National Pollutant Discharge Elimination System (NPDES) Permit for

Lakes Highway District
Municipal Separate Storm Sewer System (MS4)

NPDES Permit No. IDS-028207

Response to Comments on Proposed Permit

November 2008
U.S. Environmental Protection Agency, Region 10

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I. Introduction

On February 29, 2008, the U.S. Environmental Protection Agency Region 10 (EPA) proposed a draft National Pollutant Discharge Elimination System (NPDES) permit for discharges from municipal separate storm sewer system (MS4) owned and operated by the Lakes Highway District (District). This NPDES permit, # IDS-028193, will be referred to in this document as the District Permit or Permit.

EPA published a public notice announcing the proposed District Permit in the *Coeur d'Alene Press* on February 29, 2008. EPA also concurrently proposed four similar NPDES permits for the following entities within the same Urbanized Area: Idaho Transportation Department District #1 (NPDES Permit #IDS-028223), City of Coeur d'Alene (NPDES Permit #IDS-028215), City of Post Falls (NPDES Permit #IDS-028231) and Post Falls Highway District (NPDES Permit #IDS-028193). EPA hosted a public hearing regarding all of these proposed permits on the evening of April 2, 2008, at the Lake City Senior Center in Coeur d'Alene. The public comment period closed on April 29, 2008.

This document provides a response to comments received on the proposed District Permit. In some cases, the exact phrasing of the comment is presented. In other cases, substantive portions of the comment were excerpted or summarized. The Administrative Record contains complete copies of each comment letter.

Unless otherwise noted, all comments pertaining to this permit were received from the District. Comments relevant to each of the five concurrently proposed munical storm water permits are also included, and are attributed to their author as indicated. These comments are organized in the order the topic or issue is found in the proposed District Permit. Where indicated, EPA has made changes to the final District Permit.

II. State Certification under Clean Water Act §401

On February 19, 2008, IDEQ provided a draft Clean Water Act (CWA) §401 certification which found that the proposed District Permit provides reasonable assurance that Idaho water quality standards will be met. IDEQ accepted public comment on the draft certification concurrently during the EPA comment period through April 29, 2008.

IDEQ issued a final CWA §401 certification on October 22, 2008. A copy of the IDEQ's final certification is also included in Appendix A.

III. Response to Comments

1. **Comment: Lakes Highway District's roadways do not discharge to Coeur d'Alene Lake or to the Spokane River.** In various sections, the Fact Sheet discusses receiving water**,** water body impairments listed by the States of Idaho and Washington, and associated Total Maximum Daily Loads (TMDLs), wherein EPA states, "The receiving waters include Lake Coeur d'Alene, Hayden Lake, and the Spokane River." District roadways do not discharge to Coeur d'Alene Lake or to the Spokane River.

   Response: The fact sheet discusses the water bodies within the Coeur d'Alene Urbanized Area and the water quality issues associated with those water bodies. EPA does not revise the text of the permit fact sheet; EPA instead clarifies issues through this Response to Comment document and, as necessary, changes to the final permit text.

   The map provided by the District in 2007 reflects the District's outfall locations to Hayden Lake; however the map does not contain sufficient detail regarding where the District's MS4 interconnects with the MS4 of neighboring jurisdictions. EPA presumed that the interconnected systems may ultimately discharge to Lake Coeur d'Alene and Spokane River. EPA is requiring a comprehensive MS4 map to be completed in Part II.B.3.d. In the interim, EPA will correct references within the final permit to reflect that the Lakes Highway District MS4 discharges to Hayden Lake only as reflected in the map available at this time. However, requirements to target actions and activities of the Storm Water Management Program to control the "pollutants of concern" as identified in Part II.C of this permit remain relevant, based on the impairments for waterbodies within the Urbanized Area, and will remain in the Permit as proposed.

