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Attorneys for Hayden Area Regional Sewer Board

BEFORE THE BOARD OF ENVIRONMENTAL QUALITY

STATE OF IDAHO

HAYDEN AREA REGIONAL SEWER
BOARD,

Petitioner,

v.

IDAHO DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Respondent.

Case No. _____

PETITION FOR REVIEW

Permittee: HARSB

Permitted facility: HARSB Water
Reclamation Facility, 10789 North
Atlas Road, Hayden, Idaho 83835

Permit No.: IPDES Permit No.
ID0026590

ATTENTION: Hearing Coordinator

The Hayden Area Regional Sewer Board (HARSB) files this Petition for Review to the Idaho Board of Environmental Quality (Board) under Idaho Code section 39-107(5), Idaho Code section Title 37, Chapter 52, IDAPA 58.01.23, and IDAPA 58.01.25.204.

BACKGROUND AND PARTIES

1. HARSB is a joint powers entity organized under Idaho Code sections 67-2326 through 67-2328 and section 67-2333, created to provide consolidated sewage treatment services to its members and their residents. Its members are the City of Hayden, Kootenai County, and the Hayden Lake Sewer District.

2. HARSB owns and operates a Water Reclamation Facility at 10789 North Atlas Road in Hayden, Idaho, which serves about 16,194 residents in the Hayden area.

3. HARSB is in the midst of a multiphase facility upgrade. In 2015, HARSB completed Phase I, which provided phosphorus removal to <0.5 mg/L as well as upgrades to headworks, flow EQ, and secondary clarification. Phase II was completed in 2023 and included the installation of tertiary clarification, membrane filtration, and biosolid dewatering technologies. These improvements have together cost HARSB approximately \$38,750,217, and have greatly enhanced HARSB's ability to monitor, test, and reduce the discharge of pollutants from the Facility.

4. The Environmental Protection Agency issued HARSB a Clean Water Act National Pollutant Discharge Elimination System ("NPDES") permit on September 30, 2014, with an expiration date of November 30, 2019.

5. On July 1, 2018, the EPA transferred CWA permitting responsibility to Idaho Department of Environmental Quality through the IPDES permit program.

6. HARSB applied to renew the 2014 permit with IDEQ on May 15, 2019. The 2014 permit remains in effect until IDEQ issues a new permit.

7. IDEQ submitted a draft permit for public comment on January 2, 2024. HARSB submitted comments on the draft permit on February 2, 2024. HARSB's

comments are included in this Petition. IDEQ issued a final permit (Permit) on April 29, 2024.

REPRESENTATIVES

8. Please serve copies of all filings, correspondence, and other materials related to this matter on the following representatives:

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and

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JURISDICTION AND AGGRIEVED-PARTY STATUS

9. The Board has jurisdiction over this Petition under Idaho Code section 38-107(5) and IDAPA 58.01.25.204 (Rule 204), among other applicable legal authority.

10. This Petition was filed within twenty-eight days of IDEQ's issuance of the Permit, as required by statute and rules.

11. HARSB is the permit-holder and applicant for the Permit. HARSB is also directly affected by the challenged conditions in the Permit. Among other things, to comply with the challenged permit conditions, HARSB will have to expend significant funds, increase rates to its ratepayers, direct employees to conduct activities related to the challenged permit conditions rather than activities related to operating the Facility, and conduct other compliance-related tasks that would not be required without the challenged permit conditions. HARSB also bears the risk of noncompliance with the challenged permit conditions, including fines and penalties, even though HARSB and its customers did not create the environmental conditions the challenged permit conditions are intended to address.

12. For these reasons, and others, HARSB is an aggrieved person under Idaho Code section 39-107(5) and Rule 204 and has standing to advance this Petition.

CHALLENGED PERMIT CONDITIONS AND LEGAL AND FACTUAL BASIS

13. HARSB challenges the following conditions of the Permit, on the following factual and legal bases.

14. While this Petition identifies and summarizes the legal and factual bases for each challenge, it does not contain an exhaustive explanation of the facts and the law. A full explanation of the legal and factual bases of the challenge will occur through the hearing process. HARSB reserves the right to amend this Petition; to present additional factual and legal arguments during the hearing process; to augment the record; and all other rights associated with this Petition.

15. **Section 1.2.2 – Narrative limits and visual observations.** Section 1.2.2 of the Permit requires that HARSB “observe the receiving water once per week in the vicinity

of where the effluent enters the surface water,” and create a log of each observation with photos and other information. Permit § 1.2.2. The stated justification for this requirement is to ensure compliance with narrative water-quality criteria.

