

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:)
))
City of Harrison)
Wastewater Treatment Plant)
Permit No.: ID-0021997)

PETITION FOR REVIEW

Comes now the Idaho Conservation League and petitions the Environmental Appeals Board to review the Environmental Protection Agency's issuance of an NPDES permit for the City of Harrison Wastewater Treatment Plant.

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INTRODUCTION

Pursuant to 40 C.F.R. § 124.19(a), the Idaho Conservation League (“ICL”) petitions for review of the conditions of NPDES Permit No. ID0021997 (“Permit”), which was issued to the City of Harrison Wastewater Treatment Plant (“Permittee”) on June 25, 2018, by the United States Environmental Protection Agency, Region 10 (“Region”).

ICL contends that certain conditions are based on clearly erroneous findings of fact and conclusions of law and are counter to EPA permitting regulations and obligations under the Clean Water Act (“CWA”). Specifically, ICL challenges the following permit conditions:

(1) The biochemical oxygen demand (“BOD₅”) percent removal effluent limitation, as specified at page 7, Table 1 NPDES Permit No. ID0021997.

(2) The total suspended solids (“TSS”) percent removal effluent limitation, as specified at page 7, Table 1 NPDES Permit No. ID0021997.

Petitioner, the Idaho Conservation League, is a 501(c)3 non-profit based in Boise, Idaho, with field offices in Sandpoint, ID and Ketchum, ID. ICL represents members from all across Idaho. Many of our members live, work and/or recreate in areas impacted by the contested NPDES permit. Our members rely on Anderson Slough and the Coeur d’Alene Lake Watershed for clean water for industry, recreation and irrigation and are deeply concerned about matters that impact the health of this watershed.

ICL is represented by in-house legal staff in this matter before the Environmental Appeals Board (“Board”).

THRESHOLD PROCEDURAL REQUIREMENTS

ICL satisfies the threshold requirements for filing a petition for review under 40 C.F.R. part 124, to wit:

1. ICL has standing to petition for review of the permit decision because it participated in the public comment period on the Permit. *See* 40 C.F.R. § 124.19(a). A copy of these comments is attached with this petition. ICL Attachment 1.

2. The issues raised by ICL in its petition for review concern revisions to the final Permit that reflect changes from the proposed draft permit that were not noticed during the public comment period and could not have been anticipated by ICL. ICL Attachment 2 at 1-3. Therefore, the issues raised by ICL in its petition for review were preserved for review. *See* 40 C.F.R. § 124.19(a)(2).

FACTUAL AND STATUTORY BACKGROUND

The City of Harrison owns, operates, and maintains a wastewater treatment plant (“WWTP”) located in Harrison, Idaho. The secondary treatment component of this facility discharges treated municipal wastewater into Anderson Slough in Harrison, Idaho in the Coeur d’Alene Lake Watershed, hydrological unit code (“HUC”) 17010303.

On June 29, 2005, the Region issued the Permittee an NPDES permit, which became effective on September 1, 2005 and expired on August 31, 2010. The Permittee submitted an NPDES application for permit reissuance on February 24, 2010. However, the Region determined that this application was incomplete. On April 23, 2010, the Permittee submitted additional material, addressing several omissions. And, on May 17, 2010, the Region determined the revised application was complete and timely and administratively extended the permit. In

effect, the Permittee has operated its WWTP pursuant to an antiquated NPDES permit for nearly the past 8 years.

On May 11, 2018, the Region issued a public notice for the proposed renewal and reissuance of the Permittee's NPDES permit, which would replace the Permittee's 2005 NPDES permit. During the public comment period, ICL submitted comments on the proposed permit, which are included as ICL Attachment 1. And, on June 25, 2018, the Region reissued the Permit. See ICL Attachment 3. As a result of several comments received during the public comment period, the Region made seven separate revisions to the Permit, which are identified in the Region's Response to Comments ("RTC"). ICL Attachment 2. Among the revisions made to the final permit, the Region reduced the percent removal effluent limitations for BOD₅ and TSS by 13% and 15%, respectively. ICL Attachment 3 at 7. The revisions to these effluent limits and the rationales for the revisions were not included in the draft NPDES permit that was noticed for public comment on May 11, 2018. ICL Attachment 4 at 15.

