

## RESPONSE TO COMMENTS

**City of Twin Falls  
Wastewater Treatment Plant  
NPDES Permit # ID-002127-0  
May 10, 2011**

On March 1, 2011, the U.S. Environmental Protection Agency (EPA) issued a public notice for the proposed modification of the City of Twin Falls (Twin Falls) Wastewater Treatment Plant (WWTP) draft National Pollutant Discharge Elimination System (NPDES) Permit No. ID-002127-0. This Response to Comments provides a summary of significant comments and provides corresponding EPA responses. The comments did not result in any changes to the permit modification; the permit is unchanged from the draft modification to the final modification.

Comments were received from the following:

Justin Hayes, Program Director, Idaho Conservation League (ICL)

- 1. Comment (ICL):** EPA should clarify that Twin Falls' compliance with the "Agreement Regarding TSS Projects" is an effluent limit and, as such, is citizen suit enforceable. The agreement is referenced in the State's 401 cert – thus we believe that it is an enforceable aspect of the NPDES permit. That said, we think that EPA should be very clear on this point so as to avoid any future confusion.

**Response:** Pursuant to Section 401(d) of the Clean Water Act, EPA has required Twin Falls to comply with the conditions set forth in the 401 Certification, which includes the Agreement Regarding TSS Projects (Agreement). 33 U.S.C. §1341(d). The 401 Certification and the Agreement Regarding TSS Projects (Agreement) are included in Appendix A of the NPDES permit for Twin Falls. Section 505(f) of the Clean Water Act states that a 401 certification is an "effluent standard or limitation" as that term is used in Section 505 of the Clean Water Act. As such, the conditions set forth in the 401 Certification, including the Agreement, are enforceable conditions of the Permit that are subject to citizen suit enforcement. The permit is unchanged from the draft modification to the final modification.

- 2. Comment (ICL):** The timeline for completion noted in the agreement between the DEQ and Twin Falls – 5 years from the effective date of the agreement – is unacceptably far off into the future. Indeed this delay pushes the 'compliance date' for these projects out beyond the expiration date of the NPDES permit (10/31/2014). As we have discussed with Region 10 before, we believe that such protracted compliance schedules are not lawful.

**Response:** The timeline for completion of the projects set forth in the Agreement are conditions of the 401 certification that EPA is required to include as part of the Permit

pursuant to Section 401(d) of the Clean Water Act. The timeline for completion of the projects is not a compliance schedule under the Clean Water Act. Even if the timeline for completion of the projects is considered a compliance schedule, EPA can include a compliance schedule that extends past the expiration date of a NPDES permit. *See* Memorandum re: Compliance Schedules for Water Quality-Based Effluent Limitations in NPDES Permits, from James A. Hanlon, Director, Office of Wastewater Management, EPA, to Alexis Strauss, Director, Water Division, EPA Region 9, dated May 10, 2007.

Moreover, time is required to build, adapt, and evaluate the effectiveness of the wetland projects. *See* A Handbook of Constructed Wetlands, prepared by USDA-Natural Resources Conservation Service and the US EPA Region 3. There are also local environmental factors that the City will have to manage when creating and optimizing the wetlands such as the quality of the irrigation return flow water. As such, EPA does not consider the timeline for completion of the projects to be a compliance schedule, and, the timeline for completion of the projects is appropriate.

3. **Comment (ICL):** Because the compliance date is beyond the expiration date of the permit we think that it is premature to eliminate the TSS compliance schedule from the NPDES permit. We believe that it would be more appropriate to leave the compliance schedule and the current interim and final effluent limits in place but to also include a mechanism by which Twin Falls can avoid the need to achieve 980 lbs/day TSS *if and when* the proposed offset projects are successfully implemented. Failure to bring these projects on line and/or failure to meet expected reductions by June 30, 2014 should be considered a violation of the NPDES effluent limits.

**Response:** As explained in Response to Comment 2, the timeline for completion of the projects in the Agreement is a condition of the 401 certification which EPA is required to include as a condition of the Permit pursuant to Section 401(d) of the Clean Water Act. Moreover, assuming the timeline for completion of the projects is a compliance schedule, EPA believes that the timeline is appropriate and allows for completion of the projects as soon as possible. *See* Response to Comment 2. The TSS effluent limit in the Permit is a final effluent limit that is included in the Permit to implement the Upper Snake Rock Subbasin Total Maximum Daily Load (TMDL). The City is already in compliance with this effluent limit; therefore, a TSS compliance schedule is not needed in the Permit. Moreover, since the TSS limit is the same as the previous permit, EPA cannot include a compliance schedule in the Permit to meet this limit.