September 27, 2013

Via E-Mail to Nickel.Brian@epa.gov

US EPA Region 10
Spokane River NPDES Public Comments
1200 6th Avenue
Suite 900 M/S OWW-130
Seattle, WA 98101

Re: Comments on Draft NPDES Permit
Hayden Area Regional Sewer Board, Idaho, NPDES No. ID-002585-2

To Whom It May Concern:

On July 18, 2013, the U.S. Environmental Protection Agency ("EPA") issued a notice for public comment on draft National Pollutant Discharge Elimination System ("NPDES") Permit No. ID-0026590, for the Hayden Area Regional Sewer Board Wastewater Treatment Plant ("HARSB") (collectively, the "Draft Permit") and the accompanying fact sheets ("Draft Fact Sheets"). In response, HARSB is submit the following comment letter.

The letter addresses three topics. First, we are sensitive to the significant costs the Draft Permit will impose on our ratepayers. However, we will make the necessary investment to be in compliance with the proposed effluent limitations for phosphorus, ammonia and carbonaceous biological oxygen demand ("CBOD") of the State of Washington's February 2010 Total Maximum Daily Load for dissolved oxygen for the Spokane River and Lake Spokane (the "DO TMDL"). Second, we support EPA's determination not to include numeric effluent limits for polychlorinated biphenyls or dioxins (collectively, "PCBs") in the Draft Permit. *Id.* Finally, we request certain minor modifications to the Draft Permit, including paired quarterly influent and effluent PCB sampling, identification of Draft Permit requirements when HARSB is not discharging to the Spokane River, the option of a tertiary engineering report for pilot testing in the compliance schedule and removal of the requirement for a Phosphorus Management Plan due to existing phosphorus detergent bans, not phosphorus discharging industries and well-documented low levels of influent phosphorus. The sections below discuss these issues in turn.

DO Limitations

The Draft Permit includes some of the strictest limits in the country for phosphorus, ammonia and CBOD (collectively, the "DO Limits"). These limits are what EPA has determined are required to assure compliance with the DO TMDL. A ten-year compliance schedule accompanies the limits to give time for HARSB to design and construct the needed infrastructure to comply. HARSB is willing to meet the proposed DO Limits and compliance schedules with the understanding that the we retain our rights to reopen the permits to reflect more accurate and updated technical and regulatory information from on-going efforts being conducted cooperatively by the permitted dischargers to the Spokane River and Avista Utilities.

It is crucial to recognize the significant costs and commitment of irretrievable resources the Draft Permit will forever impose on our ratepayers. Local business interests have already raised concerns about the amount of sewer capacity fees for HARSB.

Nonetheless, HARSB was founded for the purpose of protecting Hayden Lake and the Spokane Valley – Rathdrum Prairie Aquifer. HARSB is a good steward of the environment and is committed to water quality improvement in the Spokane River. Even though HARSB currently removes more than 90 percent of its DO limiting constituents year round and will contribute less than three percent of the POTW nutrient load in the Spokane River, we believe it is important for both Washington and Idaho point source dischargers to move forward with advanced treatment to help protect the Spokane River. Nonetheless, as all parties to the TMDL are aware, meeting the water quality goals is also dependent on non-point source reductions and Avista's commitment to DO enhancement. The infrastructure improvements required in the Idaho NPDES permits completely address the water quality impacts to the Spokane River coming from the State of Idaho point sources and provide substantial assimilative capacity to our downstream neighbors. Any further efforts to meet Washington regulations should therefore be led and implemented solely by and within the State of Washington.

We appreciate and support the work EPA has done to adjust the original proposal in the DO TMDL. The extension of the treatment period into February in exchange for allowing seasonal averages to account for treatment variability, paired with the Compliance Schedule, which allows time to fund and construct the necessary improvements, should be adequate to allow HARSB to comply with the proposed limits while protecting water quality.

PCBs

As explained in more detail below, EPA correctly determined that the Draft Permit should not include numeric limits for PCBs. Numeric limits are appropriate only if EPA can reasonably anticipate that the discharge has the reasonable potential to cause or contribute to an

excursion above state water quality standards. EPA cannot make that determination under the circumstances presented here. Therefore, numeric limits are not appropriate.

Moreover, the Draft Permit's approach to PCBs is entirely reasonable. Best Management Practices ("BMPs") will reduce the discharge of PCBs. Monitoring will fill the gaps in the existing data, and participation in the Spokane River Regional Toxics Task Force (the "Task Force") will contribute to a comprehensive, watershed-based approach to controlling PCB pollution in the Spokane River. These strategies are more effective than imposing costly, immeasurable and unachievable numeric effluent limits.

1. The Draft Permit appropriately relies on special conditions to address PCBs.

A. EPA may include numeric limits only if it determines there is reasonable potential to exceed an applicable water quality standard.

