDEQ’s role as the NPDES Permitting Authority after July 1, 2021.

**10.** For reasons outlined above, the City requests that Permit Part 4.4.1 be amended to read as follows:

#### 4.4.1 Sediment Removal Actions

*4.4.1.1 The Permittees must remove accumulated sediment in catch basins, inlets, ~~outfalls,~~ and **sumps intended to capture sediment from stormwater other MS4 features** leading to the Lewiston Levee Ponds, Snake River, Lower Granite Dam Pool, Lindsay Creek, and Tammany Creek.*

*Complete implementation of sediment removal actions will be achieved when each Permittee has removed accumulated sediment at least once from 100% of their MS4 catch basins, inlets, ~~outfalls,~~ and **other MS4 features and sumps intended to capture sediment from stormwater within the Permit Area- that are accessible with industry standard equipment. Cleaning records prior to the permit effective date will be accepted. Cemented sediments, such as those from volcanic ash from Mt. St. Helens, may not be removable with industry standard equipment. Given that unremovable cemented sediments are at exceptionally low risk of transport to the receiving waters, failure to remove them shall not be considered a violation.***

*All material removed from catch basins, inlets, outfalls, and other MS4 features must be managed according to Part 7.13 of this Permit.*

*4.4.1.2 Cleaning and removal of sediment from catch basins, inlets, and **sumps intended to capture sediment from stormwater not cleaned prior to submittal of the 2025 Sediment Removal Report is recommended to be prioritized in the following order, by drainage basins identified in the City of Lewiston, Idaho, Stormwater Master Plan dated October 12, 2001 and available online at: <https://www.cityoflewiston.org/DocumentCenter/View/640/2001-Stormwater-Master-Plan-PDF>***

*Basins 12, 13, 14, draining to the West Levee Pond*

*Basin 7, draining to Lower Granite Dam Pool through the 380 Drainage Structure*

*Basins 1, 2, 3, 4, 6, 19, draining to Lindsay Creek Pond and Drainage Tunnel*

*Basins 5, 8, 9, 19, 11, 20, draining to Tammany Creek and Snake River*

*Basins 15, 16, 17, 18, draining to the North Levee Pond*

*4.4.1.3 Beginning with the 2023 Annual Report, and in each Annual Report thereafter, the Permittees must document the interim progress made towards the implementation goal identified in Part 4.4.1.1 and provide an estimate of the total sediment removed (~~in both weight and volume~~). **by weight from catch basins, inlets, and sumps and intercepted from washing into catch basins, inlets, and sumps by street sweeping.***

*4.4.1.4 No later than April 3, 2025, the Permittees must submit a Sediment Removal Report as an attachment to the Permit Renewal Application required by Part 8.2. The Sediment Removal Report must document all actions taken during the permit term to reduce pollutant loadings in sediment from the Permittees' MS4s. The Sediment Removal Report must summarize the knowledge and experience gained through **over a century of maintaining the stormwater system**, ~~conducting these sediment removal actions~~, quantify sediment and pollutant load reductions accomplished to date **by weight**, and forecast a schedule of priority Permittee actions that must be accomplished to result in complete implementation as described in Part 4.1.1.1..*

**Response:** EPA agrees to revise Part 4.4.1 as suggested by the commenter, with the following changes:

- EPA has rephrased certain sentences to direct the Permittees to identify in the Sediment Removal Report the specific locations where cemented material associated with volcanic ash or other material cannot be removed from the catch basins, inlets, and sumps, and that are a low risk of transport.
- The commenter did not request deletion of all references to “outfalls and other MS4 features,” in this Part, however, for consistency, EPA has deleted the words elsewhere in Part 4.4.1.
- EPA notes that the City published its *Updated Stormwater Master Plan* in May 2021; because this updated document does not entirely replace the *2001 Lewiston Stormwater Master Plan*, EPA has added a relevant reference to the 2021 Stormwater Master Plan in Part 4.4.1.2.

