RESPONSE TO COMMENTS

A draft National Pollutant Discharge Elimination System (NPDES) permit for the Cow Creek Gaming Center Wastewater Treatment Plant (WWTP) was issued for Public Notice on December 10, 1998. The Public Notice initiated a 30-day public comment period expiring on January 12, 1999. The Environmental Protection Agency (EPA) received written comments dated January 7, 1999 from Dennis Belsky, Oregon Department of Environmental Quality (ODEQ); January 12, 1999 from Kathy Cramer; and January 12, 1999 from Shawna Dennis. The original Fact Sheet provided during the Public Notice period will not be modified to reflect any changes made to the permit resulting from public comments. The following is a summary of the substantive comments related to the draft permit and the EPA's responses:

1. **Comment**: The term of the proposed NPDES permit is unclear.

   Response: Section VIII.D, Permit Expiration, of the Fact Sheet states that the permit will expire five years from the effective date of the permit. After an NPDES permit is signed by the Director of the Office of Water, the effective and expiration dates are included on the front page of the permit.

   If the permittee wishes to continue the activity regulated by the NPDES permit after the expiration date, he/she must apply for a new permit 180 days before the expiration date of the permit (See permit section V.F, Duty to Reapply).

2. **Comment**: The EPA only listed the sections of the Clean Water Act (CWA), not the applicable provisions, when discussing 401 certification of the facility within the public notice.

   Response: It is EPA standard procedure to cite sections of the CWA within the public notice. The complete contents of sections 208(e), 301, 302, 303, 306, and 307 can be found in the 1987 CWA. It is not practical to summarize the contents of the sections here as they are interrelated to other sections of CWA and would constitute many pages of verbatim material.

3. **Comment**: It is not clear that alternatives to discharge to surface water were evaluated nor reason for an NPDES permit after operating on-site without discharge for a period of years.

   Response: The tribe requested a discharge to the South Umpqua River in a NPDES permit application package dated October 4, 1995. They modified their original request for a year round discharge to include only the winter months (between November 1-April 30) when the proposed effluent effects would be minimal to the South Umpqua River. The EPA was told that the tribe requested a river discharge to preserve the capacity and performance of their drainfields and to minimize any potential effects to groundwater.

4. **Comment**: The river mile is not designated.

Response: The river mile was not specified in the draft permit because the pipeline and outfall have not been built yet. The permittee expects it to be built during the summer of 1999 at approximately river mile 163.3.

5. **Comment**: A mixing zone or zone of immediate dilution is not designated for the Cow Creek WWTP to determine if the City of Canyonville's mixing zone overlaps.

Response: A mixing zone was not needed in the determination of permit limits for Cow Creek Gaming Center WWTP. The permit limits represent the more stringent of either technology or state water quality-based standards. The technology-based limits for biochemical oxygen demand (BOD) and total suspended solids (TSS), never take into account dilution factors because they represent technology that is readily available to municipalities. The water quality-based limits for pH and E. coli must be met prior to discharge to the river (a.k.a. end-of-pipe) without the benefit of dilution.

6. **Comment**: Are limits for BOD and TSS consistent with state rules for new discharges (OAR 340-41)?

Response: Yes, Oregon Administrative Rule (OAR) 340-41-295 requires that during the period of high stream flows (approximately November 1 to April 30) a minimum of secondary treatment or equivalent control be met. The NPDES permit contains secondary treatment standards for BOD and TSS consistent with Title 40, Part 133, Section 102 of the Code of Federal Regulations (CFR) titled "Secondary treatment." The permit contains the more stringent water quality-based requirements for pH.

7. **Comment**: The maximum effluent volume (design flow) to be discharged is not specified in the permit. The permit does not limit the raw sewage volume to be accepted from the tribal facilities.

Response: The EPA has included mass-based limits for BOD and TSS in the NPDES permit. These limits were developed by multiplying the concentration limits by the design flow and a conversion factor of 8.34 pound*liter/milligram*million gallons. A violation of these limits will occur if the facility exceeds it design flow as measured either as influent or effluent.

