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

In re:)
)
)
City of Homedale)
Wastewater Treatment Plant)
Permit No.: ID-002042-7)
)
)

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 Homedale Wastewater Treatment Plant.

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ATHORITIES

C.F.R. § 122.44(d)(1)(vii)(B). Pages 3-4

INTRODUCTION

Pursuant to 40 C.F.R. § 124.19(a), the Idaho Conservation League (“Petitioner” or “ICL”) petitions for review of certain conditions of NPDES Permit No. ID-002042-7 (“the Permit”), which was issued to the City of Homedale Wastewater Treatment Plant (“Permittee”) on August 28, 2013, by the United States Environmental Protection Agency. The permit at issue in this proceeding authorizes the City of Homedale’s Wastewater Treatment Plant to discharge wastewater to the Snake River in Idaho.

Petitioner contends that certain permit conditions are based on clearly erroneous findings of fact and conclusions of law and are counter to EPA regulations and obligations under the Clean Water Act.

To wit, petitioner challenges permit conditions found in section I.B.1. Specifically, petitioner challenges the effluent limits established for phosphorus¹.

Petitioner, the Idaho Conservation League, is a 401(c)3 non-profit based in Boise, Idaho and 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 the Snake River for clean water for industry, recreation and irrigation and are deeply concerned about matters that impact the health of the Snake River.

Petitioners represent themselves in this matter before the EAB.

THRESHOLD PROCEDURAL REQUIREMENTS

Petitioner satisfies the threshold requirements for filing a petition for review under Part 124, to wit:

1. Petitioner 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 to this petition².

¹ United States Environmental Protection Agency Region 10, Factsheet regarding proposal to issue National Pollutant Discharge Elimination System, The City of Homedale Wastewater Treatment Plant NPDES Permit Number: ID-002042-7, August 28, 2013, Page 6.

² Idaho Conservation League comments on draft NPDES permit for Homedale wastewater treatment plant (ID002042-7), March 14, 2013.

2. The issues raised by Petitioner in its petition were raised during the public comment period and therefore were preserved for review.

FACTUAL AND STATUTORY BACKGROUND

The City of Homedale operates the Homedale Wastewater Treatment Plant. The facility's previous NPDES was issued on February 27, 2004 became effective on May 1, 2004 and expired on April 30, 2009. The contested permit replaces this prior permit.³ The contested permit was issued by the EPA. The State of Idaho does not have primacy over the CWA for NPDES permitting.

Wastewater from the Homedale facility is discharged into the Snake River in a segment of river referred to as the Mid Snake River/Succor Creek Subbasin. Beneficial uses for this segment of the Snake River are cold water communities, primary contact recreation and domestic, agricultural and industrial water supply.⁴

The State of Idaho has designated this segment of the Snake River on the 303(d) list as impaired for nutrient/eutrophication and temperature. The State of Idaho developed the Mid Snake River/Succor Creek Subbasin Assessment and TMDL (IDEQ), April 2003 (TMDL).⁵ The EPA approved Idaho's nutrient TMDL for this river segment on January 5, 2004.⁶ With regard to our petition for review of this contested permit, the pollutant of concern is total phosphorus (TP) – a nutrient which contributes to the impaired status of this segment of the Snake River.

The City of Homedale WWTP is one of only two permitted point source discharges to this segment of the Snake River. The City of Homedale's WWTP discharges phosphorus into this segment of the Snake River.⁷

The Mid Snake River/Succor Creek TMDL assigned a Wasteload Allocation of 5 kg/day Total Phosphorus to the Homedale WWTP.⁸ 5 kg/day is equal to 11 lbs/day.

³ United States Environmental Protection Agency Region 10, Factsheet regarding proposal to issue National Pollutant Discharge Elimination System, The City of Homedale Wastewater Treatment Plant NPDES Permit Number: ID-002042-7, August 28, 2013, Page 5.

⁴ Ibid, p. 6.

⁵ Ibid, p. 8.

⁶ United States Environmental Protection Agency Region 10, Approval of Total Maximum Daily Loads for Mid-Snake River/Succor Creek, Idaho. January 5, 2004.

⁷ Idaho Department of Environmental Quality, The Mid Snake River/Succor Creek Subbasin Assessment and Total Maximum Daily Load. April 2003. Page 149.

⁸ Ibid, p. 177.

The Permittee's final permit, issued by the EPA, limits the permittee's discharge of total phosphorous during the period of time between May 1 and September 30. The effluent limits in the permit are: 11 lbs/day average monthly limit and 16.5 lbs/day average weekly limit⁹

ISSUE FOR REVIEW

Petitioner seeks review of the follow matter:

Has EPA issued permit conditions regarding phosphorus effluent limits at the City of Homedale WWTP that are arbitrary and capricious and violate the Clean Water Act's requirement that directs that effluent limits must be consistent with the Wasteload Allocations in any germane, EPA approved, TMDL?

