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Idaho Conservation League

PO Box 844, Boise, ID 83701
208.345.6933

Brian Nickel
US EPA Region 10
1200 Sixth Ave, #900 M/S OWW-130
Seattle, WA 98101

Submitted via email: Nickel.Brian@epa.gov

1/30/15

RE: Idaho Conservation League comments on the draft NPDES for City of Sandpoint WWTP, Permit No.: ID 0020842.

Dear Mr. Nickel;

Thank you for the opportunity to comment on the draft NPDES permit for the City of Sandpoint's WWTP. Since 1973, the Idaho Conservation League has been Idaho's leading voice for clean water, clean air and wilderness—values that are the foundation for Idaho's extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. As Idaho's largest state-based conservation organization, we represent over 25,000 supporters, many of whom have a deep personal interest in protecting and restoring water quality throughout the greater Pend Oreille River watersheds.

Temperature

We believe that this permit needs to contain an effluent limit for temperature.

As noted in the factsheet at page E-2:

Federal regulations require that effluent limitations in NPDES permits “must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which...are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality (40 CFR 122.44(d)(1)(i)).”

At page D-3 of the factsheet, EPA states:

If the projected concentration of the pollutant in the receiving water exceeds the numeric criterion for that specific pollutant, then the discharge has the reasonable

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potential to cause or contribute to an excursion above the applicable water quality standard, and a water quality-based effluent limit is required.

Since the receiving water is designated as impaired for temperature, this means that the river currently exceeds the State water quality standard for temperature.

The Sandpoint WWTP discharges effluent that is at times at a temperature greater than the receiving water.

Noting the EPA referenced language above, since the receiving water exceeds the state water quality standard for temperature and the WWTP discharges effluent that at times exceeds the temperature of the receiving water, the discharge has the reasonable potential to cause or contribute violation of the applicable standard. As such a water quality-based effluent limit for temperature is required in this permit.

Antidegradation Review

The antidegradation review relied upon by the EPA for this draft permit incorrectly determined that the receiving water was only a tier I water for aquatic life.

Idaho antidegradation rules are found in IDAPA 58.01.02.54. Here it states:

05. Identification of Tier II Waters. The Department will utilize a water body by water body approach in determining where Tier II protection is appropriate in addition to Tier I protection. This approach shall be based on an assessment of the chemical, physical, biological and other information regarding the water body. The most recent federally approved Integrated Report and supporting data will be used to determine the appropriate level of protection as follows: (3-29-12)
- a. Water bodies identified in the Integrated Report as fully supporting assessed uses will be provided Tier II protection.
 - b. Water bodies identified in the Integrated Report as not assessed will be provided an appropriate level of protection on a case-by-case basis using information available at the time of a proposal for a new or reissued permit or license.
 - c. Water bodies identified in the Integrated Report as not fully supporting assessed uses will receive Tier I protection for the impaired aquatic life or recreational use, except as follows: (3-29-12)
 - i. For aquatic life uses identified as impaired for dissolved oxygen, pH or temperature, if biological or aquatic habitat parameters show a healthy, balanced biological community is present, as described in the “Water Body Assessment Guidance” published by the Idaho Department of Environmental Quality, then the water body shall receive Tier II protection for aquatic life uses. (3-29-12)
 - ii. For recreational uses, if water quality data show compliance with those levels of water quality criteria listed in Sections 200, 210, 251, and 275 (where applicable), then the water body shall receive Tier II protection for recreational uses. (3-29-12)

Pursuant to subsection c.i, the receiving water should have been provided tier I protection for aquatic life.

This is so because the cause of impairment are listed as temperature¹. And, the receiving water biological and habitat parameters show that the river is healthy and balanced — as demonstrated both by EPA’s bull trout assessment and the fact that the DEQ cannot authorize a mixing zone if the mixing zone will harm the designated beneficial uses. DEQ is required to undertake a biological, chemical and physical appraisal of the receiving water. Pursuant to this requirement, DEQ must have determined that the receiving water contained healthy biological and habitat parameters, otherwise DEQ would not have authorized the use of a mixing zone.

As such, this antidegradation review needs to be redone before this permit can be issued.

An additional error exists in the antidegradation review. The review (and the factsheet) state that the receiving water is impaired for total dissolved gas supersaturation. However, the receiving water in the vicinity of the discharge is not in violation of standards for total dissolved gas supersaturation. Downstream from the WWTP point of discharge is the Albeni Falls Dam. Distant and downstream from the WWTP, as a result of the Albeni Falls Dam, the river exceeds the state water quality standards for this parameter. The Albeni Falls Dam is a barrier to fish passage in the river. Since the impacts of gas supersaturation are exclusive to aquatic life, and aquatic life that is impacted by the gas supersaturation caused downstream of the dam can not swim up stream past the dam, it is not logical to say that the waters in the vicinity of the WWTP discharge are impacted by the supersaturated gas levels downstream from the dam. For this reason, the receiving water needs to be listed as *not* impaired by dissolved gas supersaturation.

Although the EPA relies on the State of Idaho to conduct an antidegradation review as a component of the State’s 401 certification of the EPA NPDES permit, the EPA is nonetheless obliged to ensure that the State has not erred in its work if the EPA is going to integrate that work into the EPA’s NPDES permit. And, in the event that the EPA determines that the State has erred, then the EPA is required to act in such a manner that the error is not implemented and the intent of the Clean Water Act subverted.

Mixing Zone

As noted above, the EPA can not integrate erroneous State conclusions into the EPA’s NPDES permit. While the State has the authority to authorize mixing zones, the EPA can

¹ Dissolved gas (supersaturation) is also listed as a cause of impairment. This cause is also listed as an exemption to tier I designation in IDAPA 58.01.02.54.05.c.i. Additionally, as discussed in a later section of these comments, gas supersaturation is not present in the receiving water in the vicinity of the discharge.

not integrate a mixing zone into an NPDES permit if the mixing zone authorized by the state violates the State's own mixing zone rules.

In this instance, the State has authorized a mixing zone for phosphorus that utilizes 43.5% of the receiving water's flow. The EPA notes (on page C-2 of the factsheet) that the State mixing zone rules "in general" do not provide for mixing zones greater than 25% of the volume of the stream flow. EPA then goes on to state that Idaho provided an "adequate justification for providing a larger mixing zone than it would generally provide."

However, Idaho's mixing zone rules provide no means for the State to authorize a mixing zone greater than 25% of the receiving flow. So, while it is clear that the State is ready and willing to authorize a mixing zone that is greater than 25% of the receiving flow, it is not able to do so because its own rules do not provide a means of doing so. As such, it is inappropriate for the EPA to incorporate a mixing zone (and accompanying effluent limits) into its NPDES when that mixing zone violates the State's own mixing zone rules.

The largest mixing zone that the EPA can incorporate into the NPDES permit is 25%. The TP effluent limit in the permit needs to be calculated so as to ensure that EPA's numeric interpretation of the State's narrative phosphorus water quality standard is not violated at the edge of a 25% mixing zone.

Please do not hesitate to contact me at 208-345-6933 ext. 24 or jhayes@idahoconservation.org if you have any questions regarding our comments or if we can provide you with any additional information on this matter.

Sincerely,



Justin Hayes
Program Director