Not supported by the facts. This condition is not supported by the facts. HARSB’s Facility uses advanced filtration technology that physically removes any particles large enough to be seen by the human eye. The Facility therefore does not discharge materials that can be observed through a visual inspection. As noted below and in the comments, HARSB is open to conducting visual monitoring at times when the Facility is physically capable of discharging materials that could be detected by the human eye—for example, when the effluent does not pass through the membranes. As written, however, the facts do not justify the visual-monitoring requirement.

Unreasonable. This condition is unreasonable. IDEQ did not consider the costs of this condition as they relate to the benefits provided by the condition. It is unreasonable to impose a condition without considering both the costs and the benefits as they relate to the characteristics of a particular facility.

To conduct the required observations and log the associated data and information, personnel from the Facility will have to travel roughly ten miles offsite, take photos of a river, and keep an extensive log of these visits. This will be costly, both in terms of materials and personnel time that should be devoted to tasks directly related to operating the Facility.

The benefits of this condition are very low, if there are benefits at all. As noted above, the Facility invested in state-of-the-art membrane technology, at great cost to its ratepayers, that makes it virtually impossible to pass materials that are floating, suspended,

or submerged. Any material that could be discharged through such a system would be microscopic – impossible to observe with the naked eye. Photographing the location of final discharge in a large body of water, miles away from the treatment facility, would provide no benefit – the photos are not capable of detecting the types of microscopic materials that could pass through the advanced membranes at the treatment facility. Comparing the high costs with the low or non-existent benefits confirms that the condition is unreasonable. At a minimum, imposing the condition without comparing the costs and benefits is unreasonable.

Not supported by applicable law. This condition is not supported by applicable law. IDEQ does not identify a basis in statute or in a lawfully promulgated rule that supports imposition of this condition under these circumstances. HARSB understands and visual monitoring may be useful under some circumstance—when it is physically possible that the Facility would discharge a material that the human eye could observe. This can occur only if the membranes are bypassed or otherwise not functioning. HARSB requests that this condition be required only when the membranes are bypassed, when the membranes are not functioning, or when the Facility’s effluent otherwise does not pass through the membranes.

16. **Section 2.1.1 – Influent Monitoring, and other PFAs-related conditions.**

Section 2.1.1 of the Permit requires influent monitoring for per- and polyfluoroalkyl substances (PFAs). Permit § 2.1.1. HARSB challenges this aspect of section 2.1.1 and the corresponding sections of the Permit and Fact Sheet that relate to PFAs, including Table 5 of Section 2.1.1; Table 6 of Section 2.1.1; Tables 8, 16, and 17 of the Fact Sheet; and section 2.3 of the Fact Sheet.

Not supported by the facts. These conditions are not supported by the facts in the record. There is no indication from the facts in the record that HARSB's influent contains PFAs. In its response to comments, IDEQ identifies several high-level, national- or regional-scale studies that suggest POTWs in general might discharge PFAs. But these studies are not specific to HARSB's Facility; they do not recommend, much less require, influent monitoring for PFAs; and they are not part of Idaho law in any case. Neither EPA nor the State of Idaho has established standards or requirements for PFAs for POTWs or surface water. Speculation that influent *might* contain PFAs is not a sufficient basis to include the PFAs-related conditions in the Permit.

In addition, EPA recently passed Safe Drinking Water Act (SDWA) limits for PFAs. Entities that are subject to these requirements are likely to begin testing for PFAs. These tests may provide information related to the presence, if any, of PFAs in the area. This precludes the need for immediate imposition of sampling requirements upon HARSB, which is not currently subject to PFAs-related requirements.

Unreasonable. These conditions are unreasonable. IDEQ imposed these conditions without comparing the costs of implementing them with the anticipated benefits. IDEQ also imposed these conditions on HARSB based on EPA standards that do not apply to HARSB. This is unreasonable because it applies the regulations, and their economic impact, beyond the circumstances that were analyzed by the agency in its decision to implement the rule. Stated another way, it is unreasonable to extend a regulation that applies to a discrete set of circumstances to another set of circumstances without a facility-specific analysis of its effects.

In addition, IDEQ imposed this condition without conducting any analysis to determine whether HARSB's influent or effluent contains PFAs.

