Before the Board of Environmental Quality
State of Idaho

City of Boise, Petitioner, vs. Idaho Department of Environmental Quality, Respondent.

Petitioner City of Boise ("City"), by and through its counsel of record, Mary R. Grant, hereby submits this Petition for Review to appeal the recent decision of Respondent Idaho Department of Environmental Quality ("Department" or "IDEQ") to issue a Notice of Noncompliance with the City's Idaho Pollutant Discharge Elimination System ("IPDES") Permit ID0020443. In appealing the action, the City alleges as follows:

I. FACTUAL AND PROCEDURAL HISTORY

The City has two (2) water renewal facilities, which have operated under two (2) IPDES

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permits during the applicable timeframe: the Lander Street Water Renewal Facility ("Lander St WRF") and the West Boise Water Renewal Facility ("WB WRF"). The subject permit for this appeal is applicable to the Lander St WRF. Each WRF treats municipal sewage and generates a material derived from the treatment process referred to as "sewage sludge" or "biosolids," which terms are used interchangeably. The Class B biosolids generated at the Lander St WRF are pumped seven (7) miles through a six (6) inch pipeline in dilute slurry to the WB WRF, where it is combined with Class B biosolids produced at WB WRF, dewatered, and hauled by truck to the City's Twenty Mile South Biosolids Application Site.

On Sunday, April 17, 2022, the pipeline transporting the biosolids from Lander St WRF to WB WRF experienced a break near Chinden Blvd and N. Maple Grove in Garden City, Idaho. The break resulted in the release of material on or around the above-noted intersection and into a water body (the Boise River via the Thurman Drain). There was potential public exposure to the material as vehicles drove through the material. The City reported the incident to IDEQ and took all necessary measures to clean the material from road, gutter, and other surfaces, the stormwater catch basin and two (2) manholes, and to take action to repair the pipeline at the point of the break. Details of the extent of the materials release, the City's actions in notifying the appropriate authorities, and the response to fix the break and clean the site were captured in a written report issued by the City's Operations Division Senior Manager on April 22, 2022.

On May 11, 2022, the Department issued a Notice of Noncompliance ("Notice") to the City of a violation of the IDPES permit, characterizing the April 17th release of biosolids as a sanitary

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1 IDEQ has just issued a new IDPES permit to the City of Boise, covering both facilities, with an effective date of July 1, 2022.
sewer overflow ("SSO") into the Thurman Drain, which connects to the Boise River. From the onset of communication with DEQ, DEQ staff indicated a 24-hour notice for permit noncompliance was required and the release is considered an SSO. DEQ did not classify the transported material as biosolids and is seeking consistency in reporting these types of releases with reporting received from other agencies under their respective permits. The City files this Petition for Review alleging that characterization of a biosolids release as an SSO: 1) is not consistent with statutory definitions and terms in the permit of "sewage" and "overflow" because of the level of treatment to the material prior to transport in the pipeline, and; 2) has far-reaching implication for the City's future compliance with its IPDES permit(s) and may set misguided precedent for other permittees.

II. STANDARD OF REVIEW

Rules of the Idaho Administrative Code provide for the appeal of an action of the Department by any person aggrieved by such action. IDAPA 58.01.23.002. An agency action includes the whole or part of any rule or order. IDAPA 04.11.01.005.03. The petition must be filed within thirty-five (35) days from the date of action of the Department. IDAPA 58.01.23.060. Filing a petition for review is required prior to seeking any judicial review of the Department's action. See Idaho Code (I.C.) § 67-5271.

An agency action may be reversed if it is in violation of constitutional or statutory provisions, is in excess of statutory authority, is made on unlawful procedure, or is arbitrary, capricious or an abuse of discretion. I.C. § 67-5279. An agency is entitled to some deference for interpretation of the laws it administers provided it is reasonable and not in conflict with the express language of a statute. Two Jinn, Inc. v. Idaho Dept. of Ins., 154 Idaho 1, 3 (2013).
III. GROUNDS FOR APPEAL

A. Applicable Law

An SSO is the release or overflow of untreated or partially treated sewage from a municipal sanitary sewer. As used under the Clean Water Act and its regulations, "sewage" is defined as a distinct pollutant separate and apart from "sewage sludge." See 40 CFR § 401.11(f). Contrary to untreated or partially treated sewage, biosolids (sewage sludge) are a product of the wastewater treatment process. The materials have been separated from liquids and treated both by physical and chemical processes:

* Sewage sludge is solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. . . .

40 CFR §503.9(w).

In addition to and apart from federal regulations, the IPDES permit language indicates what constitutes an overflow. The Twenty-four Hour Notice of Noncompliance Reporting by a permittee is applicable to "any overflow prior to treatment works." IPDES Permit ID0020443, Sec. III.G.1., p.36 (Emphasis added). An overflow is:

…any spill, release, or diversion of municipal sewage including:

(i) an overflow that results in discharge to waters of the United States and
(ii) an overflow of wastewater … that does not reach waters of the United States.

Id. In sum, to qualify as an SSO, the material must be municipal or raw sewage, and the spill, release, or diversion must occur prior to treatment.

