



SCIENCE AND ENVIRONMENT DIVISION

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December 18, 2018

Mr. Daniel Opalski  
Director, Office of Water and Watersheds, U.S.E.P.A., Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

**Subject: Review Comments for City of Pocatello, City of Chubbuck, Bannock County, Idaho  
Transportation Department District #5 and Idaho State University**  
NPDES Permit No. IDS02805 - Pocatello Urbanized Area MS4 Permit – November 2018

Dear Mr. Opalski:

The Pocatello Urbanized Area permittees (City of Pocatello, City of Chubbuck, Bannock County, Idaho Transportation Department D5, and Idaho State University) ("Permittees") are pleased to submit our consolidated comments on the Phase II storm water permit issued as draft on November 2, 2018 (Draft Permit). Individually, the permittees have (and continue to) participate in watershed groups and understand the necessity to protect Idaho's water resources and acknowledge the responsibility we share for water quality in the Portneuf River Watershed.

Considerable effort has been expended in the last 45 days with respect to our concerns regarding this permit and we thank the EPA for extending the comment deadline to December 18, 2018. Attached please find our comments to the Draft Permit and associated Fact Sheet. The permittees also urge EPA to carefully consider the comments submitted by the Association of Idaho Cities prior to making a final decision regarding the permit's scope and requirements.

We appreciate the efforts of the Environmental Protection Agency to draft NPDES permits that are fair, equitable, scientifically-based, and protective of water quality. We look forward to collaborating with you regarding the Pocatello Urbanized Area's MS4 permit. Please don't hesitate to contact me if you have any questions regarding our attached comments.

Sincerely,

Hannah Sanger, MS MA  
Pocatello Urbanized Area Permit Coordinator

cc: Brian Blad, Mayor of Pocatello  
Jeff Mansfield, Pocatello Public Works Director/City Engineer, City of Pocatello  
Kevin England, Mayor of Chubbuck  
Ken Bullock, Bannock County Commission Chairman  
Ed Bala, District Engineer, Idaho Transportation Department, District 5  
Pocatello Urbanized Area MS4 Permit permittee staff  
Lynn Van Every, Idaho Department of Environmental Quality, Region 5  
Misha Vakoc, Permit Writer, Environmental Protection Agency, Region 10  
Johanna Bell, Association of Idaho Cities

Attachment

**Attachment A**  
**Review Comments re: Public Notice Issued November 2, 2018**  
**NPDES Permit No. IDS028053 Pocatello Urbanized Area MS4 Permit**  
**Draft NPDES Permit**

**GENERAL COMMENTS**

The permittees appreciate the opportunity to comment on the proposed MS4 permit and Idaho 401 certification for the Pocatello Urbanized Area. Protection of public health and safety is an important responsibility of the permittee organizations. We are heavily invested in improving water quality in our communities and support a permitting program within the elements and requirements of the federal Phase II permit regulations and one that takes into account the need to employ adaptive management strategies over the long-term.

**Schedule of Compliance**

The permittees respectfully request that the permit effective date be moved to October 1, 2019, in line with the fiscal years for City of Chubbuck, City of Pocatello, and Bannock County. This date is after the new fiscal year for the state agencies (ISU and ITD), and as such will enable the permittees to effectively budget for the staff and other expenses required to implement the first year of the permit.

**Alternatives for Local Control**

The permittees support EPA Region 10's proposal to use the "Two-Step Approach" to address the Phase II Remand Rule requirements. The permittees support EPA's provision, throughout the permit document, that the permittees may request an alternative control measure for a particular permit requirement.

In order to provide the permittees with time to properly assess the need for alternative control measures, while still allowing time for implementation, the permittees request that the timeframe for the submission of Alternative Controls, Monitoring Assessment Plan, and Pollutant Reduction Activities be extended to 2-years following the effective date of the permit. This request would then provide for these alternative controls to be understood 2.5 years prior to when the 6 minimum control measures would be required to be in place (i.e., 4.5 years following the permit's effective date).

**Prioritization by Permittees**

The Permittees support EPA's effort throughout the document to allow the permittees to develop and define our own prioritization system for inspections, enforcement and maintenance, based on local knowledge and conditions. We believe that this will enable us to use our time and resources most efficiently and effectively towards BMP implementation and improving water quality.

