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Mixing Zone/Clean Water Act: U.S. EPA Environmental Appeals Board Addresses Challenge to Sandpoint, Idaho Wastewater Treatment Permit

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The United States Environmental Protection Agency ("EPA") Environmental Appeals Board ("EAB") issued a June 13th Order Addressing a Petition filed to review a Sandpoint, Idaho wastewater treatment facility ("Facility") Clean Water Act National Pollution Discharge Elimination System ("NPDES") permit. See NPDES Appeal No. 18-01.

The Idaho Conservation League ("ICL") petitioned for review of certain effluent discharge limits in the NPDES permit issued by Region 10 of EPA to the Facility. ICL objected to the size of the mixing zones used to set the effluent limits for phosphorus discharges from the Facility.

A mixing zone is a limited area or volume of water where initial dilution of a discharge takes place. Certain numeric water quality criteria may be exceeded in such zone. In other words, the Clean Water Act does not require that all criteria be met at the exact point where pollutants are discharged into a receiving water prior to the mixing of the pollutants with the receiving water. By authorizing a mixing zone, EPA or a delegated state allows some portion of the waterbody to mix with and dilute particular wastewater discharges before evaluating whether the waterbody as a whole is meeting its criteria.

The mixing zone applied by EPA to the Facility was authorized by the Idaho Department of Environmental Quality. ICL argued that the mixing zones provided by the permit:

... are too large, violating plain language in an Idaho regulation specifying a numerical limitation on mixing zone size, and, thus, Region 10 clearly erred in using the mixing zones in establishing phosphorus discharge limits.

EPA responded that the text of the relevant regulations are ambiguous and that it:

... did not clearly err in accepting Idaho DEQ's establishing the size of mixing zones.

EAB denies ICL's Petition for Review.

In reaching the decision, it noted a tradition of providing substantial deference to a state's interpretation of its own laws. A compelling reason is required for EPA to reject a state's interpretation.

ICL was held to have not offered a compelling reason demonstrating that EPA clearly erred in accepting Idaho DEQ's interpretation of the EPA-approved state mixing zone regulation which was utilized in issuing the Facility's NPDES permit.

A copy of the Order can be downloaded [here](#).