Not supported by governing law. These conditions are not supported by governing law. IDEQ does not identify a basis for these conditions in statute or lawfully promulgated rule. The sources that IDEQ does identify are either nonbinding guidance; federal documents that are not part of Idaho law; or standards/regulations that do not apply directly to HARSB. For these reasons, the PFAs-related conditions, including those identified above, should be removed from the Permit.

17. **Methylmercury Fish Tissue Monitoring Plan.** Section 3 of the Permit contains "Special Conditions." Section 3.9 requires HARSB to "develop and implement a methylmercury (MeHg) fish tissue monitoring plan" to "determine if fish tissue concentrations of MeHg are compliant with Idaho's MeHg fish tissue criterion of .3 milligrams per kilogram." Permit at §§ 3.9, 3.9.1.

Not supported by the facts. This condition is not supported by the facts in the record. HARSB already samples its effluent for mercury using EPA's approved methods. No sample has ever shown the presence of mercury in the discharge. Accordingly, available data show that the Facility doesn't discharge mercury. At a minimum, no information suggests that the Facility does, in fact, discharge mercury. The facts in the record do not support imposition of the fish-tissue sampling plan. IDEQ's response to comments suggests that, notwithstanding the consistent sampling results showing no mercury, the Facility *might* discharge "minute concentrations" of mercury, which "can accumulate in organisms over time." Fact Sheet at 133. This is speculation, not supported

by the facts in the record, that does not justify imposition of fish-tissue sampling as a condition of the Permit.

In addition, in light of the existing samples that reveal the Facility does not discharge mercury, at least in measurable amounts, the results of any fish-tissue sampling would not help evaluate the Facility's compliance with the Clean Water Act. As IDEQ has stated in other circumstances, "Sampling fish to determine in-stream concentrations of mercury downstream of point discharges doesn't necessarily yield useful information about the discharge-specific impacts, unless the fish being monitored are relatively non-migratory (such as sculpin)." IDEQ, Implementation Guidance for the Idaho Mercury Water Quality Criteria (April 2005) at 99 (2005 Guidance). The facts do not support imposition of this condition.

Unreasonable. This condition is unreasonable as applied to HARSB. The fish-tissue sampling requirement will compel HARSB to contract with a third-party consultant to complete a complicated study on the river outside the Facility. The costs of the sampling are likely to be significant, particularly when compared to HARSB's customer base. The study is unlikely to provide data that is useful to evaluate the Facility's compliance with the Clean Water Act. The Facility's effluent sampling establishes that it does not discharge mercury in measurable amounts. Data regarding mercury—if any—in the tissue of bull trout would, at most, provide general information about fish-tissue concentrations. The data wouldn't provide Facility-specific information tied to the purpose of the Permit. This problem is made worse because bull trout are migratory. IDEQ's own guidance indicates that fish-tissue sampling on migratory fish is not likely to yield useful information about discharge-specific impacts. *See* 2005 Guidance at 99.

To the extent IDEQ desires data about the general condition of the river, and the general status of the river's compliance with water quality standards, IDEQ may collect that data itself, but should not impose the costs on HARSB ratepayers, who have already spent tens of millions of dollars to upgrade the Facility, to the point that the Facility doesn't discharge detectable quantities of mercury. IDEQ's imposition of this condition without considering the costs and benefits, and its imposition of specific costs on HARSB customers that would not provide information useful to evaluate the Facility's compliance with the Clean Water Act, is unreasonable.

Not supported by applicable law. This condition is not supported by applicable law. IDEQ does not identify any statute or lawfully promulgated rule that justifies imposition of this condition. In the response to comments, IDEQ states that the fish-tissue study information is required to determine compliance with mercury water quality criteria. Fact Sheet at 133. But WQBELs can be imposed only after Reasonable Potential Analysis is complete. And the Fact Sheet states that there is no reasonable potential that mercury from the discharge would cause or contribute to an exceedance of water quality standards. *Id.* at 43 (noting that "there is no RPTE for the 2024 permit" for mercury). So sampling cannot be imposed to ensure compliance with the mercury water quality criteria.

The response to comments also states that the fish-tissue sampling is supported by (or suggested by, or required by; the response is not quite clear on this front) a 2015 Biological Opinion issued by the U.S. Fish and Wildlife Service as part of EPA's section 7 consultation regarding approval of Idaho's proposed water quality standard. Fact Sheet at 233. It states, "Reasonable prudent alternatives in a biological opinion are essentially a set of terms and conditions that DEQ follows in order to avoid negative impacts on an

endangered species.” *Id.* This misstates both the contents of the Biological Opinion and its legal context.

