



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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www.deq.idaho.gov

Governor Brad Little
Director John H. Tippetts

May 20, 2019
Susan Poulson
NPDES Permits Acting Section Chief
EPA Region 10
1200 Sixth Avenue, Suite 155
Seattle WA 98101-3123

RE: Final 401 Certification for the City of Pocatello, City of Chubbuck, Bannock County, Idaho Transportation Department – District 5, and Idaho State University Municipal Separate Storm Sewer Systems (MS4s), NPDES Permit No. IDS028053.

Dear Ms. Poulson:

The Pocatello Regional Office of the Idaho Department of Environmental Quality has reviewed the proposed final draft NPDES permit for the City of Pocatello, City of Chubbuck, Bannock County, Idaho Transportation Department – District 5, and Idaho State University Municipal Separate Storm Sewer Systems (MS4s), NPDES Permit No. IDS028053. Section 401 of the Federal Clean Water Act requires that states issue certifications for activities which are authorized by a Federal permit and that may result in a discharge to surface waters. In Idaho, the Department of Environmental Quality (DEQ) is responsible for reviewing these activities and evaluating whether the activity will comply with Idaho Water Quality Standards, including any applicable water quality management plans (e.g., total maximum daily loads). A federal permit cannot be issued until DEQ has provided a certification or waived certification either expressly or by taking no action.

Attached under this cover please find the Final 401 Certification for NPDES Permit No. IDS028053. Please contact me at 208-236-6160 to discuss any concerns or questions regarding this final document.

Sincerely,

A handwritten signature in blue ink that reads "Lynn Van Every". The signature is fluid and cursive.

Lynn Van Every
Regional Water Quality Manager

Cc: Bruce Olenick, Regional Administrator, Pocatello
Loren Moore, 401 Program Coordinator, Boise



Idaho Department of Environmental Quality Final §401 Water Quality Certification

May 20, 2019

NPDES Permit Number: City of Pocatello, City of Chubbuck, Bannock County, Idaho Transportation Department District #5 and Idaho State University, (Pocatello Urbanized Area) Permit # IDS-028053

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, received from EPA on August 29, 2018, 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, including without limitation, the approval from the owner of a private water conveyance system, if one is required, to use the system in connection with the permitted activities.

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 primary (common) pollutants of concern associated with stormwater or urban runoff from the Pocatello Urbanized Area (PUA) are sediment, nutrients (nitrogen and phosphorus), heat, chlorides, metals, petroleum hydrocarbons, microbial pollution, and organic chemicals (pesticides, herbicides, and industrial). Terms and conditions of the municipal separate storm sewer system (MS4) permit and this certification require permittees to reduce pollutant loading to the maximum extent practicable.

Receiving Water Body Level of Protection

The Pocatello Urbanized Area discharges to the Portneuf River and Pocatello Creek within the Portneuf Subbasin assessment units (AU) ID17040208SK001_05 (Portneuf River - Marsh Creek to American Falls Reservoir); ID17040208SK024_03 (lower Pocatello Creek); ID17040208SK024_03a (middle Pocatello Creek – Fks to Outback Driving Range); and ID17040208SK025_02 (South Fork Pocatello Creek – source to mouth). The Portneuf River AU has the following designated beneficial uses: cold water aquatic life, salmonid spawning and secondary contact recreation. The Pocatello Creek AUs have the following presumed beneficial uses: cold water aquatic life and contact recreation. 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).

Based on IDEQ's 2014 Integrated Report, the Portneuf River is not fully supporting its assessed aquatic life use. Causes of impairment include sediment, nitrogen, phosphorus, oil and grease, dissolved oxygen, temperature and physical substrate habitat alterations. The contact recreation beneficial use for the Portneuf River is also impaired for *E. coli*. DEQ will provide Tier I protection for the aquatic life and contact recreation beneficial uses of the Portneuf River (IDAPA 58.01.02.051.01). The Pocatello Creek assessment units identified above are also impaired for sediment and so do not fully support their presumed aquatic life use. The contact recreation beneficial use for Pocatello creek is not assessed; however, DEQ has sufficient data to show contact recreation impairment to the Pocatello Creek AU's and intends to recommend listing of these AU's in the 2020 Integrated Report. DEQ must provide an appropriate level of protection for the contact recreation use using information available at this time (IDAPA 58.01.02.052.05.c). DEQ will also provide Tier I protection for the aquatic life and contact recreation beneficial uses of Pocatello Creek.