**Limited Legal Authority of Permittees**

The permittees appreciate EPA's efforts to acknowledge the limited legal authority of some permittees, and providing for language that enables alternative compliance pathways such as developing an Escalating Response Plan that is "appropriate to its jurisdiction" (Section 3.3.6), or using "available regulatory mechanisms" (Section 2.5.4).

### **Individual Permit – vs - Statewide General Permit**

The permittees would strongly prefer a statewide general permit (as opposed to an individual permit) to enable us to better collaborate with MS4 permittees across the state, who would be on the same time schedule and following the same permit requirements. Pooling of resources is critical in a rural state like Idaho where the Pocatello Urbanized Area (75,000 people) is considered a large metropolitan area – and the two nearest existing Idaho MS4s are Idaho Falls (50 miles away) and Boise (235 miles away).

The permittees appreciate EPA's efforts to maintain consistency between the individually issued draft permits within Idaho (fall 2018) and respectfully request that EPA continue to strive for consistency between the individual Idaho small MS4 permits, as appropriate, to improve coordination across the state.

### **2.1 Compliance with Water Quality Standards #1**

The permittees affirm strong support for the first paragraph of this section: "If the Permittees comply with all the terms and conditions of this Permit, it is presumed that the Permittees are not causing or contributing to an excursion above the applicable Idaho Water Quality Standards."

### **2.1 Compliance with Water Quality Standards #2**

Regarding the second paragraph, the Draft Permit language implies that the permittee should determine if MS4 discharges are causing or contributing to an excursion of water quality standards (WQS). This determination can be complicated and should not be the responsibility of the MS4. The Permittees assert that their responsibility is not to determine individual causation of excursions, but to actively participate in monitoring and implementing BMPs designed to protect the receiving water quality. This section should be modified to clarify the desired response from the Permittees in the event of an excursion to Idaho Water Quality Standards. A recommendation has also been made to similarly revise Section 5.1.

#### Recommended text (2.1) (2<sup>nd</sup> paragraph):

"If credible and relevant information from monitoring and/or other sources indicate that an applicable Idaho Water Quality Standard may be exceeded in the receiving waterbody, the Permittee(s) must comply ..."

### **2.1 Compliance with Water Quality Standards #3**

The permittees appreciate EPA's commitment and intentions to construct the proposed Permit in a manner that preserves the "Maximum Extent Practicable" (MEP) standard under the Clean Water Act. However, the permittees believe the final Permit requires an affirmative statement regarding how the MEP standard will be achieved. Therefore, the permittees strongly urge the EPA to insert the following paragraph into Section 2.1, "Compliance with Water Quality Standards:"

#### Recommended text (2.1) (after 2<sup>nd</sup> paragraph):

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

The permittees request that EPA refer to the AIC comments under 'Schedule of Compliance' for additional background information and justification.

## **2.2 Snow Disposal to Receiving Waters**

The permittees request a slight modification in wording to clarify that the first sentence of this permit requirement deals with the disposal of stockpiled or trucked snow, as opposed to fresh snow that is pushed off a bridge by a snowplow.

### Recommended text (2.2):

“The Permittees are not authorized to dispose of stockpiled snow plowed in ...”

## **2.4.2 Sources of Pollution to Waters of the United States**

The permittees support permit language ensuring that valid receiving water impacts and the significance to public health are taken into consideration prior to determining whether a stormwater discharge is a source of pollution to Waters of the United States.

## **2.5.2 Joint Responsibility and Joint Agreements**

The final sentence of this section “The Permittees remain responsible for compliance with the permit obligations if the other entity fails to implement the stormwater management control measure (or component thereof).” is duplicated at the end of 2.5.3. It is not clear in Section 2.5.2 what “the other entity” is referring to as Section 2.5.2 deals entirely with agreements between the permittees.

The permittees recommend deleting the final sentence in this section.

## **2.6.4 Recognition of Alternative Control Measures**

The permittees recommend that the permit affirmatively provided for Integrated Planning within the Alternative Control Measures Section, after the 3<sup>rd</sup> paragraph.

### Recommended text (2.6.4) (after the 3<sup>rd</sup> paragraph)”

“EPA recognizes integrated planning as a way that municipalities can realize efficiencies in improving receiving water quality by sequencing investments so that the highest priority projects come first. This approach can also lead to more sustainable and comprehensive solutions, such as green infrastructure, that improve water quality and provide multiple benefits that enhance community vitality. Terms identifying this as a possibility, along with EPA’s guidance document referenced, should be included to recognize integrated planning within the guidelines set forth by EPA.”