Revised Part 4.4.1 now reads as follows:

#### **Part 4.4.1 Sediment Removal Actions**

***4.4.1.1 The Permittees must remove accumulated sediment in catch basins, inlets, and sumps intended to capture sediment from stormwater leading to the Lewiston Levee Ponds, Snake River, Lower Granite Dam Pool, Lindsay Creek, and Tammany Creek.***

***Complete implementation of sediment removal actions will be achieved when each Permittee has removed accumulated sediment at least once from 100% of their MS4 catch basins, inlets, and sumps intended to capture sediment from stormwater within the Permit Area that are accessible with industry standard equipment. Cleaning records prior to the permit effective date will be accepted. Where cemented sediments, such as those from volcanic ash from Mt. St. Helens, exist and cannot be removed with industry standard equipment, the Permittee must identify such locations in the Sediment Removal Report defined in Part 4.4.1.4.***

***All material removed from catch basins, inlets, and sumps must be managed according to Part 7.13 of this Permit.***

***4.4.1.2 Cleaning and removal of sediment from catch basins, inlets, and sumps intended to capture sediment from stormwater that are not cleaned prior to submittal of the Sediment Removal Report is recommended to be prioritized in the following order, by drainage basins identified in the City of Lewiston,***



***Idaho, Stormwater Master Plan dated October 12, 2001 and/or the 2021 Lewiston Stormwater Master Plan Update available online at:***

***<https://www.cityoflewiston.org/380/Master-Plans>***

***Basins 12, 13, 14, draining to the West Levee Pond***

***Basin 7, draining to Lower Granite Dam Pool through the 380 Drainage Structure***

***Basins 1, 2, 3, 4, 6, 19, draining to Lindsay Creek Pond and Drainage Tunnel***

***Basins 5, 8, 9, 19, 11, 20, draining to Tammany Creek and Snake River***

***Basins 15, 16, 17, 18, draining to the North Levee Pond***

***4.4.1.3 Beginning with the 2023 Annual Report, and in each Annual Report thereafter, the Permittees must document the interim progress made towards the implementation goal identified in Part 4.4.1.1 and provide an estimate of the total sediment removed by weight from catch basins, inlets, and sumps and intercepted from washing into catch basins, inlets, and sumps by street sweeping.***

***4.4.1.4 No later than April 3, 2025, the Permittees must submit a Sediment Removal Report as an attachment to the Permit Renewal Application required by Part 8.2. The Sediment Removal Report must document all actions taken during the permit term to reduce pollutant loadings in sediment from the Permittees' MS4s. The Sediment Removal Report must summarize the knowledge and experience gained through over a century of maintaining the stormwater system, quantify sediment and pollutant load reductions accomplished to date by weight, and forecast a schedule of priority Permittee actions that must be accomplished to result in complete implementation as described in Part 4.1.1.1.***

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



**STATE OF IDAHO**  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

1118 F Street, Lewiston, Idaho 83501  
(208) 799-4370

Brad Little, Governor  
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June 21, 2021

Mathew Martinson, Branch Chief  
Permitting, Drinking Water, and Infrastructure Branch  
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Mail Code WD-19-C04  
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Subject: FINAL §401 Water Quality Certification for the City of Lewiston and Lewis-Clark State College Municipal Separate Sewer System (MS4), NPDES Permit #IDS028061

Dear Mr. Martinson:

On May 21, 2021, the Lewiston Regional Office of the Idaho Department of Environmental Quality (DEQ) received the proposed final draft of the above-referenced permit for the City of Lewiston and Lewis-Clark State College Municipal Separate 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 contact me directly at (208) 799-4370 to discuss any questions or concerns regarding the content of this certification.

Sincerely,

A handwritten signature in blue ink that reads "John Cardwell".

John Cardwell  
Regional Administrator  
Lewiston Regional Office

c: Misha Vakoc, EPA Region 10  
Susan Poulosom, EPA Region 10  
Beth Spelsberg, DEQ State Office



## Idaho Department of Environmental Quality Final §401 Water Quality Certification

June 21, 2021

**NPDES Permit Number(s):** City of Lewiston and Lewis-Clark State College, IDS02861 (2021 Modification)

**Receiving Water Body:** Clearwater River (Lower Granite Dam Pool), Lewiston Levee Ponds, Lindsay Creek, Tammany Creek, and the Snake River

On April 30, 2021, EPA requested that DEQ provide Clean Water Act Section 401 certification for modification of this NPDES permit. The modified permit includes additional conditions to benefit salmonids listed under the Endangered Species Act. On May 17, 2021 EPA requested that DEQ grant or deny certification under 40 CFR 124.55 or waive its right to certify by June 29, 2021.