Federal regulations provide that water-quality based effluent limits ("WQBELs" also referred to herein as numeric effluent limits) may be imposed when a pollutant is "discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard." 44 C.F.R. § 122.44(d)(1)(i). As EPA has recognized, the Clean Water Act does not "requir[e] that permits contain water quality-based limitations on every pollutant that may be present in a given effluent." U.S. Envtl. Prot. Agency, *Clarifications Regarding Certain Aspects of EPA's Surface Water Toxics Control Regulations* at 3 (1992) (attached as Exhibit "A"). "Rather, water quality-based limits are established where the permitting authority reasonably anticipates the discharge of pollutants by the permittee at levels that have the reasonable potential to cause or contribute to an excursion above any state water quality criterion . . . ." *Id.* (emphasis added). Simply stated, numeric effluent limits are appropriate only if EPA can reasonably anticipate that a discharge has the reasonable potential to exceed an applicable water quality standard.

HARSB discharges effluent into the Spokane River, roughly 4.5 miles upstream of the Washington/Idaho border. The Spokane Indian Reservation ("Reservation") is approximately 40 miles inside the Washington border, downstream from Long Lake Dam. All three jurisdictions have numeric water-quality criteria for PCBs. Idaho and Washington both have EPA-approved criteria of 170 picograms/liter ("pg/L") for PCBs in the water column.[1] The Tribe's criterion is 3.37 pg/L.

[1] In 2006, Idaho adopted a PCB criterion of 64 pg/L. However, on May 10, 2012, EPA rejected this criterion along with other Idaho toxics criteria, on the grounds that the fish consumption rates used to derive the criteria had not considered certain regional fish consumption studies and the potential that some populations may have higher fish consumption rates than the general population. IDEQ is currently undergoing a negotiated rulemaking on the fish consumption rates, which is expected to be completed in

Given these water quality standards, EPA may impose numeric limits only if it can reasonably anticipate that HARSB' discharge has the reasonable potential to cause or contribute to water-column concentrations in excess of 170 pg/L in Washington and Idaho, or 3.37 pg/L within the Spokane Tribe Reservation. As explained in more detail below, EPA cannot make this determination. Accordingly, EPA correctly decided not to impose numeric limits.

B. EPA correctly concluded that there is insufficient data to determine whether there is a reasonable potential for HARSB' discharge to exceed water quality standards.

EPA guidance expresses a strong preference for calculating WQBELs based on site-specific monitoring data. *See* U.S. Envtl, Prot. Agency, *Permit Writers' Manual* (September 2010) (hereinafter "*Permit Writers' Manual*") at 6-23 ("EPA recommends that monitoring data be generated before effluent limitation development whenever possible.") (excerpts attached as Exhibit "B"). Indeed, when there are no site-specific data, "the permit writer must either postpone a quantitative analysis of the need for WQBELs and generate, or require the discharger to generate, effluent monitoring data, or base a determination for the need for WQBELs on other information, such as effluent characteristics of a similar discharge." *Id.* at 6-15. Without site-specific data, EPA's approach is to require effluent monitoring to generate the missing data and facilitate a future reasonable potential analysis. *See id.* at 6-30 through 6-31.

That is precisely what the EPA has done here. EPA does not have facility-specific data regarding PCBs in HARSB' discharge. Recognizing this, EPA required HARSB to gather the missing data, which will be used to conduct a reasonable potential analysis in future permits. This approach is fully consistent with the *Permit Writers' Manual* and the Technical Support Document For Water Quality-based Toxics Control. *See* U.S. Envtl. Prot. Agency, *Technical Support Document For Water Quality-based Toxics Control* (EPA/505/2-90-001) (March 1991) (hereinafter "*TSD*") (excerpts attached as Exhibit "C").

Moreover, the *Permit Writers' Manual* lists four factors to consider when deciding whether to establish WQBELs without facility-specific data. These factors are:

- Effluent variability information such as history of compliance problems and toxic impacts;
- Point and nonpoint source controls, such as existing treatment technology, type of industry, POTW treatment system, or BMPs in place;

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approximately two years. More information is available at this link: http://www.deq.idaho.gov/laws,-rules,-etc/deq-rulemakings/docket-no-58-0102-1201.aspx. Until a new rule is adopted, IDEQ is enforcing the previously adopted standard of 170 pg/L for Clean Water Act purposes.

- Species sensitivity; and
- Dilution information such as critical receiving water flows or mixing zones.

