

**National Pollutant Discharge Elimination System (NPDES) Permit for**

**City of Idaho Falls and  
Idaho Transportation Department – District #6  
Municipal Separate Storm Sewer Systems (MS4s)**

**NPDES Permit #IDS-028070**

**Response to Comments on Proposed Permit**

**March 14, 2007**

**U.S. Environmental Protection Agency, Region 10**

## Introduction

On November 30, 2006, the U.S. Environmental Protection Agency (EPA) proposed a draft National Pollutant Discharge Elimination System (NPDES) permit for discharges from municipal separate storm sewer systems (MS4s) owned and operated by the City of Idaho Falls (City) and Idaho Transportation Department – District #6 (ITD). This permit, #IDS-028070, will be referred to in this document as the “Idaho Falls Permit” or “Permit.” The MS4 operators will be collectively referred to as the “co-permittees.”

EPA published a public notice announcing the proposed permit in the *Post Register* on November 30, 2006. The comment period closed on January 19, 2007.

This document provides a response to comments received on the proposed permit. Comments were received from the City, ITD, the Association of Idaho Cities (AIC), and the United States Fish and Wildlife Service (USFWS). The Administrative Record contains complete copies of each comment letter. Where indicated, EPA has made changes to the final Permit.

## IDEQ Certification of the Permit under Clean Water Act §401

On November 30, 2006, Idaho Department of Environmental Quality (IDEQ) proposed a draft Clean Water Act (CWA) §401 certification of the Idaho Falls Permit concurrent with EPA’s proposal. IDEQ issued a final CWA §401 certification on March 6, 2007, a copy of which is included in Appendix A.

**1. Comment (City):** Addresses of the applicants should be modified as shown:

City of Idaho Falls  
P.O. Box 50220  
Idaho Falls, ID 83405-0220

Idaho Transportation Department,  
P.O. Box 97  
Rigby, ID 83442-0097

**Response:** Comment noted. EPA does not revise the language of the fact sheet after the public comment period, however, any correspondence to the co-permittees will be sent to these addresses.

**2. Comment (City, AIC):** EPA fails to adequately explain or substantiate the draft condition of Part I.D.4 prohibiting snow disposal directly to waters of the U.S. or to the MS4. EPA’s Phase II rule and commentary are silent with respect to snow dumping permit conditions. EPA should clarify its enforcement discretion policy for MS4 permittees regarding snow dumping permit conditions. Commenter further suggests removing the wording of the permit in Part I.D.4, *Snow Disposal to Receiving Waters*, and the wording in the Fact Sheet (Part VI.B, Bullet Four, *Discharges Authorized By This Permit*) and replacing with the following:

*A snow management program is to be developed and implemented so as to reduce*

*emergency and non-emergency snow dumping directly in to waters of the US, and the discharge of pollutants to the MS4, to the maximum extent practicable.*

**Response:** EPA declines to delete Part I.D.4 from the permit. However, EPA will revise Parts I.D.4 and II.B.6 of the permit to accommodate the commenter's concern.

Snow plowed from urban streets and parking lots often contains a variety of materials which accumulate on the snow pack and other cleared surfaces. Studies of urban snow disposal sites in northern climates demonstrate that snow melt water can also be a potential source of significant pollutant loadings to surface water, and commonly contains pollutants such as debris, sediment, chlorides, and oil and grease. (See Appendix B and the permit's Administrative Record).

Further, the discharge of pollutants contained in collected snow to waters of the United States requires a NPDES permit. Consistent with EPA's draft Snow Dumping Policy (April 1996), included in the Administrative Record for this action, this permit prohibits the specific practice of disposing excess snow through dumping directly to waters of the United States. In the preamble to the Phase II stormwater regulations, EPA discusses that it is appropriate for MS4 operators to consider controls for reducing or eliminating the discharge of pollutants from various municipal operations, including snow disposal areas operated by the municipality. (64 FR 68761-68762, December 8, 1999). EPA exercises its enforcement discretion on a case-by-case basis when evaluating MS4 permit compliance with regard to snow disposal.