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.

For discharge into the Clearwater River (Lower Granite Dam Pool), Lindsay Creek, Tammany Creek, and the Snake River, DEQ certifies, based upon its review of the above-referenced permit and associated fact sheet, 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 it is reasonable for DEQ to conclude that the discharge will comply with the applicable water quality 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. For discharge into the Lewiston Levee Ponds, DEQ waives certification.

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 Lewiston and Lewis-Clark State College discharge the following pollutants of concern: sediment, nutrients (nitrogen and phosphorous), heat, chlorides, metals, petroleum hydrocarbons, microbial pollution (*Escherichia coli*) and organic chemicals (pesticides and industrial chemicals). 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 Lewiston and Lewis-Clark State College discharge to the Clearwater River- Lower Granite Dam Pool, Lindsay Creek, the Snake River, and Tammany Creek within the Clearwater and Lower Snake Asotin Subbasin assessment units (AU) ID17060306CL001\_07 (Lower Granite Dam Pool), ID17060306CL003\_02 (Lindsay Creek – source to mouth), ID17060306CL003\_03 (Lindsay Creek – source to mouth), ID17060103SL001\_08 (Snake River), ID17060103SL016\_02 (Tammany Creek – source to Unnamed Tributary (T34N, R04W, Sec19)), ID17060103SL014\_02 (Tammany Creek – WBID 015 to unnamed tributary), ID17060103SL014\_03 (Tammany Creek – Unnamed Tributary to mouth).

The AUs defined above, are each designated for cold water aquatic life beneficial uses. In addition, ID17060306CL001\_07 (Lower Granite Dam Pool) and ID17060103SL001\_08 (Snake River) are designated for primary contact recreation and domestic water supply beneficial uses. The remaining assessment units—ID17060306CL003\_02 (Lindsay Creek – source to mouth), ID17060306CL003\_03 (Lindsay Creek – source to mouth), ID17060103SL016\_02 (Tammany Creek – source to Unnamed Tributary (T34N, R04W, Sec19)), ID17060103SL014\_02 (Tammany Creek – WBID 015 to unnamed tributary), ID17060103SL014\_03 (Tammany Creek – Unnamed Tributary to mouth)—are designated for secondary contact recreation beneficial uses. 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 2018/2020 Integrated Report, the Lindsay Creek and Tammany Creek AUs are not fully supporting their aquatic life or contact recreation beneficial uses. Causes of

impairment include nutrients, sediment/siltation, and *Escherichia coli* (*E. coli*). The Snake River AU is not fully supporting its aquatic life use. The cause of impairment is temperature. The contact recreation beneficial use for the Snake River is fully supported. The aquatic life and recreation beneficial uses for the Clearwater River are fully supported. As such, DEQ will provide Tier I protection (IDAPA 58.01.02.051.01) for the aquatic life and recreation beneficial uses in the Lindsay Creek and Tammany Creek AUs and Tier I protection for the aquatic life use in the Snake River AU. Tier II protection (IDAPA 58.01.02.051.02) in addition to Tier I will be provided for the contact recreation use in the Snake River and Clearwater River AUs (IDAPA 58.01.02.052.05.c) as well as the aquatic life use in the Clearwater River AU.

In addition to the water bodies discussed above, the NPDES permit identifies the Lewiston Levee ponds as distinct receiving waters and receives discharge from the City of Lewiston and Lewis-Clark State College.

There is insufficient information in the record for DEQ to conduct antidegradation analysis and act on EPA's request to certify the discharge to the Lewiston Levee Ponds. The Lewiston Levee Ponds are unassessed. The record contains little information regarding existing uses of the ponds. The record also lacks information regarding the ponds' current water quality or the effect, if any, of the MS4 discharge into the ponds. Without such information, DEQ cannot complete a Tier I review (IDAPA 58.01.02.052.07), nor determine whether Tier II protection is appropriate (IDAPA 58.01.02.052.05). Further, because EPA has provided no assurance that it will provide more time for the certification process, DEQ risks waiving certification entirely if it attempts to obtain such information. Therefore, DEQ is exercising its discretion to waive certification under section 401, 33 U.S.C. § 1341, with respect to only those portions of the MS4 that discharge to the Lewiston Levee Ponds.