## **2.7 Water Quality Trading**

Although opportunities for water quality trading have not been identified, the permittees may desire to participate in water quality trading activities. The permittees request that terms identifying this as a possibility, as long as EPA’s trading guidance is followed, be included to allow for trading within the guidelines set forth by EPA. This may require the addition of a new section (i.e. 2.7).

### Recommended text (2.7):

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

## **2.8 Integrated Planning**

EPA recognizes integrated planning as a way that municipalities can realize efficiencies in improving receiving water quality by sequencing investments so that the highest priority projects come first. This

approach can also lead to more sustainable and comprehensive solutions, such as green infrastructure, that improve water quality and provide multiple benefits that enhance community vitality. The permittees request that terms identifying this as a possibility, along with EPA's guidance document referenced, be included to recognize integrated planning within the guidelines set forth by EPA. This may require the addition of a new section (i.e. 2.8).

Recommended text (2.8):

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

**3.1 Public Education and Outreach on Stormwater Impacts**

The permittees support text in this section requiring selection of target audience(s) and messages based on permittee priorities, local audience behavior(s), and local conditions.

**3.2.4.2 Response to Complaints or Reports from the Public:**

The permittees recommend modifying the text to support the permittees prioritizing response times to urgent and severe complaints, while still responding to other complaints in a timely manner. Inserting 'on average' provides the permittees with some flexibility in response time to minor complaints.

Recommended text (3.2.4.2):

"The Permittees must respond to and investigate all complaints or reports of illicit discharges as soon as possible, but no later than within two working days, on average. Immediately investigate (or refer) problems and violations determined to be emergencies, urgent or severe."

**3.3 Construction Site Stormwater Runoff Control**

The permittees support text requiring permittee review of construction site plans for projects disturbing one or more acres.

**3.3.4 Preconstruction Site Plan Review**

The requirement for providing an opportunity for the public to comment during preconstruction site plan review is not practical for the permittees. For example, site plans for homes within a subdivision are reviewed by permittee staff within one week. The time to post and track properties at the site plan review level will be extensive with little benefit. The actual implementation of a project is often different than what is initially on the plans. In line with the new WA MS4 general permit, it would be much more helpful to have public comment on whether a project under construction demonstrates compliance with the ordinance (as opposed to having the public review engineering plans for ordinance compliance), as has been recommended for Section 3.3.5.

Recommended text (3.3.4):

"Site plan review procedures must include consideration of the site's potential water quality impacts, and must demonstrate compliance with the ordinance or other regulatory mechanism required by Part 3.3.2."

**3.3.5 Construction Site Inspection and Enforcement**

In line with the permittee recommendations for Section 3.3.4, the permittees recommend adding to this section the requirement for opportunities for the public to submit information.

Recommended new text (after the 2<sup>nd</sup> paragraph of this section) (3.3.5):

“All Permittees shall adopt and implement procedures for receipt and consideration of information submitted by the public.”

### **3.4 Post-Construction Stormwater Management in New Development and Redevelopment**

The permittees support installation of controls at sites for projects disturbing one or more acres that discharge into the MS4.

#### **3.5.9 Litter Control**

The permittees recommend removing or rephrasing this permit requirement to clarify expectations and clearly indicate that the SWMP should describe the permittee’s litter reduction methods. All of the permittees have litter control programs in place.

Recommended text if this section is not deleted in entirety (3.5.9):

“The Permittees must review, and update as necessary, existing methods to reduce litter in their jurisdictions. The Permittees must work cooperatively among themselves and with others to control litter on a regular basis, and after major public events, in order to reduce the discharge of pollutants to the MS4.”

#### **4.2 Table 4.2 #1**

The location(s) are not sufficiently identified with the usage of “et al”.

Recommended text (Table 4.2 #1):

“Permittees MS4 outfalls into the Portneuf River within the Permit Area”

#### **4.2 Table 4.2 #2**

Neither Part 4.2 nor the referenced Part 6.2 sufficiently identifies the method required for complying with the minimum monitoring/assessment expectations. Part 6.2.7 does not include an EPA approved method for the monitoring of sedimentation/siltation. Turbidity is a recognized monitoring method (DEQ 2003 Guide to Selection of Sediment Targets for Use in Idaho TMDLs) (Ecology 2007 How To Do Stormwater Monitoring) and is cited in the Fact Sheet on Page 30.

