

Response to Comments
2005 NPDES Permit Issuance to the City of Wilder, Idaho
NPDES Permit No. ID-002026-5

City of Wilder
P.O Box 687
219 3rd Street
Wilder, Idaho 83676

Public Comment Period: 10/27/04 – 11/26/04

During the public comment period specified above, a total of five comments were received on the proposed NPDES permit. This document summarizes those comments and provides EPA's response to them.

1. Regarding Appendix B, Section B.4.i. of the Fact Sheet – *Escherichia Coli* (*E. coli*)

Comment: AIC requests that the *E. coli* instantaneous effluent limit be removed from the permit as it has no regulatory or technical basis when considered with other applicable portions of the Idaho State Water Quality Standards such as IDAPA 58.01.02.080.03, "Violation of Water quality Standards".

Response: IDAPA 58.01.02.251 of the Idaho Water Quality Standards (WQS) provides the sole basis for determining bacteria effluent limitations in NPDES permits. However, the State may use IDAPA 58.01.02.080.03 as a basis for their own enforcement discretion or implementation policy of their wastewater treatment requirements. While the States 401 certification of the permit contains suggestions as to how the permit can be made less stringent and still meet WQS, these suggestions were not implemented in accordance with federal regulations at 40 CFR 124.55(c) which says "a State may not condition or deny a certification on the grounds that State law allows a less stringent permit condition". The State would not have provided 401 certification of a permit that had no regulatory or technical basis in their own WQS. Furthermore, NPDES permitting regulations at 40 CFR 122.44(d) require EPA to include effluent limits in permits necessary to achieve water quality standards established under section 303(c) of the CWA. Establishing *E. coli* permit limits based upon single sample maximum and geometric mean concentrations is not only consistent with State WQS, but allows EPA and the State to monitor and control effluent variability by controlling spiked concentrations in the discharge in a way that is protective of public health.

2. Regarding Appendix B, Section B.4.i. of the Fact Sheet – *Escherichia Coli* (*E. coli*)

Comment: EPA's 1986 Bacteria Criteria Guidance, EPA's 2004 Final BEACH Rule (69 FR 67218), and the Idaho State Water Quality Standards appear to provide no technical or regulatory basis for the instantaneous bacteria limit included in the draft permit. While Idaho is not one of the 35 states included in the BEACH Rule, the rule contains EPA's most current thinking and guidance to states concerning appropriate implementation of *E. coli* standards for freshwaters. AIC requests that the basis for the limitation in the Fact

Sheet be corrected to be consistent with State WQS, and that the instantaneous *E. coli* limit be removed from the permit.

Response: As described in Section IV.B.3. of the Beaches Environmental Assessment and Coastal Health (BEACH) Rule, EPA and the states “retain the discretion to use single sample maximum values as they deem appropriate in the context of Clean Water Act implementation programs other than beach notification and closure”. While maximum or instantaneous *E. coli* values are appropriate for determining beach closures, the final rule does not constrain the use of single sample maximum values in Clean Water Act programs such as NPDES permitting. As noted in the comment response above, Idaho WQS include an instantaneous maximum criterion for *E. coli*, and NPDES regulations at 40 CFR 122.44(d) require EPA to incorporate effluent limits necessary to protect state water quality standards. Since the State of Idaho has not authorized a mixing zone for bacteria, the effluent must meet the criterion prior to discharging to the receiving water. EPA has determined that meeting the bacteria criterion prior to discharging will not cause or contribute to a violation of the water quality standards.

3. Regarding Appendix B, Section B.4.i. of the Fact Sheet – *Escherichia Coli (E. coli)*

Comment: EPA has issued a number of NPDES permits throughout the state with instantaneous *E. coli* limits. Permit limits appear to be based on the incomplete/incorrect application of Idaho State Water Quality Standards (e.g. application of Section 251 but not 080.03). AIC is interested in EPA’s proposed approach regarding how the Agency will correct these recently issued permits should it be determined that instantaneous limits are not required. AIC is also interested in knowing how EPA will address compliance reporting of instantaneous limits.

Response: EPA has included instantaneous maximum limits in NPDES permits because it determined that these limits were necessary to protect water quality standards as required under 40 CFR 122.44(d). As noted in the comment response above, EPA has interpreted Section 251 of the State WQS as providing the sole basis for determining permit effluent limitations, and that Section 080.03 can be utilized by the State for enforcement discretion or implementation policy. The State has provided a 401 certification of reasonable assurance that the activities allowed under the permit will comply with the applicable requirements of the CWA. For the purposes of compliance reporting, sampling data regarding an instantaneous *E. coli* limit is summarized on a Discharge Monitoring Report (DMR) no differently from any other pollutant. Specific enforcement actions taken relative to permit violations are done on a case by case basis considering many factors including any history of repeated effluent violations.

4. Regarding the mixing zone used to calculate a residual chlorine water quality-based effluent limit.

Comment: The city believes that a mixing zone should have been used to calculate a chlorine water quality-based effluent limit despite the fact that no flow data is available for the Wilder Drain.

Response: For small, effluent dominated fluvial systems such as Wilder Drain, it is inappropriate to assume a critical low flow value for dilution purposes when no flow data exists. The permit provides a two year compliance schedule for chlorine, with interim limits of 0.5 mg/l (average monthly) and 0.75 mg/l (maximum daily). During this time, the city may choose to undertake a stream flow study in Wilder Drain above Outfall 001 which should include measurements during periods of critically low flow. Pending results of this study, EPA may reopen the permit to calculate a new chlorine limit that includes a mixing zone.

5. Regarding the surface water monitoring requirements in Wilder Drain.

Comment: The city is not clear why upgradient surface water monitoring is required for the various parameters listed in Table 2 of the permit.

Response: The Lower Boise River is impaired for sediment, dissolved oxygen, oil and grease, nutrients, bacteria and temperature. As described in Appendix B of the Fact Sheet, if a facility discharges to a receiving water listed as water quality limited for that parameter, but a TMDL or Wasteload allocation has not been developed, then the permit requires monitoring for that parameter for the purposes of evaluating future limits. A TMDL for nutrients and dissolved oxygen is under development for the Lower Boise River which is five miles downstream of Outfall 001 on the Wilder Drain. Accordingly, ammonia, nitrogen, phosphorous and dissolved oxygen are included as surface monitoring requirements four times per year for a period of four years. Temperature and pH have also been included as ammonia criteria is dependent on these parameters. These monitoring requirements sunset after four years.