### ***Protection and Maintenance of Existing Uses (Tier I Protection)***

A Tier I review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing and designated uses and the level of water quality necessary to protect existing and designated uses shall be maintained and protected. In order to protect and maintain existing and designated beneficial uses, a permitted MS4 discharge must reduce the discharge of pollutants to the maximum extent practicable. The terms and conditions contained in the City of Lewiston and Lewis-Clark State College permit and this certification require the permittees to reduce the discharge of pollutants to the maximum extent practicable.

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

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 Snake River is in Idaho's 2018/2020 Integrated Report in Category 5 as impaired by temperature but does not have a current TMDL. The EPA-approved *Lindsay Creek Watershed*

*Assessment and Total Maximum Daily Loads* (June 2007), *Tammany Creek Sediment TMDL* (February 2002), and *Tammany Creek Watershed (HUC 17060103): TMDL Addendum* (December 2010) establish wasteload allocations for *E. coli* bacteria, nutrients, and sediment. These wasteload allocations are designed to ensure that Lindsay Creek and Tammany Creek will achieve the water quality necessary to support existing and designated aquatic life and contact recreation beneficial uses and comply with the applicable numeric and narrative criteria. The terms and conditions contained in the City of Lewiston and Lewis-Clark State College permit and the conditions of this certification are consistent with the applicable waste load allocations in the TMDLs.

Specific terms and conditions of the permit aimed at providing a Tier I level of protection and compliance with the Lindsay Creek and Tammany Creek TMDLs include (Permit part 2 & 3):

- A prohibition on snow disposal directly to surface waters;
- Specific prohibitions for non-stormwater discharges;
- Requirements to develop a stormwater management plan with the following control measures:
  - Public education and outreach,
  - Illicit discharge detection and elimination,
  - Construction site stormwater runoff controls,
  - Post-construction stormwater management for new and redevelopment,
  - Pollution prevention/good housekeeping for MS4 operations;
- Quantitative monitoring/assessment to determine BMP removal of pollutants of concern in all impaired AUs;
- Requirements for the City of Lewiston and Lewis-Clark State College to implement pollutant reduction activities and quantitative monitoring and assessment for discharges to Lindsay Creek and Tammany Creek;
- Requirements for the City of Lewiston and Lewis-Clark State College to monitor and assess temperature in discharges to the Snake River; 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 permittees must take a series of actions to remedy the situation.

In summary, the terms and conditions contained in the City of Lewiston and Lewis-Clark State College permit will reduce the discharge of pollutants to the maximum extent practicable and combined with the conditions of this certification, are consistent with the wasteload allocations established in the *Lindsay Creek Watershed Assessment and Total Maximum Daily Loads*, *Tammany Creek Sediment TMDL*, and *Tammany Creek Watershed (HUC 17060103): TMDL Addendum*. Therefore, DEQ has determined the permit will protect and maintain existing and designated beneficial uses in Lindsay Creek and Tammany Creek 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 Clearwater River – Lower Granite Dam Pool is considered high quality for cold water aquatic life and primary contact recreation. The Snake River is also considered high quality for primary contact recreation. As such, the water quality relevant to cold water aquatic life and primary contact recreation uses of the Clearwater River – Lower Granite Dam Pool and the Snake River 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 cold water aquatic life and primary contact recreation uses of the Clearwater River – Lower Granite Dam Pool and the Snake River (IDAPA 58.01.02.052.05). These include *E. coli*, sediment, heat, nutrients, metals, chlorides, petroleum hydrocarbons, and organic chemicals (pesticides and industrial chemicals).

