Response to Comments
Draft NPDES Permit No. ID-000078-7
ConAgra Incorporated d/b/a Armour Fresh Meats
Nampa, Idaho
December 10, 1998

Background: *On June 17, 1998, EPA issued a notice of proposed reissuance of a National Pollutant Discharge Elimination System (NPDES) permit for ConAgra Incorporated d/b/a Armour Fresh Meats. The facility is a complex beef slaughter and boxed beef fabrication plant that discharges treated process wastewater and non-contact cooling water. The water is discharged into Indian Creek, above the City of Nampa, Idaho. Indian Creek empties into the Boise River near Caldwell. The notice initiated a 30-day public review and comment period which expired on July 18, 1998.*

The June 17, 1998 notice also announced the reissuance of four other NPDES permits which are located in the same Lower-Boise River Watershed as the ConAgra facility. The four other permits are municipal wastewater treatment plants: City of Nampa, City of Caldwell, City of Boise - Lander Street Facility, and City of Boise - West Boise Facility.

The only comments received regarding the proposed permit for the ConAgra facility were those submitted by the permittee, through a letter from Kristen R. Thompson of Thompson, Ashcraft, and Burnham, L.L.P. dated July 17, 1998. The following summarizes and responds to each comment raised by ConAgra. Also discussed in this document is a change to the permit as a result of the State of Idaho's Clean Water Act (CWA) Section 401 Certification.

Comment 1. Limitations for Total Suspended Solids: ConAgra requests an increase in the monthly average limitation for total suspended solids (TSS) from the proposed level of 100 pounds per day to 125 pounds per day. ConAgra also requests an increase in the daily maximum TSS limitation from the proposed level of 120 pounds per day to 154 pounds per day. The basis for the request is "that it has been the experience of the permittee that cold weather fluctuations in temperature cause difficulty in complying with the TSS numbers." The permittee states that TSS could be increased by these amounts with no appreciable negative impact on Indian Creek, while allowing flexibility to the permittee to properly meet their NPDES permit requirements.

Response: The proposed TSS limitations of 100 lbs/day monthly average and 120 lbs/day daily maximum are technology-based limits carried forward from the previous 1985 permit. The limitations from the 1985 permit were retained in the draft reissued permit since the "anti-backsliding" provisions of Section 402(o) of the Clean Water Act generally prohibit the inclusion of effluent limitations in a reissued permit that are less stringent than the comparable effluent limitations in the previous permit. As discussed in the Fact Sheet, derivation of TSS limits based on recent daily production and current federal technology-based effluent guidelines (40 CFR

432.22) would result in TSS limitations that are much less stringent than the limits of the previous 1985 permit (270 lbs/day monthly average and 550 lbs/day daily maximum - see Fact Sheet for computations).

Section 402(o)(2) of the CWA does contain a number of narrowly defined exceptions to the anti-backsliding rule. Section 402(o)(2)(E) states that a reissued permit may contain less stringent effluent limitations applicable to a pollutant if "the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification)." After review of the TSS data submitted in monthly reports by the permittee, EPA finds that Section 402(o)(2)(E) does apply in this instance to TSS and the final permit will reflect the adjusted TSS limitations of 154 lbs/day for daily maximum and 125 lbs/day for a monthly average.

Although the TSS limitation is a technology-based limit EPA has discussed this adjustment with the State of Idaho Division of Environmental Quality (DEQ) with regard to the permittee's comment that this increase will have little or no impact on the surface waters of the United States. DEQ concurs that this TSS adjustment will have minor impact to Indian Creek. DEQ certified that this TSS load limitation will not violate State Water Quality Standards (12/2/98 letter from Mr. Stephen West, DEQ to Mr. Robert Robichaud, EPA)

Comment 2. Limitations for Dissolved Oxygen: ConAgra requests clarification of the dissolved oxygen (DO) limitation and whether it should be expressed as a daily maximum or daily minimum limit. The table in the draft permit list the DO limit under the "daily maximum limit" column, which is inconsistent with State water quality criteria.

Response. EPA intended the dissolved oxygen requirement of 6.0 mg/L to be expressed as a daily minimum limitation. Although the 6.0 mg/L is in the daily maximum column of the table, footnote 4 of the table states that DO is in fact a daily minimum requirement. EPA recognizes the potential for confusion and will list the DO requirement as a separate paragraph under the limitations section in the final permit.

Comment 3. Ambient Monitoring Requirements: ConAgra had a number of comments regarding the ambient monitoring requirements: "The parameters of ... Turbidity, Total Kheldahl Nitrogen, Nitrate-Nitrite, Total Phosphorus and Ortho-Phosphate sampling regime under effluent limitation and monitoring are the gathering of baseline data for various stream studies at Outfall 010. ConAgra views this as the responsibility of the regulating agency or agencies and not the responsibility of the permittee, or within the certification to comply with applicable state laws."