ARGUMENT

The total phosphorus effluent limits contained in the NPDES permit for the Homedale WWTP allow for the discharge of more phosphorus than authorized by the wasteload allocations assigned to the facility in the germane TMDL. As such, these limits are arbitrary and capricious and violate the Clean Water Act requirement that directs that effluent limits must be consistent with the Wasteload Allocations in any germane, EPA approved, TMDL.

The Mid Snake River/Succor Creek TMDL assigns the City of Homedale WWTP a Total Phosphorus (TP) Wasteload Allocations (WLA) of 5 kg/day (also expressed as 11 lbs/day) Total Phosphorus to the Homedale WWTP.¹⁰

EPA regulations direct that water quality-based effluent limits, such as those required when a facility is discharging to a 303(d) listed waterbody, must be consistent with the assumptions and requirements of any available wasteload allocation for the discharge contained in an EPA approved TMDL. See below:

(vii) When developing water quality-based effluent limits under this paragraph the permitting authority shall ensure that:

...

⁹ United States Environmental Protection Agency Region 10, Authorization to Discharge under the National Pollutant Discharge Elimination System, The City of Homedale Wastewater Treatment Plant NPDES Permit Number: ID-002042-7, August 28, 2013, Page 6.

¹⁰ Ibid, p. 177.

(B) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7.

C.F.R. § 122.44(d)(1)(vii)(B).

Thus, since the EPA approved TMDL assigned a WLA of 11 lbs/day TP to the City of Homedale WWTP, the EPA *should have* developed TP effluent limits that did not exceed 11 lbs/day TP. However, in this instance, the EPA developed effluent limits that allowed for discharges of up to 16.5 lbs/day Average Weekly Limit.

The effluent limit of 16.5 lbs/day Average Weekly Limit authorizes the permittee to discharge at levels greater than EPA approved WLA for the facility.

During the public comment period for the draft permit, we raised our concern about the permit average weekly effluent limits exceeding the facility WLA. However, our concerns were brushed aside by EPA at several points in EPA's "Response to Comments."¹¹

See excerpts from Response to Comments below:

ICL comment:

"[D]ischarging greater than 11 lbs/day exceeds the TMDL wasteload allocation assigned to the Homedale WWTP. The WLA is "the maximum daily load" that this facility can lawfully discharge. The WLA is not expressed as an annual load as some EPA approved Idaho TMDLs are; nor is it expressed as a monthly or weekly load. Neither the State's TMDL nor the EPA approval of the TMDL provide justification for extrapolating this facility's daily load limit to an average monthly or weekly load limit. Doing so would allow the facility to exceed the EPA approved WLA on some days. Thus it is possible to be in compliance with the TP limit proposed in this draft NPDES permit and in violation of the TMDL. This conflict is unlawful and must be remedied. Therefore, the effluent limit for the facility must include a maximum daily discharge limit for TP of no greater than 11 lbs/day. As EPA must develop weekly and monthly average limits pursuant to 40 CFR 122.45(d)(2), then EPA must

¹¹ United States Environmental Protection Agency Region 10, Response to Comments, City of Homedale NPDES Permit, Permit Number: ID-002042-7, August 16, 2013. Pages 1-3.

state that the weekly and monthly average limit is 11 lbs/day.

EPA Response:

[T]he monthly limit of 11 lbs/day TP is consistent with the assumptions and requirements of the WLA in the TMDL and appropriately implemented in the permit as a monthly average with units of lbs/day.

The units of a TMDL, i.e. lbs/day (kg/day) units do not require the compliance period to be daily average. The permit correctly requires that all samples of TP measured for the month be averaged for compliance with the TP monthly effluent limitation. This is similar to monthly average compliance monitoring of TSS and BOD₅ for compliance with the monthly effluent limitations for TSS and BOD₅. Even though the limits have lbs/day units the average of all samples over the month are averaged for compliance with the monthly limits.

The EPA justifies the use of an Average Weekly Limit of 16.5 lbs/day – which exceeds the facilities WLA – based on the inclusion of a Monthly Average Limit of 11 lbs/day. This rational hinges on EPA’s belief that a Total *Maximum Daily Load* does not actually represent a *maximum daily* load.

In its “Response to Comments” the EPA asserts that the facility WLA, expressed in lbs/day is actually a monthly average. EPA states¹²:

The WLA as expressed in the TMDL is an average monthly load based on a TP discharge concentration of 3.5 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.

This is patently false. The Mid Snake River/Succor Creek TMDL contains no mention whatsoever of WLA’s being expressed as Average Monthly Loads. In fact, a search of the TMDL document reveals that the term “average monthly load” is never used in the entire document.

In an effort to bolster its claim that daily discharges exceeding the WLA of 11 lbs/day were somehow foreseen (and approved) by the TMDL, the EPA

¹² United States Environmental Protection Agency Region 10, Response to Comments, City of Homedale NPDES Permit, Permit Number: ID-002042-7, August 16, 2013. Page 2.

cites recent “personal communications” with two Idaho DEQ staff members and an erroneous conclusion stated in Idaho’s 401 certification of the permit. See below¹³:

The EPA’s interpretation of the averaging period for the WLA was confirmed through communication with IDEQ staff during development of the permit. (Personal communication between John Drabek and Lauri Monnot, Watershed Manager, IDEQ Boise Regional Office in 2012 and Marti Bridges, IDEQ Program Manager on May 17, 2013). IDEQ’s 401 Certification states “The EPA approved *Mid Snake River/Succor Creek TMDL(2003)* established wasteload allocations for total phosphorus....the effluent limitations and associated requirements contained in the City of Homedale WWTF permit are set at levels that comply [with] these waste load allocations.”

