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(Slip Opinion)

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

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In re: )  
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City of Homedale )  
Wastewater Treatment Plant )

NPDES Permit No. ID-002042-7 )  
)  
)

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NPDES Appeal No. 13-10

[Decided July 8, 2014]

***ORDER DENYING REVIEW***

***Before Environmental Appeals Judges Randolph L. Hill,  
Catherine R. McCabe, and Kathie A. Stein.***

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**IN RE CITY OF HOMEDALE  
WASTEWATER TREATMENT PLANT**

NPDES Appeal No. 13-10

***ORDER DENYING REVIEW***

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Decided July 8, 2014

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Syllabus

Idaho Conservation League (“ICL”) petitioned the Environmental Appeals Board (“Board”) to review certain effluent limitations in a National Pollutant Discharge Elimination System permit issued to the City of Homedale, Idaho, authorizing discharges from its wastewater treatment plant to the Snake River. The U.S. Environmental Protection Agency, Region 10, issued the permit on August 28, 2013, pursuant to Clean Water Act § 402, 33 U.S.C. § 1342. ICL objected to the permit limits on discharges of “total phosphorus” (“TP”) on the ground that they were inconsistent with the assumptions and requirements of the wasteload allocation (“WLA”) assigned to the facility in the Total Maximum Daily Load (“TMDL”) for the Mid-Snake River that was developed by the State of Idaho and approved by EPA. ICL argued that the WLA should be interpreted and applied to require a daily maximum TP limit in the permit, rather than the monthly and weekly average discharge limits permitted by the Region.

Held: The Board found no clear error or abuse of discretion in the Region’s determinations that Homedale’s TP permit limits were consistent with the assumptions and requirements of the WLA provided for in the Mid-Snake River TMDL. The Board denied ICL’s petition for review.

***Before Environmental Appeals Judges Randolph L. Hill,  
Catherine R. McCabe and Kathie A. Stein.***

***Opinion of the Board by Judge McCabe:***

***I. STATEMENT OF THE CASE***

Idaho Conservation League (“ICL”) petitions the Environmental Appeals Board (“Board”) to review certain effluent limitations in a National Pollutant Discharge Elimination System (“NPDES”) permit issued to the City of Homedale, Idaho, authorizing discharges from its wastewater treatment plant to the Snake River. The U.S. Environmental

Protection Agency, Region 10 (“Region”), issued the permit on August 28, 2013, pursuant to Clean Water Act § 402, 33 U.S.C. § 1342. ICL objects to the monthly and weekly average quantities of “total phosphorus” (“TP”) the permit allows Homedale to discharge, claiming that the limits are inconsistent with the assumptions and requirements of a wasteload allocation assigned to Homedale in a Total Maximum Daily Load management plan for the Mid-Snake River watershed. ICL therefore seeks a remand of the permit for correction of the TP effluent limits.

## II. *ISSUE PRESENTED*

The Board must determine whether the Region clearly erred or abused its discretion in determining that the TP effluent limitations in Homedale’s NPDES permit are consistent with the assumptions and requirements of Homedale’s wasteload allocation.

## III. *PRINCIPLES GUIDING BOARD REVIEW*

Section 124.19 of Title 40 of the Code of Federal Regulations governs Board review of NPDES permit decisions. Petitioners appealing such decisions must demonstrate that the permit is based on a clearly erroneous finding of fact or conclusion of law, or involves an important matter of policy or exercise of discretion that warrants further review. 40 C.F.R. § 124.19(a)(4); *see, e.g., In re Town of Newmarket*, NPDES Appeal No. 12-05, slip op. at 5, 41-42, 48-51, 57-58 (EAB Dec. 2, 2013), 16 E.A.D. \_\_\_ (petitioner failed to carry burden of demonstrating NPDES permit remand was appropriate); *In re San Jacinto River Auth.*, NPDES Appeal No. 09-09, slip op. at 692, 694-709 (EAB July 16, 2010), 15 E.A.D. \_\_\_ (petitioner carried burden of demonstrating basis for partial remand). The Board generally upholds decisions that reflect the permit issuer’s “considered judgment” or “reasonable exercise of discretion,” as documented in the administrative record. *See, e.g., In re City of Attleboro Wastewater Treatment Plant*, 14 E.A.D. 398, 411-16, 451-52 (EAB 2009) (no showing of clear error or abuse of discretion where record reflected permit writer’s considered judgment and showed it reasonably exercised its discretion to craft nutrient limits); *In re Wash.*