Permit Writers' Manual at 6-30 (Exhibit "B").[2]

None of these factors support numeric limits here. As to the first factor, HARSB does not have a history of compliance problems or toxic impacts. HARSB operates a relatively new treatment plant, serving communities without a history of industries that manufactured or used PCBs prior to the ban of those substances in 1979. As to the second factor, PCBs are already banned pursuant to federal law. To address the trace amounts that may escape the ban, BMPs will be imposed as a condition of the Permits and HARSB will both participate in the Task Force to support region-wide efforts to reduce PCBs. The final two factors are irrelevant. The driving concern with PCBs is human health; aquatic species sensitivity is not a material factor. Similarly, low-flow conditions and mixing zones do not drive a need for numeric PCB limits. All the available data from Idaho show that PCB concentrations in the Spokane River meet both the Washington and Idaho water quality criteria, with no evidence that either low flow conditions or mixing zones create PCB hot spots. The Spokane Tribe's more stringent water quality standards apply more than 68 miles downstream from HARSB Dam on the Spokane Indian Reservation, where HARSB flows are a very small part of a large, flow-controlled system, and are far beyond the impact of any mixing zone. Accordingly, the EPA correctly declined to impose WQBELs in the absence of site-specific data.

Several other factors support EPA's decision. First, the data estimating PCB levels in the Idaho reach of the Spokane River do not support the imposition of numeric effluent limitations on HARSB. As mentioned, EPA has no data on PCB levels in the HARSB discharge. However, the Washington Department of Ecology ("WDOE") has conducted an assessment of PCB sources in the Spokane River, including sampling at the Idaho/Washington border. The study concluded that "sources [of PCBs] upstream of the Idaho border were negligible." *See* Dave Serdar et. al, *Spokane River PCB Source Assessment, 2003-2007*, at p. 31 (Wash. Dep't of Ecology 2011) (hereinafter "*PCB Source Assessment*") (citing the Department of Ecology's study from 1994) (attached as Exhibit "D"). The same study found that Washington dischargers, including Washington wastewater treatment plants, were substantial sources of PCB contamination. *See id.* The most recent assessment came to a similar result: PCB concentrations were relatively low (and below the relevant water quality standards) at the Idaho border, and significantly increased as the river passed through Spokane. *See id.* at 96-99. Indeed, indirect

[2] These criteria are not materially different from the *TSD*. *Compare Permit Writers' Manual* at 6-30 (Exhibit "B") *with TSD* at 50-51 (Exhibit "C").

sampling of PCBs using semi-permeable membrane devices at the Idaho-Washington border estimated concentrations of only 106 pg/L, 38 percent below the relevant criteria in the water column.[3] Draft Fact Sheet at 16.[4] While the Spokane Tribe's standards are more stringent, there are no data for PCB concentrations in Tribal waters and it is unknown how discharges in Idaho affect downstream PCB concentrations, particularly given the potential that some portion of the PCBs in the water column may settle into sediment behind the series of dams between the Idaho border and waters within tribal jurisdiction many miles downstream.[5]

Second, the available data from Washington dischargers does not support numeric effluent limits. Effluent concentration of PCBs from Washington facilities varies widely. The lowest recorded concentration is 46.6 pg/L at the Medical Lake Wastewater Treatment Plant, which is located southwest of Spokane, Washington and has a design flow of 1.85 million gallons per day.[6] *See* Randy Coots and Casey Deligeannis, *PCBs, Dioxins and Furans in Fish, Sediment, and Wastewater Treatment Plant Effluent from West Medical Lake* at pp. 13, 32

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[3] In the Draft Fact Sheets, EPA notes that samples taken by the U.S. Geological Service ("USGS") in 1999 revealed fish-tissue concentrations of 270 ug/L, which arguably is above the fish-tissue concentrations that would be expected at the water-column criteria of 170 pg/L. While this study is somewhat puzzling, it does not support numeric effluent limits. First, the relevant criterion is 170 pg/L in the water column; there is no criterion for fish-tissue concentration. Second, the 13-year-old USGS study itself admits that the sampling was too cursory to support any definite conclusions. USGS, *Ecological Indicators of Water Quality in the Spokane River, Idaho and Washington, 1998 and 1999*, at p. 7 (September 2003) ("The brevity of sampling for this study did not allow adequate determination of the extent or permanence of contamination or impairment . . . .") (attached as Exhibit "E"). Third, the study does not indicate the types of fish sampled, their probable origins or primary habitat, or other relevant information necessary to evaluate the study's accuracy. Fourth and finally, no data indicates the relationship between HARSB' discharge and fish-tissue concentrations. For these reasons, the fish-tissue data is irrelevant and, in any event, cannot support a reasonable potential analysis or the imposition of numeric effluent limits.

[4] The Fact Sheet overstates the available data as "fact." The water quality sampling conducted to date has been indirect using semi-permeable membrane devices ("SPMDs") for comparison purposes only and not for listing purposes or other direct regulatory actions. *See* Sandvik, "Baseline Summary of Long-Term Monitoring Effort in the Spokane River for PCBs, PBDEs, and Metals" (WDOE Toxics Unit November 17, 2011), p. 23 (attached as Exhibit "F").