ConAgra also provided estimates of the cost per year to perform this monitoring and commented that they will have to hire a professional stream biologist and other personnel to evaluate data under the parameters of the permit.

ConAgra also comments that Idaho Department of Health and Welfare has no jurisdiction over the NPDES process in the state, therefore, ConAgra comments that submitting plans required under the NPDES permit to IDEQ for review and approval, specifically the Nutrient Monitoring Plan of I.B.5., is not within the scope of the Clean Water Act, the Federal Administrative Procedures Act, or State of Idaho Administrative Procedures Act. ConAgra also comments that this is beyond the scope of state CWA certification, and request that these requirements be stricken from the permit.

Response: Clean Water Act 308(a) states: "Whenever required to carry out the objective of this chapter, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard... (A) the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents, and (v) provide such other information as he may reasonably require...."

As discussed in the Fact Sheet, the ambient and effluent data are being gathered to support state TMDL efforts and to assess whether effluent limitations will be developed during the next permit reissuance. Indian Creek has been listed as impaired for sediments, oil and grease, nutrients, and dissolved oxygen. The parameters listed in the comment letter from ConAgra are linked to one or more of these parameters and the monitoring is being conducted in part to assess the facility's contribution to receiving water conditions. It is reasonable to expect that the facility's discharge contains each of the parameters identified in the monitoring program. Therefore, the ambient monitoring program is retained in the final permit largely as proposed in the draft, with the following revisions: deletion of the Nutrient Monitoring Plan (discussed below), an amendment to the start date (discussed in Comment 5) and, a possible reduction in sampling frequency (discussed in State Certification section).

Upon further review by Idaho DEQ, and based on comments received on the other permits being reissued within the watershed, DEQ has dropped the request of the Nutrient Monitoring Plan, Section I.B.5. of the proposed permit. The state believes that data from instream ambient and effluent monitoring of nutrients as proposed in the draft NPDES permit, along with data collected through the Watershed Advisory Group process, will provide sufficient information to evaluate this facility's impact on nutrients within Indian Creek. Section I.B.5. of the draft permit will not be included in the final permit and ConAgra will not be required to submit a Nutrient Monitoring Plan to DEQ for review and approval.

Comment 4. Whole Effluent Toxicity (WET) Testing: ConAgra comments that the WET testing requirements are "costly, burdensome, and outside the scope of the Clean Water Act NPDES permitting process." ConAgra also comments that this permit requirement will require the permittee to hire a stream biologist and to secure resources that are not available to the permittee. ConAgra further states that "requiring monitoring of parameters outside the pollutants allowed under the NPDES Permit may be well beyond the scope of the permit and the jurisdiction of EPA and the State of Idaho..."

Response. EPA NPDES permitting regulations at 40 CFR 122.44(d)(1) require EPA to establish permit requirements necessary to achieve state water quality standards established under section 303 of the CWA, including state narrative criteria for water quality. The Idaho Water Quality Standards and Wastewater Treatment Requirements contain a narrative standard for toxic substances. The General Surface Water Quality Criteria, Toxic Substances (ID WQS 16.01.02.200.02) contain the following criteria: "Surface waters of the state shall be free from toxic substances in concentrations that impair designated beneficial uses."

The discharge at this facility contains known substances of concern such as chlorine and ammonia. Other known constituents of the effluent include BOD, TSS, and oil and grease. Nutrients are likely present in the discharge. EPA is not aware of this effluent being tested for toxicity and the toxicity of the effluent as a whole is unknown.

As in response to Comment 3, WET testing is required under the authority of Section 308(a) of the CWA to determine whether future limits are appropriate. Testing twice a year for five years (a total of 10 tests) is not believed by EPA to be unreasonable, and the testing will provide the minimum data necessary to assess toxicity at this facility. Although the permittee has the option of developing in-house laboratory capabilities to conduct this testing, all other NPDES facilities in Idaho collect samples and contract with laboratories that provide WET testing services, thus avoiding the expense of directly hiring biologists as expressed in ConAgra's comments.

Comment 5. Quality Assurance (QA) Requirements and Ambient Monitoring Start Date: ConAgra requests a minimum of 180 days for quality assurance plan development versus the 90 days of the draft permit due to the various documents cited in the permit to be considered by the permittee during QA plan development.

Response. EPA believes 90 days is an adequate period of time to develop the QA plan. The permit requires the permittee to follow quality assurance procedures found in two EPA documents. Two other documents are cited in the permit as additional references. Other permits issued by EPA Region 10, including those for the other four permittees in the Lower-Boise River watershed, contain similar schedules.