ISSUE PRESENTED FOR REVIEW

Did the Region violate the Clean Water Act and Administrative Procedure Act by issuing NPDES Permit No. ID0021997, which improperly authorizes percent removal effluent limits for BOD₅ and TSS according to special considerations under 40 C.F.R. § 133.103(d)?

ARGUMENT

The Region unlawfully reissued the Permit because, in the Permit, the Region authorized percent removal effluent limits for BOD₅ and TSS without a satisfactory demonstration by the

Permittee that the Permittee's WWTP meets all three requirements obligated pursuant to 40 C.F.R. § 133.103(d).

The Clean Water Act authorizes the Region to issue a permit for the discharge of pollutants, so long as such a permit meets all the applicable requirements under 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1318, and 1343. *See* 33 U.S.C. § 1342(a)(1).¹ One such requirement, under Section 301 of the CWA, establishes a required performance level, referred to as “secondary treatment,” which publicly operated treatment works were required to meet by July 1, 1977. 33 U.S.C. § 1311(b)(1)(B). The EPA developed and promulgated secondary treatment effluent limitations, which are found in 40 C.F.R. § 133.102. These effluent limitations apply to the Permittee and require the Permittee apply secondary treatment to its effluent discharge in order to meet or exceed effluent quality criteria for the pollutants BOD₅, TSS, and pH. Specifically, the Permittee's effluent discharge must meet the following secondary treatment standards for BOD₅ and TSS:

BOD₅

- “(1) The 30-day average shall not exceed 30 mg/l.
- (2) The 7-day average shall not exceed 45 mg/l.
- (3) The 30-day average percent removal shall not be less than 85 percent.”

TSS

- “(1) The 30-day average shall not exceed 30 mg/l.
- (2) The 7-day average shall not exceed 45 mg/l.
- (3) The 30-day average percent removal shall not be less than 85 percent.”

40 C.F.R. § 133.102(a) and (b).

¹ The Region reissued the Permit prior to July 1, 2018, when the EPA granted the State of Idaho primacy over permitting discharges for publicly operated treatment works under the Clean Water Act.

² The data provided in this attachment was downloaded from EPA's ECHO program on July 24, 2018 and is

Pursuant to 40 C.F.R. §§ 133.103 and 105, federal regulation provides two exceptions to meeting the secondary treatment requirements provided above, but the Region applied these exceptions to the Permittee despite the fact that the Permittee is ineligible for the exceptions. Moreover, neither the Permittee nor the Region satisfactorily demonstrated that the Permittee was eligible for the exceptions to the secondary treatment requirements.

Subsection 103 Exception to Secondary Treatment Standards

Pursuant to 40 C.F.R. § 133.103(d), The Region is authorized to assign percent removal requirements for BOD₅ and TSS below 85%, but only if the Permittee satisfactorily demonstrates all three of the following requirements:

“(1) The treatment works is consistently meeting, or will consistently meet, its permit effluent concentration limits but its percent removal requirements cannot be met due to less concentrated influent wastewater (“Requirement 1”),

(2) [T]o meet the percent removal requirements, the treatment works would have to achieve significantly more stringent limitations than would otherwise be required by the concentration-based standards (“Requirement 2”), and

(3) [T]he less concentrated influent wastewater is not the result of excessive I/I. The determination of whether less concentrated wastewater is the result of excessive I/I will use the definition of excessive I/I in 40 C.F.R. 35.2005(b)(16) plus the additional criterion that inflow is nonexcessive if the total flow to the POTW (i.e. wastewater plus inflow plus infiltration) is less than 275 gallons per capita per day (“Requirement 3”).”

