

**EXHIBIT J**

ID0020397  
City of Nezperce  
Response to Comments

Environmental Protection Agency (EPA)  
Region 10  
June 2019

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## General Information

EPA provided public notice of the draft permit for the City of Nezperce on January 31, 2018. The comment period ended on March 2, 2018. Comments were received from the City of Nezperce and the Nez Perce Tribe.

Based on the comments received, EPA revised the Draft Permit and provided a Statement of Basis to support the conditions of the Revised Draft. The comment period on the Revised Draft began on March 15, 2019 and ended on April 15, 2019. Comments were received from City of Nezperce, the Nez Perce Tribe Water Resource Division (NPT WRD) and the Idaho Conservation League (ICL).

This document includes both sets of comments and responses to the comments. In some cases, the response, refers to the Statement of Basis which addressed the issue.

EPA Region 10 has undergone an organizational realignment since the Revised Draft Permit was issued. This has caused some name changes to segments within the organization, title changes and changes to mailstops within addresses. These updates have been made in the Final Permit.

*As much as possible, the comments below were taken verbatim from the comments received by EPA.*

## Comments on the Draft Permit

- Comment:** BOD and TSS mass limits in the 2004 and 2018 draft permit are based on annual average flow of 0.09 mgd presented in our 1987 permit. Although this flow is consistent with the flow indicated in our most recent Facility Plan, an assessment of this design capacity does not agree with the observed flow stated in the 2018 Fact Sheet, Part II.A which states a flow range from 0.06 to 0.77 mgd and an average of 0.17 mgd during times of the year when the City is discharging. Flow of 0.09 mgd as averaged over a 12 month period is not representative of the actual facility flow conditions, as annual averaging incorporates periods of no discharge. The actual facility flow conditions should be used to determine the mass loading limits for this permit.

**Response:** 40 CFR 122.45(b) requires that in the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow. The design flow of 0.09 mgd was included in the reapplication; therefore, EPA used this value to calculate the effluent limitations in the permit. No changes have been made to the permit.

2. **Comment:** The 2004 permit also appears to have implemented mass load limits based on unrealistically low BOD and TSS concentrations because there was insufficient data to classify the facility. The facility should have been classified as "treatment equivalent to secondary" (TES). The mass loading should be increased to reflect the actual facility flows and performance ability. The City requests a discharge mass load based on the average annual flow of the facility as recorded in the DMRs, and past permit limits of 32 mg-BOD<sub>5</sub>/L and 70 mg-TSS/L effluent concentrations.

As we move forward in accordance with the Compliance Order on Consent, we anticipate moving our facility toward aerated lagoons that would increase the design capacity of our facility, and further would like to request the ability to revisit mass limits presented in the permit at that time.

**Response:** The conditions of the 2004 permit are not open for comment in this permit action. The time to comment upon and appeal the conditions in the 2004 permit was when the permit was issued.

The loading limits in the current permit are calculated from the applicable concentration limitations contained in 40 CFR Part 133 (see the Response to Comment #3, below) using the equation provided in the Fact Sheet. As noted in the Response to Comment #1, the design flow must be utilized for this calculation. Thus, EPA cannot use the actual facility flows and performance ability to calculate effluent limits.

The City of Nezperce may request a future modification of its permit requirements pursuant to 40 CFR 122.63, specifically 40 CFR 122.63(a)(1) Alterations, if future upgrades at the facility result in an increase in design capacity.

3. **Comment:** As commented during development of the 2004 Permit, the City's category of treatment system is "Treatment Equivalent to Secondary". Response 1 from the 2004 Response to Comments disagreed stating that, To qualify for Treatment Equivalent to Secondary effluent limitations all of the following requirements must be met:
- The BOD<sub>5</sub> and TSS effluent concentrations consistently achievable through proper operation and maintenance of the treatment works exceed Secondary Treatment Effluent Limits
  - A trickling filter or waste stabilization pond is used as the principal treatment process.
  - The treatment works provide significant biological treatment of municipal wastewater (i.e., a minimum of 65% reduction of 8005 is consistently attained).