EPA expects MS4 operators to define appropriate Best Management Practices (BMPs) to control pollutants in snow melt runoff from publicly-owned snow disposal areas through the "Good Housekeeping/Pollution Prevention for Municipal Operations" section of the Storm Water Management Program (SWMP) requirements in Part II.B.6. Appropriate practices which the co-permittees could consider and utilize include: using upland areas for the storage and disposal of accumulated snow, preferably in flat areas at least 100 feet from adjacent water bodies, wetlands, and areas near public or private drinking water wells; dumping snow exclusively in pervious areas where it can infiltrate; and/or removing sediment and debris from dump areas each spring.

EPA agrees to add the language to the permit suggested by the commenter to augment the stormwater management activities in Part II.B.6. (Pollution Prevention and Good Housekeeping for Municipal Operations). EPA has added the following language as Part II.B.6.c, and updated Table III to read:

"Within four years of the effective date of this permit, the co-permittees must develop and implement a snow management program to reduce emergency and non-emergency snow dumping directly in to waters of the U.S., and the discharge of pollutants to the MS4, to the maximum extent practicable. A description of the snow management program(s) must be included in the associated Annual Report."

To provide additional clarity, EPA will revise Part I.D.4 in keeping with previously issued MS4 permits in Fairbanks, Alaska, which acknowledges that the use of appropriate BMPs is required for discharging from public snow disposal sites. EPA has revised Part I.D.4 of the Permit to read:

“The co-permittees are not authorized to dispose of snow directly to waters of the United States or directly to the MS4(s). Discharges from public snow disposal sites are authorized under this permit when such sites are operated using appropriate best management practices required in Part II.B.6. Such best management practices shall be designed to prevent pollutants in the runoff and to assure that applicable water quality standards are not violated.”

**3. Comment (City, AIC):** Requiring a sixty-day review period for IDEQ to concur with public education and outreach materials is onerous, and does not provide sufficient flexibility for permittees to take advantage of opportunities to educate the public. Commenter suggests replacing the wording of the draft permit under Part II.B.1.a, *Minimum Control Measures, Public Education and Outreach*, and replace with the following:

*Within one year of the effective date of this permit, the co-permittees must develop and implement an ongoing public education program to educate the community about the impacts of storm water discharges on local water bodies and the steps that citizens and businesses can take to reduce pollutants in storm water runoff. This program must include coordination with local entities and others to educate residents about proper disposal of hazardous waste. Prior to the distribution or use of educational material in support of this public education program, the co-permittees must provide IDEQ with copies of such material for review and comment.*

**Response:** EPA agrees. IDEQ’s draft certification contained a condition that EPA include permit provisions that: ... (2) require[s] all public outreach material drafted for permit compliance be submitted for review and comment by the Department prior to publication of the material.” To more directly match the intention of IDEQ’s condition as well as the commenter’s suggestion, EPA has revised Part II.B.1.a. and Table III of the permit to read:

*Within one year of the effective date of this permit, the co-permittees must develop and implement an ongoing public education program to educate the community about the impacts of storm water discharges on local water bodies and the steps that citizens and businesses can take to reduce pollutants in storm water runoff. This program must include coordination with local entities and others to educate residents about proper disposal of hazardous waste. Prior to the publication, distribution or use of educational material in support of this public education program, the co-permittees must provide IDEQ with copies of such material for review and comment.*

**4. Comment (ITD):** If the permittees identify current outfalls of the MS4 system as part of this permit process, are continued discharges at these locations permitted?

**Response:** Yes, existing discharges from the co-permittees' MS4 are authorized, provided the terms and conditions of the Permit are followed. Mapping/identifying all of the existing co-permittee-owned MS4s in the Idaho Falls Urban Area is a requirement of the permit, as are the various stormwater management activities designed to reduce the discharge of pollutants to the maximum extent practicable.

**5. Comment (ITD):** ITD owns structures over waters of the U.S. When ITD plows snow over these structures or if there is runoff from rain, the water goes through drains in the bridge deck that drain directly into waters of the US. Is this discharge permitted or does ITD have to do expensive retrofits in order to contain this runoff? What is the timeframe for having to make these improvements?

**Response:** Yes, such existing discharges are authorized provided the terms and conditions of the permit are met. The bridge drains are part of the existing MS4, which discharge directly to waters of the US. In Part II.B.6, the permit requires the co-permittees to examine their ongoing maintenance activities (such as snow disposal and street maintenance) to accomplish the following actions: 1) evaluate the potential impacts on water quality from current practices; 2) develop an operations and maintenance (O&M) plan for how such practices should be done; and 3) train staff to ensure that pollutant loading to the river from these activities is minimized to the maximum extent. If retrofits are necessary to address situations of particularly egregious pollutant loading, ITD may identify an appropriate schedule for conducting such retrofits. The co-permittees must actively determine whether existing practices are sufficient to protect water quality, and if not, change the practices in order to do so to the maximum extent practicable.