40 C.F.R. § 133.103(d).

In the Permit, the Region authorized percent removal effluent limitations for BOD₅ and TSS below 85%, but neither the Permittee nor the Region satisfactorily demonstrated that the Permittee met all three of the requirements provided above.

Permittee Did Not Consistently Meet its Permit Effluent Concentration Limits

The discharge monitoring report (“DMR”) data provided in the Region’s Fact Sheet for the City of Harrison’s WWTP indicates the Permittee violated its permit effluent concentration limits for BOD₅ and TSS at least six times since 2008, including one violation as recent as 2016. ICL Attachment 4 at 33-42. In addition, EPA’s Enforcement and Compliance History Online (“ECHO”) web program reports the Permittee’s DMR data, showing the Permittee violated its monthly effluent concentration limitation for BOD₅ as recently as April 30, 2018. *See* ICL Attachment 5.² Despite the Region’s own finding that the Permittee had violated its BOD₅ and TSS effluent concentration limits, the Region determined that the Permittee had consistently met its permit effluent concentration limits for BOD₅ and TSS. *See* ICL Attachment 2 at 2-3. But, this determination ignores the Permittee’s history of discharge violations and runs afoul of 40 C.F.R. § 133.103(1), which specifically requires the Permittee to demonstrate that it is consistently meeting, or will consistently meet, its permit effluent concentration limits. The Permittee is not consistently meeting its permit effluent concentration limits, and the Permittee’s most recent discharge violations provide no reason to presume the Permittee will consistently meet these effluent limits.

To demonstrate that a facility meets Requirement 1, the facility must not have violated its effluent concentration limits for BOD₅ and TSS, or the facility must satisfactorily show that it

² The data provided in this attachment was downloaded from EPA’s ECHO program on July 24, 2018 and is accessible at https://echo.epa.gov/trends/loading-tool/reports/effluent-exceedances/?permit_id=ID0021997.

will not violate these limits. Some facilities in Region 10 can clearly show that they meet Requirement 1. For example, the City of Dover (“Dover”), Idaho requested that the Region reduce the percent removal requirement for TSS for its WWTP NPDES permit. *See* ICL Attachment 6 at 2. The Region evaluated Dover’s request first by applying Requirement 1 to Dover’s compliance history, as reported on ECHO. *Id.* In that case, the Region found that ECHO reported no recent TSS concentration violations for Dover and concluded that Dover met Requirement 1. *Id.* However, the same cannot be said of the Permittee in this case because the Permittee violated its effluent concentration limits for BOD₅ and TSS at least seven times in the last ten years, including the most recent violations in December 2016 and April 2018. As such, the Region incorrectly determined that the Permittee met Requirement 1 and improperly authorized a reduction in the percent removal of BOD₅ and TSS in the Permit.

Permittee Failed to Demonstrate it would have to Achieve Significantly More Stringent Limitations

Neither the Permittee nor the Region demonstrated that the Permittee would have to achieve significantly more stringent limitations than would otherwise be required by the concentration-based effluent standards, in order to meet the 85% removal requirements. In the Region’s RTC, the Permittee claimed, without evidence or calculation, that the Permittee would have to achieve significantly more stringent limitations than would otherwise be required. *See* ICL Attachment 2 at 2. Because the Permittee failed to quantify the effluent concentration limits that would be required to meet the 85% removal requirements, there has been no demonstration that the effluent concentration limits would be *significantly more stringent* than would otherwise be required. *See id.* This critical given that the federal regulations identify a specific threshold for

what constitutes a significantly more stringent limitation for BOD₅ or TSS. Pursuant to 40 C.F.R. § 133.101(m), a significantly more stringent limitation means:

“BOD₅ and [T]SS limitations necessary to meet the percent removal requirements of a least 5 mg/l more stringent than the otherwise applicable concentration-based limitations (e.g. less than 25 mg/l in the case of the secondary treatment limits for BOD₅ and [T]SS), or the percent removal limitations in §§133.102 and 133.105, if such limits would, by themselves, force significant construction or other significant capital expenditures.”

