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June 9, 2020

Paula Wilson
DEQ State Office
1410 N. Hilton Street
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Submitted via e-mail to: paula.wilson@deq.idaho.gov

Re: Design and Construction of Phosphogypsum Stacks: Docket No. 58-0119-2001 Negotiated Rulemaking

Dear Ms. Wilson:

Thank you for considering our comments on the 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. During the May 28, 2020 rulemaking session, DEQ distributed a number of discussion points for the group generated from the first round of public comments. We would like to provide additional comment on some of those discussion items:

- **Timeline of rulemaking and schedule considerations**

We support the recommendation put forth at the 5/28 meeting to not rush through this rulemaking and take the time necessary to develop a satisfactory rule.

- **Idaho Code § 39-107D applicability**

We concur with DEQ's stated position that 39-107D is applicable to this rulemaking process.

- **Groundwater monitoring plan**

We believe that it is important for language around groundwater monitoring to be included in this rule, as it is closely linked to the design standards that pertain to liner quality and construction.

- **Seepage testing**

We continue to advocate for this rulemaking to comprehensively address water quality issues that can arise at phosphogypsum stack systems. Liner design requirements are very important in this respect, but it is also crucial that the liners have some sort of quality control to ensure that they are operating as intended before being put into use for wastewater ponds. Seepage testing can serve as that quality control and be used to identify potential impacts to groundwater resulting from seepage (given that all liners eventually leak).

We understand that the phosphate companies have expressed some technical concerns in this rulemaking regarding the feasibility of seepage testing large wastewater ponds. At the last rulemaking meeting, DEQ stated 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. We also note that large municipal wastewater ponds are already subject to seepage testing requirements, some of which are of comparable size to the ponds at gyp stack facilities. Our position is that the rule should require seepage testing or a reasonable alternative.

At the 5/28 rulemaking meeting, Itafos mentioned that they use a double-lined system with leak detection technology at one of their facilities. We would consider that specific design and construction method to be an acceptable alternative to seepage testing requirements in this rule. We are open to discussion of other alternatives to seepage testing, provided that any proposed alternative first and foremost accomplishes the goal of preventing harmful releases of wastewater into the environment.

We also recommend incorporating a decision tree regarding seepage testing, with triggers outlining steps for retesting and remediation and timelines for accomplishing these goals, should such actions be necessary. Including such provisions would increase certainty for the public, agencies, and companies in terms of how these facilities will be managed and how water quality will be protected.

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,



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