National Pollutant Discharge Elimination System (NPDES) Permit for

City of Coeur d'Alene
Municipal Separate Storm Sewer System (MS4)

NPDES Permit No. IDS-028215

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 the municipal separate storm sewer system (MS4) owned and operated by the City of Coeur d'Alene (City). This NPDES permit, # IDS-028215, will be referred to in this document as the City Permit or Permit.

EPA published a public notice announcing the proposed 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), Lakes Highway District (NPDES Permit #IDS-028207), 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 City 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 City of Coeur d'Alene. Comments relevant to each of the five concurrently proposed municipal 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 City Permit. Where indicated, EPA has made changes to the final Permit.

II. State Certification under Clean Water Act §401

On February 19, 2008, Idaho Department of Environmental Quality (IDEQ) provided a draft Clean Water Act (CWA) §401 certification which found that the proposed City of Coeur d'Alene Permit provides reasonable assurance that Idaho water quality standards will be met. IDEQ accepted public comment on the draft certification concurrently with the EPA comment period through April 29, 2008.

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

III. Response to Comments

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

   Response: Although the Idaho Transportation Department was commenting upon its own MS4 permit, this comment is relevant to all of the concurrently proposed MS4 permits for the Coeur d'Alene Urbanized Area. To provide additional clarity, EPA has revised Parts I.C.1.c.ii, I.C.2 and II.A.2.a of the Permit to specifically reference the Idaho water quality standards found at IDAPA 58.01.02. The physical points of compliance are the location(s) at which the MS4 discharges to waters of the United States.

2. **Comment regarding Part II.B.6.c:** This condition requires a storm water pollution prevention plan (SWPPP) for the fleet maintenance/street department site and the waste water treatment plant. Neither of these sites discharge into our MS4 system, therefore this requirement should be eliminated.

   Response: Storm water discharges associated with industrial activities owned/operated by municipalities are subject to NPDES permit requirements as of March 10, 2003, and must therefore be authorized under an NPDES permit. See 40 CFR 122.26(e)(1)(ii). EPA has used its discretion to include this requirement in this permit to authorize such discharges to waters of the United States and/or the MS4, rather than requiring the City to obtain separate permit coverage for these discharges under the federal NPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activities, (MSGP), Permit #IDR05-0000.

3. **Comment regarding Table IV.A, Note 2:** A "storm event" is not defined in the draft permit. We suggest that a storm event be defined as at least 0.1 inch in a 3 hour period.

   Response: In the ***NPDES Storm Water Sampling Guidance Document*** (EPA

833-B-92-001, July 1992; see http://www.epa.gov/npdes/pubs/owm0093.pdf), EPA has defined a "storm event" to mean the following: the depth of the storm must be greater than 0.1 inch accumulation; the storm must be preceded by 72 hours of dry weather; and where feasible, the depth of rain and duration of the event should not vary by more than 50 percent of the average depth and duration. The permittee may evaluate the local weather data and determine whether its suggested storm event definition meets these specifications. The monitoring plan required in Part IV.A.2 of the permit can describe the storm event definition used for the sampling effort.

4. **Comment regarding Table IV.A, Note 2:** Outfall sampling is required within 30 to 60 minutes of a storm event. The outfalls will be at least one to 2 miles apart making it difficult to obtain grab samples. Sampling within 2 hours of the start of a storm event will provide a more reasonable time to obtain samples. Furthermore, the outfalls are located far enough downstream in the tributary areas so that the travel time in the system will be on the order of 1 to 2 hours, thereby allowing the first flush to be sampled.

   Response: Comment noted. EPA recommends that the permittee attempt to collect samples in the timeframe indicated in the permit using additional manpower, or other means.

5. **Comment 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 three 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 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 reporting period.

6. **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 the TMDL for PCBs is completed by Washington Department of Ecology, and is formally approved by EPA, EPA will at that time consider whether any conditions of the TMDL require additional actions for the City of

Coeur d'Alene relative to discharges from the MS4 pursuant to permit modification requirements in 40 CFR §122.62. EPA will determine whether modification of the permit is necessary at that time.

7. **Comment (Spokane Tribe of Indians)**: The Spokane Tribe concurs with the monitoring program for storm discharge events. This information should be used to improve the Coeur d'Alene MS4 permit in the future. The permit should indicate that monitoring should target any flood event during the May-June and July-August timeframe.

   Response: Comment noted. To provide maximum flexibility to the permittee to obtain necessary samples during storm events, EPA is not including any additional provisions or restrictions to the monitoring requirements. If information is found under this current permit that indicates that more targeted monitoring, such as sampling after a flood event, is needed, EPA will evaluate the need for such monitoring during the next permit term.

4. 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 City of Coeur d'Alene 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 B 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 City of Coeur d'Alene Municipal Separate Storm Sewer System (MS4) NPDES Permit # IDS-028215.

Dear Mr. Lidgard,

The State of Idaho Department of Environmental Quality (Department) has reviewed the proposed MS4 permit for the City of Coeur d'Alene. 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 028215, 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 – 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 City of Coeur d'Alene 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 a NPDES permit for the discharges from the City of Coeur d'Alene MS4 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. EPA has thus 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 Urban Area within Kootenai County.

Issuance of an NPDES permit for discharges from the City of Coeur d'Alene MS4 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 has stated that there are 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 Coeur d'Alene MS4 NPDES permit, the City of Coeur d'Alene discharges stormwater through eleven separate outfalls. Four outfalls discharge to the Spokane River; one outfall discharges to Fernan Lake, and one to Fernan Creek; the remaining five outfalls discharge to Lake Coeur d'Alene.

EPA's permit requires the City of Coeur d'Alene 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.

In addition, the permit requires stormwater outfall monitoring to gather information in order to better characterize the quality of the discharges.

Since stormwater discharges from the outfalls have occurred for many years, all of the activities required in the implementation of the City of Coeur d'Alene SWMP should have a beneficial effect on the bull trout population upstream of the Post Falls dam by reducing the levels of environmental contaminants in the existing storm water discharges. Therefore, EPA determines that issuance of this permit for discharges from the City of Coeur d'Alene may affect, but are not likely to adversely affect, bull trout in the Spokane River and Lake Coeur d'Alene. EPA also determines that issuance of this permit may affect, but is not likely to adversely affect critical habitat for bull trout.

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