2. **Comment: Regarding the fact sheet discussion which states: "**A TMDL for total phosphorus was developed for Hayden Lake, and was approved by EPA in 2001. The TMDL does not contain any waste load allocation or stormwater management requirements for municipal stormwater discharges." Does this mean that there are no requirements for storm water or that the allocation for stormwater is zero?

Response: The TMDL developed by IDEQ does not assign a waste load allocation to the storm water discharges from the District's MS4. Moreover, it does not identify any necessary actions or controls to reduce phosphorus in urban runoff and does not identify storm water runoff as a specific source of phosphorus to Hayden Lake. However, phosphorus remains a pollutant of concern in Hayden Lake. The requirements are in place to ensure that the District does as much as it can to reduce any potential phosphorus pollutants as necessary through its Storm Water Management Program (SWMP) activities.

3. **Regarding Part I.C.5:** The Permit states, "The permittee is not authorized to dispose of snow directly to waters of the United States or directly to the MS4." The District is rural in nature even within the Urbanized Area. We understand that the ditches that convey stormwater are essentially the stormwater system as defined by the MS4. Stating that the District cannot dispose of snow directly to the MS4 (*i.e.*, their ditches) unless the District uses best management practices (BMPs) is nearly impossible.

   Response: If the District defines and employs practices which are reasonable and appropriate to minimize the accumulation of grit, litter, and other pollutants in snow plowed from the District's roadways, existing snow management techniques are not in conflict with the requirements of this Permit. Best management practices which reduce pollutant loading onto and from roadways, while still providing for public safety, are available and should be utilized by the District.

   Snow plowed from urban streets and parking lots can contain 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 of this document for references contained in the permit's Administrative Record).

   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 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 SWMP requirements in Part II.B.6 Appropriate practices which the permittee 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.

4. **Comment (Idaho Transportation Department District #1) : Regarding Part II.A.2.a –** The Permit needs to identify any applicable water quality standards and points of compliance so that the permittee can ensure compliance.

   Response: This comment is relevant to all of the concurrently proposed MS4 permits for the Coeur d'Alene area; Therefore, to provide additional clarity, EPA has revised Parts I.C.1.c.ii , I.C.2 and II.A.2.a of the District Permit to specifically reference the State of Idaho water quality standards found at IDAPA 58.01.02.

5. **Comment: Regarding Part II.C.1,** the permittee must determine whether stormwater is contributing to pollutants of concern in the Spokane or Coeur d'Alene Rivers. The District roadways do not discharge to Coeur d'Alene Lake or the Spokane River so they should not be required to participate in the testing of stormwater that enters those water bodies.

   Response: The permit does not require the District to conduct monitoring of its storm water discharges; analytical monitoring is optional. The Permit merely sets forth monitoring requirements that need to be followed if the District chooses to conduct analytical monitoring. However, the SWMP implemented by the District must be targeted to reduce the discharge of metals, nutrients, sediment, total polychlorinated biphenyls (PCBs), and excess temperature through urban runoff. The District must document how the actions and activities taken by the District specifically target and control these specific types of pollutants.

6. **Comment (City of Coeur d'Alene) Regarding Part IV. C. 2 – Annual Report:** It appears that the annual report is due at the end of the reporting period, which does not allow any time to compile the most recent data and assimilate it into a report. We suggest that the annual report be due 3 months after the end of the reporting period. If the permit is issued in the fall this is a very busy time for staff and the 3 month period provide adequate time to compile all the information and data and produce the report.

   Response: This comment is relevant to all of the concurrently proposed MS4 permits for the Coeur d'Alene Urbanized Area. EPA agrees to address this timing issue by revising Part IV.C.2 to identify a specific date (February 15) by which the Annual Report is due to be submitted; the report will reflect work done in the previous 12 month period reporting period.

7. **Comment (Spokane Tribe of Indians):** The Spokane Tribe expects the Washington Department of Ecology to develop a Total Maximum Daily Load (TMDL) for polychlorinated biphenyls (PCBs) in the near future to address PCBs in the Spokane River. This NPDES permit should have some literature reference pertaining to such a TMDL because restrictions and/or modifications may need to take place prior to the expiration date of the permit.