Response 1 went on to discuss that based on only six data points collected between 1997 and 2003, "the wastewater treatment plant can meet secondary treatment effluent limits."

The EPA's 2004 Response to Comments and 2003 Fact Sheets recognize a lack of information in determination of the City's limits:

With respect to discussion regarding the City's inability to meet secondary treatment limits, Response 1 discussed that, the, "City of Nezperce has not submitted any additional data that would indicate otherwise."

The 2003 Fact Sheet states the following in Appendix A - " Facility Information" regarding the City of Nezperce: "No data exist for TSS percent removal".

The 2003 Fact Sheet states the following in Appendix B, "Basis for Effluent Limitations", Paragraph A.1 with respect to "Technology Based Effluent Limits" that, "With no data to evaluate, the permit requires secondary treatment limits. The permit may be modified in the future if the data collected show that the facility cannot meet secondary limits, but qualifies for TES limits or reduced percent removal requirements".

Comments submitted during development of the 2004 Permit accurately predicted that effluent BOD and TSS limits, "will be problematic for the City." Based on data obtained and submitted in DMRs under the 2004 Permit, data clearly shows that the City's facility cannot consistently achieve secondary limits and qualifies for "Treatment Equivalent to Secondary".

The City would like to note the following data documented during the period between March 2012 through February 2017 in the 2017 Consent Agreement:

- TSS Percent Removal -The Consent Agreement documented 17 months, correlating with 516 separate violations of the 85% removal requirement. During only two of these months was the percent removal less than the 65% removal limit discussed in the 2004 Response to Comments, consistent with "Treatment Equivalent to Secondary".
- TSS Effluent Concentration (weekly average) - The Consent Agreement documented 4 months, correlating with 28 separate violations of the 45 mg/L average weekly TSS limit. None of these months identified an effluent concentration greater than the 70 mg/L discussed in the 2004 Response to Comments, consistent with "Treatment Equivalent to Secondary".
- TSS Effluent Concentration (monthly average)-The Consent Agreement documented 11 months, correlating with 335 separate violations of the 30 mg/L average monthly TSS limit. None of these months identified an effluent concentration greater than the 70 mg/L discussed in the 2004 Response to Comments, consistent with "Treatment Equivalent to Secondary".
- BOD Percent Removal - The Consent Agreement documented 18 months, correlating with 580 separate violations of the 85% removal requirement. During only two of these months was the percent removal less than the 65% removal limit discussed in the 2004 Response to Comments, consistent with "Treatment Equivalent to Secondary".
- BOD Effluent Concentration (monthly average) - The Consent Agreement documented 3 months, correlating with 91 separate violations of the 30 mg/L average monthly BOD limit. None of these months identified an effluent concentration greater than the 45 mg/L discussed in the 2004

Response to Comments, consistent with "Treatment Equivalent to Secondary".

**Response:** The Statement of Basis presented an analysis of recent data provided by the City in their monthly Discharge Monitoring Reports (DMRs), showing that Treatment Equivalent to Secondary was not warranted for the City of Nezperce. No new comment was made during the comment period for the Revised Draft.

4. **Comment:** The City noted during development of the 2004 Permit that the proposed 85% removal criteria was too restrictive for the City's waste stabilization treatment pond. As validated through past DMRs as well as the City's recent 2017 Wastewater Compliance Report, the City does struggle to meet the 85% removal limit even during periods when effluent concentrations are within permit limits. Further, the 85% removal criterion is not listed in the antidegradation analysis completed by DEQ in Appendix D of the Fact Sheet. The City therefore requests modifying the 85% removal limit to be consistent with the 65% removal limit in the 1987 permit as allowed by the EPA in the 2003 Fact Sheet.

**Response:** See Response to Comment #3, above.

5. **Comment:** Within the 2003 Fact Sheet, the EPA indicates that with additional data, the "Permit may be modified in the future if the data collected show that the facility cannot meet secondary limits, but qualifies for TES limits or reduced percent removal requirements". Review of the submitted data validates that average monthly BOD and TSS concentrations consistent with "Treatment Equivalent to Secondary" of 32 mg/L and 70 mg/L, respectively, are justified and consistent with the 1987 permit limits.