For a new permit or license, the effect on water quality is determined by reviewing the difference between the existing receiving water quality and the water quality that would result from the activity or discharge as proposed in the new permit or license (IDAPA 58.01.02.052.06.a). NPDES permits for regulated small municipal separate storm sewer systems (MS4s) must include terms and conditions to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements under the Clean Water Act. “Maximum extent practicable” is the statutory standard that describes the level of pollutant reduction that MS4 operators must achieve. The proposed MS4 permit relies on practices to identify and reduce discharge of pollutants to the maximum extent practicable (Permit part 2 & 3). Further, the permittees’ implementation of these practices must be documented in annual reports to EPA and DEQ and is subject to review and on-site inspections. To ensure discharged stormwater will not degrade receiving waters, the permittees are required to manage the effectiveness of these stormwater management practices, monitor discharge and receiving water quality and, if necessary, adapt its management practices. The City of Lewiston and Lewis-Clark State College must map their MS4 and all associated outfalls (Permit part 3.2.2).

Pollutant reductions should be realized as each element of the stormwater management plan is developed and implemented during the permit cycle. Stormwater control measures, when designed, constructed, and maintained correctly have demonstrated the ability to reduce runoff, erosive flows, and pollutant loadings<sup>1</sup>. Due to the nature of MS4 permits, implementation requires investigating and resolving complaints; continual discovery of pollutant sources; use, monitoring, and refinement of BMPs; and additional knowledge through training opportunities. Water quality is expected to improve in Lindsay Creek and Tammany Creek, and the downstream receiving waters of the Clearwater River and Snake River, as a result of conducting these pollutant reduction activities (Permit part 4.3).

Under the revised NPDES permit in section 4.4, the City of Lewiston and Lewis-Clark State College will incorporate sediment removal actions to reduce toxic impact to salmonids in the Lower Granite Dam Pool and the Snake River. These changes will further improve water quality by prioritizing areas where sediment is a concern and incorporating sediment removal actions from catch basins, inlets, outfalls and other MS4 features within the permit area.

<sup>1</sup> Urban Stormwater Management in the United States, National Research Council, 2008

This level of scrutiny and effort combined with requirements to address pollution sources should lead to improved water quality the longer the permit is in effect and should result in minimal to no adverse change in existing water quality significant to recreational and aquatic life uses. Therefore, DEQ has reasonable assurance that at a minimum, no degradation will result from the discharge of pollutants from the City of Lewiston and Lewis-Clark State College MS4s.

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

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

### ***Best Management Practices***

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

This condition is necessary to ensure that best management practices implemented under this permit maintain and protect existing uses of the receiving waters in accordance with Idaho water quality requirements including, without limitation, IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.250, IDAPA 58.01.02.252.

When selecting best management practices the permittees must consider and, if practicable, utilize practices identified in the DEQ's Idaho Catalog of Storm Water Best Management practices found at <https://www.deq.idaho.gov/water-quality/wastewater/storm-water/>.

### ***Pollutant Reduction Activities in Tammany Creek and Lindsay Creek***

In carrying out the requirements of Part 4.3 of the permit, the permittees must define and implement at least one (1) pollutant reduction activity designed to reduce *E. coli*, nitrogen, phosphorus, and sediment loadings from the MS4 into Tammany Creek.

In carrying out the requirements of Part 4.3 of the permit, the permittees must define and implement at least one (1) pollutant reduction activity designed to reduce *E. coli*, nutrients, and sediment loadings from the MS4 into Lindsay Creek.

These conditions are necessary to ensure discharges of causative pollutants from the MS4 into Tammany Creek and Lindsay Creek are consistent with the allocations in the *Lindsay Creek Watershed Assessment and Total Maximum Daily Loads* (June 2007), *Tammany Creek Sediment TMDL* (February 2002), and *Tammany Creek Watershed (HUC 17060103): TMDL Addendum* (December 2010). IDAPA 58.01.02.055.05

### ***Temperature Monitoring - Discharges to the Snake River***

The permittees must monitor temperature in stormwater discharges from the MS4 to the Snake River to quantify stormwater impacts to the waterbody.



This condition is necessary to develop the information necessary to assess compliance with IDAPA 58.01.02.401.01 and applicable temperature criteria in IDAPA 58.01.02.250.

### ***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 Lewiston Regional Office at 208-799-4370 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

This condition is necessary to ensure compliance with the notification requirement in IDAPA 58.01.02.850.03.

### **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. Such modifications may not be implemented until DEQ has determined whether additional certification is necessary.