   Response: When a TMDL for PCBs is completed by Washington Department of Ecology, and approved by EPA, EPA will at that time consider whether any conditions of the TMDL require additional actions for the District relative to discharges from the MS4. EPA will then determine whether modification of the permit is necessary at that time pursuant to 40 CFR 122.62.

IV. 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 Lakes Highway District MS4 on listed endangered and threatened species in the vicinity of the Coeur d'Alene Urbanized Area, and has determined that issuance of this permit is not likely to adversely affect any threatened or endangered species or critical habitat.

Appendix C of this document includes the information used by EPA to support this determination.

Appendix A – Final CWA §401 Certification from Idaho Department of Environmental Quality

STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

2110 Ironwood Parkway • Coeur d'Alene, Idaho 83814 • (208) 769-1422

C.L. "Butch" Otter, Governor
Toni Hardesty, Director

October 22, 2008

Mr. Michael Lidgard
U.S. Environmental Protection Agency
Region 10
1200 6th Avenue, OW-130
Seattle, WA 98101

RE: Final 401 Water Quality Certification for the Lakes Highway District Municipal Separate Storm Sewer System (MS4) NPDES Permit # IDS-028207.

Dear Mr. Lidgard,

The State of Idaho Department of Environmental Quality (Department) has reviewed the proposed MS4 permit for Lakes Highway District. 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, 33USC Section 1341, and Idaho Code Sections 39-101 et. seq., and 39-3601 et. seq., that if the permittee complies with the terms and conditions as written in Permit #IDS 028207, then there is a reasonable assurance that the authorized discharges of storm water will comply with applicable requirements of Sections 301, 302, 306 and 307 of the Clean Water Act.

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.

Questions regarding this certification can be directed to June Bergquist at 208/666-4605 or e-mail to: june.bergquist@deq.idaho.gov.

Sincerely,

Dan Redline, Regional Administrator
Coeur d'Alene Regional Office

cc: Barry Burnell, DEQ
Doug Conde, DEQ

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*.

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 – Endangered Species Act Determination of Not Likely to Adversely Affect Listed Species

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 Lakes Highway District (District) MS4 on listed endangered and threatened species in the vicinity of the Coeur d'Alene 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 list of endangered and threatened species from the USFWS, dated June 1, 2008 (14420-2008-SL-0354). For Kootenai County, Idaho, the following species are listed: Canada lynx (*Lynx canadensis*), Water howellia,(*Howellia aquatilis*), Spalding's catchfly (*Silene spaldingii*) and bull trout (*Salvelinus confluentus*), Species lists available from NOAA Fisheries do not identify any additional listed endangered or threatened species within this portion of the Spokane River basin.

Canada Lynx

Canada lynx generally occur in boreal and montane regions dominated by coniferous or mixed forest with thick undergrowth, but they may also enter open forest, rocky areas, and tundra to forage for abundant prey. (Koehler 1990). Resident populations currently exist only in Maine, Montana, Washington and possibly Minnesota. The lynx is considered extant but no longer sustaining self-support populations in Idaho. (USFWS 1998). Hunting and habitat destruction are the primary causes of the Canada lynx decline.

Issuance of an NPDES permit for the Lakes Highway District MS4 discharges within the Coeur d'Alene Urbanized Area will not result in habitat destruction, nor will it result in changes in population that could result from increased habitat destruction. Furthermore, issuance of this permit will not impact the food sources of the Canada lynx. Lynx are not an aquatic or aquatic dependent species; therefore any contact with water near a stormwater outfall within the urban area is unlikely and expected to be very infrequent. Therefore, EPA has determined that issuance of this permit will have no effect on the Canada lynx.

