

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101

Statement of Basis

A Draft National Pollutant Discharge Elimination System (NPDES) Permit has been prepared to address the withdrawn portions of the 2019 Permit.

NPDES Permit: ID0020397

Applicant: City of Nezperce
2480 Highway 62
Nezperce, ID 83543

Facility Contact: Craig Cardwell (208) 937-2652
Facility Location: 46.2408°N 116.2431°W

Receiving Water: Long Hollow Creek

I. PROPOSED ACTION, TYPE OF FACILITY AND DISCHARGE LOCATION:

Pursuant to 40 CFR 124.19(j), Region 10 of the United States Environmental Protection Agency (EPA) is proposing to reissue certain portions of National Pollutant Discharge Elimination System Permit No. ID0020397, which the Region issued to the City of Nezperce (City) on June 25, 2019. Specifically, the EPA is proposing to include a compliance schedule for ammonia which is a new effluent limitation included in the permit.

The City of Nezperce owns and operates a wastewater treatment plant (WWTP) located in Nezperce, Idaho. The collection system has no combined sewers. The City of Nezperce is an agriculturally based, rural community, serving a resident population of 460. There are no major industries discharging to the facility.

The WWTP is adjacent to Long Hollow Creek downstream of the City. A schematic of the wastewater treatment process and photos of the outfall were included in Appendix A of the Fact Sheet. This facility is considered a minor facility.

In 2007, the facility prepared a plan for an upgrade of the WWTP. The Lagoon Improvements Project was finalized on April 30, 2010. A new lift station and pumps were installed to address age, reliability, and maintenance concerns. Other improvements were completed to address permit compliance issues with effluent Biochemical Oxygen Demand (BOD₅) and Total Suspended Solids (TSS) loading, BOD₅ and TSS percent removal, and Total Residual Chlorine (TRC). However, the City continued to have problems with complying with some of the effluent limits in the permit.

As a result, a Compliance Order on Consent (CWA-10-2018-0003) was signed and entered into between the City and EPA on November 28, 2017. The Order establishes a compliance schedule for the facility to achieve and maintain compliance with the Total Suspended Solids (TSS) and Biochemical Oxygen Demand (BOD₅) effluent limitations of the administratively continued permit. A Consent Agreement and Final Order (CWA-10-2018-0004), dated November 30, 2017, imposes a penalty for effluent limitation exceedences outlined in the Fact Sheet.

II. LIMITATIONS AND CONDITIONS

As indicated above, the EPA is only accepting comment on the inclusion of a compliance schedule for ammonia. All other conditions of the permit, including effluent limitations and monitoring provisions are unchanged. For clarity, rather than issue only the revised permit provisions, the new draft permit includes the entire text of the permit. **However, EPA is accepting comment only on the inclusion of a compliance schedule.**

III. BACKGROUND FOR THIS ACTION

On June 25, 2019, the EPA reissued the NPDES Permit for the City of Nezperce. On July 26, 2019, the City of Nezperce filed a petition for review of the permit with the EPA's Environmental Appeals Board (EAB). The petition raised the issue of whether a compliance schedule for ammonia, which was a new effluent limitation, should have been included in the reissued permit. By letter dated August 5, 2019, the EPA identified one permit condition that was stayed by the petition for review – the effluent limits for ammonia (both the monthly average limit and daily maximum limit). All remaining, uncontested permit conditions became fully effective and enforceable on August 1, 2019, in accordance with 40 CFR §§124.16(a)(2) and 124.20(d). On September 30, 2019, the EPA took a voluntary remand to address the ammonia compliance schedule issue.

Compliance schedules are authorized by 40 CFR § 122.47. Compliance schedules allow a discharger to phase in, over time, compliance with water quality-based effluent limitations when effluent limitations are in the permit for the first time. Additionally, 40 CFR § 122.47 requires compliance with effluent limitations as soon as possible and when the compliance schedule is longer than 1 year, the schedule shall set forth interim requirements and the dates for their achievement. The time between the interim dates shall generally not exceed 1 year, and when the time necessary to complete any interim requirement is more than one year, the schedule shall require reports on progress toward completion of these interim requirements. In order to grant a compliance schedule, the permitting authority must make a reasonable finding that the discharger cannot immediately comply with the water quality-based effluent limit upon the effective date of the permit and that a compliance schedule is appropriate (see 40 CFR 122.47(a)). Here, the EPA has found that a compliance schedule is appropriate for total ammonia.

A reasonable potential calculation shows that the City of Nezperce discharge would have the reasonable potential to cause or contribute to a violation of the water quality criteria for ammonia. Therefore, the final permit issued on June 25, 2019, contained water quality-based effluent limits for ammonia.

The data shows that the permittee will not be able to meet the ammonia effluent limitations. Therefore, the EPA is addressing the need for an appropriate compliance schedule in this action.

The EPA is proposing to include alternative compliance schedules in the permit pursuant to 40 CFR § 122.47(b)(3). The City is pursuing an alternative whereby it would no longer discharge to Long Hollow Creek (i.e., the City would land apply). In the second alternative, if the City is unable to eliminate the discharge, the alternative is to meet the new ammonia effluent limitations by upgrading the existing facility. This alternative would continue to authorize the discharge from the WWTP to Long Hollow Creek.