Because DEQ is certifying only the activity described in the certification request, this condition is necessary to ensure that discharges under circumstances that differ from those described in the certification request will comply with 33 U.S.C. § 1341, 40 CFR Part 121, and other applicable water quality requirements, including without limitation 33 U.S.C. § 1311(a), Idaho Code § 39-108, IDAPA 58.01.02.051, IDAPA 58.01.02.052, IDAPA 58.01.02.080, IDAPA 58.01.02.200, IDAPA 58.01.02.210, IDAPA 58.01.02.250, IDAPA 58.01.02.251, IDAPA 58.01.02.252, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

### **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.

Idaho Department of Environmental Quality

§401 Water Quality Certification

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Questions or comments regarding the actions taken in this certification should be directed to Sujata Connell, Lewiston Regional Office at 208-799-4370 or via email at [Sujata.Connell@deq.idaho.gov](mailto:Sujata.Connell@deq.idaho.gov).

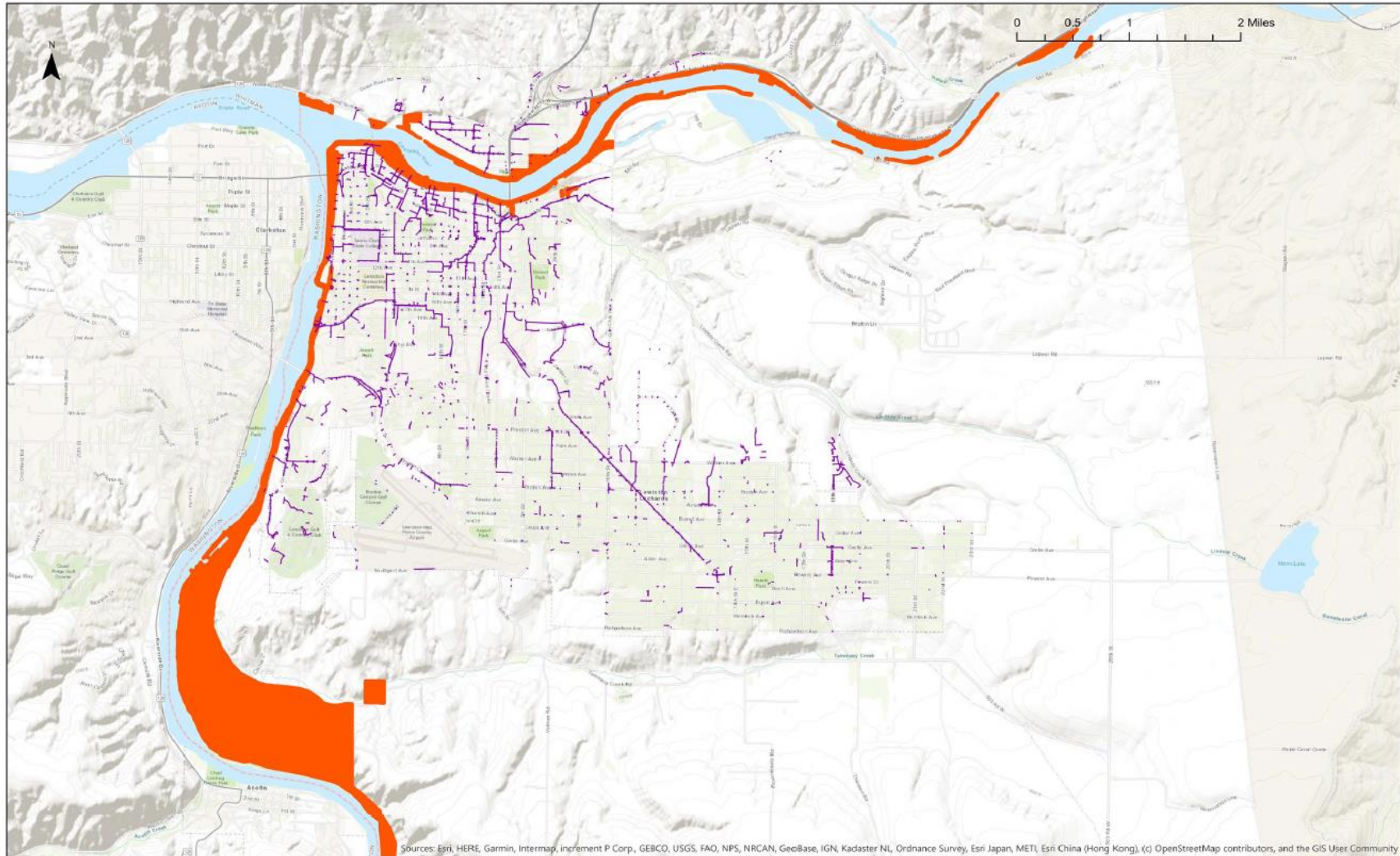


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John Cardwell  
Regional Administrator  
Lewiston Regional Office