*Aqueduct Water Supply Sys.*, 11 E.A.D. 565, 585-86 (EAB 2004). Petitioners challenging issues that are fundamentally technical or scientific in nature bear a particularly heavy burden of proof. Where the permit issuer adequately explains its rationale and supports its reasoning in the record, the Board generally will defer to the permit issuer's technical/scientific expertise. *See, e.g., In re Dominion Energy Brayton Point, LLC*, 12 E.A.D. 490, 510, 588-90, 699-703 (EAB 2006) (partially affirming and partially remanding technical issues in NPDES permit); *Wash. Aqueduct*, 11 E.A.D. at 573-92 (same).

#### IV. SUMMARY OF DECISION

The Board concludes that ICL failed to establish clear error or abuse of discretion in the Region's determination that TP effluent limits in Homedale's NPDES permit are consistent with the assumptions and requirements of Homedale's wasteload allocation.

#### V. STATUTORY AND REGULATORY BACKGROUND

Section 301(a) of the Clean Water Act ("CWA" or "Act") prohibits the discharge of pollutants into waters of the United States unless authorized by, among other things, an NPDES permit issued in accordance with CWA section 402. *See* CWA §§ 301(a), 402, 33 U.S.C. §§ 1311(a), 1342. The Act relies on two central mechanisms to protect water quality: (1) facility-specific permit effluent limitations; and (2) water quality standards, which generally are promulgated by states and approved by EPA. Permit limits can be either technology-based (established by EPA on an industry-specific basis) or water quality-based (developed in the context of individual permit decisions). *See* CWA §§ 301, 303, 304(b), 402, 33 U.S.C. §§ 1311, 1313, 1314(b), 1342; 40 C.F.R. pts. 122, 125, 131. Before issuing an NPDES permit, EPA must obtain state certification that the permit contains all conditions necessary to assure compliance with the CWA and attain the state's water quality standards. CWA § 401(a)(1), 33 U.S.C. § 1341(a)(1); *see* 40 C.F.R. §§ 124.53(a), .55(a)(2). The water quality standard at issue in this case is a narrative criterion for "excess nutrients," including TP, which provides:

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Surface waters of the state shall be free from excess nutrients that can cause visible slime growths or other nuisance aquatic growths impairing designated beneficial uses.

Idaho Admin. Code r.58.01.02.200.06 (2013).

Section 303(d) of the Act requires states to identify water body segments that fail to meet state water quality standards, despite implementation of all requisite effluent limitations on discharges in the affected waters. CWA § 303(d)(1)(A), 33 U.S.C. § 1311(d)(1)(A). For such “water-quality limited” or “impaired” waters, states must develop a Total Maximum Daily Load (“TMDL”) for each relevant pollutant. CWA § 303(d)(1)(C), 33 U.S.C. § 1311(d)(1)(C); *see* 40 C.F.R. §§ 130.2(j), .7. EPA has authority to approve or disapprove the state’s TMDL. CWA § 303(d)(2), 33 U.S.C. § 1311(d)(2); 40 C.F.R. § 130.7(d). TMDLs establish specific wasteload allocations (“WLAs”) for point sources<sup>1</sup> that discharge to the water body in question, as well as load allocations for nonpoint sources<sup>2</sup> in the watershed. 40 C.F.R. §§ 130.2(g)-(i), .7. TMDLs also include natural background concentrations of the pollutants in question and incorporate margins of safety to account for scientific uncertainties. 40 C.F.R. §§ 130.2(g), (i), .7(c)(1). The sum of these values establishes the “loading capacity” of an impaired water body, which is the “greatest amount” of a pollutant that the water body can receive without violating water quality standards for that pollutant. 40 C.F.R. § 130.2(f); *see In re City of Moscow*, 10 E.A.D. 135, 140 (EAB 2001).