Protection and Maintenance of Existing Uses (Tier I Protection)

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

Water bodies not supporting existing or designated beneficial uses must be identified as water quality limited, and a 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 to restore the water body to a condition that meets applicable water quality criteria. Discharge permits must contain limitations that are consistent with wasteload allocations in the approved TMDL. A permit with terms and conditions consistent with TMDL wasteload allocations will provide the level of water quality necessary to support existing and designated uses and therefore satisfies Tier I antidegradation requirements.

The EPA-approved *Portneuf River TMDL: Water Body Assessment and Total Maximum Daily Load* (1999) and the *Portneuf River TMDL Revision and Addendum* (2010) established wasteload allocations for sediment, phosphorus, oil and grease and bacteria in the Portneuf River and Pocatello Creek. The wasteload allocations are designed to ensure these waters will achieve the water quality necessary to support existing and designated beneficial uses and comply with the applicable numeric and narrative criteria. The terms and conditions contained in the Pocatello Urbanized Area permit reasonably assure compliance with these wasteload allocations. In addition, the execution of a comprehensive stormwater management program which includes targeted pollution reduction activities and pollutant assessment and monitoring in assessment units within the Pocatello Urbanized Area is consistent with the TMDLs.

In general, the permit contains clear, specific and measureable provisions for the continued implementation of specific controls, management practices, control techniques, and system design and engineering methods to achieve the requirements of the permit. The provisions in this MS4 permit are at least as stringent as those established in the previous individual MS4 permit issued in 2006 for the City of Pocatello, Chubbuck, Bannock County and Idaho Transportation District #5, thus addressing anti-backsliding. Idaho State University has joined this permit as a co-permittee for the first time. The permittees will continue to implement their existing storm water management program within their jurisdiction. In addition, specific terms and conditions of the permit (Part 2-5) aimed at providing a Tier I level of protection and compliance with the existing Portneuf River TMDLs include:

- a prohibition on snow disposal directly to surface water;
- specific prohibited non-stormwater discharges;
- a requirement to develop/revise the stormwater management plan that includes five control measures:
 - public education and outreach,
 - illicit discharge detection and elimination,

- construction site stormwater runoff control,
- post-construction stormwater management for new development and redevelopment,
- pollution prevention/good housekeeping for MS4 operations;
- quantitative monitoring/assessment of pollutants removed by BMPs (in part, two constructed wetlands since 1996) in conjunction with their required maintenance in assessment units within the PUA;
- a Monitoring/Assessment Plan and at least two (2) Pollutant Reduction Activities addressing expectations in the Portneuf River TMDL; and
- the stipulation that if either EPA or DEQ determine that this MS4 causes or contributes to an excursion above the water quality standards, the permittee must take a series of actions to remedy the situation.

The terms and conditions, monitoring and assessment practices, BMP requirements, and associated requirements contained in this MS4 permit, coupled with the conditions in this certification provide reasonable assurance that the permittee will protect and maintain beneficial uses to the maximum extent practicable, which is consistent with applicable wasteload allocations in the Portneuf River TMDLs. Therefore, DEQ has determined this MS4 permit will protect and maintain existing and designated beneficial uses in the Portneuf River and Pocatello Creek and is in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

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

Best Management Practices

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

When selecting BMPs, the permittee must consider and, if practicable, utilize practices identified in the Idaho DEQ Catalog of Stormwater Best Management Practices for Idaho Cities and Counties (<http://www.deq.idaho.gov/media/622263-Stormwater.pdf>).

Pollutant Reduction Activities in the Portneuf River and Pocatello Creek

In carrying out the requirements of Part 4.3 of the permit, the Pocatello Urbanized Area must define and implement:

- Two (2) pollutant reduction activities designed to reduce sediment, nitrogen, phosphorus, oil and grease, dissolved oxygen, bacteria and/or and temperature from the MS4 into the Portneuf River.

Reporting of Discharges Containing Hazardous Materials or Deleterious Material

All spills of hazardous material, deleterious material or petroleum products which may impact waters (ground and surface) of the state shall be immediately reported. Call 911 if immediate assistance is required to control, contain or clean up the spill. If no assistance is needed in cleaning up the spill, contact the Pocatello DEQ regional office during normal working hours (239) 236-6160, or Idaho State Communications Center after normal working hours. If the spilled volume is above federal reportable quantities, contact the National Response Center.

For immediate assistance: Call 911

National Response Center: (800) 424-8802

Idaho State Communications Center: (800) 632-8000

Other Conditions

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

Right to Appeal Final Certification

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

Questions or comments regarding the actions taken in this certification should be directed to Lynn Van Every, Pocatello Regional Office, at (208) 236-6160 or via email at lynn.vanever@deq.idaho.gov.



Bruce Olenick

Regional Administrator

Pocatello Regional Office