In response to a comment received on another permit in this watershed EPA has decided to amend the start date for the ambient monitoring program of Section I.B. for all of the permits in the watershed. Ambient monitoring shall start 150 days after the effective date of the permit instead of 90 days after the effective date of the permit. This will allow 90 days to develop the QA plan, and a 60-day period for EPA to review the QA and ambient monitoring stations (I.B.1.) prior to initiation of the ambient monitoring program. EPA will delete the EPA approval requirement from Section I.D.3. of the permit, and instead allow for a 60-day EPA review period. The permittee is ultimately responsible for ensuring the data collected is valid and representative. EPA will also modify the corresponding effluent monitoring start date to 150 days after the effective date of the permit for turbidity, TKN, nitrate-nitrite, total phosphorus, ortho-phosphate, and the 24-hour temperature requirement so that ambient and effluent monitoring shall be done concurrently.

Comment 6. Request for additional time to review other permits in same watershed: ConAgra requests additional time be given for completion of comments on the other draft permits that were public noticed in the Lower-Boise River Watershed.

Response. As a result of requests from the Cities of Nampa, Caldwell, and Boise, EPA extended the public notice expiration dates of the municipal permits. The Cities of Nampa and Caldwell were extended until August 3, 1998, and City of Boise (Lander Street and West Boise) was extended until August 20, 1998. Notice of the extended dates was published in local newspapers.

Change as a Result of the State of Idaho CWA Section 401 Certification:

The State of Idaho, Division of Environmental Quality, provided the CWA Section 401 Certification of the final permit in a letter from Mr. Stephen E. West, Regional Administrator to Mr. Robert Robichaud of the EPA dated December 2, 1998. The letter contained a comment that the final permit should allow the permittee to reduce the sampling frequency for nutrient effluent and ambient sampling from weekly to either bi-weekly or monthly. This reduction would occur after one year of weekly sampling and after verifying statistically, using data collected during the first year, that weekly sampling is not providing any distinct information than sampling with a lower frequency. This provision was included in the final permit for nutrients. This provision does not apply to effluent ammonia sampling, which is required weekly throughout the life of the permit.

Other Minor Changes to the Final Permit:

The criminal penalties language of the draft permit, Section III.B.2., contained standard NPDES permit text applicable only to publicly-owned treatment works (POTWs). This language is not relevant to industrial facilities and was therefore deleted from the final permit.

Section IV.A. of the proposed permit, "Notice of New Introduction of Pollutants", included notification requirements also applicable only to POTWs (40 CFR 122.42(b)). The section is not applicable to this industrial permit and was deleted from the final permit and replaced by corresponding notification requirements for industrial facilities. Section IV.A. "Changes in Discharge of Toxic Substances" has been inserted into the final permit and is required for NPDES permits for existing manufacturing facilities (see 40 CFR 122.42(a)). This standard or boilerplate text was also included in the permittee's previous (1985) NPDES permit.

Sections IV.B. and IV.C. of the draft permit, "Control of Undesirable Pollutants", and "Requirements for Industrial Users", are also only applicable to POTW permits and were not included in the final permit.

A definition of "Director" consistent with CFR 122.2 was added to Section I.E. of the final permit in order to provide additional clarification.

Summary of changes to the draft permit as a result of EPA's response to comments:

I.A.1. TSS limitations revised for outfall 010 to 125 lbs/day average monthly limit and 154 lbs/day daily maximum limit.

I.A.1. Table for outfall 010, footnote number 6, the start date for monitoring of selected parameters was changed from 90 days to 150 days.

I.A.4. The DO requirement from the table has been moved to paragraph I.A.4.: "Dissolved Oxygen Limitation for Outfall 010: One day minimum of not less than 6.0 mg/L. Sample analysis shall be conducted on a grab sample once per week." Previous paragraph I.A.4. Temperature Monitoring Requirements has been renumbered to I.A.5.

I.A.5. The start date was changed from 90 days to 150 days.

I.B. The start date for the ambient monitoring program has been revised from 90 days to 150 days after the effective date of the permit.

I.B.5. The Nutrient Monitoring Plan requirements have been deleted. Subsequent paragraphs have been renumbered.

I.C. Section added to allow for nutrient monitoring sampling frequency to be reduced during the second year of sampling, provided certain conditions specified in this section are met.

I.E.3. Requirement for EPA approval of QA plan has been deleted. Requirement to submit QA plan to EPA for review within 90 days of the effective date of the permit has been retained.

I.F. The definition of “Director” was added to the final permit.

III.B.2. Language specific to publicly owned treatment works was deleted

IV.A.B.C. Sections A, B, and C of the draft permit were deleted. Section A, “Changes in Discharge of Toxic Substances” was added to the final permit. Subsequent sections were renumbered.