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<sup>1</sup> A “point source” is “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, [or] channel \* \* \* from which pollutants are or may be discharged.” CWA § 502(14), 33 U.S.C. § 1362(14).

<sup>2</sup> A “nonpoint source” is a land area, used for urban, agricultural, silvicultural, natural, or other purposes, over which water flows in diffuse patterns into navigable waters. *See, e.g., Cordiano v. Metacon Gun Club, Inc.*, 575 F.3d 199, 219-22 (2d Cir. 2009) (citing cases, treatises, and Agency guidance that define or discuss nonpoint source pollution).

Where a TMDL exists for a receiving water body, the permitting authority must determine whether a WLA has been assigned to a point source seeking an NPDES permit. If a WLA has been so assigned, the permit issuer must calculate a water quality-based effluent limit for the pollutant that is “consistent with the assumptions and requirements” of the WLA. 40 C.F.R. § 122.44(d)(1)(vii)(B).

## VI. PROCEDURAL AND FACTUAL HISTORY

The City of Homedale owns and operates a wastewater treatment plant that serves approximately 2,750 persons and has a design flow rate of 0.45 million gallons per day (“mgd”). Region 10, U.S. EPA, *Draft NPDES Permit No. ID-002042-7 Fact Sheet 5* (Mar. 1, 2013) (“Fact Sheet”). Wastewater from Homedale’s separate sanitary sewer system flows into the plant, is routed into two aerated lagoons, then a stabilization lagoon, and finally into a contact chamber where it is disinfected with chlorine prior to discharge to the Snake River at Mile 412. *Id.* at 5-6.

Idaho has designated the following uses for the river reach that includes Mile 412 (i.e., from Swan Falls to Boise River, called the “Mid-Snake River”): (1) cold water aquatic life; (2) primary contact recreation; and (3) domestic water supply.<sup>3</sup> Idaho Admin. Code r.58.01.02.140.03. Idaho also identified the Mid-Snake River as “impaired” (i.e., failing to meet water quality criteria) for nutrients/eutrophication (including TP) and temperature, pursuant to CWA § 303(d), 33 U.S.C. § 1303(d). Fact Sheet at 8 (citing State of Idaho, *Integrated Water Quality Monitoring and Assessment Report* (2010)). Accordingly, in April 2003, Idaho developed a TMDL management plan for the Mid-Snake River, which EPA approved in January 2004. See Idaho Dep’t of Env’tl. Quality, *Mid-Snake River/Succor Creek Subbasin Assessment and TMDL* (Apr. 2003) (“Mid-Snake TMDL”); Fact Sheet at 8-9. The Mid-Snake TMDL contains a TP WLA for Homedale’s wastewater treatment plant of

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<sup>3</sup> All Idaho surface waters, including the Mid-Snake, also have three other designated uses: (1) agricultural and industrial water supply; (2) wildlife habitat; and (3) aesthetics. Idaho Admin. Code r.58.01.02.100.03-.05; see Fact Sheet at 6-7.

5 kilograms per day, equivalent to 11 pounds per day (“lbs/day”). Mid-Snake TMDL tbl.50, at 177.

Homedale’s prior NPDES permit, which expired on April 30, 2009, and was administratively continued, did not contain TP limits. *See* Fact Sheet at 5, 10. The Region, however, proposed a monthly average TP limit of 11 lbs/day and a weekly average TP limit of 17 lbs/day when it issued Homedale’s new draft permit in March 2013. *See* Region 10, U.S. EPA, *Draft NPDES Permit No. ID002042-7 for City of Homedale Wastewater Treatment Plant* tbl.1, at 6 (Mar. 1, 2013) (“Draft Permit”). During the 30-day public comment period provided for the draft permit, ICL commented that the TP effluent limits the Region developed were not consistent with the assumptions and requirements of Homedale’s WLA and should be replaced with a daily maximum limit of 11 lbs/day. *See* Letter from Justin Hayes, Program Dir., Idaho Conservation League, to John Drabek, Region 10, U.S. EPA & attach. (Mar. 14, 2013). On August 28, 2013, the Region issued the final NPDES permit, along with a response-to-comments document. *See* Region 10, U.S. EPA, *Final NPDES Permit No. ID002042-7 for City of Homedale Wastewater Treatment Plant* (Aug. 28, 2013) (“Final Permit”); Region 10, U.S. EPA, *Response to Comments on NPDES Permit No. ID002042-7* (Aug. 16, 2013) (“RTC”). The final permit included a monthly average TP limit of 11 lbs/day and a weekly average TP limit of 16.5 lbs/day. Final Permit tbl.1, at 5.

