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Idaho Conservation League

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May 29, 2015

Paula Wilson
DEQ State Office
Attorney General's Office
1410 N. Hilton
Boise, ID 83706

Submitted via email: paula.wilson@deq.idaho.gov

Re: Idaho Conservation League Comments re Idaho Pollutant Discharge Elimination System Program: Docket No. 58-0125-1401 - Negotiated Rulemaking. Public Comment period #5

Dear Ms. Wilson;

Since 1973, the Idaho Conservation League (ICL) has been Idaho's voice for clean water, clean air and wilderness—values that are the foundation for Idaho's extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. As Idaho's largest state-based conservation organization, we represent over 25,000 supporters, many of whom have a deep personal interest in protecting Idaho's water quality, fisheries and the health of Idaho residents. The issuance of NPDES permits is critical to protecting and restoring water quality in Idaho. Idaho's effort to obtain primacy over discharge permits issued within its borders has the potential to significantly affect water quality in Idaho.

ICL appreciates the opportunity to review Discussion Paper #5 and related materials regarding IPDES Fees and Administration.

We have reviewed DEQ's recalculation of the number of discharge permits that the IPDES program is likely to encompass and find DEQ's new estimate to be more in line with what we believe to be the number of permits that need to be serviced. We appreciate DEQ's efforts to more accurately capture this effort.

Staffing Levels

Correctly gauging the number of permits is one of several critical components to accurately projecting needed staffing levels. Another key variable in accurately projecting needed staffing levels is the number of hours necessary to execute tasks.

Given the more accurate estimation of the number of IPDES permits, we support DEQ's increase in staff necessary to undertake the Compliance, Inspection and Enforcement (CIE) activities. The increase in the number of permits necessitates the nearly doubling of staff (from 8 FTEs to 14.6 FTEs) needed to carry out this important role.

However, we are gravely concerned that DEQ is grossly underestimating the number of hours that will be required to successfully implement permitting tasks.

In January, the DEQ underestimated the number of permits that would be part of the IPDES program. Still, even with what DEQ now admits was a significant underestimate, the DEQ estimated that it would take 11 FTEs approximately 19,800 hours to undertake permitting activities. Now, with the significant increase in the estimated number of permits that will be in the IPDES program, the DEQ estimates that this vastly increased permit load can be adequately service by only 7.1 FTEs in only 12,728 hours. This seems suspect.

DEQ is clearly attempting to keep this program within a scale that they believe that the legislature will support. However, by artificially constraining the budget to under \$2.8 million, the DEQ is forced to artificially constrain needed staff numbers.

The January IPDES program staff and budget estimate was a total of 25.5 FTE and \$2.7 million per year. The 'new and improved' staff and budget estimate to cover the significantly larger number of permits is 28.5 FTE and \$2.8 million per year.

The pursuit of NPDES primacy has, in part, been stoked the assertion that Idaho will be able to process permits more quickly than the EPA and that Idaho will expeditiously churn out permits and work through the existing backlog. As noted in a prior DEQ analysis, the EPA is currently struggling to re-issue permits in a timely manner and there currently exists a significant 'backlog' of out-of-date permits. The DEQ analysis reports that 35% of all NPDES permits in Idaho are out of date. Per the January DEQ report, the EPA appears to have 13-14 FTE permit writers servicing Idaho's permit needs – yet this backlog continues to exist.

In prior comments to DEQ on the issue of staffing levels, we raised concern about the number of staff (11 FTEs) DEQ was proposing to devote to permitting. DEQ's reduction in the number of permitting staff to just 7.1 FTE is preposterous and casts the validity of the State's efforts to secure primacy of NPDES permitting into doubt and seems completely divorced from the reality.

DEQ is simply going to have to increase the total budget for the IPDES program and hire the proper number of staff to implement the IPDES program.

Fees

We feel compelled to point out that the proposed fee structure results in municipalities bearing the costs for a hugely disproportionate share of the IPDES program. This seems

inherently unfair. Why should small towns pay their fair share yet private, for profit aquiculture operations pay nothing? Why should the municipalities as a whole pay nearly half of all of the fees charge by the program? Why should urban areas be subsidizing rural areas? And, why should the city of Boise pay nearly 10% of all of the annual fees collected in the entire state? Will 10% of the entire resources of the IPDES program be devoted to servicing the City of Boise? Of course not; so why is Boise paying 10% of all of the fees?

We believe that permittees should be charged pursuant to the amount of work that is required to service their permits and ancillary needs. DEQ's current proposal shifts costs away from those who have been vocal opponents of the State seeking privacy because of their objects to having to pay for their discharge permits. In essence, those who opposed primacy on grounds that they did not want to pay for their own permits are being rewarded by not having to pay for permits. Foisting these costs onto others creates an unfair system that will likely prove unpopular and unsustainable as time goes on and the paying part of the universe begins to feel as if they have been taken advantage of.

We urge DEQ to create a more equitable system for allocating costs to permittees.

Please contact me if you have any questions at 208-345-6933 x 24 or jhayes@idahoconservation.org

Sincerely,

A handwritten signature in blue ink, appearing to read "Justin Hayes".

Justin Hayes
Program Director