**6. Comment (ITD):** What is the definition of outfalls? Are outfalls only where the MS4 or stormwater discharges directly into the Snake River, or are outfalls catchbasins, detention ponds, or the storm sewer system?

**Response:** EPA regulations define "outfall" and "point source" at 40 CFR 122.26(b)(9), and 40 CFR 122.2, respectively, as follows:

*"Outfall means a point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States."*

“*Point source* means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (See §122.3).”

**7. Comment (ITD):** If all current outfall discharges are permitted, how do the co-permittees meet the water quality standards? Our understanding is that these requirements are for future expansions or upgrades to the system, similar to the federal requirements for the Americans with Disabilities Act (*i.e.*, as long as an existing facility is not expanded, renovated or upgraded, co-permittees are not required to do anything to the facility now). Is this the same for the permit?

**Response:** Discharges from the co-permittees’ MS4s must not cause or contribute to violations of Idaho water quality standards. See Part 1.D.2 of the Permit. The manner in which the co-permittees ensure that they are not causing or contributing to violations of water quality standards is to develop, implement and enforce a SWMP designed to reduce the discharge of pollutants to the maximum extent practicable. (see Part II.A.) This SWMP consists of all the actions and activities described in Part II.B. If the co-permittees are aware of circumstances where pollution is being discharged through their MS4 sufficient to contribute to violations of Idaho’s water quality standards, the co-permittees must take actions to eliminate or reduce that pollutant loading to the maximum extent practicable.

**8. Comment (ITD):** Regarding Part I. C. 3, how does EPA define cooperative agreement, and what wording or terms would make the agreement enforceable? Do we submit a draft, or just the final agreement?

**Response:** In general, an enforceable agreement is similar to a contract, wherein a breach of the agreement results in some penalty for breaking the agreement. It is more formal and binding than a memorandum of agreement. MS4 permittees in the greater Boise area and the Pocatello area both have cooperative agreements among co-permittees which may provide useful examples for the City and ITD to follow.

**9. Comment (ITD):** What is an estimated timeline for having the final permit signed by EPA management?

**Response:** After EPA responds to public comment and prepares the final draft permit, IDEQ must provide final certification of the Permit; in addition, EPA must also obtain concurrence from USFWS that the Permit will not result in any adverse impact to endangered species or critical habitat. We anticipate the permit will be issued as a final document by early April 2007.

**10. Comment (USFWS):** EPA’s documentation of potential impacts to Utah valvata snails resulting from the issuance of this permit is incorrect. Recent survey efforts have

found Utah valvata snails in several locations between American Falls Reservoir and the Henry's Fork of the Snake River.

**Response:** Based on the revised information provided by USFWS, EPA has revised the discussion of impacts resulting from the issuance of this permit on endangered species in the Idaho Falls urbanized area. The revised text of Fact Sheet Part VII.A (*Other Legal Requirements, Endangered Species Act*) is included in Appendix A of this document.

## Appendix A: Revised Fact Sheet Discussion

### VII. Other Legal Requirements

#### A. Endangered Species Act

The Endangered Species Act requires federal agencies to consult with the National Oceanic and Atmospheric Administration – National Marine Fisheries Service (NOAA-Fisheries) and the U.S. Fish and Wildlife Service (USFWS) if their actions could beneficially or adversely affect any threatened or endangered species. EPA evaluated the potential effects of the discharges from the MS4s on listed endangered and threatened species in the vicinity of the Idaho Falls Urbanized Area, and has determined that issuance of this permit is not likely to adversely affect any threatened or endangered species or critical habitat.

EPA reviewed the current lists of endangered and threatened species from the USFWS, dated March 1, 2006 and September 1, 2006 respectively (SL 06-0294 and 2006 SL-0896). For Bonneville County, Idaho, the following species are listed: Gray wolf (*Canis lupus*), Canada lynx (*Lynx canadensis*), Bald eagle (*Haliaeetus leucocephalus*), Ute Ladies'-tresses (*Spiranthes diluvialis*), and Utah valvata snail (*Valvata utahensis*) as federally-listed endangered species. NOAA Fisheries has not identified any additional listed endangered species within this portion of the Snake River basin.