As to content, the Biological Opinion states that it would be reasonable and prudent to “use the 2001 EPA/2005 Idaho human health fish tissue criterion of .3 mg/kg wet weight for WQBELs.” Biological Opinion at 279. The WQBELs should be imposed “using the current methodology for developing WQBELs to protect human health;” namely, the “reasonable potential to exceed calculations.” *Id.* The Permit contains a reasonable potential calculation for mercury, which contends that there is no reasonable potential to exceed water quality standards for mercury. *See id.* This is precisely what the Biological Opinion recommends: conducting a reasonable potential calculation to determine whether WQBELs for mercury are required because there is no reasonable potential to exceed mercury water quality standards, the Biological Opinion doesn’t support a fish-tissue study in the permit.

In addition, a Biological Opinion does not provide a menu of options that IDEQ can simply incorporate into permits on a whim. The Biological Opinion served the limited purpose of satisfying EPA’s section 7 consultation requirements related to EPA’s decision to approve Idaho’s water quality standards. Once Idaho’s water quality standards are approved, IDEQ must apply those standards to IPDES permits in accordance with Idaho law. The Biological Opinion is not a law or rule of the State of Idaho; recommendations in a Biological Opinion cannot be treated by IDEQ as legally-binding requirements that compel particular conditions in a facility-specific permit.

IDEQ’s response to comments also cites the 2005 Guidance, stating that fish-tissue monitoring is “prescribed,” *i.e.*, required, by the 2005 Guidance. Fact Sheet at 43,

133. But guidance is not legally binding on IDEQ or HARSB. IDEQ cannot issue guidance without notice-and-comment rulemaking or legislative approval, and later point to the guidance as the sole legal basis for conditions in a permit. The 2005 Guidance does not, and cannot, legally prescribe a condition in an IPDES permit. Doing so would circumvent the procedural and substantive requirements for adopting legally binding rules in Idaho.

In short, the fish-tissue sampling requirement is not supported by statute or lawfully promulgated rule. The fish-tissue-sampling conditions should be removed from the Permit in their entirety.

18. **Whole Effluent Toxicity (WET) testing.** Section 3.3.1 of the Permit establishes a schedule that includes certain WET testing during June 1 through September 30. Permit § 3.3.1. In addition, Table 8 of the Permit requires sampling for chlorine twice per day. Permit Table 8, p. 24.

Not supported by the facts. This condition is not supported by the facts in the record. HARSB does not send effluent from the Facility to the Spokane River from June 1 to September 30. During these times, HARSB uses reclaimed water for irrigation purposes. To meet the standards that apply for land-application, specifically the standard for total coliform, HARSB increases its chlorine treatment during this period. If the reclaimed water is sampled for WET during this timeframe, the chlorine standard will likely be exceeded. This is because the water is not being discharged, and the WQBELs for chlorine do not apply.

IDEQ's response to comments notes that WET testing is not required if the facility does not discharge during that quarter. Fact Sheet at 135. HARSB appreciates this attempt at clarification but believes the Permit must be amended to explicitly state that

WET testing is not required during periods without discharge to avoid future ambiguity or confusion.

Unreasonable. Increasing chlorine testing two twice daily is not reasonable. The once-daily testing required by the current permit is accurate and sufficient to demonstrate HARSB's compliance with chlorine limits. HARSB has incrementally decreased the amount of chlorine used during the treatment process. HARSB currently uses only 10% of the chlorine that it used to. HARSB has not had any issue meeting chlorine standards, testing once per day, using much more chlorine than it currently does. Twice daily sampling for chlorine imposes a cost with no articulable benefit. The Permit should be clarified to confirm that WET testing is not required when there is no discharge from Outfall 001, and that chlorine samples are required once per day.

REQUEST FOR RELIEF


19. For these reasons, HARSB respectfully requests that the Board grant the following relief:

- a. That the conditions in the Permit challenged in this Petition be removed, revised, or otherwise altered as stated in the body of this Petition;
- b. That the Board initiate a contested case, hearing, or other procedure through which HARSB can present the facts and legal argument in support of this Petition;
- c. That HARSB be awarded its reasonable costs and attorney fees associated with this Petition, under Idaho Code 12-117 and any other applicable law; and

- d. Any other relief that the Board, Hearing Officer, or Director considers reasonable under the circumstances.

