



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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

Brad Little, Governor
Jess Byrne, Director

January 25, 2021

Susan Poulson
Manager, NPDES Permits Section
EPA Region 10
1200 Sixth Avenue, Suite 155 (19-C04)
Seattle, Washington 98101

Subject: FINAL 401 Water Quality Certification for the University of Idaho Municipal Separate Sewer System (MS4), NPDES Permit #IDS028576

Dear Ms. Poulson:

The Lewiston Regional Office of the Department of Environmental Quality (DEQ) has reviewed the above-referenced permit for the University of Idaho 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 Final 401 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 cursive script that reads "John Cardwell".

John Cardwell
Regional Administrator
Lewiston Regional Office

c: Misha Vakoc, EPA Region 10
Beth Spelsberg, DEQ State Office
Brian D. Johnson, University of Idaho



Idaho Department of Environmental Quality Final §401 Water Quality Certification

January 25, 2021

NPDES Permit Number(s): IDS028576, University of Idaho MS4 Permit

Receiving Water Body: Paradise Creek

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

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

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

Antidegradation Review

As part of its water quality standards program, Idaho is required to establish an antidegradation policy (40 C.F.R. § 131.12). 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 employs 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 University of Idaho municipal separate storm sewer system (MS4) has the potential to discharge the following pollutants of concern pertinent to Idaho WQS and applicable TMDLs: nutrients (nitrogen and phosphorus), sediment, heat, chlorides, metals, petroleum hydrocarbons, microbial pollution (*Escherichia coli*) and organic chemicals (pesticides and industrial chemicals). Terms and conditions of the permit and this certification require permittees to reduce pollutant loading to the maximum extent practicable.

Receiving Water Body Level of Protection

The University of Idaho discharges to Paradise Creek, assessment unit (AU) 17060108CL005_02 (Paradise Creek – Urban boundary to Idaho/Washington border). This AU is designated for cold water aquatic life and secondary contact recreation beneficial uses (IDAPA 58.01.02.120.01).

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, this AU is not fully supporting the designated uses. The aquatic life use in the receiving water body AU is not fully supported due to impairments including temperature, sediment, nutrients, physical substrate habitat alterations, and other flow regime alterations. The contact recreation beneficial use is not fully supported due to *Escherichia coli* (*E. coli*). As such, DEQ will provide Tier I protection for both the aquatic life and contact recreation uses (IDAPA 58.01.02.052.05.c).

Protection and Maintenance of Existing Uses (Tier I Protection)

A Tier I review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.04; 07), applies to all waters subject to the jurisdiction of the Clean Water Act (IDAPA 58.01.02.051.05; 052.01), 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 (IDAPA 58.01.02.051.01). 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 University of Idaho 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 (IDAPA 58.01.02.055.02). 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 allocations in the approved TMDL.

The EPA-approved *Paradise Creek TMDL: Water Body Assessment and Total Maximum Daily Load* (DEQ 1997) and *Paradise Creek TMDL: 2015 Bacteria Addendum* (DEQ 2015) includes urban stormwater system inputs in nonpoint sources of pollution and the calculation of load allocations for these AUs. These load allocations were designed to restore the water quality of this AU to the level necessary to support designated aquatic life and contact recreation beneficial uses and comply with the applicable water quality criteria. The implementation of a comprehensive stormwater management program which includes targeted pollutant reduction activities and pollutant assessment and monitoring in each impaired AU by the University of Idaho, is consistent with the Paradise Creek TMDLs.

Urban stormwater runoff was included in the load allocations for nonpoint sources in these AUs. The TMDLs require small MS4 operators to obtain a NPDES permit, implement a comprehensive stormwater management and monitoring program, and use BMPs to reduce pollutants of concern in stormwater discharges to the maximum extent practicable.

The MS4 NPDES permit contains clear, specific, and measurable provisions for the continued implementation of specific controls, best management practices, control techniques, and system design and engineering methods to achieve the effluent limitation requirements in the permit. The permittee is discharging to an impaired waterbody and will be required to conduct additional, targeted pollutant reduction and assessment activities in accordance with Part 4 of the permit in order to protect water quality and reduce pollutants to the maximum extent practicable. Upon the effective date of the permit, the permittee must begin to develop and implement the Stormwater Management Program (SWMP) control measures outlined in Part 3 of the permit. The SWMP control measure components must be fully implemented no later than the specified compliance dates. Compliance with these conditions of the permit provides DEQ reasonable assurance that the Permittee will protect and maintain beneficial uses to the maximum extent practicable.

Specific terms and conditions of the permit aimed at providing a Tier I level of protection and compliance with the Paradise Creek TMDLs include:

- 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;
- Required pollution reduction activities in all impaired AUs;
- The stipulation that if either EPA or DEQ determines that a MS4 causes or contributes to an excursion above the WQS, the permittee must take a series of actions to remedy the situation.

If the MS4 discharge causes or contributes to an excursion above the applicable Idaho WQS, Part 5 of the permit outlines corrective action and adaptive management as needed to address the source of pollutants. This response plan outline will likely improve the response time to an exceedance and require the permittee to evaluate and determine the effectiveness of their BMPs.

In sum, the limitations and associated requirements contained in the University of Idaho MS4 NPDES permit are set at levels that reasonably assure reduction of pollutants and support of beneficial uses to the maximum extent practicable, and consistency with the load allocations established in the applicable TMDLs. Therefore, DEQ has reasonable assurance the permit will protect and maintain existing and designated beneficial uses in Paradise Creek to the maximum extent practicable in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01; 052.07).

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, and maintained by the permittee to protect and maintain the existing beneficial uses and water quality necessary to protect the existing beneficial uses of waters of the United States (IDAPA 58.01.02.051; .052).

DEQ provides a catalog of storm water best management practices, available at (<https://www2.deq.idaho.gov/admin/LEIA/api/document/download/14968>), which describes a variety of BMPs that can be used to control pollutant runoff into storm water systems. Other sources of information are also readily available and may be used for selecting appropriate BMPs.

Pollutant Reduction Activities in Paradise Creek

Pursuant to IDAPA 58.01.02.055.05, 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, sediment, and heat loadings from the MS4 into Paradise Creek.

Reporting of Discharges Containing Hazardous Materials or Deleterious Material

Pursuant to IDAPA 58.01.02.850 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 Region DEQ office during normal working hours at 208-799-4370 or Idaho State Communications Center after normal working hours. If the spilled volume is above federal reportable quantities, contact the National Response Center.

For immediate assistance: Call 911

National Response Center: (800) 424-8802

Idaho State Communications Center: (800) 632-8000

Other Conditions

This certification is conditioned upon the requirement that any material modification of the permit or the permitted activities including significant changes to the draft permit, any modifications of the permit to reflect new or modified TMDLs, load allocations, amended NOI, site-specific criteria, variances, or other new information that would require the application for a new permit or the reissuance of a permit shall first be provided to DEQ for antidegradation review to determine compliance with Idaho WQS (IDAPA 58.01.02.052.04) and to provide additional certification pursuant to Section 401.

Right to Appeal Final Certification

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

Questions or comments regarding the actions taken in this certification should be directed to Sujata Connell, Lewiston Regional Office, 208-799-4370 or Sujata.Connell@deq.idaho.gov.



John Cardwell

Regional Administrator

Lewiston Regional Office