Hunting and habitat destruction are the primary causes of the Canada lynx and Gray wolf's decline. Issuance of an NPDES permit for the City of Idaho Falls and ITD municipal storm water discharges within the Idaho Falls Urbanized Area will not result in habitat destruction, nor will it result in changes in population that could result in increased habitat destruction. Furthermore, issuance of this permit will not impact the food sources of the Canada lynx or Gray wolf. Therefore, EPA has determined that issuance of this permit will have no effect on the Canada lynx or Gray wolf.

The primary reasons for the decline of the Bald eagle are destruction of their habitat and food sources and widespread application of DDT resulting in eggshell thinning and effects on reproduction. This draft permit will have no impact on any these issues. The bald eagles diet is not likely to include fish species from this urbanized area. Therefore, EPA has determined that issuance of this permit will have no effect on the Bald eagle.

The primary reasons for the decline of the Ute ladies'-tresses are habitat destruction associated with land development, agricultural, and water system alterations. This permit is targeted to the area within Bonneville County located within the Idaho Falls Urban Area, and will have no impact on the Ute ladies'-tresses because it does not change existing land uses or modify the species' riparian habitat. Therefore, EPA has determined that issuance of this permit will have no effect on the Ute ladies' tresses.

Based on information provided by USFWS, the Idaho Department of Fish and Game has conducted recent surveys in the Snake River above American Falls Reservoir. The Utah valvata populations were found at 5 of the 20 sites between American Falls



Reservoir and the confluence of the South Fork and Henry's Fork of the Snake River. Two of the locations where the Utah valvata snail was encountered, Osgood Bridge and Sunnyside Bridge on the Snake River, are located to the north and south of the City of Idaho Falls, respectively. Therefore, there is a possibility that the Utah valvata snail could occur in the action area for this permit for the City of Idaho Falls and Idaho Transportation Department.

This permit requires the co-permittees to develop, implement and enforce a Storm Water Management Plan (SWMP) designed to reduce pollutants to the maximum extent practicable and to protect water quality. EPA regulations require SWMPs to address six minimum control measures; actions fulfilling these control measures are required by this permit and include the following:

- 1) Public education and outreach efforts educate the public on impacts of stormwater runoff so individuals can take actions to protect or improve the water quality.
- 2) Public involvement activities in development of the SWMP should encourage public participation in its implementation.
- 3) Illicit discharge detection and elimination to accurately map all storm sewer outfalls, prohibit discharges of non-storm water to the system, detect and address non-storm water discharges and inform the public of the hazards of illegal discharges and improper disposal of waste. EPA regulations allow MS4 operators to develop a comprehensive storm sewer system map as a result of the first five-year NPDES permit term. This program should significantly reduce any illicit discharges to the system that may contain contaminants that could potentially harm the snails.
- 4) Construction site runoff control ordinance to require the use of appropriate erosion, sediment and onsite waste control at construction sites, which will reduce pollutant discharges during the construction process.
- 5) Post-construction stormwater management requirements for new development and redevelopment ensure that appropriate stormwater pollution controls are included in the design of developments to reduce pollutant discharges in storm water runoff after construction is complete.
- 6) Pollution prevention/good housekeeping for municipal operations ensure that existing municipal operations and maintenance activities are performed to minimize contamination of stormwater discharges.

All of the activities required in the implementation of the City of Idaho Falls and ITD's SWMP should have a beneficial effect on the Utah valvata snail by reducing the levels of environmental contaminants in existing stormwater discharges. Therefore, EPA has determined that issuance of this permit is not likely to adversely affect the Utah valvata snail.

## **Appendix B: Snow Dumping and Disposal Practices**

EPA Memo: Draft Snow Dumping Policy, EPA and EPA Region 1, 1996

Carlson, Robert F, Synthesis of Best Management Practices for Snow Storage Areas, University of Alaska Fairbanks & et al for ADOT&PF, FHWA-AK-RD-03-04.

Oberts, Gary L. “Influence of Snowmelt Dynamics on Storm Water Runoff Quality”, Article 3, Feature article from Watershed Protection Techniques, 1(2): 55-61.