On September 27, 2013, ICL filed a petition for review with the Board, challenging the TP effluent limits and requesting oral argument. *See* Petition for Review (“Pet.”). The Region filed a response to ICL’s petition on December 6, 2013. *See* EPA Region 10’s Response Brief (“Resp.”). On December 23, 2013, the Wet Weather Partnership, National Association of Clean Water Agencies, and six state municipal wastewater associations (Missouri, Maryland, North Carolina, South Carolina, Virginia, and West Virginia) filed an *amicus curiae* brief supporting EPA Region 10. *See* Brief of *Amici Curiae* Wet Weather Partnership et al. On January 24, 2014, ICL filed a reply to the Region’s response, *see* ICL’s Reply (“Reply”), and on April 30, 2014, the Board

heard oral argument. See Oral Argument Transcript (Apr. 30, 2014) (“OA Tr.”).

## VII. ANALYSIS

This case concerns the interrelationship between two key mechanisms prescribed by the CWA for protecting and improving water quality: (1) the facility-specific effluent limits established by NPDES permits issued pursuant to section 402, and (2) the TMDL WLAs developed by states pursuant to section 303(d) to limit and allocate pollution loads among facilities discharging to impaired water bodies. The statute does not specify how NPDES permits should incorporate or reflect WLAs. EPA’s implementing regulations, however, require permitting authorities to ensure that permit effluent limits are “*consistent with the assumptions and requirements* of any available [WLA] for the discharge prepared by the State and approved by EPA.” 40 C.F.R. § 122.44(d)(1)(vii)(B) (emphasis added).

In this case, ICL contends that the Region has failed to ensure consistency between the TP effluent limits in the NPDES permit and the EPA-approved WLA for the Homedale plant. ICL fears that this will hamper the State’s efforts to achieve water quality standards in the river downstream from the plant. For the reasons explained below, the Board concludes that the Region did not clearly err or abuse its discretion in determining that the Homedale permit limits are consistent with the State’s WLA and sufficient to attain the State’s water quality standard for TP.

As the Board explained in *In re City of Moscow*, 10 E.A.D. 135 (EAB 2001), section 122.44(d)(1)(vii)(B) does not require permit limits to be *identical* to the WLA established by a TMDL. 10 E.A.D. at 146-48. The regulation only requires that the permit limits be *consistent* with the *assumptions* and *requirements* of the allocation. The lack of a detailed procedure for establishing permit limits from available WLAs was intended to give “the permitting authority the flexibility to determine the appropriate procedures for developing water quality-based effluent limits,” as explained in the preamble to the applicable regulations.

54 Fed. Reg. 23,868, 23,879 (June 2, 1989). Accordingly, in *City of Moscow* the Board rejected the argument that the EPA permit writer, in calculating permit limits for a wastewater treatment plant, was required to use the same numerical value for total effluent flow that the State had used in calculating the TMDL WLA for the plant.<sup>4</sup> Recognizing the Board's ruling in *City of Moscow*, ICL expressly disavows any argument in this case that the TP effluent limits in Homedale's NPDES permit must be identical to the State's WLA for the Homedale plant. Reply at 5.

ICL's petition objects to the Region's inclusion of average monthly and weekly TP effluent limits of 11 lbs/day and 16.5 lbs/day, respectively, in the Homedale permit. ICL argues that these effluent limits exceed and are inconsistent with the State's WLA for the Homedale plant of 11 lbs/day.<sup>5</sup> In ICL's view, the State's WLA for the Homedale plant must be interpreted to limit TP discharges to a *daily maximum* of 11 lbs/day. If the plant's discharges exceed that limit on some days (as the *average* weekly and monthly permit limits allow), ICL fears that the water quality standards for TP in the Snake River will not be achieved. See Reply at 4-5. The Region, in contrast, believes that the average monthly and weekly permit limits are consistent with the State's WLA for the Homedale plant and will be sufficient to ensure attainment of TP water quality standards in the Snake River.