[5] PCB "hotspots" have been found where PCB-contaminated sediment settles out of the water column, particularly behind dams. *See PCB Source Assessment* at 31. Both Upriver Dam and Long Lake Dam stand between HARSB and the Spokane Reservation. The effects of these structures on downstream PCB levels have not been studied or quantified.

[6] HARSB' design flow is 5.0 million gallons per day.

(Wash. Dep't of Ecology 2010) (attached as Exhibit "G"). Medical Lake is similar to HARSB in that the community is primarily residential without a large number of industrial discharges. HARSB has no significant industrial users. The highest concentration of PCBs identified is 39,785 pg/L, but the Fact Sheet does not indicate the facility or design flow. Presumably, this data comes from the Spokane area, either from stormwater or combined stormwater/wastewater flows. Spokane's size and industrial history make it highly unlikely that wastewater flows from HARSB contain PCBs at comparable levels. The extreme range of the data and likelihood that HARSB falls on the low end of the range preclude reliance on the Washington data to impose limits on HARSB.

Third, the unique nature of PCB pollution buttresses EPA's determination not to impose numeric limits on HARSB. Three aspects of PCB pollution support this conclusion: (1) PCBs are banned; (2) PCBs are ubiquitous in the environment; and (3) PCBs are persistent and cannot practically be removed from municipal effluent to extremely low levels. The paragraphs below discuss each of these issues in turn.

The Toxic Substances Control Act has banned the manufacture, processing, distribution (including importation) and use of PCBs in the United States the since 1979. 44 Fed. Reg. 31514 (May 31, 1979). As a result, PCBs generally are found in municipal treatment plant effluent only as a pass-through of residual sources, including (a) historical sources, (b) trace concentrations that are below the TSCA 50 part per million standard ban, (c) as byproducts of certain manufacturing processes, such as paper manufacturing, none of which exist in the communities served by HARSB, and (d) as a result of atmospheric deposition. These unique limitations have led EPA, in other contexts, to recognize that the adoption of water quality standards for PCBs (and consequent imposition of numeric effluent limitations) does not have a large impact on PCB contamination. *See* U.S. Envtl. Prot. Agency, *Decision on Petition for Rulemaking to Publish Water Quality Standards on the Mississippi and Missouri Rivers Within Arkansas, Illinois, Iowa, Kansas, Kentucky, Missouri, Nebraska and Tennessee* (June 25, 2004) (hereinafter "Mississippi River Decision") at 19 (attached as Exhibit "H").

Further, PCBs "have become one of the most ubiquitous of environmental contaminants." *PCB Source Assessment* at 28. For example, WDOE has recognized that atmospheric deposition probably introduces PCBs into the Spokane River. *See PCB Source Assessment* at 91. While atmospheric deposition likely contributes to PCB contamination upstream of the Idaho border, the amount is unquantified. *Id.* The dispersed nature of PCB pollution makes a point source treatment strategy singularly ineffective and impractical. Municipalities should not be saddled with essentially unachievable effluent limitations for PCBs just because minute traces find their way into the municipal effluent due to atmospheric deposition.

Moreover, the chemical structure of PCBs makes them extremely persistent in the environment and very difficult to remove from wastewater. WDOE has explicitly concluded that

"no currently available treatment technology is likely to provide adequate removal [of PCBs] sufficient to comply with either state water quality standard[s] for PCBs or the more stringent tribal water quality standard." Wash. Dep't of Ecology, *Fact Sheet for Spokane Cnty. Reg'l Water Reclamation Facility* (Nov. 28, 2011) (hereinafter "Spokane County Fact Sheet") at 18 (attached as Exhibit "I").

For these reasons, EPA has determined to address PCBs with monitoring and straight to implementation BMPs coordinated through the Task Force. HARSB will join the other dischargers and interested agencies in the Task Force to monitor PCBs, identify sources, reduce PCB discharges and implement remediation of contaminated sites. For example, rather than imposing strict wasteload allocations on point source dischargers, several EPA-approved TMDLs rely on natural attenuation—that is, the eventual burying or breakdown of PCB molecules—as the primary means by which water quality standards will be achieved. *See, e.g.*, Penn. Dep't of Envtl. Prot., *Total Maximum Daily Load, PCB and Chlordane, Ohio River* (March 2001) ("Ohio River TMDL") at 16 (attached as Exhibit "J").

In sum, EPA's decision not to impose numeric limits is consistent with federal regulations and its own stated policy. In addition, the particular circumstances presented here preclude EPA from making an accurate reasonable potential calculation, and otherwise weigh heavily against the imposition of numeric effluent limits in the Draft Permit.