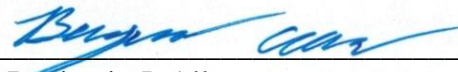
DATED May 24, 2024.

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By 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 24, 2024, I caused to be served a true and correct copy of the foregoing by the method indicated below:

Paula Wilson, Hearing Coordinator
Idaho Board of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255

- Email paula.wilson@deq.idaho.gov
- U.S. Mail
- Fax
- Hand Delivery



Preston N. Carter

EXHIBIT 1

EXHIBIT 1



HAYDEN AREA REGIONAL SEWER BOARD

10789 N. Atlas Road • Hayden, Idaho 83835 • Fax (208) 772-3863

Ken Windram, Administrator
Phone (208) 772-0672

February 2, 2024

Matt Stutzman
IPDES Permit Supervisor
Idaho Department of Environmental Quality (IDEQ)
1410 North Hilton Street
Boise ID 83706

Subject: Public Comment Review, by Hayden Area Regional Sewer Board (HARSB) on (IPDES Permit ID0026590) and (Fact Sheet for IPDES Permit No. ID0026590).

Dear Mr. Stutzman,

Hayden Area Regional Sewer Board (HARSB) offers the following public comments on the Draft for its Idaho Pollutant Discharge Elimination System (IPDES) Permit and Fact Sheet.

1. IPDES Permit Section 1.2, Page 6: Effluent Limits and Associated Monitoring Requirements first sentence says, “The permittee must operate the facility to limit pollutant discharges from Outfall 001”.

Comment: The HARSB Treatment Facility does not discharge effluent through the outfall during summer growing season at a minimum June 1 through September 30. As a result, the HARSB effluent does not impact the Spokane River. When HARSB Treatment Plant is not discharging through Outfall 001, HARSB cannot reasonably justify the expenditure of constituent resources required by sampling or testing associated with effluent discharge when it is not going to a receiving water of the U.S. therefore not under the Clean Waters Act.

Request: We request that a change be made to read “The permittee must operate the facility to limit pollutant discharges **while discharging through** Outfall 001 from Table 1 as described in Table 2 and Table 3 and meet all other permit conditions..”

2. IPDES Permit Section 1.2 Effluent Limits and Associated Monitoring Requirements – Table 2: the instantaneous minimum limit for pH has been increased from 6.4 S.U. to 6.5 S.U..

Table 3. Effluent characterization (2017 – 2022).

Parameter	Average	Maximum	Minimum	# of samples	Data Source
pH [SU]		6.4 - 7.8 (min – max)		42	DMR

Request: HARSB requests that the instantaneous minimum limit for pH be reduced from 6.5 to 6.4 S.U. based on the mixing zone allowed in the previous permit per Table 7 of the Fact Sheet and since HARSB measured pH levels down to 6.4 S.U. based on the data summarized in Table 3 of the Fact Sheet.

3. IPDES Permit Section 1.2.2 Narrative Limits states:

The permittee must comply with all narrative criteria at IDAPA 58.01.02.200. The permittee must observe the receiving water once per week in the vicinity of where the effluent enters the surface water. The permittee must maintain a log of each observation that includes photos, date, time, observer, and whether there is presence of floating, suspended or submerged matter; or other indications that the discharge causes a violation of IDAPA 58.01.02.200 narrative criteria. The log must be retained onsite and made available to DEQ upon request.

Comment: The HARSB Treatment Facility has ultra filtration membranes with a membrane pore size of 0.01 micron. This means that anything passing through the membranes is smaller than 0.01 micron in size. These membranes remove bacteria and viruses which are not visible to the naked eye. The IPDES Permit needs to recognize the excellent water quality being produced. There will be no “floating, suspended or submerged materials” in the plant effluent from the ultra-filtration system. We request that this paragraph be removed. If the Narrative Limit must stay, then please modify to the following paragraph to reduce the operator time and expense associated with the additional travel time offsite for an observation that is not affected by the plant effluent.