The Permittee failed to show that 85% removal effluent limitations for BOD₅ or TSS would require the Permittee to achieve significantly more stringent concentration limits, as this is defined in the regulation above.

Similarly, the Region also failed to satisfactorily demonstrate that the Permittee met Requirement 2. The Region simply assumed, without providing evidence or calculation, that the “BOD and TSS effluent limits would need to be lower to reduce low influent levels by 85 percent.” *See id.* at 3. Here too, the Region’s statement exhibits the same error committed by the Permittee in that the Region also failed to demonstrate that the reduced effluent concentration limits necessary to accommodate 85% removal requirements would be significantly more stringent than would otherwise be required.

Accordingly, the Region incorrectly determined that the Permittee met Requirement 2 and improperly authorized a reduction in the percent removal of BOD₅ and TSS in the Permit.

Permittee Failed to Satisfactorily Demonstrate that Less Concentrated Wastewater is Not the Result of Excessive I/I.

Both the Permittee and the Region failed to satisfactorily demonstrate that the Permittee's less concentrated influent wastewater is not the result of excessive I/I because both the Permittee and Region claimed, without providing evidence, that the Permittee's pressurized septic tank effluent system precludes excessive I/I. Although a pressurized septic tank effluent system can limit I/I, this system's capacity to reduce I/I is only as good as the level of repair of the septic tanks and associated septic infrastructure.

Describing the costs and benefits of pressurized septic tank effluent systems, the EPA's 2002 Wastewater Technology Factsheet states "...a large number (often a majority) [of existing septic tanks] must be replaced or expanded over the life of the [pressurized] system because of insufficient capacity, deterioration of concrete tanks, or leaks." *See* ICL Attachment 7. Rather than demonstrate that the Permittee's facility precludes excessive I/I, both the Permittee and Region assume this to be the case, without showing that the Permittee's particular wastewater treatment system has been retrofitted and maintained for optimum operation, and therefore capable of precluding excessive I/I. *See* ICL Attachment 2 at 2-3. Without such a demonstration, the Region incorrectly determined that the Permittee met Requirement 3 and improperly authorized a reduction in the percent removal of BOD₅ and TSS in the Permit.

Treatment Equivalent to Secondary Treatment

In addition to 40 C.F.R. § 133.103, subsection 105 also creates an exception to meeting the baseline secondary treatment requirements in subsection 102. Pursuant to subsection 105, facilities are eligible for what is known as "treatment equivalent to secondary treatment," if the

facility satisfies three requirements. 40 C.F.R. § 133.101(g). During the public comment period, ICL did not comment on the treatment equivalent to secondary treatment exception. However, it has come to our attention that the Region authorized effluent limitations for TSS according to treatment equivalent to secondary treatment in the Permit, without analyzing whether or not the Permittee met all three requirements at subsection 101(g). *See* ICL Attachment 3 at 7; *see also* ICL Attachment 4 at 17.

In other words, barring the exception at 40 C.F.R. § 133.105, the Region must set the Permittee's TSS effluent concentration limits to a 30-day average limit of 30 mg/l and a 7-day average limit of 45 mg/l. 40 C.F.R. 133.102. However, the Permittee's 30-day average and 7-day average TSS limits in the Permit are 50% and 45% greater, respectively, than the limits required by subsection 102, despite the Region having provided no analysis or justification showing the Permittee is eligible for the treatment equivalent to secondary treatment exception provided under subsections 105 and 101(g).

As such, the Region improperly granted the Permittee an exception to the secondary treatment effluent limits, as provided at subsection 102(b). ICL wishes to direct the Board and the Region to this issue, regardless of whether or not there exists a regulatory mechanism that would permit the Board or Region to amend the TSS effluent concentration limit in the context of this petition for review. That said, ICL recommends the Board and Region resolve this issue in the Permit.