2. The Draft Permit appropriately relies on special conditions to address PCBs.

Consistent with EPA policy, the Draft Permit appropriately relies on "special conditions" (*see Permit Writer's Manual,* Chapter 9 (Exhibit "B") rather than numeric effluent limitations to address the potential that the HARSB discharge may contain PCBs. These special conditions include (a) monitoring; (b) Best Management Practices; and (c) participation in the Task Force. As discussed in the paragraphs below, these conditions are the accepted and appropriate way for the Draft Permit to address PCBs.

First, the Draft Permit requires HARSB to sample its influent and effluent, as well as adjacent surface water. Draft Permit at 6 (influent and effluent); *id.* at 14-15 (surface water). These monitoring data, in turn, may be used to perform a reasonable potential analysis in future permit cycles. This approach follows EPA guidance. *See Permit Writers' Manual* at 6-30 through 6-31 ("After evaluating all available information characterizing the nature of the discharge without effluent monitoring data for the pollutant of concern, if the permit writer is not able to decide whether the discharge ... has the reasonable potential to cause ... an excursion above a water quality criterion, he or she may determine that effluent monitoring should be required to gather additional data") and 9-1("There are many reasons to include special conditions into a permit including . . . [t]o address unique situations, such as facilities discharging pollutants for which data are absent or limited, making development of . . . water-

quality based effluent limitations . . . . more difficult or impossible . . . .") (Exhibit "B"). WDOE required monitoring in lieu of effluent limits for PCBs for numerous dischargers into the Spokane River. *See, e.g.*, Wash. Dep't of Ecology, *Fact Sheet for Liberty Lake Sewer & Water Dist.* (May 24, 2011) (hereinafter "Liberty Lake Fact Sheet") at 12, 18 (Exhibit "K"); Wash. Dep't of Ecology, *Fact Sheet for Inland Empire Paper Co.* (Sept. 29, 2011) (hereinafter "Inland Empire Fact Sheet") at 17 (Exhibit "L").

Another benefit to the monitoring program required by the Draft Permit is that monitoring using Method 1668 will provide data on many PCB congeners, including those of greatest environmental concern. With this data, it may be possible to better understand the hazard posed by any PCBs that may be detected. We urge EPA to use this fine-grained data to greatest advantage in determining whether to impose numeric effluent limitations in future permit cycles. For example, if PCBs detected in HARSB' effluent are congeners that do not pose a hazard at the levels detected, it would not be appropriate to set effluent limits based on those congeners. On the other hand, if certain congeners are found at levels of concern, the data may suggest strategies that address those congeners specifically. These strategies may or may not include the imposition of numeric effluent limitations.

Second, the Draft Permit requires HARSB to implement Best Management Practices ("BMPs") to reduce discharge of PCBs. Revised Fact Sheets at 15-17; Draft Permit at 28-29. As part of the BMPs, HARSB must design and implement a Toxics Management Plan ("TMP") designed to reduce loadings of PCBs to the maximum extent practicable. Draft Permit at 28. The TMP must address sources of PCBs from contaminated soil; industrial and commercial users; and sources within HARSB' direct control. *Id.* HARSB must also create a public education program and submit annual reports to EPA and the Idaho Department of Environmental Quality ("IDEQ"). *Id.* at 29. BMPs are an accepted method to address water quality improvements where numeric effluent limitations are not imposed, and WDOE required them in other NPDES permits for Spokane River dischargers. *E.g.,* 40 C.F.R. § 122.44(k) (BMPs are appropriate when "reasonably necessary to achieve effluent limitations and standards or carry out the purpose and intent of the CWA"); *Permit Writer's Manual* at 9-3 through 9-5 (guidelines for BMPs) (Exhibit "B"); Inland Empire Permit at 17-18 (Exhibit "L").

Third, HARSB has consented to a provision in the Draft Permit requiring participation in the Task Force. Draft Permit at 31. The Task Force will "develop a comprehensive plan to bring the Spokane River into compliance with applicable water quality standards for PCBs" by, among other things, identifying and filling data gaps, identifying and characterizing the amounts, sources, and locations of PCBs entering the Spokane River, preparing recommendations for controlling and reducing the sources of PCBs, reviewing TMPs and BMPs, and monitoring and assessing toxic reduction measures. *See Memorandum of Agreement Regarding Spokane River Regional Toxics Task Force* (January 23, 2012) (hereinafter "MOA") at 7 (Exhibit "M"). It will

also "provide for an independent community [of] technical advisor(s) who shall assist in review of data, studies, and control measures, as well as assist in providing technical education information to the public." *Id.* Participants in the task force include governmental entities, environmental groups, and point-source dischargers in Washington. Participation in the Task Force has been required in numerous permits issued by the State of Washington. *See* Wash. Dep't of Ecology, *Final Permit for Kaiser Aluminum Fabricated Products, LLC* (June 23, 2011) (hereinafter "Kaiser Permit") at 18-19 (attached as Exhibit "N"); Liberty Lake Permit at 42-43; Wash. Dep't of Ecology, *Final Permit for City of Spokane Riverside Park Water Reclamation Facility and Combined Sewer Overflows* (June 16, 2011) at 47-48 (attached as Exhibit "O"); Inland Empire Permit at 19-20 (Exhibit "L").