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2 40 CFR §503.9(w).
B. Argument

The material transported through the pipeline from the Lander Street WRF easily and clearly meets the definition of sewage sludge, as opposed to raw or municipal sewage, because of the treatment process at that WRF. After physical separation of the solids from sewage, removed by the influent screens and grit removal, influent is directed to the primary clarifiers. The primary clarifier effluent is then treated for removal of phosphorus, ammonia, and nitrogen and sent to secondary clarifiers. Solids are allowed to settle in the secondary clarifiers and sent to a gravity belt thickener. Solids removed from both the primary and the gravity belt thickener are pumped to primary and secondary anaerobic digesters. The digested sludge is treated to Class B biosolids standards for Pathogen Reduction and Vector Attraction and pumped through the pipeline. The material is about 1.5% solids and is dewatered at WB WRF to 11-14% solids and then trucked to the land application site.

For particular parameters, please see the following that these Class B biosolids have met:

- Pathogen Reduction through anaerobic digestion at Lander Street WRF. Per Option 3 in Appendix B of 40 CFR Part 503, the biosolids must be heated in anaerobic digesters to between 35 and 55 degrees Celsius and retained for a minimum of 15 days. Digester temperatures are continuously monitored at both facilities, and the digester times are calculated each day.
- Vector Attraction through Option 1 in accordance with 40 CFR Part 503.33 (b) (1). This requires the reduction of total volatile solids by at least 38% during anaerobic digestion.
- Pollutant concentration – City of Boise biosolids meet both ceiling concentration limits (Table 1 of 40 CFR Part 503.13) and pollutant concentration limits (Table 3 of 40 CFR Part 503.13) for the 503 regulated metals.
- Monitoring frequency – due to the amount of biosolids produced by the City (between 1,500 and 15,000 dry metric tons per year), pollutants, pathogen density, and vector attraction must be monitored at least six (6) times per year.

In summary, the material transported by the pipeline is collected at an advanced stage in the wastewater treatment process, meets the EPA pollutant and pathogen requirements for land
application, and, accordingly, qualifies as biosolids. The fact that the material is further dewatered at the WB WRF facility does not change the regulated elements of the material to Class B designation.

Moreover, the release of material did not occur prior to treatment in order to qualify as an overflow under the permit language.

Whether the City's assertion (that this is not an SSO) is consistent with other agencies' reporting or Notices of Noncompliance issued by DEQ is only a secondary consideration to whether the Notice here is legally supported. Rather, the City is interested in ensuring that any incident where material is released, before, during, or after a wastewater treatment process, is characterized dependent on 1) the applicable regulatory framework, 2) the context of the spill or release, and 3) the treatment processes the material has been through prior to release. In this circumstance, it appears there is an overreliance on the method of transport via the pipeline rather than the chemical and physical attributes of the material.

C. Effects of Characterizing a Biosolids Release as an SSO

The characterization of the release of material from the pipeline as an SSO severely inhibits the City's Public Works Operations' ability to repair and replace portions of the pipeline, as any diversion of the material from the pipeline would result in a notice of noncompliance. Additionally, regulatory reporting uncertainty would occur in the event of a release from a biosolids truck on a roadway. If DEQ continues with its current classification of this material, such a spill would be reported as an SSO.

Calling this an SSO is also inconsistent with the treatment of a similar biosolids release that occurred in our treatment works in May 2020. IDEQ had only recently taken over enforcement
of permittees at that time and was not issuing violations for any SSOs. However, IDEQ has now disproportionately broadened its enforcement to include these types of incidents as SSOs beyond what is supported by federal regulatory authority. The Notice would imply that the City's Biosolids Spill Response Plan is inadequate to address releases of the material.\(^3\)

Finally, raw or municipal sewage overflow has distinctly more severe implications for public health and safety than a release of biosolids. The biosolids have been processed and handled in a manner that minimizes the potential risk to human health. While every measure is taken to ensure that this material is land-applied without incident, the City acknowledges that the release of biosolids to a water body occurred. If there is a manner in which the incident qualifies as an event of noncompliance, IDEQ needs to appropriately characterize it rather than conflating the regulations applicable to municipal sewage and biosolids.

**D. Relief Sought**

The administrative process through IDEQ is necessary to settle whether this is an exceedance of enforcement authority and to gain clarity regarding IDEQ treatment of such incidents in the future. This is especially true as the City moves into meeting new requirements under the IPDES permit currently being issued. The City respectfully requests that the Department withdraw the Notice on the basis it cites insufficient legal grounds to justify the nature of the noncompliance event as an SSO.

**IV. CONCLUSION**

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\(^3\) The City is working to update this Response Plan to more explicitly include pipeline releases in addition to truck spills. The plan was most recently updated in 2019.
Because the nature of the biosolids release cannot be characterized as an SSO, the Department incorrectly issued the Notice on those grounds. As the consequences for events of noncompliance under the City's IPDES permit may be cumulative and are subject to escalation of Department remedies for enforcement, the Notice issued on May 11, 2022, should be withdrawn.

DATED this 15th day of June 2022.

OFFICE OF THE CITY ATTORNEY

MARY R. GRANT, Deputy City Attorney
Attorney for City of Boise
CERTIFICATE OF SERVICE

I hereby certify that I have on this 15th day of June 2022, a true and correct copy of the Petition for Review was served on the following as indicated below:

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Mary R. Grant
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