In addition, section III.M, Design Criteria Requirement, of the permit includes the design criteria flow for the WWTP as 0.0865 million gallons per day (mgd). If the annual average flow of the WWTP exceeds 85% of this design flow (0.0735 mgd) the permittee is required to develop a facility plan and schedule for maintaining compliance within one year from the date of the first exceedence.

8. **Comment**: A reasonable potential analysis should be performed for ammonia. We suggest the EPA add maximum effluent limits consistent with OAR 340-41 at the outfall pipe.

Response: The reasonable potential for the facility to violate state standards for ammonia cannot be performed. Insufficient monitoring data is available for effluent pH and temperature in order to determine which state criteria values apply. Section III.A, Monitoring Requirements, of the permit does require that the facility monitor effluent **and** ambient pH, temperature, and total ammonia. Based on the results of this monitoring, and prior to reissuance of the NPDES permit, the EPA will determine whether ammonia limits are required.

9. **Comment**: The maximum daily Escherichia coli (E. coli) limit differs from the Oregon standard for a single sample exceedence.

Response: In the permit, Table I-1 of section I.A, Effluent Limitations, includes a "Daily Maximum" effluent limitation for E. coli. Section VI of the permit includes the definition of "Daily maximum" as the maximum value allowable in any single sample or instantaneous measurement. Because the definition of "Daily maximum discharge limitation" is also included in this section and is confusing, the final permit has been modified to exclude this definition.

10. **Comment**: Oregon procedure is to base the monthly average limit for E. coli on a log mean, regardless of the number of samples. Refer to OAR 340-41-285-2-e.

Response: Oregon state standard OAR 340-41-285-2(e)(A)(i)(II) states that a 30-day log mean of 126 E. coli organisms per 100ml, be based on a minimum of five samples. Since Oregon's implementation procedure does not require a minimum of five samples and weekly monitoring is required in the permit for E. coli, the permit will reflect this suggestion consistent with state practice.

11. **Comment**: Oregon basin standard allows sources to conduct additional sampling for E. coli if the daily 406/100ml standard is not met.

Response: Umpqua basin standard OAR 340-41-285-2(e)(A)(i)(II) does not contain a provision to allow additional sampling. It is the state's implementation procedure to allow five consecutive re-samples to be taken at four hour intervals beginning as soon as practicable (preferable within 28 hours) after the original sample was taken exceeding 406 organisms per 100ml. If the log mean of the five re-samples is less than or equal to 126 organisms per 100ml, a violation shall not be triggered. The EPA has incorporated this provision in the permit consistent with ODEQ practice.

12. **Comment**: Because the EPA will be enforcing the permit, the state protective statutes and administrative regulations should be clearly delineated in paragraph II.A of the permit titled "State laws and federal standards."

Response: The Cow Creek WWTP mainly generates *mixed/commercial septage*. This *septage* is subject to state solid waste rules off-reservation and federal solid waste rules on the reservation. The EPA will enforce the provision that the permittee takes reasonable steps to assure that solids handling contractors, disposing of the mixed septage, are complying with state laws off of the reservation. "Reasonable steps" might be a written assurance of compliance or a permit issued under state law. Once the materials leave the reservation, with a contractor that the tribe has good reason to believe complies with state law and regulations, the ultimate responsibility for compliance lies with the state, not the tribe or the EPA.

There is also the possibility that the WWTP might require disposal of the *biosolids* generated in the drainfields or recirculation tanks. The *biosolids* shall be disposed of in either municipal solids waste landfill (MSWLF) unit or the gravel will be cleaned and recycled for continued use with washwater going back into the treatment system. *Biosolids* from the WWTP have not previously been disposed of (nor are they expected to be disposed of during the life of the permit). Disposal or uses of the *biosolids* are subject to federal regulations on the reservation and state and federal regulations off of the reservation.