First, it is important to note that EPA regulations require NPDES permits for publicly owned treatment works to be stated as average weekly and average monthly limits, unless that is impracticable. 40 C.F.R. § 122.45(d)(2). In contrast, other types of facilities with continuous discharges must be given *maximum daily*, as well as average

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<sup>4</sup> The EPA permit writer used the plant's current maximum design flow to calculate the effluent limit. In preparing the TMDL WLA for the plant, the State had used a slightly higher flow assumption (possibly based on a planned upgrade for the facility). *City of Moscow*, 10 E.A.D. at 146-48.

<sup>5</sup> ICL bases its argument solely on its interpretation of the State's WLA for the Homedale plant. ICL has not alleged that either the Homedale permit or the TMDL is required by statute or regulation to include daily maximum limits.

monthly, discharge limitations. 40 C.F.R. § 122.45(d)(1). The Region has made no finding that average weekly and monthly effluent limits are impracticable for the Homedale plant. Therefore, section 122.45(d)(2) requires that the plant's discharge limits be stated as weekly and monthly averages. The question presented by ICL's petition is whether those limits are also consistent with the assumptions and requirements of the State's WLA for the plant.

The Region views the permit's average monthly and weekly limits as consistent with the State's WLA based on the Region's understanding that the State calculated and intended the 11 lbs/day WLA to apply on a *monthly average* basis, not as a daily maximum. In its response to comments from ICL on the draft permit, the Region explained:

The WLA as expressed in the TMDL is an average monthly load based on a TP discharge concentration of 3.5 [milligrams per liter ("mg/L")] of TP, at the facility's design capacity of 0.4 mgd (maximum *monthly* design flow). Establishing the WLA as a *maximum daily* limit would be inconsistent with the TMDL.

RTC at 2 (emphases added) (citing Mid-Snake TMDL at 176, 178, 319).

The Region's interpretation of the Homedale WLA is supported by the State's certification, under CWA section 401, that the Region's permit for the Homedale plant is sufficient to ensure compliance with the requirements of the CWA and to meet Idaho's water quality standards. *See Idaho Dep't of Env'tl. Quality, Final § 401 Water Quality Certification for City of Homedale Wastewater Treatment Facility, NPDES Permit No. ID-002042-7*, at 1, 3, 5 (May 8, 2013). The State expressly stated in its section 401 certification that "[t]he effluent limitations and associated requirements contained in the City of Homedale [Wastewater Treatment Facility] permit are set at levels that

comply” with the Mid-Snake TMDL WLAs. *Id.* at 3. The State further clarified that the Homedale WLA is a *monthly allocation* in its response to ICL’s public comments on the section 401 certification:

The TP wasteload allocation in the *Mid-Snake River/Succor Creek TMDL* (2003) is based on operation at facility design capacity and monthly monitoring of total phosphorus. *Therefore, this is a monthly allocation.*

Idaho Dep’t of Env’tl. Quality, *Response to Comments on Section 401 Certification for City of Homedale Wastewater Treatment Facility, NPDES Permit No. ID-002042-7*, ¶ 1 (undated) (emphasis added).<sup>6</sup>

In addition, the State explained in its response to comments on the section 401 certification that the weekly average TP limit in the Homedale permit was derived using standard EPA protocols and is consistent with the permit’s monthly average limit of 11 lbs/day:

Using 1.5 times the monthly limit [for the weekly average permit limit] is standard protocol for EPA permit writer’s [sic] and is based on EPA’s Technical Support Document for Water Quality Based Toxics Control. The effluent limit may vary over the week

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<sup>6</sup> ICL had raised the same argument that it raises on this appeal (that the WLA should be applied as a daily maximum limit) in its comments on the State’s section 401 certification. ICL claims in its petition that the State’s certification was erroneous. Pet. at 6. ICL’s opportunity to challenge the State certification before Idaho’s Board of Environmental Quality is long past. *See* Idaho Code § 39-107(5) (applicants and “other aggrieved person[s]” may appeal section 401 water quality certifications to state tribunal); Idaho Admin. Code r.58.01.23.100 (petitions must be filed within 35 days of certification decision); *see also* 40 C.F.R. § 124.55(e) (“[r]eview and appeals of limitations and conditions attributable to State certification shall be made through the applicable procedures of the State”).

and month but must average less than 17 lbs/day for each week and 11 lbs/day for each month.

