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1410 N. Hilton Street  
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Submitted via e-mail to: [paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

**Re: Design and Construction of Phosphogypsum Stacks: Docket No. 58-0119-2001 Negotiated Rulemaking (Rule Draft #2)**

Dear Ms. Wilson:

Thank you for considering our comments on the second rule draft for Docket No. 58-0119-2001 Negotiated Rulemaking. Since 1973, the Idaho Conservation League has had a long history of involvement with phosphate mining in southeastern Idaho. As Idaho's largest state-based conservation organization we represent over 30,000 supporters who have a deep personal interest in ensuring that our state's water quality is protected.

ICL appreciates the initiation of the rulemaking process and continues to support the development of this rule, which should provide regulatory certainty surrounding the design and construction of phosphogypsum stacks. We have previously submitted comments on the first rule draft and subsequent discussion points. Our new comments on the second rule draft are found below.

**Seepage Testing**

We continue to advocate for this rulemaking to comprehensively address water quality issues that can arise at phosphogypsum stack systems. Specifically, our position is that the rule should require seepage testing or a reasonable alternative. DEQ has stated repeatedly that seepage testing is a technically viable method for large ponds, citing a 2011 white paper that provided a statistical review of seepage test calculations. However, in rule draft #2, that seepage testing requirement was removed by DEQ.

Based on the last rulemaking meeting, it appears that DEQ has come to the conclusion that seepage testing should not be mandated in this rule because it is an "operational issue." We disagree with that

conclusion. Seepage testing is indeed directly related to the design and construction of phosphogypsum stacks. During the October 30th rulemaking meeting, DEQ stated that the groundwater monitoring plan was included in this rule because it is “tied to the functionality of the [stack] design” (which we agree with). The logic here is that you need a groundwater monitoring plan to make sure that the stack design is functioning as it should. We are perplexed as to why DEQ does not view that logic as equally applicable to the need for seepage testing (or a reasonable alternative) in this rule. Seepage testing is necessary to determine whether the liners - a fundamental component of the stack design - are functioning as they should be. We would also be comfortable with an exception in the case of an appropriate alternative being used, such as a double-lined system with leak detection technology.

If seepage testing requirements are not included in this rule, then how/where in the regulatory realm will the performance of the liner - and therefore the potential water quality impacts from leaking liners - be addressed?

### **Groundwater Monitoring Plan**

A comprehensive groundwater monitoring plan is necessary to assess the performance of the liners associated with phosphogypsum stacks. The performance of the extraction wells is also fundamentally tied to the assessment of whether the stack design is functioning as it should and therefore should be included in the rule. In general, we disagree with DEQ’s decision to trim the requirements in that section of the rule, as well as the proposal to remove even more of these requirements in a future draft. Based on the intent of the statute and the rulemaking effort, we believe there is adequate justification to keep those requirements in the rule.

### **Intent of Rule**

At the October 30th rulemaking meeting, Simplot stated that “this rule is not about the release of hazardous substances, just design.” In our view, it is inappropriate to make a distinction between the design of the phosphogypsum stacks and the release of pollutants in terms of applicability to this rule; the very purpose of having design standards is to prevent adverse impacts to the environment. As stated in the “Scope and Applicability” section of Idaho House Bill 367, the intent of the rule is to establish “minimum design and construction requirements to ensure that phosphogypsum stack system impoundments meet critical safety standards and do not cause unplanned releases into the environment” (emphasis added). Components such as seepage testing and a robust groundwater monitoring plan fit well within the scope of this rulemaking based on the language of the enabling statute.

We thank you for the continued opportunities to submit comments on the proposed rule. We look forward to continuing to work with the Department of Environmental Quality on this rulemaking and others in the future. Please feel free to contact us if you have any questions or require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Josh Johnson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Josh Johnson, Central Idaho Conservation Associate  
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