**Response:** See the Response to Comment #3.

6. **Comment:** The City's existing treatment system is not capable of meeting the 2018 draft permit limit, and the draft permit does not recognize existing compliance issues discussed in the 2017 Compliance Order on Consent and 2017 Consent Agreement. The Compliance Order identifies several milestones within a compliance schedule, and the City requests interim limits that can be met with the existing facilities under the timeframes identified in the Order. The City requests involvement during development of the interim limits so that the City's existing treatment system can satisfy permit limits within the timeframes identified in the Order.

**Response:** 40 CFR 122.44(l) *Reissued permits* requires that when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit. Since the effluent limitations proposed in the draft permit and contained in the final permit are the same as those in the previous permit, there is no basis to include interim effluent limits in the permit. In addition, since the permit limits have not changed, there is no basis to include a compliance schedule in the permit.

7. **Comment:** As noted in the 2003 Fact Sheet, Appendix A, "Because the facility only discharges a few days per year, weekly monitoring for BOD<sub>5</sub> and TSS is required." As noted in the 2004 Response to Comments, test frequency for BOD and TSS of 1/week presents a tremendous financial burden on our community. The EPA responded that weekly sampling was necessary to

characterize the effluent due to limited discharge timeframes that occurred at that time. As noted in our 2017 Compliance Report, our community discharged 11 months during 2017, with positive impacts on compliance. We anticipate similar operation moving forward, and therefore would like to request a reduced test frequency for these constituents of 1/month, similar to NPDES permits for other local communities including the communities of Genesee, Riverside, Riggins, and Winchester.

**Response:** The Statement of Basis analyzed the data provided by the City in their DMRs and proposed monthly monitoring for TSS and BOD<sub>5</sub>. See also Response to Comment # 16.

8. **Comment:** Paragraph B.2 indicates 24 hour reporting for violations of maximum daily limits of *E. coli*, but this is not noted in Table 1. The City requests clarification regarding reporting requirements for *E. coli* violations.

**Response:** Table 1 was updated in the Revised Draft to require 24-hour reporting of any violation of the maximum daily effluent limitation for *E. coli*. No new comment was received on the Revised Draft.

9. **Comment:** We have completed a cursory review of 40 CFR 403 and do not believe that we have any industrial users introducing pollutants to the POTW. We therefore request that the requirement to develop a municipal code regarding pretreatment be removed from the permit and required only if industrial users are identified in accordance with paragraph II.C.4.

ICL commented on this issue in the Revised Draft requesting that the EPA include the requirement that the City of Nezperce develop a municipal code that authorizes the POTW to apply and enforce the requirement of CWA sections 307(b) and (c) and 402(b)(8), as described in 40 CFR 403.8(f)(1).

ICL understands the City's perspective and the fact that it did not identify any industrial users that introduce pollutants to the POTW currently. However, this does not rule out the possibility that an industrial user may move to the City of Nezperce at some later date. And, developing the municipal code described above would better protect the City of Nezperce and Long Hollow Creek (and the Clearwater River downstream), in the event an industrial facility locates in the City and utilizes the POTW.

**Response:** The Statement of Basis addressed this issue and removed this requirement from the Revised Draft. Based on ICL's comment, EPA has reconsidered this requirement. The Final Permit requires the City to develop a legally enforceable code only upon identification of a potential industrial discharger prior to the initiation of a discharge to the POTW.

10. **Comment:** The Nez Perce Tribe requested that the permit require that reports received by EPA also be submitted or be made available to the Tribe.

**Response:** The Statement of Basis addressed this issue. Please see Response to Comment # 18.

## Revised Draft Comments

11. **Comment:** Review of draft TMDL documents indicate pending phosphorus and temperature limits that the system cannot meet without significant upgrades. The identified phosphorus and temperature limits are seasonal, and as part of the planning process, the City is reviewing a land application disposal system with seasonal discharge.