*Id.*<sup>7</sup> In other words, the State understood that the permit's average weekly limit would allow occasional spikes of TP discharges higher than 16.5 lbs on a few days in a given month, but overall would ensure that TP discharges do not exceed an average of 11 lbs/day in any month of the summer season.

ICL's argument that the State's WLA of 11 lbs/day must be interpreted and applied as a daily maximum limit finds no support in the language of either the Mid-Snake TMDL or the State's section 401 certification. If the State had intended the WLA to apply on a daily maximum basis, presumably it would have so stated. For example, the State expressly provided in the Mid-Snake TMDL that its allocation for another water quality parameter, temperature, applied on an "instantaneous maximum" and "maximum daily average" basis. Mid-Snake TMDL tbl.52, at 178. In contrast, the State's explanations and language in both the Mid-Snake TMDL and the section 401 certification support the conclusion that the State consciously chose to apply the Homedale WLA on a monthly average basis. In addition, after receiving ICL's public comments on the draft Homedale permit, the Region sought and obtained confirmation from the State that its interpretation of the State's TMDL and WLA for the Homedale plant was correct. *See* RTC at 2 (referencing May 17, 2013 staff communication); Resp. attach. 11 (Memorandum from John Drabek, P.E., EPA Region 10, *Expression of*

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<sup>7</sup> The State's reference to a discharge limit of 17 lbs/day for each week was based on the Region's draft permit. In response to ICL's comment that the Region had rounded incorrectly in performing its calculations, the Region modified the TP effluent limit in the final permit to an average of 16.5 lbs/day. RTC at 3. ICL did not challenge the use of the 1.5 conversion factor in either its petition or its comments on the State's section 401 certification. Therefore, any objection to the Region's use of this conversion factor is waived.

*Total Phosphorus* (May 20, 2013) (documenting personal communications with Idaho staff)).<sup>8</sup>

The Region's view that the State's WLA for the Homedale plant is a monthly allocation finds further, inferential support in the State's contemporaneous TMDL for the adjacent downstream segment of the Snake River (the Hell's Canyon TMDL). The State used the same assumptions and methodology in preparing the WLAs for the Hell's Canyon TMDL that it used for the Mid-Snake TMDL. That is, the State multiplied the *average* TP concentration (using the same numerical value used in the Mid-Snake TMDL) by each facility's *monthly* design flow to derive the WLA for each facility. See Idaho Dep't of Env'tl. Quality, *S Snake River–Hell's Canyon TMDL* § 4.0.2.6 & tbl.4.0.8, at 445-46 (rev. June 2004) ("Hell's Canyon TMDL"). The State also explicitly stated in the Hell's Canyon TMDL that the TP reduction requirements for facilities discharging into that river segment would be "applied daily *on a monthly average basis*." *Id.* § 4.0.2.6, at 445 (emphasis added). This is consistent with the Region's understanding that the State's approach to these related TMDLs was based on average monthly allocations, rather than maximum daily allocations.

ICL suggests that the State used different allocation methods for the Hell's Canyon TMDL (monthly average) and the Mid-Snake TMDL (daily maximum). ICL cites no specific language in the TMDLs, however, that supports this theory. Nor does ICL offer any persuasive explanation of why the State would choose different approaches for these two adjacent river segments. The Board is not persuaded that the State made any such distinction in crafting these two TMDLs.

A key premise of ICL's position is its contention that there must be a daily maximum permit limit on the Homedale plant's TP discharges in order to ensure attainment of the State's water quality target of

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<sup>8</sup> ICL argues that the Board should not consider these informal "post hoc" statements of State officials. Pet. at 6. The Board does not agree. While these statements provide less direct evidence of the State's intent than its written TMDL report and section 401 certification, they are entitled to some weight as supporting evidence.

