

RESPONSE TO COMMENTS

The public comment period for the draft permit for the Filer Wastewater Treatment Plant began on September 24, 1997, and expired on November 10, 1997. Comments received on the draft permit include letters from Idaho Division of Environmental Quality (IDEQ) and the City of Filer. The following is a summary of the comments and EPA's responses:

1. Comment: IDEQ and the City of Filer commented that the monitoring frequency for total suspended solids (TSS) and the five-day biological oxygen demand (BOD₅) should be twice per month rather than twice per week as stated in the draft permit.

 Response: The fact sheet stated that monitoring should be twice per month for TSS and BOD₅, however, the draft permit incorrectly stated monitoring should be twice per week. The final permit has been corrected and requires the permittee to monitor these parameters twice per month.

2. Comment: IDEQ commented that the term “composite” sample should be changed to “grab composite” and a definition of grab composite should be included in the permit. Additionally, IDEQ stated that the definition for 24-hour composite was not required for this permit.

 Response: The final permit has been revised to reflect the changes requested by the State.

3. Comment: Comments on fecal coliform bacteria requirements in the draft permit included the following:

 - Expression of Average Monthly Limit: IDEQ stated that the limit for fecal coliform should be expressed as an average monthly limit of 200/100ml based on a minimum of 5 samples taken over a 30 day period.
 - Deleting Daily and Weekly Limits: IDEQ and the City of Filer stated that daily and weekly effluent limits should be deleted.
 - Purpose of a Weekly Limit: IDEQ requested to know what the purpose of a weekly limit was when the sampling frequency was 5 times per month.
 - Monitoring Frequency: The City of Filer was also concerned that the monitoring requirements for fecal coliform increased from one per month to five per month, and requested that the monitoring frequency be reevaluated.

Response: Expression of Average Monthly Limit: The average monthly limit is written as worded in the comment.

Deleting Daily and Weekly Limits: According to the State of Idaho Water Quality Standards, Cedar Draw is protected for secondary contact. Per Section 16.01.02250.01b of the Idaho Water Quality Standards, waters designated for secondary contact recreation are not to contain fecal coliform bacteria in concentrations exceeding 800/100 ml at any time. The daily maximum fecal coliform limit in the proposed permit is based directly on this maximum allowable concentration.

Section 16.01.02420.05a. of the Idaho Water Quality Standards, “Disinfection Requirements for Sewage Wastewater Treatment Plant Effluent” requires that fecal coliform concentrations in secondary treated effluent must not exceed a geometric mean of 200/100 ml based on no more than one weeks of data and a minimum of five samples. The weekly average limit in the proposed permit is based directly on this fecal coliform concentration.

The Clean Water Act requires that limitations in permits meet state water quality standards. Because the daily maximum and weekly average fecal coliform limits in the proposed permit are based on the Idaho water quality standards they will be retained in the final permit. This was discussed with the State of Idaho¹ and the State concurred that the daily and weekly fecal coliform limits should be retained in the final permit.

Purpose of a Weekly Limit: IDEQ requested to know the purpose of a weekly limit when the sampling frequency was five times per month. As stated above, the weekly average limit is based on the State’s water quality standards. EPA originally required the facility to monitor five times per week as required in the State’s Water Quality Standards. However, IDEQ requested that the monitoring be reduced to 5 times per month. As stated in the fact sheet:

“In a memo dated August 28, 1997 IDHW-DEQ has determined that monitoring for fecal coliform 5 times per month (for small municipalities) will satisfy the more stringent technology based monitoring requirement for fecal coliform bacteria. IDHW-DEQ will incorporate the monitoring requirements into their 401 certification of the NPDES permit.”

Monitoring Frequency: The monitoring frequency in the draft permit is

less than what is required in the State's standards. As stated previously, IDEQ has determined that the monitoring frequency will be sufficient to ensure the State's standards are being met. Therefore, the monitoring frequency will be retained in the final permit.

4. Comment: IDEQ and the City of Filer stated that additional dilution of the effluent occurs because the effluent is discharged to a seepage tunnel with year round flow. The seepage tunnel extends for approximately one-half mile prior to discharging to Cedar Draw. When calculating the total residual chlorine limit, EPA should consider this additional dilution. IDEQ also stated that if the seep tunnel has any chlorine demand, the chlorine level at the discharge pipe may be lowered prior to flowing into Cedar Draw. It is suggested that the toxicity calculations may need to be reevaluated and a technology based limit of 0.5 mg/L assigned to the permit.

Response: There is no flow information available for the seepage tunnel, therefore, it is not possible to re-evaluate the effluent limits. However, the final permit has been revised to allow the facility to monitor total residual chlorine and fecal coliform bacteria at the end of the seepage tunnel. Monitoring at the end of the seepage tunnel, rather than prior to the discharge entering the seepage tunnel, will allow the facility to take advantage of the available dilution and any possible chlorine demand.

5. Comment: Several comments were received regarding the phosphorus limitations in the draft permit. The City of Filer stated that the phosphorus loading should be higher. IDEQ provided the following comment: "Deletion of the total phosphorus daily limit should be considered, as the monthly limit will be precedent based on a once per month sampling frequency. Also, phosphorus, biologically does not have a "toxic" effect and is not a toxic but a pollutant of concern. It seems that a daily limit does not have significance if a monthly average limit is observed."

Response: Phosphorus loading: The wasteload allocation is the concentration (or loading) of a pollutant that may be discharged by the permittee without causing or contributing to a violation of water quality standards in the receiving water. In this case, the WLA for the City of Filer wastewater treatment plant was established in the *Middle Snake River Watershed Management Plan* (hereafter referred to as the Management Plan) developed by the State of Idaho. The NPDES program is required to implement the management plan through its permitting system, however, the program does not have the authority to revise the WLA's established in the Management Plan. Therefore, the WLA will remain the same.

