RESPONSE TO COMMENTS

City of Fruitland Snake River Facility
Wastewater Treatment Plant
NPDES Permit # ID-002033-8
March 31, 2011

On February 16, 2011, the U.S. Environmental Protection Agency (EPA) issued a public notice for the proposed reissuance of the City of Fruitland Snake River Facility Wastewater Treatment Plant (WWTP) draft National Pollutant Discharge Elimination System (NPDES) Permit No. ID-002033-8. This Response to Comments provides a summary of significant comments and provides corresponding EPA responses. Where indicated, EPA has made appropriate changes to the final NPDES Permit.

Comments were received from the following:

Carl Hipwell, PE., City Engineer - Water/Wastewater Pharmer Engineering, LCC for the City of Fruitland Snake River Facility (City),

1. **Comment (City):** Remove the flow limitation of 0.5 mgd. We are requesting the flow limitation be removed from the permit as this will limit our ability to serve the existing community and receive additional flow from existing and potential new dischargers to the City. Replace the flow limitation with a heat load allocation in BTU's and modify the heat load limitation to be seasonal discharge from May through September to be consistent with other permittees.

   Response: EPA included the flow limit in order to ensure the allocated heat load of the TMDL was not exceeded. The flow limit will be eliminated. EPA will implement the heat load allocation directly through temperature and heat load limits. Pursuant to 40 CFR 122.44(d)(1)(vii)(B), EPA is required to implement a TMDL waste load allocation (WLA) in a NPDES permit for heat load. The Snake River - Hells Canyon Total Maximum Daily Load (TMDL) **(**IDHW-DEQ), June, 2004 (SR-HC TMDL) established allocations for heat load in both British Thermal Units (BTU), degrees Fahrenheit (°F) and flow in Table 4.0.16

   Table 4.0.16 *Permitted point source discharge temperature waste load allocations specific to cold water aquatic life/salmonid rearing for the Snake River - Hells Canyon TMDL reach (RM 409 to 188).*

Point Source	Point Source Average Daily Temperature (°F)	Discharge Volume (design flow)	Allocated Heat Load in Million BTU/day
City of Fruitland	72	0.5 MGD	300

Further, the TMDL makes clear the temperature allocation is based on design flow:

"Waste load allocations specific to temperature limit point sources to existing loads based on *design flow"* (emphasis added). The flow limit is eliminated and a 300 million British Thermal Unit (BTU) per day limit and temperature limit are established consistent with the allocation.

The calculation method is:

BTU/day = Flow (gallons per day) x temperature (°F) x 8.34 (BTU/gallon °F)

Pursuant to 40 CFR 122.44(d)(1)(vii)(B), EPA is required to implement the SR-HC TMDL WLA in the Fruitland NPDES permit for heat load year round. The SR-HC TMDL states the allocation applies during both the critical period of May through September and during non-critical periods:

"These allocations are specific to the salmonid rearing/coldwater aquatic life target, which applies year-round. The critical period for this target in the SR-HC TMDL reach (that time period in which target exceedances are most likely to occur) is from May through September. During the non-critical period, NPDES permits shall ensure that discharges are limited to ensure that each source does not violate water quality standards."

Year round temperature and heat load limitations are established and the flow limit is eliminated.

2. **Comment (City):** Remove the requirement of continuous temperature measurement and replace with daily recording of temperature during the weekdays. The temperature of the lagoons do not fluctuate in such large bodies of water over short time periods and it seems reasonable to measure the temperature daily rather than continuously.

   Response: EPA disagrees with the statement that temperature will not fluctuate over short periods and continuous monitoring is required. Pursuant to 40 CFR 122.44(d)(1)(vii)(B), EPA is required to implement a TMDL waste load allocation in the Fruitland permit. The temperature and heat load allocation is an average daily temperature limit and an average daily heat load limit. Continuous monitoring is more representative of a daily average than a onetime grab sample. Diurnal temperature variations will occur in the effluent not measured by a grab sample. Pursuant to 40CFR 122.48(b) all permits must require monitoring at a "frequency sufficient to yield data which are representative of the monitoring activity including when appropriate, *continuous monitoring*." (emphasis added). The cost of continuous monitoring is less than $1,000. EPA finds the cost of continuous temperature probes and recorders is reasonable and will ensure representative compliance monitoring. The permit is unchanged.

3. **Comment (City):** Clarify within the permit on reporting requirements for violations of the permit. Page 7/22, Item 2 requires that the permittee report within 24 hours to EPA any violations of the maximum daily limits for *E. coli* and that all other effluent limits at the time of DMR shall be reported. Page 12/22 item G.1.c. it appears all violations must be reported.

   Response: Reporting under Condition III.G.1.c. is only required if Fruitland chooses to demonstrate an affirmative defense for an upset. An upset can be used as an affirmative defense in actions brought to the permittee for noncompliance. As defined in permit Condition VI. *Definitions* an "'Upset' means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee."

   Condition III.G.1.c. requires as part of the demonstration that Fruitland report by telephone within 24 hours from the time it becomes aware of noncompliance "any upset that exceeds any effluent limitation in the permit (See Part IV.G., '*Upset Conditions*')." Condition IV.G. *Upset Conditions* establishes "An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the permittee meets the requirements of Paragraph 2 of this Part." Paragraph 2 of Condition IV.G. requires "To establish the affirmative defense of upset, the permittee must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

   a) An upset occurred and that the permittee can identify the cause(s) of the upset.

   b) The permitted facility was at the time being properly operated;

   c) The permittee submitted notice of the upset as required under Part III.G., "Twenty-four Hour Notice of Noncompliance Reporting;" and

   d) The permittee complied with any remedial measures required under Part IV.D., "Duty to Mitigate" (emphasis added).

   This response provides the explanation and legal basis for Condition III.G.1.c. and the permit is unchanged.