## Appendix B: Map Submitted by the City of Lewiston, Showing Federal Land Ownership by the U.S. Army Corps of Engineers

Corps of Engineers Property



## Appendix C: References

### Regarding Catch Basin/Pipe Cleanout:

Limno-Tech. *2016 Comprehensive Plan to Reduce PCBs in the Spokane River*. Prepared for: Spokane River Regional Toxics Task Force; Plan Accepted by the Task Force November 16, 2016. November 29, 2016. Available online at: [http://srtrtf.org/wp-content/uploads/2016/04/2016\\_Comp\\_Plan\\_Final\\_Approved.pdf](http://srtrtf.org/wp-content/uploads/2016/04/2016_Comp_Plan_Final_Approved.pdf)

City of Spokane. *Report: PCB Characterization of Spokane Regional Vector Waste Decant Facilities*. Prepared for the Spokane River Regional Toxics Taskforce. September 2015. City of Spokane RPWRF Laboratory. Available online at: <http://srtrtf.org/wp-content/uploads/2015/09/2015-9-11-REPORT-Vector-Decant-Facility-Characterization-FINAL.pdf>

California Regional Water Quality Control Board, San Francisco Bay Region. *Municipal Regional Stormwater NPDES Permit; Order R2-2009-0074; NPDES Permit No. CAS612008*. October 14, 2009. Available online at: [https://www.waterboards.ca.gov/rwqcb2/board\\_decisions/adopted\\_orders/2009/R2-2009-0074.pdf](https://www.waterboards.ca.gov/rwqcb2/board_decisions/adopted_orders/2009/R2-2009-0074.pdf). See Parts C.11.c and C.11.d, pages 88 – 89

City of Seattle. *Seattle's Source Control Plan for the Lower Duwamish Waterway (2021 – 2026) December 2020 Update*. Available online at: <https://www.seattle.gov/Documents/Departments/SPU/Services/DrainageSewer/LDWSourceControlImplementationPlan2021-2026.pdf>. See, for example, Section 10.1, pages 58-60

City of Seattle. *Subject: G1300084 NEP grant: S Lander St storm drain cleaning project, final report*. April 9, 2015.

Dorfmeier, E. and L. Fore. *Comparing costs to reduce toxic pollution: City of Tacoma. Background Summary*. Puget Sound Partnership, Tacoma, WA. 2016. Available online at: <https://psp.wa.gov/evaluating-effective-action.php>. See pages 8-12.

U.S. EPA, Region 9. *Water Quality Progress Report San Francisco Bay – Mercury (Approved 2008) Total Maximum Daily Load (TMDL) Summary - Water Quality Progress Report: June 2015*. Available online at: <https://www.epa.gov/sites/production/files/2015-07/documents/12-sf-bay-mercury-tmdl-implementation-report-2015-06-15.pdf>

### Regarding Outfall Disconnection/Removal:

City of Spokane Valley. March 2021. *2021 Stormwater Management Plan (SWMP)*. City of Spokane Valley Public Works Department Stormwater Utility. Available online at: [https://www.spokanevalley.org/filestorage/6836/6896/6914/8301/2021\\_Stormwater\\_Management\\_Program\\_Plan.pdf](https://www.spokanevalley.org/filestorage/6836/6896/6914/8301/2021_Stormwater_Management_Program_Plan.pdf). See discussion regarding outfall disconnection, page 19.

Spokane County. 2016. *MS4 Program Annual Report*. Submitted to WA Department of Ecology. Available online at: <https://www.spokanecounty.org/DocumentCenter/View/14776/2016-Spokane-County-Annual-Report---Merged>. See Section 10.3, page 40; Appendix C, pages 68-75; Attachment 7, pages 5-6.