Request: *The permittee must comply with all narrative criteria at IDAPA 58.01.02.200. The permittee's discharge must not result in floating, suspended, or submerged matter of any kind in concentrations causing nuisance or objectionable conditions or that may impair designated beneficial uses in the receiving surface water. If the Ultra Filtration system is bypassed, the permittee must maintain a log of each observation that includes photos, date, time, observer, and whether there is presence of floating, suspended, or submerged matter in the effluent. The log must be retained onsite and made available to IDEQ upon request.*

4. IPDES Permit Section 2.1.1 Influent Monitoring – Table 5, Section 2.1.2 Additional Effluent Monitoring – Table 6, and Fact Sheet Tables 8, 16, and 17:

Comment: The potable water source that eventually ends up in the HARSB Plant influent comes from the Rathdrum Prairie – Spokane Valley Special Resource Aquifer. There is no reason to suspect that per- and polyfluoroalkyl substances (PFAS) are present in HARSB’s sewage. There is currently no surface water quality standard for PFAS. Testing the influent and effluent on a quarterly basis is unwarranted. Testing is only required to be performed as part of the permit renewal effluent monitoring process required in Section 2.1.5.

Request: That testing for per- and polyfluoroalkyl substances (PFAS) is only required to be performed as part of the permit renewal effluent monitoring process required in Section 2.1.5.

5. IPDES Permit Section 2.1.2 Additional Effluent Monitoring - Table 6 and Fact Sheet Table 8 and Table 17:

Comment: The HARSB effluent testing has shown that Mercury has not been detected in HARSB's discharge. The additional Mercury testing is unwarranted.

Request: That testing for Mercury is only required to be performed as part of the permit renewal effluent monitoring process required in Section 2.1.5.

6. IPDES Permit Section 2.1.2 Additional Effluent Monitoring - Table 6 and Fact Sheet Table 8 and Table 17: Continuous temperature effluent monitoring for Outfall 001.

Comment: The HARSB outfall pipeline near the Spokane River is on private property. HARSB does not own the land where the outfall pipe is located. There is a poorly written easement between HARSB and the property owner that basically only allows the pipe to be there. There is no provision for access, adding new structures or power/communication activities.

We believe additional effluent monitoring for continuous temperature is to provide data for a future Spokane River Total Maximum Daily Load (TMDL) for temperature. HARSB does not discharge to the Spokane River during the warmest period of the year. HARSB is not contributing to the high summer Spokane River temperatures. Furthermore, the HARSB outfall is empty with no flow during the Spokane River high temperature season. Therefore, there will be no outfall water temperature data to be collected for the Spokane River Temperature TMDL.

Request: HARSB requests that continuous temperature monitoring of its effluent be performed after the final treatment process at the treatment facility Outfall 001 effluent force main and prior to discharge to the Spokane River. All other effluent monitoring will be collected at the effluent force main of the treatment facility Outfall 001 which has been approved by IDEQ under the current permit.

7. IPDES Permit Section 2.1.4 Receiving Water Monitoring – Table 8 and Table 9 and Fact Sheet Table 19 and Table 20: Continuous temperature effluent monitoring of the upstream and downstream receiving water.

Comment: HARSB does not discharge plant effluent to the Spokane River June 1 through September 30. HARSB has long-term lease agreements with the farmer and ALK Source Materials, Inc. to provide irrigation water. Therefore, from June 1 through September 30,

the HARSB effluent will not enter the Spokane River and there will be no impact on the Spokane River.

Request: HARSB requests that continuous temperature monitoring of the receiving water not be required during the months that HARSB diverts its flow from the river to the reuse farm (June 1 through September 30).

8. IPDES Permit Section 3.9.1 Methylmercury Fish Tissue Monitoring Plan - Cooperative Fish Tissue Monitoring Plan and Fact Sheet Section 5.4.3: Per Section 2.2.3 of the Fact Sheet, the area of the Spokane River associated with the discharge from the HARSB POTW is not designated as critical habitat for Bull Trout and IDEQ is unaware of a bull trout population in the downstream portion of the Spokane River.

Comment: We understand the need for monitoring Mercury in fish tissue in the Spokane River. HARSB effluent Mercury test results are below the detection limit of the test procedure. Therefore, quarterly effluent water column monitoring and fish tissue receiving water monitoring is unreasonable to impose on HARSB given that mercury has not been detected in HARSB's discharge.

The purpose of HARSB treatment facility is to receive wastewater and turn it into clean water and biosolids. We are not freshwater biologists. We have learned that a Methylmercury Fish Tissue Monitoring Plan is a complicated process to gather the correct data and produce a viable report that the State of Idaho could use to issue fish consumption rules. It is unreasonable to put the cost of the Methylmercury Fish Tissue Monitoring Plan on the HARSB sewer rate payers. The sewer rate payers pay to clean the pollution from homes and businesses and not to fund fish studies.