Therefore the monthly limit of 11 lbs/day TP is consistent with the assumptions and requirements of the WLA in the TMDL and appropriately implemented in the permit as a monthly average with units of lbs/day.

Here, as above, the EPA is not providing any actual information linking the permit’s use of effluent limits that exceed the WLA to facts actually found in the germane TMDL. Personal communications between staffers nearly a decade after the TMDL was written cannot credibly be used to demonstrate that the written words of the TMDL somehow do not actually mean what they plainly say and mean.

The Mid Snake River/Succor Creek TMDL contains no mention whatsoever of WLA’s being expressed as Average Monthly Loads. The TMDL expresses the WLA in lbs/day – and it clearly means that the *maximum daily* discharge authorized by the Homedale WWTP is 11 lbs/day.

In order to ensure that the permit’s effluent limits for total phosphorus are consistent with the permittee’s WLA for total phosphorus, the permit needs to provide for a daily maximum discharge of no more than 11 lbs of total phosphorus. Consistent with this, the permit’s ‘average monthly limit’ and ‘average weekly limit’ must also not exceed 11 lbs/day.

CONCLUSION

Petitioner has demonstrated that the EPA issued permit conditions in the contested permit that were based on errors of law and/or fact, and are counter to EPA regulations related to the use of WLA in the development of effluent limits. Conditions contained in the contested permit are counter to

¹³ Ibid. p. 2.

the WLA's developed for the permittee's facility in the germane TMDL and fail to ensure that compliance with the contested permit will not further degrade water quality in this already impaired segment of the Snake River and result in further violation of Idaho's Water Quality Standards.

Petitioners ask that the EAB concur with their claims and find the contested permit deficient. Further Petitioners ask that the EAB direct the EPA to stay all permit conditions authorizing the discharge of phosphorus in excess of the EPA approved WLA for this facility until such time that the permit can be reissued in a manner that is consistent with the Clean Water Act's legal requirements.

Petitioners ask that the EAB grant the Petitioner the opportunity for an Oral Argument to explain our Petition for Review and our underlying concerns as articulated herein.

Petitioner further asks that the EAB grant such other relief as the EAB deems appropriate in this matter.

Submitted by: _____



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Pro Se Litigant

Date: 9/27/13

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 2,600 words in length.

LIST OF ATTCHMENTS

Complete versions are being provided electronically to the EAB Clerk's office.

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

Attachment #1: United States Environmental Protection Agency Region 10, Factsheet regarding proposal to issue National Pollutant Discharge Elimination System, The City of Homedale Wastewater Treatment Plant NPDES Permit Number: ID-002042-7, August 28, 2013

Attachment #2: Idaho Conservation League comments on draft NPDES permit for Homedale wastewater treatment plant (ID002042-7), March 14, 2013.

Attachment #3: United States Environmental Protection Agency Region 10, Approval of Total Maximum Daily Loads for Mid-Snake River/Succor Creek, Idaho. January 5, 2004.

Attachment #4: Idaho Department of Environmental Quality, The Mid Snake River/Succor Creek Subbasin Assessment and Total Maximum Daily Load. April 2003. ***** This is 422 page document. I am attaching just the pages that are relevant to this petition for review. I will file a complete electronically. *****

Attachment #5: United States Environmental Protection Agency Region 10, Authorization to Discharge under the National Pollutant Discharge Elimination System, The City of Homedale Wastewater Treatment Plant NPDES Permit Number: ID-002042-7, August 28, 2013

Attachment #6: United States Environmental Protection Agency Region 10, Response to Comments, City of Homedale NPDES Permit, Permit Number: ID-002042-7, August 16, 2013.

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

In re:

City of Homedale
Wastewater Treatment Plant
Permit No.: ID-002042-7

Certificate of Service

Regarding the petition for review which was filed on 9/27/13, all parties to this action were given notice at that time. Enclosed please find a Certificate of Service
DATED today, 18th day of October, 2013.

Respectfully submitted,



Justin Hayes
Pro Se Litigant

CERTIFICATE OF SERVICE

I hereby certify that on the 27th of September, 2013, I caused a true and correct copy of the Petition for Review regarding the NPDES permit for the City of Homedale (Permit number ID-002042-7) to be served upon the following, by the method indicated:

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
WJC East, Room 3334
Washington, DC 20004

[VIA FAX and FEDERAL EXPRESS]

City of Homedale
PO Box 757
Homedale ID 83628

[VIA US MAIL]

Dennis McLerran, Regional Administrator
EPA - Region 10
1200 6th Ave., Suite 900
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[VIA US MAIL]

DATED this 18th day of October, 2013.

Submitted by: _____



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