It is not the EPA's intent to make the state rules regarding non-domestic septage or biosolids off of the reservation enforceable under the NPDES permit. The permit has been reorganized to make the differences in septage and biosolids more clear.

13. **Comment**: Disposal of gravels/biosolids to a "solids handling facility" is vague and raises concern of proper environmental and public safety safeguards.

Response: The requirement in the draft permit stating that disposal of the commercial septage to a solids handling facility off-reservation must comply with State solid waste regulations regarding classification and disposal has been reorganized for better clarity. These can now be found in sections II.B.1 and II.C.1 of the permit. The term "solids handling facility" is meant to be a broad term, because the state has the authority to direct the septage consistent with its requirements.

The gravel from the recirculating gravel filters and/or drainfields will either be recycled and reused or sent to a MSWLF, if necessary.

14. **Comment**: The facility should be prohibited from accepting septage or grease trap waste from other treatment facilities, commercial establishments or domestic sewage septic tanks or the permit should contain strength and volume limitations.

Response: The EPA agrees to some extent. Section II.A.1, Acceptance of waste, has been included in the permit restricting the permitte from accepting septage or grease trap waste unless the permittee has written permission from EPA. This authority for the modification comes from Section 405(d)(4) of the CWA which allows the Administrator to take such measures appropriate to protect public health and the environment.

15. **Comment**: Biosolids management and protection of public health and the environment is vaguely worded particularly with regard to toxics that may be present. No discussion or application information is provided that enables analysis of specific precautions in the facility design or operation, or identification of possible toxic pollutants. The permit doesn't require notification of the EPA or operator training as part of an overall plant operation to address toxics in the biosolids.

Response: In response to this comment, the EPA has modified the permit to include a one time test of the commercial septage for those pollutants identified in Table 1 of 40 CFR 503.13 (arsenic, cadmium, copper, lead, mercury, molybdenum, nickel, selenium, and zinc). In addition, because the mixed commercial septage and biosolids disposal is regulated by the state in regards to toxics off of the reservation, the state and landfill owners have the opportunity to request that haulers test their materials prior to disposal. The source of the septage waste has been identified in section II, Facility activity, of the Fact Sheet. The permittee is required to notify the EPA of any significant changes to its influent under section V.A., Notice of New Introduction of Pollutants, of the permit.

Section IV.E, Operation and maintenance, of the permit addresses the requirement for operator training consistent with that required by the state. This requirement has been included as a result of conversations prior to drafting the permit.

16. **Comment**: It is unclear if surface waters of the U.S. includes only navigable waters, waters of the state, stormwater, irrigation return flows, or all perennial or intermittent waters.

Response: Waters of the U.S. (in accordance with the definition in 40 CFR 122.2) means:

a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

b) All interstate waters, including interstate "wetlands;"

c) All other waters such as intrastate lakes, river, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters which are or could be used by interstate or foreign travelers for recreational or other purposes or from which fish or shellfish are or could be taken and sold in interstate or foreign commerce, or which are used or could be used for industrial purposes by industries in interstate commerce.

d) All impoundments of waters otherwise defined as waters of the United States under this definition;
e) Tributaries of waters identified in paragraphs a) through d) of this definition;
f) The territorial sea; and
g) "Wetlands" adjacent to water (others than waters that are themselves wetlands) identified in paragraphs a) through f) of this definition.

17. **Comment**: The proposed permit should require a specific biosolids management plan be prepared by the facility and approved by the EPA to determine sufficient environmental and public safety.

Response: A letter, dated December 14, 1998, from the tribe indicates that in the unlikely circumstance that disposal of biosolids is necessary, they intent to dispose of it by recycling and reusing the gravel material (with the washwater being returned to the treatment system) or sending it to the Douglas County MSWLF. The EPA has included the permit requirement that biosolids disposal procedures be included in the facilities "Operation and Maintenance Plan" under section IV.E of the permit. The review and development of this Plan are required within 180 days of the effective date of the permit. The EPA understands that ODEQ regulates disposal out of state through permits to the disposal site operators.