Request: We do not feel that the HARSB sewer rate payers should be responsible for the Methylmercury Fish Tissue Monitoring Plan, gathering the data and paying the associated costs. We request that the Methylmercury Fish Tissue Monitoring Plan be removed from the HARSB IPDES Permit and assigned to an State of Idaho agency that has more responsibility for the Spokane River environmental and wildlife conditions in Idaho.

9. Fact Sheet Section 2.3 Pollutants of Concern: Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) and Mercury are listed as a pollutant of concern.

Comment: HARSB disagrees that PFAS is expected in its discharge. There is no data to support this assumption. Mercury has not been detected in its discharge either. These pollutants do not meet the criteria for pollutants of concern (POC).

Request: Remove Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) and Mercury from the pollutants of concern list. That testing for Perfluoroalkyl and Polyfluoroalkyl

Substances (PFAS) and Mercury is only required to be performed as part of the permit renewal effluent monitoring process required in Section 2.1.5.

10. IPDES Permit Page 35; Section 3.3.1 Sample Frequency, Test Species and Methods; For annual WET testing, the schedule is defined as follows:

2024: 1st Quarter (January 1—March 31)

2025: 2nd Quarter (April 1—June 30)

2026: 3rd Quarter (July 1—September 30)

2027: 4th Quarter (October 1—December 31)

Comment: As stated before, HARSB does not send treatment plant effluent to the Spokane River June 1 through September 30. During the growing season, HARSB produces Reuse Water for irrigating agricultural purposes during the growing season. There are different requirements for Reuse Water including Total Coliform. HARSB applies more chlorine to the disinfection process to meet the Total Coliform requirements.

Request: HARSB does not discharge to the Spokane River June 1 through September 30 and instead produces reuse water for farm irrigation. The high chlorine residual required for irrigation would result in failing any Wet Effluent Toxicity Test because there is no dechlorination. The permit needs to reflect WET test sampling when HARSB is not discharging to Outfall 001. We request a second sampling event in one of the other Spokane River effluent discharge quarters.

11. IPDES Permit Section 3.16.1 Toxic Management Practices Plan Page 48 Paragraph 10. f. reads as follows:

- f. A summary of facility treatment upgrades that have been completed during the previous 12-month period. Include a description of how those upgrades are considered to reduce PCBs and 2,3,7,8TCDD quantities discharged.

Comment: The HARSB Tertiary Treatment Upgrades were designed to meet the Spokane River Dissolved Oxygen TMDL by targeting the removal of Total Phosphorous. The tertiary treatment upgrades were not designed nor did IDEQ approve the facility design to treat or remove any PCBs or 2,3,7,8 TCDD. The treatment plant monitoring data shows that there are no 2,3,7,8 TCDD in the influent and effluent. There was no design consideration that the tertiary treatment will remove PCBs or 2,3,7,8 TCDD. Any removal of PCBs or 2,3,7,8 TCDD is a result of these organic pollutants adsorbing onto solids that are separated from the wastewater. Historically, PCB data indicates that the activated sludge treatment plant tends to show a reduction in PCBs from influent to effluent. At best, the Toxic Management Practices Plan annual report can show the PCB effluent testing results. The treatment plant operates the tertiary treatment system to remove Total Phosphorous. Any reduction in PCBs or 2,3,7,8 TCDD is not based on the plant design or operation.

Request: The modification of Section 10.f to require that the “Toxic Management Practices Plan Annual Report include the effluent data for only PCBs. That testing for 2,3,7,8 TCDD is only required to be performed as part of the permit renewal effluent monitoring process required in Section 2.1.5.

12. Fact Sheet Section 3.5.2.2 Pollutants without limits in the 2014 or 2023 permits – PCBs; Page 55 states:

DEQ expects BMPs in conjunction with tertiary treatment will significantly reduce the facility’s contribution of PCBs to the Spokane River. This expectation is supported by the findings in the 2021 peer reviewed article (Rodenburg 2021) entitled Effect of Membrane Filtration on the Fate of Polychlorinated Biphenyls in Wastewater Treatment, which when comparing the treatment provided by WWTP before and after tertiary technology was added, stated:

“...filtration reduced concentrations of total PCBs in the effluent at the Coeur d’Alene WWTP by over 50% to 289 pg/L from 644 pg/L, which reduced loads to the river by nearly 5 mg/d, a significant reduction for the Spokane River where total loads of PCBs from municipal WWTPs is estimated to be 51-125 mg/d (LimnoTech, 2016).”