These commitments are substantial, both in terms of time commitment and financial resources. PCB monitoring is extremely expensive, costing approximately $1,000 per sample under Method 1668. The BMP plan will require significant staff resources to write and implement, in the range of 0.3 full-time equivalent personnel ("FTE") per municipality per year. Participation in the Task Force will also require significant staff time and financial resources, the amount of which will not be known until after the Draft Permit is issued.

3. **The State of Washington Pollution Control Hearings Board decision on the Spokane County permit does not change the analysis.**

On July 19, 2013, the State of Washington Pollution Control Hearings Board ("PCHB") ruled that the PCB conditions in the Spokane County (the "County") NPDES permit do not comply with the Clean Water Act and applicable Washington regulations. Findings of Fact, Conclusions of Law and Order, *Sierra Club, et al. v. Washington Dep't of Ecology, et al.*, PCHB No. 110184 (Wash. Pollution Control Hearings Bd. July 19, 2013) (hereinafter the "*Spokane County PCHB Ruling*") (attached as Exhibit "P"). Specifically, the PCHB determined that the Washington Department of Ecology ("DOE") should have performed a reasonable potential analysis for PCBs and that the evidence in the record supported a conclusion that there is a reasonable potential that PCB discharges from the County's plant could cause or contribute to a violation of water quality standards. *Id.* at 21-22. The PCHB further ruled that insufficient data exists to calculate a numeric effluent limit for PCBs and therefore best management practices ("BMPs") or narrative effluent limits were required. *Id.* at 22. The PCHB determined that the TMP condition (S12) and the Task Force condition (S13) in Spokane County's permit failed to provide sufficient assurance that the contemplated PCB control and reduction activities will occur. The PCHB remanded the permit to DOE to modify both conditions in several respects.

The *Spokane County PCHB Ruling* does not affect EPA's determination not to include numeric limits for PCBs in the HARSB permit. First, the PCHB's rationale for reasonable potential is not persuasive as applied to HARSB. Second, the PCHB's reasoning for changing

the TMP and Task Force conditions does not hold up when applied to HARSB. These issues are discussed in turn in the sections below.

A. The rationale behind the PCHB's reasonable potential analysis is inapplicable to HARSB.

The PCHB determined there was a reasonable potential for PCBs in the Spokane County discharge to cause a violation of water quality standards based on five factors from the TSD the PCHB deemed relevant: (a) the type of publicly owned treatment plant seeking a permit; (b) dilution; (c) existing data on toxic pollutants; (d) the state's list of waters not meeting water quality standards; and (e) fish advisories or bans in Washington. As discussed in the subsections below, none of these considerations support a finding of reasonable potential for HARSB.

Type of publicly owned treatment plant. The TSD states that "POTWs with loadings from indirect dischargers (particularly primary industries) may be candidates for toxicity limits." *TSD* at 50 (Exhibit "C"). As discussed above, HARSB has few if any such dischargers.

Dilution. The HARSB discharge will benefit more from dilution than Spokane County because, as set forth in the table below, the Idaho discharges are smaller relative to critical low flows than the Spokane County discharge. The dilution levels for HARSB are near the one percent threshold the *TSD* considers to be de minimis. *TSD* at 50 (Exhibit "C").

Discharger	Design flow (CFS)	Critical low flow (CFS)	Design flow as % of critical low flow
HARSB	3.7	500	0.74%
Spokane County	12.38	573	2.1%

Existing Data. Existing data as described in the *TSD* does not support numeric limits for HARSB. The *TSD* addresses only existing data measuring the dischargers' effluent, including numeric data and whole effluent toxicity ("WET") data. TSD at 50 (Exhibit "C"). EPA has no numeric PCB data for HARSB. The WET data submitted with the applications shows no toxicity concerns. However, the PCHB decision looks beyond direct data to the *PCB Source Assessment* and a generic statement that the "effluent will include some quantity of PCBs." *Spokane County PCHB Ruling* at 21. Even if the idea of "existing data" is stretched to this extent, it does not support a reasonable potential finding for HARSB. The *PCB Source Assessment* found that PCB levels are below the Idaho and Washington water quality standards at the Idaho border (106 pg/L) and fall further by Upriver Dam (77 pg/L). *PCB Source Assessment* at 97 ("Exhibit D"). The *PCB Source Assessment* thus logically concludes that

sources in Idaho are "negligible." *PCB Source Assessment* at 31. PCB levels rise closer to Spokane, including the area of the Spokane County Plant. *PCB Source Assessment* at 97 ("Exhibit D").