**Response:** Neither the draft or final permit include phosphorus or temperature effluent limitations. The City should engage in any TMDL process initiated by the Nez Perce Tribe to comment upon the wasteload allocations set forth in any draft TMDL proposed by the Tribe once the Tribe obtains Treatment as a State (TAS) authority to administer the water quality restoration provisions of CWA § 303(d).

12. **Comment:** Review of documents provided by the EPA to develop the ammonia limits in the draft permit indicate the proposed limit of 0.5 mg/l is based on low flow periods when Long Hollow Creek is essentially dry. As the City looks to satisfy phosphorus and temperature limits with seasonal discharge, they do not anticipate discharging during this low flow period, and an ammonia limit structured around low flow conditions when the City will not discharge are irrelevant.

Information obtained from draft TMDL documents provided by the EPA indicate that bi-weekly flow information in Long Hollow Creek was obtained approximately 1 mile upstream of the lagoons during the timeframe of June, 2005 through May, 2006. Within the draft "Big Canyon Creek Watershed Characterization" it is identified that stream flow at the City of Nezperce peaked at 2.75 cfs in April and throughout the summer, flows were "very low to stagnant".

**Response:** The permit authorizes the facility to discharge year round. In developing water quality-based effluent limits, the EPA bases the limits on critical conditions identified in the effluent and receiving water characterization in order to be protective during most conditions. This occurs during the summer low flow period. The inputs to the ammonia criteria equations are ambient temperature and pH. It is EPA Region 10 policy to use the 95<sup>th</sup> percentile of these values to develop effluent limitations so the criteria are protective during most ambient conditions. The data provided in the TMDL documents (summarized in the Fact Sheet) do show that flows are highest in the Spring but also show that some of the highest pH and temperatures were measured in the Spring and early Summer. There has not been enough ambient data collected to determine whether seasonal effluent limitations would be appropriate. If the permittee moves to a seasonal discharge only, the permittee can request a modification of the permit, to authorize discharge only during that portion of the year. See also Response to Comment #13 regarding phosphorus and temperature limits.

13. **Comment:** The potential nutrient and proposed effluent ammonia limits require a significant "change-of-course" in the way the City treats and disposes of

wastewater. In an effort to lower the impact, the City would like consideration of a dynamic permit based on receiving water flow, effluent temperature and effluent pH. There are times of the year when the receiving stream has flow which could be used for dilution and the City would manage the effluent pH to keep it lower thereby reducing toxicity. Such consideration would allow the City to discharge during parts of the year without harm thereby reducing the need for storage and land application area.

Implementation of a dynamic permit with ammonia limits structured around more moderate streamflow conditions would provide significant relief for the City.

**Response:** In order to protect the receiving water, the water quality-based effluent limits are based on ambient values for pH and temperature, not effluent pH and temperature. Using effluent values may not be protective of water quality in the receiving water.

With regard to the use of the receiving stream flow and dilution, the EPA assumes that the City is referring to the use of a mixing zone. Because of the low flows, the limits are based on meeting ammonia criteria at the end of the pipe.

14. **Comment:** Given the existing lagoon treatment process, the City is unable to meet an effluent ammonia limit of <0.5 mg/l by the time the proposed permit is expected to become effective. Therefore, the City requests that an extended compliance schedule be incorporated into the permit. We realize a compliance schedule may be rolled into a modified consent order, but we would like to know how that process would work and to ensure coordination.

Further, during the Phase I planning process identified in the existing Compliance Order, the City would continue to collect effluent ammonia, temperature, and pH data more consistent with current operations (as EPA acknowledged within the Statement of Basis) for continued use by EPA for performance analysis. In conjunction, the City will collect stream flow rate information in addition to the surface water monitoring required under Table 2 of the permit. This will allow the EPA to work with the City and better quantify creek flows, establishing timeframes for seasonal discharge to optimize the City's ability to comply with ammonia, phosphorus, and temperature limits. The data collection period would begin upon issuance of the permit and terminate no later than May 31, 2024 in conjunction with the Compliance Order assessment period. The new data would be utilized to develop dynamic ammonia limits including consideration of a seasonal permit to discharge under more moderate flow conditions. A compliance date beginning July 2029 would be implemented for the final limits.

