



Sierra Club Comments on Spokane DO TMDL  
Department of Ecology Dispute Resolution Panel  
April 5, 2010

**1. Introduction**

- Thank you for the opportunity to present our concerns. Sierra Club Upper Columbia River Group is:
  - Part of the largest environmental organization in the state of WA,
  - Longstanding participant in the Spokane River dissolved oxygen TMDL, and associated processes,
  - Longstanding participant in Spokane County's processes, as available, relating to construction and financing of new treatment plant.
- Two points we wish to make today
  - Spokane County, as a new discharger may not obtain a waste-load allocation (WLA).
  - Spokane County may not rely on its Septic Tank Elimination Program (STEP) to create offsets as credit for a WLA or otherwise.
- We have submitted our arguments and supporting information to the Panel in written form. Today we wish to:
  - Point out the documents and information relating to our concerns,
  - Respond to comments submitted by Spokane County,
  - Answer any questions Panel members may have.

**2. No new WLA for the County's treatment plant**

- Under 40 CFR 122.4, the County may not obtain a permit for its new treatment plant unless specified conditions are met. See also WAC 173-201A-510(1), (4) (no NPDES permit may be issued that causes or contributes to a violation of water quality standards; no compliance schedule for new discharges).
- The County makes the unsupportable assertion that it is not a new discharge. The County is building a new treatment plant, at a cost of more than \$100 million in public funds, several miles upstream of the existing regional facility. There is no proposal to transfer effluent discharge quantities from the old plant to the new one. The new county plant is a new source and a new discharge.
- The County attempts to distinguish the relevant 9<sup>th</sup> Circuit case, Pinto Creek, based on the facts. But that doesn't change the legal requirements of federal and state regulations that prohibit a new discharge that would cause or contribute to an impaired water body.
- The appropriate focus is on Subsection 1 of the federal regulation: are there "sufficient remaining pollutant load allocations to allow for the discharge"?

- This proviso directly implicates the soundness of the TMDL – i.e., whether it provides reasonable assurance that water quality standards will be met. On this point, the Spokane River DO TMDL is an exceptionally speculative plan.
- The TMDL allocates DO improvement “responsibility” to Avista, but does not quantify the improvement in a metric that can be analyzed, nor discuss whether those requirements can in fact be met.
- The plan requires large reductions of anthropogenic P loading in the two tributaries, Hangman Creek (20-50%) and the Little Spokane River (36%). These nonpoint source reductions will be extremely difficult, if not impossible, to achieve.
- The plan requires (correctly) that the tributary load allocations described above be achieved before the dischargers may be awarded offset credits for non-point source reductions. (The 2004 version of the TMDL proposed WLAs would have allowed immediate credit – but the dischargers refused to accept those numbers.)
- The plan substitutes “ecoregional criteria” (10 ug/l) as the natural background target for the River just upstream of and in Lake Spokane. Given that natural background P in groundwater and at the Lake Coeur d’Alene outlet has been adjusted downward, use of this figure understates reductions necessary to achieve natural background DO.
- Finally, as pointed out in the University Legal Assistance letter (4/1/10), the County cannot obtain an NPDES permit because its discharge will include pollutants – most notably, PCBs – that remain on the 303(d) list and for which a TMDL and implementation plan has not been promulgated.

### **3. The County is not eligible for offset credit for Septic Tank Elimination Program (STEP).**

- Spokane County’s proposed use of its STEP program to create offsets for its effluent discharge is problematic for two reasons.
- First, septic offsets are illusory from technical perspective.
- The County’s study (HDR 2007) makes numerous assumptions about P loading and “breakthrough” to groundwater.
  - A major source of P to septic tanks is dishwasher detergent. P in dish detergent is now banned in Spokane County. HDR, p. 3. See RCW 70.95L.020 (banning phosphates in dish detergent).
  - Most of the septic systems near the River or in proximity to groundwater were replaced with sewers early in the STEP program. HDR, p. 29. According to the County analysis, these are the systems most likely to have achieved “breakthrough.” HDR, p. 29.
  - The choice of 2001 as a baseline date is arbitrary. The fact that 2001 was a low-flow year for the Spokane River has nothing to do with P in groundwater.

- Keta Waters memorandum (10-8-07) reviews the HDR report. (1.2, App. B-6). This memo discusses several reasons why the HDR estimates are not conservative, including over-estimation of P loading from septic systems, and misinterpretation of the algorithm for P sorption rates in soil.
- Ecology memo "Septic Tank Design for Nutrient Control," (3-8-06), (1.2, App. F:5), describes the time of travel of P from septic systems through 10 feet of soil separation into the groundwater system: a range of between 4 and 78 years.
- Second, the use of septic offsets will not meet the requirements for WA state's water quality offset regulation, WAC 173-201A-450.
- Subsection 2(c) requires a level of technical certainty that is absent from the County's analysis. See section above.
- Subsection 2(e) requires that the offsets be "new" – i.e., not already required by a pre-existing requirement. Here, the County is required to implement the STEP program and P will be removed from groundwater as a result. It is not permissible for the County to receive credit for actions that it is already committed (and funded) to take.

#### **4. Conclusions**

- It is the policy of the Clean Water Act that new facilities have the opportunity, and the obligation, to install the best and most efficient production processes and wastewater treatment technologies.
- Zero discharge is no longer a new concept. Treatment plants around the world and in the United States are achieving zero discharge. Both Spokane County and the Department of Ecology have done a disservice to the citizens of this watershed in proposing to add more pollution to the Spokane River.
- Sierra Club urges the Dispute Resolution Panel to strike the WLA for Spokane County from the TMDL and remove discussion of septic offsets as a mitigation strategy for the County treatment plant.
- Thank you again for the opportunity to provide our concerns today.