List of Water Quality Limited Waters. Other available information is consistent with the *PCB Source Assessment* that PCB levels in the Spokane River are "negligible." For example, the Idaho stretch of the Spokane River is not water quality limited for PCBs.

Fish Advisories. Further, unlike the Spokane River in Washington, no fish advisories are in effect for PCBs for the Idaho stretch of the Spokane River. *See Eat Fish, Be Smart, and Choose Wisely: A Guide for Safe Fish Consumption for Fish Caught in Idaho Waters* (Idaho Department of Health and Welfare, Bureau of Community and Environmental Health), http://www.healthandwelfare.idaho.gov/Portals/0/Health/EnvironmentalHealth/FishGuide.pdf.

B. The PCHB's reasoning to modify the TMP and Task Force conditions in the Spokane County permit does not hold up when applied to HARSB.

The reasoning in the Spokane County PCHB Ruling does not support a conclusion that the TMP (Condition 2.I) or the Task Force (Condition 2.H) need to be changed in the HARSB permit. While we offer no opinion on what Washington law requires for Spokane County, the PCHB's analysis takes several dubious twists and turns that render it inapplicable to the Idaho permits.

For one, the *Spokane County PCHB Ruling* repeatedly refers to the PCB conditions in the Spokane permit as "narrative effluent limitations." This term is inapplicable and confuses the analysis. The NPDES permitting rules do not refer to narrative effluent limitations in the context of point source discharge permits. Rather, the regulations and guidance uniformly refer to BMPs as the proper type of condition to impose when data is sparse or when it is infeasible to impose numeric limits. E.g. 40 CFR § 122.44(k). By conflating narrative effluent limits with BMPs, the Spokane County PCHB Ruling insists that the conditions "must require defined steps toward compliance with standards," Spokane County PCHB Ruling at 24, and that the conditions must specify "the expected reductions in toxicant loadings, the schedule for initiating such reductions, and at a minimum, offer greater definition and timelines for/of this expected outcome." *Id.* at 25. While we all hope the PCB BMPs will improve water quality, nothing in the Clean Water Act requires the performance-based approach to the BMPs mandated by the PCHB. Rather, BMPs "are inherently pollution prevention practices." *Guidance Manual for Developing Best Management Practices,* USEPA 833-B-93-004) (October 1993) at 1-4. As the name implies, BMPs are practices the permittee undertakes to minimize the pollutants discharged from a facility. If the permittee implements the practices, it complies with the conditions. Mandating numeric progress toward meeting water quality standards through BMPs is simply arbitrary and unfair to the permittee. There is no way to know what level of reductions are possible through

implementation of BMPs, so whatever target is chosen would have to be picked out of the air. As a result, the permit may (or likely would) undershoot or overshoot the amount of reductions that would occur. If it undershoots, the permittee could do a poor job on its BMPs and still comply. If it overshoots, the permittee could implement all practicable BMPs perfectly and still violate the permit. As a result, numeric reduction targets should be left for when there is sufficient data and a need to impose a numeric effluent limitation.

For another issue, the *Spokane County PCHB Ruling* complains repeatedly that the PCB conditions in Spokane County's permit do not specifically require the permittee to undertake the actions described, such as source control and changing the County's procurement practices. *Spokane County PCHB Ruling* at 24. While one may complain the Spokane County permit was not clear enough in requiring the specified actions, the same cannot be said of the HARSB permit. Each action in the PCB conditions is mandatory. *E.g.* Draft Permit at 31 ("The [TMP] *must address* source control and elimination of PCBs and 2,3,7,8 TCDD as follows…" (emphasis added)) (each subsequent requirement also includes mandatory language).

Further, the *Spokane County PCHB Ruling* exceeds the reopener requirements of the Clean Water Act by requiring "the use of ongoing monitoring data to set a numeric effluent limitation at the earliest possible time, including during the term of the current permit, in order to be in compliance with water quality standards." *Spokane County PCHB Ruling* at 26. EPA should not adopt this approach for the HARSB permit. Rather, the agency should retain its discretion as to the timing of permit modification and /or reissuance, and include only a standard reopener clause in the permit. The facts are (1) that the treatment technology HARSB will install to address DO reductions will also reduce PCBs as well or nearly as well as any treatment regime that could be installed specifically to address PCBs; (2) the permit requires HARSB to undertake all practicable source control measures; and (3) the Task Force will address basin-wide PCB control beyond what could otherwise be required in individual NPDES permits. If numeric PCB limits requiring further reductions in PCBs were imposed on top of these requirements, compliance would likely be impossible short of removing all discharges from the Spokane River with the resultant prohibitive costs, loss of river flows and collateral environmental damage from the storage of enormous quantities of wastewater. As a result, HARSB would likely to able to obtain variances from any such requirements. Thus, because the permits already require everything to be done that realistically can be done, numeric limits are unlikely to lead to water quality improvements and should not be pursued during this permit cycle.