In summary, the City proposes the following timeline of Extended Compliance Activities to facilitate development and implementation of dynamic ammonia limits in parallel with compliance efforts the City is striving to achieve under the existing Compliance Order on Consent.

Timeframe	Existing Compliance Order Activities	Extended Compliance Activities
July 2019		Anticipated effective date of NPDES permit
July 2019 – May 2020	Facilities Plan Analysis	Additional Data Collection for development of dynamic ammonia limit
June 2020 – December 2021	Phase I Design & Construction	<ul style="list-style-type: none"> <li>Effluent Discharge Data (Ammonia, temperature, pH)</li> </ul>
January 2022 – May 2024	Phase I Assessment Period	<ul style="list-style-type: none"> <li>Streamflow Data (Flow, Ammonia, temperature, pH)</li> </ul>
June 2024 – May 2026	Phase II Planning	Development of dynamic ammonia limit based on data collection period and seasonal discharge.
June 2026 – December 2028	Phase II Design & Construction for full compliance	

**Response:** The City should contact the Enforcement & Compliance Assurance Division to discuss the potential for an amendment to their existing compliance order, if necessary.

15. **Comment:** It is understood that that BOD limits have been developed based on carbonaceous BOD standards, and as such requests that compliance with BOD limits be assessed using a CBOD test in lieu of a BOD test to eliminate the interference of nitrification on sample results.

**Response:** The BOD<sub>5</sub> effluent limitations included in the permit are based on 40 CFR 133.103(a)(1) and not 40 CFR 133.103(a)(4).

Parameter	Revised Draft Permit	133.103(a)(1)	133.103(a)(4)(i)
BOD <sub>5</sub> 30 day average 7 day average % Removal	30 mg/L 45 mg/L 85%	30 mg/L 45 mg/L 85%	
CBOD <sub>5</sub> 30 day average 7 day average % Removal			25 mg/L 40 mg/L 85%

Since the effluent limitations are not based on carbonaceous BOD, compliance with the effluent limits cannot be measured in this manner.

16. **Comment:** The NPT WRD does not agree with EPA's decision to reduce monitoring frequencies for BODs and TSS. The City cites the reasoning behind the request, "because they plan to discharge more frequently than was anticipated in the current permit." (EPA Statement of Basis, pg. 4). The NPT WRD believes that more monitoring should be conducted if more discharges are or will be occurring. Furthermore, all violations reported in the previous

three years were of BODs and TSS levels. We request that the monitoring frequency for BODs and TSS remain at 1/week.

**Response:** EPA reviewed the data from 2017 through the present and no numeric effluent violations have occurred for TSS or BOD<sub>5</sub> concentration for Monthly Average and only one instance for TSS concentration for the Weekly Average. Since the quality of the discharge is becoming more consistent, the reduction in monitoring frequency is justified.

17. **Comment:** The NPT WRD supports EPA's decision to keep ammonia monitoring as a requirement of the permit.

**Response:** Comment noted.

18. **Comment:** The NPT WRD appreciates EPA's efforts to incorporate permit requirements that reports received by EPA also be submitted or be made available to the Tribe. We further request that this requirement be added to the following sections in the permit: IV.I Planned Changes and IV.J. Anticipated Noncompliance.

**Response:** The requested additions have been made.

19. **Comment:** NPT WRD requests adding the NPT WRD contact information below EPA's information in section III.J.4.

**Response:** EPA has added the contact information and regrets its omission from the Revised Draft Permit.

## Fact Sheet Comments

20. **Comment:** The City of Nezperce pointed out many inaccuracies within the Facility Information and Description provided in the Fact Sheet.

**Response:** The Statement of Basis addressed these issues. No new comment was received on the Revised Draft.

21. **Comment:** The Compliance History notes that the City of Nezperce, "has identified several factors contributing to these violations, including aged lift station pumps ... " The lift station pumps were replaced to address age, reliability, and maintenance concerns, not to meet compliance.

**Response:** The Statement of Basis addressed this issue. No new comment was received on the Revised Draft.