Protect Our Water Jackson Hole

Submitted via the Wyoming DEQ Comment Portal

January 4, 2024

Mr. Justin Scott, P.G.
UIC Program Manager
Wyoming Department of Environmental Quality
Water Quality Division
200 West 17th Street, 2nd Floor
Cheyenne, Wyoming 82002

Re: Notice of Proposed Underground Injection Control Permit: Yellowstone National Park Norris Wastewater Treatment Plant (Permit No. 2023-076)

Dear Mr. Scott:

On behalf of Protect Our Water Jackson Hole (POWJH), I am pleased to submit this letter in response to the WDEQ's December 5, 2023 public notice inviting comments on the above referenced pollution discharge permit renewal.

POWJH is a locally-based nonprofit organization dedicated to serving Teton County, Wyoming, as a powerful advocate for restoring and protecting the surface and groundwater in our watershed.

We note that this facility is in proximity to Class 1 waters it deserves close scrutiny.

Background

The draft permit proposes to authorize the National Parks Service (NPS) to inject a maximum of 75,000 gpd and an average of 45,000 gpd of primary treated domestic wastewater from a wastewater treatment plant through a single leachfield into the unconfined Gibbon River Alluvium. We recognize that the proposed facility would replace the existing wastewater system that consists of local septic tank/leach field systems, and we appreciate the potential for improved technology to reduce impacts to human health and the environment.

POWJH Concerns

POWJH has the following concerns regarding the draft permit:

Proposed Site is in Proximity to Class 1 Waters

Chapter One, Appendix A (Wyoming Surface Water Classifications) states that Class 1 Waters include: "All surface waters located within the boundaries of national parks and congressionally designated wilderness areas as of January 1, 1999. Thus, the waterbodies, including wetlands, see Application page 30 of 258, affected by this proposed project are significant.

DEQ Should Require, or the NPS Should Agree to, Tertiary Treatment

It is unclear whether the DEQ is requiring, or the NPS is agreeing to, tertiary wastewater treatment technology. See page 131 of 258 (referencing a "tertiary effluent disposal field"). DEQ should require, or the National Park Service should agree, to use tertiary treatment methods to help ensure that there is no degradation to Class 1 waters. Because of (1) the proximity to surface water resources; (2) the generally porous substrate; (3) the fact water bodies are below the grade of the treatment plant, and (4) the potential for the proposed facility to constitute a point source (see *Maui* Case discussion, below), DEQ should require tertiary treatment to ensure that NPS' actions do not result in degradation to Class 1 waters. At a minimum, NPS should submit further information about the hydrology to demonstrate that the effluent will not move laterally into nearby water bodies or wetlands or affect the surface waters from groundwater surface connections.

Distances Between Drinking Water Sources and Surface Waters

In its completeness review DEQ found that the Application was incomplete and stated:

> Isolation distances were not provided on maps and drawings submitted with the permit renewal application. Because the disposal capacity of this facility is over 10,000 gallons per day, isolation distances will need to be determined from a hydrogeological subsurface study in accordance with Wyoming Water Quality Rules (WWQR) Chapter 25, Section 19, Table 7, footnote 2. The process to complete this study is described in WWQR Chapter 3, Section 4 (d)(v)(B). Please revise and submit this hydrogeological subsurface study information. Updates should be made to the provided drawings. New drawings may be created but must be signed by a P.E. or P.G. before they are submitted.

In response, NPS provided maps (pages 251 of 258 to 254 of 258) showing distances, including distances from surface waters and wells. However, it does not appear that the NPS provided hydrogeological subsurface study information. DEQ should require such information and DEQ should also ensure that the proposed distances are adequate to protect human health and the environment.

Sufficiency of Monitoring Wells

DEQ should ensure that the monitoring wells are sufficient and NPS should provide support for the locations for these wells (i.e. the monitoring wells should be down gradient and placed in a good area to detect potential issues).

Recent United States Supreme Court Case Law Indicates that a Septic Facility Can Constitute a Point Source (i.e. the *Maui* Case).

Although the Clean Water Act has traditionally drawn a distinction between point source and nonpoint source pollution, recent Supreme Court case law holds that in certain situations a discharge to groundwater can constitute a point source. *County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462 (2020). The Supreme Court held that the Clean Water Act requires a permit when the addition of pollutants into navigable waters is the *functional equivalent* of direct discharges from a point source. *Id*. at 1468. The facility in that case released treated waste into four injection wells, which terminate in a groundwater aquifer. *Haw. Wildlife Fund v. County of Maui*, 24 F. Supp. 3d 980, 983-84 (D. Haw. 2014). Environmental groups asserted that pollution from the

facility was reaching the Pacific Ocean and that a National Pollutant Discharge Elimination System (NPDES) permit was necessary to prevent violations of the Clean Water Act. *See generally id*.

Here, NPS proposes to release sewage effluent into groundwater that may have a hydrological connection to Class 1 surface waters, i.e. the Gibbon River, its tributaries, Tantalus Creek Tributary, and adjacent wetlands to such waterbodies. DEQ should conduct further hydrological analysis to determine whether, in light of the direct connection to surface waters, the proposed project constitutes a prohibited point source. WQQR Chapter 1, Section 4(a) ("no further water quality degradation by point source discharges other than from dams will be allowed.")

DEQ Should Evaluate Monitoring Parameters

- The draft permit contains a limit of 2000 mg/L chloride. What is the justification for a limit nearly 10x greater than other similar facilities in the region, such as Tower Fall Store Area (Permit No. 2022-230) or South Entrance Government Area (Permit No. 2022-170), which have limits of 250 mg/L?

- What is the justification for no permit limit on BOD?

- What is the justification for no permit limit on phosphorus?

Enforcement Provisions Should be added to the Permit

Importantly, it is unclear what happens if water quality standards are not met. Chapter 1 prohibits degradation of Class 1 waters, as explained above in this comment letter. DEQ should specify criteria that constitutes a violation of the Draft Permit and describe next steps that should be taken.

Additional Periodic Review of the Permit Should be Required

The draft permit is for a term of no more than 10 years. (Page 12 of draft permit) The draft permit also requires "[t]his permit shall be reviewed at least once every five (5) years for continued validity of all permit conditions and contents." *Id*. We respectfully request that the permit should be evaluated every three (3) years to help ensure that the wastewater facility is not negatively affecting the sensitive Class 1 waters.

POWJH commends the work that has already been done to improve this facility. It is clear that the National Park Service has worked closely with WDEQ to update their operations to mitigate water quality impacts from effluent discharge. The analysis suggested above will go a long way towards ensuring that the protected ground- and surface waters near the facility are safeguarded from the harmful impacts of effluent discharge.

We appreciate the opportunity to provide comments on Permit No. 2023-076 and we look forward to WDEQ's response to our specific questions and comments.

Sincerely,

Kevin E. Regan
Law and Policy Advisor
Protect Our Water Jackson Hole