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6/16/09

**RE: Idaho Conservation League comments on draft NPDES permit for Twin Falls wastewater treatment plant (ID002170)**

Dear Ms. Wilson,

Thank you for the opportunity to comment on the draft NPDES permit for Twin Falls' wastewater treatment plant (ID002170). The Idaho Conservation League has a long history of involvement with water quality issues and NPDES permitting in Idaho. As Idaho's largest state-based conservation organization we represent over 9,800 members, many of whom have a deep personal interest in protecting Idaho's water quality and the health of all Idahoan's from the harmful effects of effluent discharge.

A number of our members live downstream from Twin Falls and are very concerned about the general health of the Snake River and the low quality of water in this area specifically. Our members rely on the Snake River for clean water for drinking, industry, recreation and irrigation. Failure to ensure that the Twin Falls wastewater facility is adequately regulated may result in ongoing and future discharges that jeopardize our members' interests in the Snake River.

Our specific comments in the draft NPDES permit for the Twin Falls wastewater treatment facility are attached.

In summary, we do not support the use of pollutant trading in this segment of the Snake River at this time. Our primary objection to inclusion of pollutant trading language in the Twin Falls NPDES permit stems from the fact that EPA is predicating this trading on old, draft Idaho guidance and pollutant trading ratios that do not ensure environmental benefits beyond those that can be achieved via the enforcement of existing NPDES permits.

Thank you for your consideration of our comments on this important matter. Please do not hesitate to contact me at 208-345-6933 ext 24 or at [jahyes@wildidaho.org](mailto:jahyes@wildidaho.org) if you have any questions about comments.

Sincerely,

Justin Hayes  
Program Director

cc. Jim Wernitz, Boise EPA

## Idaho lacks sufficient guidance and rules to allow pollutant trading

The use of pollutant trading to meet water quality objectives has the potential of providing an economically efficient means of reducing pollutant loading. If pollutant trading is to be a more frequently used regulatory/permit tool it will be critical to ensure that the practice is sufficiently regulated. The draft Twin Falls NPDES permit proposes to authorize pollutant trading. Upon review of the draft permit we are concerned that there is not currently sufficient regulation and formal federal and state guidance to assure that the pollutant trading being authorized is done in a manner that is protective of Idaho water quality and carried out in a manner that is consistent with state and federal law.

If pollutant trading is to take place, it will be critically important that trading be done in a transparent and documented manner and that there be clearly articulated Idaho guidance directing these actions and that such actions be supported by clear Idaho rules providing such authorities in Idaho to ensure compliance with State Clean Water Act obligations and authorities.

As such, it is important that Idaho's rules adequately address this issue. Unfortunately, the State of Idaho has failed to sufficiently craft DEQ rules to authorize and govern pollutant trading. Indeed, DEQ's formal rules on pollutant trading fail to offer any substantive direction on how pollutant trading will be carried out. Indeed, DEQ's rules merely state that pollutant trading may be utilized with the goal of restoring water quality. See below:

IDAPA 58.01.02 .054

06. Pollutant Trading. Development of TMDLs or equivalent processes or interim changes under these rules may include pollutant trading with the goal of restoring water quality limited water bodies to compliance with water quality standards.

This inadequate treatment in the IDAPA Rules fails to provide the authorities and direction needed for issuance of consistent and Clean Water Act compliant utilization of pollutant trading.

Absence rule language to direct this issue, the Twin Falls permit proposes to utilize pollutant trading *guidance* developed by Idaho in 2003. However, this state guidance was never finalized. Indeed, the 2003 guidance has languished in draft form for over five years. We believe that there are substantive and procedural deficiencies in this draft guidance and that it is not appropriate for EPA to rely on this half finished work product to provide the regulator framework for pollutant trading in Idaho.