Requested Minor Modifications

Table 1 of the Draft Permit requires PCB monitoring of the influent at the frequency of once every two months but quarterly for the final effluent. Since HARSB' collection and treatment system was constructed after 1978 when PCB production and use was banned and it

has no Significant Industrial Users that predate the ban, it is not reasonable to expect significant fluctuations in influent concentrations of PCB. In addition, it would be beneficial to pair influent PCB sampling with effluent PCB sampling to better understand those concentration temporally. The influent and effluent PCB sampling will be further coordinated with the required Toxics Management Plan, the Regional Toxics Task Force, and with surface water quality monitoring. Therefore, we request the Draft Permit be revised with the influent PCB monitoring to match the quarterly effluent monitoring for this permit cycle.

Part II.B of the Draft Permit requires preparation of a Phosphorus Management Plan, ostensibly to reduce influent phosphorus to the treatment plant so as to reduce resulting loading to the Spokane River. This requirement serves no purpose for HARSB for two reasons. First, HARSB has no significant industrial or commercial entities that would discharge inordinate quantities of phosphorus to the treatment plant (i.e. dairies, food processors, metal finishers, etc.). Second, over a decade of influent phosphorus monitoring in the Daily Monitoring Reports shows an average influent concentration of 7.3 mg/L which is the expected value for normal domestic wastewater (Takashi Asano, Water Reuse: Issues, Technologies, and Applications, McGraw-Hill, 2006, pp107, Table 3-12). Therefore, we request that the requirements for a Phosphorus Management Plan be removed from the Draft Permit.

Part II.F.2 of the Draft Permit should also specifically state that this permit may be modified based on approval of applicable use attainability analyses or site specific criteria. 40 CFR § 131.10(g) (authorizing use attainability analyses), 40 CFR § 131.11(b)(l)(ii)(authorizing site specific criteria).

We request express language in the Draft Permit compliance schedule allowing HARSB to forego pilot testing if sufficient data is available to select appropriate final filtration technologies based upon an approved engineering report.

We are also requesting that the Draft Permit clearly identify the Draft Permit conditions that HARSB must be in compliance with when not discharging to the river. HARSB has the option to not discharge to the Spokane River and therefore the NPDES permit discharge conditions do not apply. HARSB is requesting that the NPDES Draft Permit conditions that are still in effect when there is no Spokane River discharge be clearly identified.

Revised Fact Sheet Comments

The Revised Fact Sheet for the Hayden Area Regional Sewer Board Wastewater Treatment Plant had several area which the EPA requested comments. Below are the Revised Fact Sheet comments not already discussed above.

Revised Effluent Levels for Lead and Zinc: HARSB supports the revised Draft Permit effluent limits for Lead and Zinc. HARSB also supports the revised Draft Permit effluent limits for Cadmium.

Revised Mass Limits for Winter CBOD, TSS and Ammonia: HARSB supports the revised Draft Permit effluent limits for Winter CBOD, TSS and Ammonia.

HARSB Discharge Year Round to the Spokane River: HARSB supports the revised Draft Permit effluent limits for year round discharge to the Spokane River. The Draft Permit includes some of the strictest limits in the country for phosphorus, ammonia and CBOD. The Draft Permit limits are what EPA has determined are required to assure compliance with the DO TMDL for year round discharge to the Spokane River.

Revised WET Testing: HARSB is requesting that the Whole Effluent Toxicity (WET) Testing requirement be annually instead of semi-annually, the past results for the WET testing have not varied from sample to sample. Due to the consistency of the results, HARSB believes that an annual WET sampling and testing request is justified.

Revised Surface Water Monitoring Requirements: HARSB requests that the Surface Water Monitoring Requirements only apply when HARSB is discharging to the Spokane River. Sampling and testing the Spokane River upstream and downstream of the HARSB outfall when HARSB is not discharging would not measure any influence of HARSB effluent because it was not present. The Coeur d'Alene Wastewater Treatment Plant is required to test downstream of the plant outfall which is upstream of the HARSB outfall. The Post Falls Wastewater Treatment Plant is required to test upstream of the plant outfall which is downstream of the HARSB outfall. These two treatment plant surface water monitoring results will provide the Spokane River data when HARSB is not discharging to the Spokane River.

Thank you for your consideration of these comments. If you would like to discuss any of these comments please contact Ken Windram of HARSB at (208) 457-3372 or our legal counsel, Gary Allen, at (208) 388-1200.

Sincerely,

Daniel H. Green, Chairman
Hayden Area Regional Sewer Board