0.07 mg/L TP. The State identified this numerical target as its instream goal in the Mid-Snake River TMDL.<sup>9</sup> See Mid-Snake TMDL § 5.1, at 161-62; see also Hell's Canyon TMDL § 3.2, at 257-317 (deriving target). ICL argues that the 0.07 mg/L water quality target is an *instantaneous* limit, i.e., a limit that must be met at all times and never exceeded. See Reply at 6 (“Because the TMDL’s target is an instantaneous instream concentration, it is imperative that all of the [WLAs] developed in the TMDL must, for NPDES effluent limit considerations, be preserved and implemented as daily maximums.”). ICL is unable, however, to provide any support for its interpretation of the 0.07 mg/L TP water quality target as an “instantaneous” limit. See, e.g., OA Tr. at 14-21.

The Mid-Snake TMDL describes the State’s 0.07 mg/L water quality target for TP as follows:

The target shown to result in attainment of water quality standards and support of designated uses in the reach is an instream concentration of less than or equal to 0.07 mg/L TP. Transport and deposition of phosphorus, and the resulting algal growth within the reach, is seasonal in nature. Therefore, *application of the 0.07 mg/L TP target is also seasonal in nature*, extending from the beginning of May through the end of September.

Mid-Snake TMDL § 5.2, at 164 (emphasis added). Nothing in this description indicates that the 0.07 mg/L TP target must be applied on an instantaneous basis. The word “instantaneous” does not appear. Nor has

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<sup>9</sup> As described in Part V above, Idaho state law prescribes only narrative water quality standards for TP in the Snake River. In order to derive permit effluent limits to meet a narrative standard, the permit writer must translate those standards into a numerical water quality target. See 40 C.F.R. § 122.44(d)(1)(vi).

ICL offered any evidence or persuasive explanation for why an instantaneous TP target would be necessary to address an environmental problem that is “seasonal in nature.” Finally, ICL’s view that the State’s water quality target of 0.07 mg/L TP is an *instantaneous* limit is belied by the State’s section 401 certification that the Homedale permit’s average monthly and weekly limits are sufficient to meet the State’s water quality standards.

The State and the Region both have determined that the average monthly and average weekly TP effluent limits in the Homedale permit are sufficient to attain the State’s water quality target of 0.07 mg/L TP. Nothing in the record indicates that the stricter daily maximum limit urged by ICL is necessary to achieve that target. The Board therefore will defer to the Region’s technical judgment that the average monthly and weekly TP effluent limits in the Homedale permit are sufficient to achieve the State’s standard and its 0.07 mg/L numerical target. *See, e.g., In re Upper Blackstone Water Pollution Abatement Dist.*, 14 E.A.D. 577, 607-15, 620-23 (EAB 2010) (deferring to EPA’s technical expertise and observing that “[g]iving deference to the permit issuer’s scientific and technical judgment ‘serves an important function within the framework of the Agency’s administrative process; it ensures that the locus of responsibility for important technical decisionmaking rests primarily with the permitting authority, which has the relevant specialized expertise and experience’”) (citations omitted); *In re City of Attleboro Wastewater Treatment Plant*, 14 E.A.D. 398, 421-22 (EAB 2009) (deferring to EPA’s technical expertise where petitioner failed to “support its allegations with solid evidence that demonstrate[d] how the permit issuer clearly erred in its decisionmaking”); *In re Phelps Dodge Corp.*, 10 E.A.D. 460, 517-19 (EAB 2002).

Overall, the record supports the Region’s conclusion that the State prepared and intended its 11 lbs/day WLA for the Homedale plant to be applied on a monthly average basis, rather than as a daily maximum limit. The Board concludes that ICL has failed to demonstrate that the Region clearly erred or abused its discretion in determining that the average monthly and weekly TP effluent limits in the NPDES permit for

the Homedale plant are consistent with the assumptions and requirements of the State's TMDL WLA for this facility.

*VIII. CONCLUSION*

For all the reasons explained above, ICL's petition for review is denied.

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Denying Review** in the matter of *City of Homedale Wastewater Treatment Plant*, NPDES Appeal No. 13-10, were sent to the following persons in the manner indicated:

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