In addition, regarding the commercial septage, it is the tribe's responsibility to take reasonable measures to assure that the haulers, and/or solid waste facility are complying with state requirements and regulation. The EPA understands that the disposal site operators are responsible for complying with ODEQ's regulations through a state permit. The EPA has consulted with ODEQ before classifying the septage as mixed/commercial.

18. **Comment**: The term "major change" in biosolids management is too vague to determine if sufficient environmental and public safety provisions have been incorporated.

Response: As described in Appendix C, section B.6 of the Fact Sheet, A "major change" in biosolids management constitutes any disposal options other than to a solids handling facility or within or directly over a MSWLF unit. Disposal by other options such as in a separate trench within a MSWLF or stockpiling for longer than two years, would constitute a major change.

19. **Comment**: Specific and repeatable sampling frequency should be required for biosolids.

Response: As explained in the response to comment #12, the biosolids from the recirculating gravel filters and drainfields are not expected to need disposing of during the life of the permit. For this reason, section III.A.2, Monitoring requirements, of the permit only requires sampling when the biosolids are disposed of in a MSWLF.

20. **Comment**: Inspection of the dosing/septic tank should occur annually, and grease traps, on a semiannual basis.

Response: The EPA agrees that inspections of this type make good sense and therefore, the requirements are included as part of the WWTP's Operation and Maintenance Plan (section IV.E of the permit).

21. **Comment**: Monthly monitoring of ammonia, not once per quarter monitoring, would sufficiently ascertain environmental and public safety.

Response: The EPA agrees and has modified the total ammonia effluent and ambient monitoring requirement to once per month consistent with state practices.

22. **Comment**: Temperature monitoring of one grab sample per quarter is insufficient to characterize the temporal and seasonal changes in effluent temperature. Continuous recording should be required with an approved Quality Assurance Plan. Annual temperature reporting should be required.

Response: The main purpose of the temperature monitoring is to determine what state ammonia criterion applies to the WWTP and to determine if reasonable potential is exceeded for that criteria (in accordance with 40 CFR 122.44(d)). The permit effluent and ambient monitoring conditions have been changed to once per month for temperature and ambient monitoring for pH has been changed to once per month to facilitate a correlation between total ammonia, temperature, and pH. Reporting of monitoring results are required on Discharge Monitoring Reports (DMRs) on a calendar quarter basis. All effluent and ambient monitoring is only required during periods of discharge (from November 1 through April 30).

23. **Comment**: No information is provided as to levels of phosphorus in the discharge as well as whether state law limiting phosphorus content of cleaning compounds is a management practice at the facility. Suggest monthly monitoring be required for preparation of Total Maximum Daily Load (TMDL) Plans.

Response: Minimal phosphorus monitoring data exists for the Cow Creek WWTP. ODEQ's Water Quality Standards however, do not include phosphorus criteria for freshwater discharges. Therefore, even if sufficient monitoring information was available, effluent limits would probably not be developed due to a lack of reasonable potential to exceed criteria.

Section III, Receiving Water, of the Fact Sheet notes the parameters for which the South Umpqua River is listed on the Oregon 303(d) list. Phosphorus or nutrients are not among the pollutants listed. Therefore, a TMDL is not currently required for these pollutants.

The applicability of state law limiting phosphorus content is not the subject of the permit

and therefore will not be addressed in the Cow Creek Gaming Center WWTP permit.

24. **Comment**: Effluent monitoring during unanticipated bypass events should be required so as to determine if limitations are exceeded.

Response: Although it is EPA Region 10's policy to only require this type of monitoring for major facilities (i.e., design flow greater than 1.0 mgd), the permit has been modified to include this requirement in Section III.B.1, Representative Sampling. This section now requires sampling whenever a bypass, spill, or non-routine discharge of pollutants occurs, if such discharge may reasonably be expected to cause or contribute to a violation of an effluent limit under the permit.

25. **Comment**: Suggest the Quality Assurance Plan (QAP) be submitted to the EPA for approval.