40 CFR § 122.47(b)(3) allows for alternative schedules of compliance in a NPDES permit as long as the following conditions are met:

- (i) Both schedules contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;
- (ii) One schedule leads to timely compliance with applicable requirements, no later than the statutory deadline;
- (iii) The second schedule leads to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements no later than the statutory deadline;
- (iv) The permit containing two schedules includes a requirement that after the permittee has made a final decision under [paragraph (i)] it follows the schedule leading to compliance if the decision is to continue conducting regulated activities, and follows the schedule leading to termination if the decision is to cease conducting regulated activities.

The permit meets the requirements of 40 CFR § 122.47(b)(3) in the following way:

- (i) The permit establishes two compliance schedules with an identical interim deadline of June 1, 2022 to decide whether to cease discharging or meet the final ammonia effluent limits in the permit. This interim deadline leaves sufficient time to comply with the applicable requirements in the permit in a timely manner if the City's decision is to continue the discharge to Long Hollow Creek
- (ii) The permit contains a timely compliance schedule for compliance with the new ammonia effluent limits by December 31, 2028. The compliance schedule for this option would require system upgrades to meet the permit effluent limitations.
- (iii) The permit contains a schedule for cessation of the discharge to Long Hollow Creek by October 31, 2027. This compliance schedule for this option includes acquisition of land as a land application site; and design and implementation for land application.
- (iv) The permit requires the City to follow the compliance schedule for the selected option. If the option is to continue discharging, the City must follow the compliance schedule in Table 4. If the decision is to cease the discharge to Long Hollow Creek with the land application option, the City must follow the schedule leading to termination Table 3.

In addition, 40 CFR § 122.47(b)(4) requires that “[t]he applicant’s or permittee’s decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Director, such as a resolution of the board of directors of a corporation.” The permit requires the City to provide the EPA with a written notice of the decision to cease discharging that must be submitted by June 1, 2022, to the EPA and the Nez Perce Tribe signed by either a principal executive officer or ranking elected official.

Pursuant to 40 CFR § 122.47(a)(3), a permit with a compliance schedule must have interim requirements and dates for achievement. The EPA has included interim requirements and dates as set forth in Tables 3 and 4 of the permit.

Pursuant to 40 CFR § 122.47(a)(1), “Any schedules of compliance under this section shall require compliance as soon as possible.” The conditions in the draft compliance schedule considers time to fund, design and construct the selected alternative.

V. PUBLIC COMMENT PERIOD AND PROCEDURE FOR FINAL DECISION

Persons wishing to comment on, or request a public hearing for, this limited draft permit action may do so in writing by the expiration date of the public notice period. A request for a

public hearing must state the nature of the issues to be raised as well as the requester's name, address, and telephone number. All comments should include name, address, phone number, a concise statement of the basis for a comment and relevant facts upon which it is based. All written comments should be addressed to the Water Division Director at U.S. EPA, Region 10, 1200 Sixth Avenue Suite 155, 19-H16, Seattle, WA 98101; submitted by facsimile to (206) 553-0165; or comments on the draft permit may be submitted via e-mail to godsey.cindi@epa.gov

After the Public Notice expires, the EPA will consider all substantive comments related to this revised draft permit. The EPA's Regional Director for the Water Division will make a final decision regarding permit issuance based on all comments received during both comment periods. The EPA will address the comments and issue the permit along with a response to comments. The permit will become effective no less than 33 days after the issuance date, unless an appeal is submitted to the Environmental Appeals Board within 30 days pursuant to 40 CFR § 124.19.

Documents are Available for Review.

The draft NPDES permit and related documents can be reviewed or obtained by visiting or contacting EPA's Regional Office in Seattle between 8:30 a.m. and 4:00 p.m., Monday through Friday.

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue, Suite 155, 19-C04
Seattle, Washington 98101
(206) 553-0523 or
1-800-424-4372 (within Alaska, Idaho, Oregon and Washington)

The draft permit, this Statement of Basis, the previous documents and other information can also be found by visiting the Region 10 website at <https://www.epa.gov/npdes-permits/idaho-npdes-permits>. The draft Administrative Record for this action contains the pertinent documents from the previous draft permit and any documents listed in the References section that were not previously included. The Administrative Record or documents from it are available upon request by contacting Cindi Godsey.

The revised draft permit and Statement of Basis are also available at:

EPA Idaho Operations Office	Water Quality Program Coordinator
950 W Bannock	Water Resources Division
Suite 900	Nez Perce Tribe
Boise, ID 83702	PO Box 365
Phone: 208-378-5746	Lapwai, ID 83540

For technical questions regarding the Statement of Basis, contact Cindi Godsey at (206) 553-1676 or godsey.cindi@epa.gov. Services can be made available to persons with disabilities by contacting Audrey Washington at (206) 553-0523.

VI. REFERENCES

EPA 1991. *Technical Support Document for Water Quality-based Toxics Control*. Office of Water Enforcement and Permits, Office of Water Regulations and Standards. Washington, DC. March 1991. EPA/505/2-90-001.

EPA 2010. *NPDES Permit Writers' Manual 2010*. Office of Wastewater Management, Water Permits Division, State and Regional Branch. Washington, DC. September 2010. EPA-833-K-10-001.

DEQ, 2018. Rules of the Department of Environmental Quality, IDAPA 58.01.02, "Water Quality Standards." <https://adminrules.idaho.gov/rules/current/58/580102.pdf>

40 CFR 122 - EPA Administered Permit Programs: The National Pollutant Discharge Elimination System. July 1, 2019.

40 CFR 124 - Procedures for Decisionmaking. July 1, 2019.