Daily and monthly limitations for phosphorus: The NPDES regulations at 40 CFR 122.45(d) require that permit limits for publicly owned treatment works (POTW) be expressed as average monthly limits (AMLs) and average weekly limits (AWLs) unless impracticable.

The objective in setting effluent limits is to establish limits that will result in the effluent meeting the WLA under normal operating conditions virtually all the time. Developing both an AML and AWL for POTWs is consistent with the requirements of EPA regulations and also assures that the long-term average loading requirements of total phosphorus to the Middle Snake River system, as specified in the management plan, is being met. Having both an AML and AWL also ensures good performance of the treatment system. Setting a AWL establishes an upper bound on effluent values used to determine the monthly average and provides a measure of effluent compliance during operational periods between monthly sampling.

In the final permit the maximum daily limit (MDL) has been deleted and instead an AML and an AWL is required. No evidence has been presented during the comment period that indicates these limitations “are impracticable” as cited by the regulations¹.

After reviewing the comments EPA realizes that sampling once during the month, as proposed for small POTWs in the mid-Snake watershed, is not adequate to determine compliance with the average monthly limitation (weekly sampling was proposed for food processors and larger municipal facilities in the watershed). For this reason, EPA is requiring weekly sampling for phosphorus for municipal facilities affected by the Management Plan. This requirement increases assurance that the average monthly limitation is being met by averaging four or five weekly samples a month versus one sample. It is also consistent with the weekly effluent limitations of the permit.

6. Comment: Rather than having a specific date for the facility to come into compliance with the phosphorus limit, IDEQ suggested that the compliance date be changed to reflect a date five years from the date of issuance of the permit.

¹ The final permit will continue to require a MDL for chlorine rather than an AWL. An AWL has the potential of allowing spikes of a pollutant to occur. While this is not a concern with pollutants that are not toxic, such as phosphorus, it is a significant concern when toxic pollutants, such as chlorine, are being discharged. Using an MDL in lieu of an AWL will ensure that spikes do not occur, and will be protective of aquatic life. For these reasons EPA Region 10 considers it impracticable to develop an AWL for chlorine.

- Response: The draft permit required the permittee to achieve compliance with the phosphorus effluent limits by May 1, 2002, five years from the date of approval by EPA of IDEQ's *Middle Snake River Watershed Management Plan*. Including a date in the permit facilitates compliance tracking through EPA's compliance database, therefore, the final permit will include a specific date for achieving compliance. However, the compliance date in the final permit has been revised to allow the facility five years from the effective date of the permit to achieve compliance.
7. Comment: The City of Filer requested that sample type for BOD₅, TSS, total ammonia, total phosphorus, total Kjeldahl nitrogen, and nitrate-nitrite be changed to a grab sample rather than a grab composite.
- Response: Grab samples are required for those parameters that have qualities that may change during the time necessary for compositing. The above parameters do not fall within that category. Additionally, composite samples are more representative of the actual discharge than grab samples. Therefore the requirement to analyze composite samples will be retained in the final permit.
8. Comment: The City of Filer commented that they have been voluntarily monitoring for nitrate, nitrite, total nitrogen, total kjeldahl nitrogen, and phosphorus. The City stated they were led to believe that if they did this sampling it would help in the future when the NPDES permits were reviewed and issued. The City believes they were misled and that the monitoring they did was not considered. They are also very concerned about the cost of the monitoring program.
- Response: The monitoring requirement for phosphorus is necessary to ensure the permittee is in compliance with the effluent limitations in their permit, therefore, monitoring will remain a condition of the permit. Monitoring for nitrate-nitrite, total kjeldahl nitrogen, and total ammonia was recommended in *The Middle Snake River Watershed Management Plan*. The information gathered will be used to help develop phase II of the TMDL for the Mid-Snake River. Additionally, EPA has discussed the monitoring program with IDEQ. IDEQ believes the monitoring is necessary and should remain in the permit. Therefore, these requirement will be retained in the final permit.

Endangered Species Consultation

The U.S. Fish and Wildlife Service has issued a Biological Opinion on the effects of EPA issuing this and eight other NPDES permits that authorize discharge into the Middle Snake River. The Service's opinion is that the proposed action is not likely to jeopardize the continued existence of listed snail species in the action area. The opinion also includes an "Incidental Take Statement". Under the terms of Section 7(b)(4) and Section 7(o)(2) of the Endangered Species Act, take of species that is incidental to an agency's action is not prohibited provided that such taking is in compliance with the terms and conditions of the Incidental Take Statement. The Service identified eight "reasonable and prudent measures" that must be addressed by EPA in order to minimize incidental take. As described in the Biological Opinion, measures listed in the Incidental Take Statement are "non-discretionary, and must be implemented by the EPA so that they become binding conditions of any grant or permit issued to the applicant..."

In order to meet the conditions specified in the Incidental Take Statement, EPA has revised the twenty-four hour notice of noncompliance reporting requirements in section II of the permit. The permittee shall report conditions that endanger the listed snail species to both EPA and the U.S. Fish and Wildlife Service within 24 hours from the time a permittee becomes aware of the circumstances. Likewise, written reports on noncompliance occurrences that endanger listed Snake River snails species must be sent to the Service. These reporting requirements have been included in the final permit. No other revisions to the NPDES permit language are necessary to address the conditions of the Biological Opinion.