Water Howellia

Water Howellia grows in firm consolidated clay and organic sediments that occur in wetlands associated with ephemeral glacial pothole ponds and former river oxbows. The known Idaho population of Water Howellia is found within Latah County, near Harvard, Idaho. Water Howellia appears to be extirpated from Kootenai County in Idaho (USFWS, et al, 2007a). EPA has therefore determined that issuance of this permit will have no effect on Water Howellia.

Spalding's Catchfly

Spalding's Catchfly is an herbaceous perennial plant found in open, moist grassland communities, although it is occasionally also found within sagebrush-steppe communities as well as pine forests. The plant is typically found at elevations ranging from 420 to 1,555 meters (1,380 to 5,100 feet), usually in deep, productive loess soils (fine, windblown soils). Plants are generally found in swales or on north or east facing slopes where soil moisture is relatively higher. The final recovery plan for Spalding Catchfly (USFWS 2007b) includes a map of known populations of the species which suggest that the species are not known to occur near the Couer d'Alene Urbanized Area within Kootenai County.

Issuance of an NPDES permit for the Lakes Highway District municipal storm water discharges within the Coeur d'Alene Urbanized Area will not result in habitat destruction. Therefore, EPA has determined that issuance of this permit will have no effect on Spalding's Catchfly.

Bull Trout

Bull trout are native to the Pacific Northwest and western Canada and are widespread throughout the tributaries of the Columbia River Basin, including the headwaters of the Columbia in Montana and Canada (63 FR 31647, June 10, 1998). The USFWS listed the Columbia River segment of the bull trout population as threatened on June 10, 1998. That listing did not designate critical habitat (63 FR 31647). However, critical habitat was designated in 2005, and this designation included Lake Coeur d'Alene (70 FR 56212).

The Idaho Department of Fish and Game (IDFG) has stated that there is no reproducing population of bull trout in the Spokane River or any of its tributary streams and that the only bull trout that would be expected to be found in the Spokane River would be transients from Lake Coeur d'Alene. There is an adfluvial population that spawns in the headwaters of the St. Joe River, which is a tributary to Lake Coeur d'Alene. IDFG also stated that there is no fish passage at the Post Falls Dam (communication between Brian Nickel, EPA, and Ned Horner, IDFG, 2/1/07). EPA fact sheets for the 1999 reissuances of the NPDES permits for wastewater treatment plants discharging to the Spokane River state that bull trout cannot get past the Post Falls Dam and that bull trout in the Spokane River are probably transients from Lake Coeur d'Alene (EPA 1999a, 1999b, 1999c). There is no known population of bull trout in the Spokane River downstream of the Post Falls dam (FERC 2006).

As noted in the fact sheet for the Lakes Highway District MS4 NPDES permit, and in comments from the District reflected in this document, the District discharges to Hayden Lake, but does not discharge directly to Lake Coeur d'Alene or Spokane River. Lakes Highway District owns and operates natural drainage channels, culverts and roadside ditches along the District road system. This permit requires a comprehensive map and system assessment to be completed by the District. EPA determines that discharges from any District outfalls will have no effect on critical habitat for bull trout.

Further, EPA's Permit requires the District to develop, implement and enforce a Storm Water Management Program (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 as defined in 40 CFR 122.32. Narrative effluent limits in the permit outline the specific actions which must be taken to implement following minimum measures:

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.

Since discharges that will be covered by this Permit have existed for many years, all of the activities required in the implementation of the Lakes Highway District SWMP should have a beneficial effect on the bull trout population within Hayden Lake by reducing the levels of environmental contaminants in existing storm water discharges. Therefore, EPA determines that issuance of this permit for any discharges from the District storm water outfalls to Hayden Lake may affect, but are not likely to adversely affect, bull trout in the Spokane River or Lake Coeur 'Alene.

References

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USFWS. 2002. Howellia aquatilis (water howellia) - Threatened. Section 7 guidelines, Snake River Basin office, species guidance summary.

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