Response to Comments
2005 NPDES Permit Issuance to the City of Lava Hot Springs, Idaho
NPDES Permit No. ID-002182-2

City of Lava Hot Springs
115 West Elm Street
Lava Hot Springs, Idaho 83246

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

During the public comment period specified above, a total of four 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 4.5 year compliance schedule for nitrogen and phosphorous effluent limits.

Comment: Due to the complexity and projected engineering costs associated with the new effluent limits, the city requests and extension of the 4.5 year compliance period.

Response: EPA agrees that there are numerous complex, time consuming and expensive tasks associated with upgrading a wastewater treatment system to meet new TMDL and permit requirements. NPDES permits are issued for a period of five years, and a compliance schedule can not extend longer than the permit period. The permit has been revised to extend the nitrogen and phosphorous compliance schedule to 4 years 11 months, the maximum period allowable. The city must be in compliance with the permit upon its expiration on year five.

5. **Additional EPA Comment Regarding Fact Sheet:** The draft permit contained concentration based effluent limitations for total inorganic nitrogen (0.04 mg/l) and total phosphorous (0.06 mg/l) based upon a wasteload allocation assigned in the Total Maximum Daily Load (TMDL) Implementation Plan. This wasteload allocation in the TMDL was 0.02 tons/year and 0.03 tons/year for nitrogen and phosphorous, respectively, and concentration based limits were derived using the design flow the wastewater treatment system (0.343 MGD). Federal regulations at 40 CFR 122.45(f) require (with some exceptions) that permit limits be expressed in terms of mass while the *Technical Support Document for Water Quality-based Toxics Control* (TSD) suggests that both mass and concentration based effluent limits be included in permits. Accordingly, the final permit includes both mass and concentrations based effluent limits for nitrogen and phosphorous based upon the wasteload allocation in the Portneuf River TMDL.