Response: Section III.C of the permit requires that the QAP be submitted to the EPA within 120 days of the effective date of the permit. It is not the EPA's policy to include provisions requiring approval of Quality Assurance Plans in permits. Generally, the QAP is reviewed by the EPA upon submittal and comments are provided to the permittee.

26. **Comment:** Who is notified of noncompliance and how do downstream beneficial users get timely notification?

Response: Depending on the circumstance, section III.J.4, Twenty-four Hour Notice of Noncompliance Reporting, of the permit states that reports of noncompliance by the permittee be either made by phone or in writing to the address in section III.E of the permit which is the EPA NPDES Compliance Unit. Oral reporting is also to the EPA, Region 10 NPDES Compliance Unit via the Noncompliance Reporting Line. The EPA does not have the authority to require that permittees notify the public of occurrences of noncompliance. Monitoring information from Discharge Monitoring Reports (DMRs), including noncompliance of permit limits, are entered into the Permit Compliance System (PCS) database. The public has access to this information through the Internet (Envirofacts at http://www.epa.gov/enviro/index_java.html) or a request to the EPA.

27. **Comment**: How is endangerment to public health from noncompliance determined?

Response: Section II.J of the permit, Twenty-four Hour Notice of Noncompliance Reporting, contains the requirement that the permittee report by telephone any noncompliance which may endanger public health or the environment. This is a regulatory permit requirement from 40 CFR 122.41(l)(6). There is no standardized format for determining endangerment; it would be based on a case by case determination taking relevent factors into account. If reasonable and prudent judgment on the part of the operator leads him/her to believe that there would be a health concern from the drinking of or swimming in the effluent, endangerment would be triggered.

28. **Comment**: Does the EPA intend to rely upon the State of Oregon operator certification system to certify the supervising operator?

Response: The EPA is not directing the operators to obtain certification from the State of Oregon operator certification program. The EPA expects that the operators will receive the applicable, Class I, training required in Section V.H.2 of the permit.

29. **Comment**: Section IV.F of the permit should be expanded to prevent entry of grit, solids, etc. to groundwater and surface waters of the State of Oregon and not just navigable waters.

Response: Section 502(7) of the CWA defines "navigable water" as waters of the United States (U.S.), including the territorial seas. In order to avoid further confusion, the term "navigable waters" has been changed to "waters of the United States" which is defined in comment 16 above. Please note that waters of the U.S. does not include groundwater.

30. **Comment**: Specific information and maps regarding ownership information would be helpful.

Response: Ownership maps were not available for inclusion in the Fact Sheet. The color map was created using EPA's SITEINFO program. The tribe's reservation and associated jurisdiction extends halfway across the South Umpqua River, including the bed and banks containing the proposed outfall.

31. **Comment**: The permit does not take into account the City of Canyonville's discharge by conducting a winter dissolved oxygen sag analysis.

Response: A dissolved oxygen (DO) sag analysis is not needed, and is not possible because of limited monitoring data, for the WWTP discharge. The EPA has received concurrence with the National Marine and Fisheries Service that DO is not likely to be a problem for the listed fish species in the South Umpqua River. There is significant wintertime flow and available mixing in the immediate area of discharge and downstream. DO depression is also generally not an issue in the wintertime (because DO has an inverse relationship with temperature).

32. **Comment**: Groundwater flow is not characterized. Groundwater recharge to the South Umpqua River or Canyon Creek is possible from drainfield disposal of effluent.

Response: The NPDES permit is for the November 1 through April 30 discharge to the South Umpqua River through outfall 001 only. The permit does not include the drainfield discharge. The NPDES program applies to discharges of pollutants from any point source into waters of the United States (40 CFR 122.1). EPA does not have any information to suggest that pollutants from the drainfield leach through the ground and eventually make

their way to the South Umpqua River or Canyon Creek.

33. **Comment**: EPA documents do not describe facility improvements to accommodate a surface discharge such as interference with UV disinfection. Effluent should undergo clarification before disinfection.