CONCLUSION

Because neither the Permittee nor the Region has satisfactorily demonstrated that the Permittee has met all three requirements under 40 C.F.R. § 133.103(d) ICL requests the Board

find that the Region's issuance of the Permit violated the Clean Water Act, 33 U.S.C. § 1311(b)(1)(B), for authorizing BOD₅ and TSS percent removal effluent limits below 85%. In addition, ICL requests the Board find that the Region's authorization of the BOD₅ and TSS percent removal effluent limits below 85% was an abuse of discretion, not in accordance with the law, and unsupported by substantial evidence, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (E).

Accordingly, ICL requests the Board direct the Region to reissue the Permit, including 85% removal effluent limits for BOD₅ and TSS. Contrary to 40 C.F.R. § 124.16, we further request that the Board not stay the percent removal effluent limits for BOD₅ and TSS currently authorized in the Permit. Allowing the percent removal effluent limits, as currently authorized, to become effective, during the pendency of this appeal, would better ensure the protection of water quality standards in Anderson Slough than staying the limits until this matter is resolved.

ICL requests:

- 1) The Board find that the Region's issuance of NPDES Permit No. ID0021997 violated the Clean Water Act, 33 U.S.C. § 1311(b)(1)(B), by unlawfully authorizing BOD₅ and TSS percent removal effluent limits below 85%;
- 2) The Board find that the Region's issuance of NPDES Permit No. ID0021997 violated the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (E), by unlawfully authorizing BOD₅ and TSS percent removal effluent limits below 85%;
- 3) The Board direct the Region to reissue NPDES Permit No. ID0021997 with 85% removal effluent limitations for BOD₅ and TSS;

- 4) The Board not stay the percent effluent limitations for BOD₅ and TSS as currently authorized by NPDES Permit No. ID0021997; and
- 5) The Board grant ICL the opportunity for oral argument to further explain the Petition for Review and the underlying concerns articulated therein.



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Date: July 25, 2018

STATEMENT OF COMPLIANCE WITH WORD LIMITATION

This petition for review complies with the requirement that petitions for review not exceed 14,000 words.

This petition for review, excluding attachments, is approximately 2,923 words in length.

TABLE OF ATTACHMENTS

Complete versions are being provided electronically to the Board's Clerks' office.

Attached are the following exhibits, numbered in order of appearance in the petition:

ICL Attachment 1	ICL Comments on Draft Permit for City of Harrison WWTP and 401 Cert. of Same, June 11, 2018
ICL Attachment 2	EPA Response to Comments: City of Harrison Wastewater Treatment Plant, NPDES Permit Number: ID0021997, June 25, 2018
ICL Attachment 3	United States Environmental Protection Agency Region 10, Authorization to Discharge under the National Pollutant Discharge Elimination System, City of Harrison Wastewater Treatment Plant NPDES Permit No. ID0021997, June 25, 2018
ICL Attachment 4	Fact Sheet, U.S. Environmental Protection Agency: City of Harrison Wastewater Treatment Plant, NPDES Permit #ID0021997, May 2018
ICL Attachment 5	Effluent Limit Exceedances Report, ID0021997: Harrison Wastewater Treatment Plant, Harrison, ID 83833, Monitoring Period Date Range: 08/01/2017 to 07/31/2018 (last accessed on July 24, 2018)
ICL Attachment 6	EPA Response to Comments: City of Dover Wastewater Treatment Plant, NPDES Permit ID0027693, June 5, 2018
ICL Attachment 7	Wastewater Technology Fact Sheet: Sewers, Pressure, United State Environmental Protection Agency, September 2002

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Petition for Review in the matter of the City of Harrison Wastewater Treatment Plant, Permit No. ID0021997, were served, by the method indicated, on the following persons, this 25th day of July, 2018:

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Environmental Appeals Board
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