“The two plants employing membrane filtration (Spokane County and Coeur d’Alene after upgrade) had higher removal of congeners than the other plants ($p < 0.05$ via paired two-tailed t-test).”

Comment: It is true that the Spokane County, Coeur d’Alene and HARSB tertiary treatment systems have membrane equipment. But the Spokane County and Coeur d’Alene are Membrane Bioreactor (MBR) systems with 8,000 to 16,000 mg/l mixed liquor solids at the membrane surface. There is a general engineering conjecture that the high mixed liquor solids are providing a place for the PCBs to be adsorbed. There is no scientific proof that PCBs are broken down by the membrane treatment. The HARSB membranes are just tertiary water filtration following an activated sludge process with about 3,000 mg/l mixed liquor solids concentration.

Request:

FACT Sheet Page 56 comment. Add a sentence preceding the subject sentence stating,

“The tertiary treatment processes, although designed for seasonal removal of Total Phosphorus, may have the ancillary benefit of further reducing PCBs beyond levels achieved through BMPs and the existing secondary treatment process. *DEQ expects BMPs in conjunction with tertiary treatment will ~~significantly reduce~~ **help to reduce** the facility’s contribution of PCBs to the Spokane River.*”

13. IPDES Permit Section 1.2 Effluent Limits and Associated Monitoring Requirements. Table 2. Page 10. Footnote g. 3-11 days over calendar month. Below is Table 2 requiring a minimum of five (5) E-coli samples per month for the Geometric Mean.

Table 2. Pollutants with effluent limits and monitoring requirements for Outfall 001 from Table 1

Parameter	Discharge Period	Units	Effluent Limits						Monitoring Requirements		Reporting Period (DMR Months)
			Monthly Average	Weekly Average	Monthly Geometric Mean	Instantaneous Minimum	Instantaneous Maximum	Daily Maximum	Sample Type	Sample Frequency	
Carbonaceous Biochemical Oxygen Demand (CBODs)	01/01 to 12/31	mg/L	25	40	—	—	—	—	24-hour composite ^a	1/week	Monthly
CBODs Percent Removal	01/01 to 12/31	%	85 (min.)	—	—	—	—	—	Calculation ^b	1/month	
CBOD ₅ (February - October)	02/01 to 10/31	lb/day	112	206	—	—	—	—	Calculation ^c	1/month	Monthly
			Seasonal Average Limit: 77.4 lb/day							1/year	Annually (October)
CBOD ₅ (November – January)	11/01 to 1/31	lb/day	500	801	—	—	—	—	Calculation ^c	1/month	Monthly
Total Suspended Solids (TSS)	01/01 to 12/31	mg/L	30	45	—	—	—	—	24-hour composite ^a	1/week	Monthly
		lb/day	601	901	—	—	—	—	Calculation ^c	1/month	
TSS Percent Removal	01/01 to 12/31	%	85 (min.)	—	—	—	—	—	Calculation ^b	1/month	
E. coli ^{d,e}	01/01 to 12/31	#/100 mL	—	—	126 ^f	—	406 ^g	—	Grab ^h	5/month	Monthly
Enterococci ^{d,e}	01/01 to 12/31	#/100 mL	—	—	35 ^f	—	130 ^g	—	Grab ^h	5/month	

f. The permittee is required to monitor for and meet the applicable limits for E. coli or Enterococci but not both. The permittee must enter NODI Code "9" for DMR reporting for the parameter that is not monitored.

g. Geometric mean of five or more samples collected 3-11 days apart over a calendar month.

h. Idaho's water quality standards for contact recreation for permitting (IDAPA 58.01.02.251.02.c) include a Statistical Threshold Value (STV), which is represented in the permit as an instantaneous maximum limit. The STV requires that no more than 10% of valid samples collected over a 30-day period contain E. coli bacteria in concentrations exceeding an STV of 410 E. coli counts per 100 mL or 130 Enterococci counts per 100 mL.

Comment: The permit requires 5 E-coli samples per month. It is not possible to get the 5 samples in a month if a sampling gap is 11 days. Last permit it was 3-7 days in a calendar month.

Request: We feel the previous effluent permit E-Coli sampling a minimum of 5 times per month and schedule sampling gap of 3-7 days in a calendar month was providing the data needed. To remove any confusion on E-coli sampling and testing, we ask for the Permit and Fact Sheet footnotes referencing the sampling day gap to be **“Geometric mean of five or more samples collected 3-7 day apart over a calendar month.”**