Response: This comment has been provided to the permittee for their consideration. The EPA is responsible for developing permit limits consistent with and protective of designated beneficial uses and the CWA, how those limits are met is the responsibility of the permittee.

34. **Comment**: Interconnection of the North Canyonville Sanitary District (NCSD) should not be allowed under the permit unless specifically authorized by permit modification.

Response: Connection issues are beyond the scope of the NPDES program. However, the EPA has a copy of a letter and fax from the tribe to the City informing them that the RV park and Casino would be disconnected from the city system on July 30, 1996 and requesting that a city representative be present. Pictures are also available showing the disconnection of the RV park sewer lines from the city's lines and connection to the Cow Creek Gaming Center WWTP.

35. **Comment**: The proposed permit does not have a requirement to meet basin water quality standards with a "notwithstanding" clause.

Response: The NPDES permit need not contain all of the provisions of the ODEQ Water Quality Standards because the Cow Creek Gaming Center WWTP discharge is within "Indian Country" and is a sovereign nation. The EPA feels that confusion may arise regarding the definition of "highest and best practicable treatment" which is included in the "notwithstanding" clause, found in OAR 340-41-285(1). The clause also is not expected to provide any additional benefit to attaining the beneficial uses of the River, and therefore has not been included in the permit.

36. **Comment**: The permit does not address management of RV holding tank wastes that may include disinfectant and sewage stabilizers.

Response: The response to comment #15 explains the new permit requirement to conduct a test of the WWTP's commercial septage in order to evaluate toxicity that may be present. This monitoring is consistent with the more stringent requirements for land applying biosolids. Any other pollutants found in the waste stream are not expected to be a problem due to the minor nature of the discharge.

37. **Comment**: The State requests that the EPA provide copies of the DMRs to ODEQ for use in the development of TMDLs for the South Umpqua River.

Response: The DMRs are entered into the Permits Compliance System. The PCS monitoring information is publically available via the Internet at http://www.epa.gov/enviro/index_java.html. From the homepage select "Generate reports from data - PCS customized query" and then "Effluent measurements." The EPA will provide copies to ODEQ for TMDL use upon request.

38. **Comment**: There should be random, unannounced visits to check the permittee's monitoring data.

Response: Because the facility is within and discharging to "Indian Country" (a.k.a. within the reservation boundary), it is the EPA's responsibility (and not ODEQ's) to assure enforcement/compliance of the NPDES permit. This authority is found in section III.L Inspection and Entry of the permit. This section states that the Director or an authorized representative, upon presentation of credentials and other documents as may be required by law, shall be allowed to 1) enter the permittee's premises, 2) have access to any records kept under the conditions of the permit, 3) inspect at reasonable times anything regulated under the NPDES permit, and 4) sample and monitor at reasonable times, for the purpose of assuring permit compliance any substances or parameters at any location. These inspections are available on EnviroFacts (http://www/epa.gov/enviro/index_java.html).

39. **Comment**: The permit should not be issued unless the public has the right to bring legal action against the tribe for damages.

Response: Under Section 505(a) of the Clean Water Act, " . . . any citizen may commence a civil action on his behalf 1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of (A) an effluent standard or limitation under this Act or (B) an order issued by the Administrator or a State with respect to such a standard or limitation,..."

The Clean Water Act includes an Indian tribe in the definition of "person" for the following reason. In section 502(5) of the CWA, 33 U.S.C. § 1362(5), the "term 'person' means an individual, corporation, parternship, association, State, municipality, commission, or political subdivision of a State, or any interstate body" (emphasis added). Further in section 502(4) of the CWA, 33 U.S.C.§ 1362(4), the "term municipality means . . . an Indian tribe or an authorized Indian tribal organization . . ."

Therefore, section 505 of the Clean Water Act allows a citizen to sue for civil penalties, but does not authorize the recovery of damages. That remedy would have to be pursued under other legal authorities. The EPA does not have the authority to broaden any statutory provisions.