There are many questions raised by pollutant trading that EPA and DEQ are not in a position to address absent final guidance and/or more illustrative rules. For instance, how will Idaho ensure that the facility purchasing credits does not violate water quality standards in the receiving body at the point of discharge? Will Idaho (and EPA) issue ad hoc mixing zones to address this concern? How can Idaho issue a 401 certification of the Twin Falls NPDES permit when the permit, via a trade, result in violations of water quality standards downstream at the facility that purchases and utilizes the credit?

With such scant formal State of Idaho direction as to how to proceed, it is frankly inappropriate for EPA to include pollutant trading in Twin Falls' NPDES permit. We ask that EPA remove this provision from the draft NPDES permit at this time. Should the State of Idaho decide that it wants to more formally provide rules and guidance on pollutant trading, EPA and Twin Falls can revisit this matter in the next permitting cycle.

### Trading between point sources and non-point sources

A particular concern of ours with regard to pollutant trading is the potential for trades to take place that involve non-point sources. Non-point sources, as opposed to point sources, lack NPDES permits. As such, individual non-point sources do not have effluent limits and required monitoring and reporting requirements. Absence the regulatory framework built around a source having an NPDES permit, it is not possible to ensure that pollutant trading transactions occur, have the intended benefits and are enforceable. Transactions that involve non-point sources will not have the transparency and accountability necessary to comply with Clean Water Act requirements.

The EPA fact sheet that accompanies the draft Twin Falls permit states “This proposed permit authorizes the City of Twin Falls to sell phosphorus credits to other point sources in the Upper Snake Rock Subbasin consistent with IDEQ’s November 2003 draft Pollutant Trading Guidance.”

This gives the impression that trades authorized by this permit will only be between other point sources. However, such a limitation is not in the draft NPDES permit. Nor is there such a limitation in the November 2003 draft Pollutant Trading Guidance. Indeed, the draft guidance provides for trading between point and non-point sources. Thus, absent clear statements limiting trading to just point sources, trading between point and non-point sources is inferred and permitted.

### Value or Ratio of pollution credits unacceptable

EPA is relying on Idaho’s November 2003 *draft* Pollutant Trading Guidance to determine the amount of the credit to be gained from a pollutant reduction and the required ratio for a trade. Reliance on a five-year-old draft document to guide this very important decision is not acceptable. Our organization has not had the opportunity to comment on this matter in light of recent developments (such as current water quality status, trends and TMDL implementation. Indeed, since the 2003 draft guidance was crafted, nearly all of the aquiculture facilities that discharge to this segment of the Snake River have received new NPDES permits. This is a very significant modification of circumstances not captured in the draft guidance. This change in circumstances argues convincingly that EPA must revisit the issue of credits and ratios and cannot rely on the old draft documents provided by the State of Idaho.

If EPA wishes to embrace a pollutant trading scheme in this permit (and others), EPA must develop reduction credits and trading ratios that reflect current water quality needs and permit developments.

Trading ratios of 1:1 fail to comply with the intent and language of the EPA *final* Water Quality Trading Policy (Jan. 13, 2003). EPA’s policy notes:

The United States Environmental Protection Agency (EPA) believes that market-based approaches such as water quality trading provide greater flexibility and have potential to **achieve water quality and environmental benefits greater than would otherwise be achieved under more traditional regulatory approaches.** [emphasis added] page 1.

And,

## II. Trading Objectives

EPA supports implementation of water quality trading by states, interstate agencies and tribes where trading:

...

F. **Achieves greater environmental benefits than those under existing regulatory programs.** [emphasis added] page 3.

EPA’s current NPDES permits for point source facilities in this area contain effluent limits for phosphorus. Allowing for a trading ratio of 1:1 does nothing to “achieve greater environmental benefits than those under existing regulatory programs.”

If EPA wishes to utilize pollutant trading in this area, EPA must develop ratios that are greater than 1:1.

## Typo

Table 2 on page 13 of the draft permit contains a typo. Sample Type for Flow is written as “gage.” We presume this is meant to be “gauge.”