Recommended footnote text (Table 4.2 #2):

“Turbidity may be used for monitoring as an indicator of sedimentation/siltation.”

### **5 REQUIRED RESPONSE TO EXCURSIONS ABOVE IDAHO WATER QUALITY STANDARDS**

The opening paragraph of Part 5 should clarify that determination that the MS4 is causing or contributing to an excursion should be based on data that are credible, relevant, and site-specific. This reinforces that such a determination should be well-established and data be reliable and vetted before the actions outlined in Part 5 are required. Replace the opening paragraph of Part 5 with the following.

Recommended text (5) (replace 1<sup>st</sup> paragraph):

“A Permittee will be presumed to be in compliance with applicable Idaho Water Quality Standards if the Permittee is in compliance with the terms and conditions of this Permit. If the Permittee, the EPA, and/or IDEQ determines that, based on relevant credible and site-specific information, the discharge from the MS4 causes or contributes to an excursion above the Idaho Water Quality Standards, then the Permittee remains in compliance with this Permit as long as the Permittee implements applicable control measures required by this Permit and undertakes the following actions:”

## **5.1 Notification**

Part 5.1 of the Draft Permit language implies that the permittee should determine if MS4 discharges are causing or contributing to an excursion of water quality standards (WQS). This determination, and more importantly the degree to which the MS4 may be contributing can be complicated and should not be the responsibility of the Permittees at the time of notification.

Additionally, the Permittees would like the phrase “relevant, credible and site-specific information” to be used. This is consistent with the vocabulary suggested in the paragraph above.

### Recommended text (5.1) (replace 1<sup>st</sup> paragraph):

“The Permittee must notify the EPA and IDEQ in writing at the addresses listed in Appendix A.1 within 30 days of becoming aware that, based on relevant and credible site-specific monitoring information, discharge from the Permittee’s MS4 may have resulted in the receiving water not meeting an applicable Idaho Water Quality Standard.”

## **6.4 Annual Report Deadline**

The permittees support EPA’s decision to provide the permittees with adequate time (61 days) to prepare their Annual Reports at the end of each reporting period.

## **7 COMPLIANCE RESPONSIBILITIES**

The text in Section 7 includes language copied from wastewater permits that is not suitable or relevant to stormwater. The permittees urge the EPA to simplify Part 7 so that only the language directly applicable to stormwater permits be included in the final permit. Section 2.8 in the fact sheet states that there are provisions in Part 7 that do not apply to MS4s. If the provisions do not apply to the discharge permit, they should be removed.

There is precedence for not including these provisions in MS4 permits. These sections are not included in the Montana Phase 2 General permit, precisely because they do not apply to stormwater permits. EPA’s (2008) TMDLs to Stormwater Permits Handbook clearly states the differences between stormwater and wastewater and the need for unique and distinct permit language.

Sections 7.6, 7.7, 7.10 and 7.11 do not apply to stormwater permits. If the last two bullets in Section 7.9 are removed, this section will be applicable to stormwater noncompliance reporting.

### Recommended text deletions (7.6; 7.7; 7.9 and 7.11):

Remove parts 7.6, 7.7, 7.10, and 7.11 in their entirety.

Remove the last two bullets in section 7.9 (p. 50)

The permittees also propose alternative language for section 7.10 that could be interpreted in light of a stormwater treatment system could be replaced with text that applies to an MS4 and clarifies the actions required by the Permittee. The following text, adapted from the Eastern Washington Phase 2 general MS4 permit, is directly applicable to stormwater and would be more suitable for this permit. The permittees recommend that EPA use the following as a replacement for the language in the proposed Permit:

### Recommended text (if section 7.10 is not deleted in entirety) (7.10.3):

“The permittees are prohibited from intentionally bypassing stormwater from all or any portion of a stormwater treatment BMP as long as the design capacity of the BMP is not exceeded unless the following conditions are met.

- Bypass is: (1) unavoidable to prevent the loss of, personal injury, or severe property damage or (2) necessary to perform construction or maintenance-related activities essential to meet the requirements of the Clean Water Act (CWA); and
- There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated stormwater, or maintenance during normal dry periods.”