U.S. EPA. National Management Measures to Control Nonpoint Source Pollution from Urban Areas, January 2006. EPA-841-B-05-004, pp. 7/1-19

South Dakota Department of Water and Natural Resources, Minimizing the Environmental Impact from Snow Disposal, South Dakota Nonpoint Source Program, 1990, [www.state.sd.us/denr/dfta/watershedprotection/snow.htm](http://www.state.sd.us/denr/dfta/watershedprotection/snow.htm).

Wheaton, S. Private Snow Disposal Sites (On-Site Snow Storage Only) Operations Guidance (draft), Municipality of Anchorage, 2003.

Wheaton, S. and William Rice, “Siting, Design and Operational Controls for Snow Disposal Sites,” Municipality of Anchorage, March 2003.

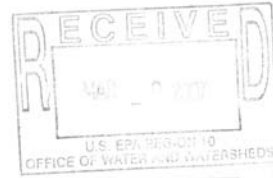
Alaska Department of Environmental Conservation. Evaluation of Snow Disposal into Near Marine Environments, Final Report, June 2006.

Steinkraus, D.. “Heading for the Lake- More than melting snow runs into the water,” March 7, 2005. *The Journal Times Online*, Racine County, Wisconsin.

# Appendix C: IDEQ Final §401 Water Quality Certification



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY



900 NORTH SKYLINE DRIVE, SUITE B • IDAHO FALLS, IDAHO 83402 • (208) 528-2650

JAMES E. RISCH, GOVERNOR  
TONI HARDESTY, DIRECTOR

March 6, 2007

Mr. Michael Lidgard  
US Environmental Protection Agency  
Region 10  
1200 6<sup>th</sup> Avenue, OW-130  
Seattle, Washington 98101

**RE: §401 Water Quality Certification for the Idaho Falls and Idaho Transportation Department District 6 Municipal Separate Storm Sewer Systems (MS4s) NPDES Permit No. IDS-028070.**

Dear Mr. Lidgard:

The State of Idaho Department of Environmental Quality (Department) has reviewed the final draft MS4 permits for the city of Idaho Falls and the Idaho Transportation Department District 6. This letter will serve as the Department's final Water Quality Certification.

### WATER QUALITY CERTIFICATION

Based on the Department's review of the referenced permit, the Department certifies, pursuant to the provisions of Section 401 of the Federal Water Pollution Control Act (Clean Water Act) as amended, 33 USC Section 1341, and Idaho Code Sections 39-101 et. seq., and 39-3601 et. seq., that if the co-permittees comply with the terms and conditions as written in Permit No. IDS-028070 then there is a reasonable assurance that the authorized discharges of storm water will comply with applicable requirements of Sections 301, 302, 303, 306 and 307 of the Clean Water Act.

Because EPA has incorporated the Department's comments (dated October 4, 2006) from the draft permit, the Department does not believe there are additional conditions that must be in the permit to ensure compliance with the applicable provisions of the Clean Water Act.

This certification does not constitute authorization of the permitted activities by any other local, state or federal agency or private person or entity. This certification does not excuse the permit holder from any obligation that may exist to obtain any other necessary approvals, authorizations or permits, including without limitation, any approval, if one is required, from the owner of a water conveyance system to use the system in connection with the permitted activities.

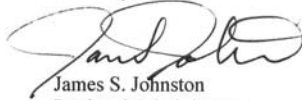
This § 401-certification decision may be appealed pursuant to the Idaho Environmental Protection and Health Act, Idaho Code § 39-107(5) and the Idaho Administrative Procedure Act. Such an appeal is a prerequisite to any district court action and must be initiated by filing a petition for a contested case in accordance with the Rules of Administrative Procedure before the Department of Environmental Quality Board (IDAPA 58.01.23) within thirty-five (35) days of the date of the Department's decision regarding the 401 certification.

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If the Department can clarify any portion of this water quality certification, please contact Troy Saffle at 208.528.2650 or [troy.saffle@deq.idaho.gov](mailto:troy.saffle@deq.idaho.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "James S. Johnston". The signature is fluid and cursive, with a large initial "J".

James S. Johnston  
Regional Administrator  
Idaho Falls Regional Office

c: Doug Conde, Deputy AG  
Steve Anderson, City of IF  
Tom Cole, ITD