## **FACT SHEET COMMENTS**

### **Fact Sheet 2.6.**

Excursions to Idaho Water Quality Standards (WQS) that result from the cumulative watershed loading (not solely from the MS4) are addressed through the process of identifying impaired waters and developing Total Maximum Daily Loads (TMDL) for pollutants of concern. EPA and IDEQ expect attaining WQS will only be achieved through reduction from point and nonpoint source contributors identified in the approved TMDL. Therefore, actions in preparation for, in support of, or contributing to the development of a TMDL and implementation plan for the pollutant of concern should be considered a suitable adaptive management response. Actions could include collecting additional monitoring data, participation in a WAG in developing a TMDL and Implementation plan, or contributing to other watershed planning efforts aimed at achieving WQS. The specific actions can be included in the adaptive management report. Include the following paragraph or a similar paragraph in the fact sheet.

#### Recommended text (FS 2.6):

“The pathway to achieving WQS for excursions resulting from multiple significant watershed contributions is through the TMDL process. The case that the pollutant of concern has multiple significant contributions in the watershed contributing to the excursion, actions in preparation for, in support of, or contributing to the development of a TMDL and implementation plan for the pollutant of concern can constitute a suitable adaptive management response. These actions should be described in the Adaptive Management Report (outlined in Section 5.2). “

Additionally, the permittees request that a similar statement affirming 1) that the TMDL process is the pathway to achieving WQS for watershed-related WQS excursions and 2) that actions in preparation for, supporting or aligned with developing a TMDL can constitute an acceptable adaptive management response, should be provided in EPA’s response to this comment and request.

### **Fact Sheet 2.8**

If the permittees modification request for Section 7 of the Draft Permit is not met, Section 2.8 should be modified to identify the provisions that are not applicable to MS4 permits. This modification would eliminate the need for permittees to interpret which provisions may apply and which provisions do not. However, the permittees would rather have this clarification made in the permit document and not in the fact sheet. Add the following sentences to the end of Part 2.8 of the Fact Sheet:

#### Recommended text (FS 2.8):

“Provisions 7.6, 7.7, 7.9, 7.10, and 7.11 in the permit do not apply to the permittees’ MS4 discharges or facilities. The permittees need not comply with these provisions.”

Additionally, the permittees request that the provision that are not applicable to MS4 permits be confirmed in EPA’s response to this comment and request.



## **COPY EDITS**

### **ACRONYMS –**

We recommend reviewing the Acronyms for inclusion of the acronyms in the Permit (and Fact Sheet). For instance, the following Acronym from the draft permit does not appear at all in the Permit itself: IDA. Additionally, PVC, LA and USC only appear once, with USC and LA spelled out in the document.

### **2.5.5 SWMP Document.**

There is an apparent typographical error in the first sentence of Part 2.5.5

Recommended text: “The Permittees must maintain at least a written ...”

### **3.3.1 Compliance Dates**

There is an apparent typographical error in Part 3.3.1

Recommended text: No later than [180 Days before Permit Expiration Date], \* the Permittees must update existing...”

### **3.3.3.1**

We recommend removing the reference to the State of Idaho for management of the CGP as this transition does not occur until 2021. Simply refer to the CGP.

Recommended text: “Requirements for use of erosion control, sediment control, and waste materials management/pollution prevention practices that complement, and do not conflict with, the current version of the CGP”

### **5.3 Review and Approval of Adaptive Management Report**

There is an apparent typographical error in the first sentence of Part 5.3. Replace “Adaptive Management Response” with “Adaptive Management Report.”

Recommended text: “The EPA and IDEQ will, in writing, acknowledge receipt of the Adaptive Management Response...”

## **DEFINITIONS**

### **Common Plan of Development**

Add a “.” at the end of the sentence.

Recommended text: “... industrial parks.”

### **Post- construction stormwater management controls**

We recommend removing the reference to “new stormwater controls” as it is not in the definitions or document.

Recommended text: “or “permanent stormwater controls” means those controls designed to treat or control runoff on a permanent basis once construction is complete. See also “existing permanent controls.””

### **Stormwater Management Control Measure**

We recommend removing the acronym SCM from within this definition, or clearly spell out SCM elsewhere.

Recommended text: “or Stormwater Management Program (SWMP) Control Measure, means the physical, structural, and/or managerial measures that, when used singly or in combination, reduce the downstream quality and quantity impacts of storm water runoff. Also, Stormwater Management Control Measure means ....”