From: prove356@frontiernet.net [mailto:prove356@frontiernet.net]
Sent: Tuesday, May 31, 2016 1:17 PM
To: Troy Smith
Subject: comment on IPDES User's Guide to Permitting and Compliance—Volume 1

IPDES User's Guide to Permitting and Compliance—Volume 1
Troy Smith
Idaho Department of Environmental Quality
1410 N. Hilton, Boise, ID 83706
Dear Sir,
I am commenting on the changes proposed on page 71. line 15. and continuing on to line 16.
The current change is to read;
EPA has developed the following permits to address various sources of discharge:

To be accurate the change should read as follows;
EPA has illegally developed the following permits to address various sources of discharge:

This change should be incorporated in the final version because on line 24. of page 71. we find the words "Small Suction Dredge (SSD) Mining."
The EPA NPDES General Permit for Small Scale Suction Dredge Mining in Idaho is illegal for the following reasons;
In National Mining Association v. US Army Corps of Engineers, 145 F. 3d 1399, 1404 (D.C.Cir.1998), the court stated; **The Court concludes that neither § 301 nor § 404 covers incidental fallback.**
and,
ORDERED, that the so-called Tulloch rule is declared invalid and set aside, and henceforth is not to be applied or enforced by the Corps of Engineers or the Environmental Protection Agency.
Small Suction Dredge Mining in Idaho represents "incidental fallback." This fact has been made known to the US EPA, Idaho DEQ, and the office of Idaho Attorney General.
Section 301 Clean Water Act is at issue and has been set aside by court order by the D.C. Circuit Court as it pertains to "incidental fallback" and cannot be used by EPA to regulate suction dredge mining in Idaho. By extension the IDEQ is equally enjoined by the court from regulating suction dredge mining in Idaho. The language in Section 301 Clean Water Act; **The "discharge of any pollutant by any person" is unlawful except in compliance with...,** cannot be applied to suction dredge mining in Idaho because the activity represents "incidental fallback."
Thank you for allowing me the opportunity to comment on the absolute lawlessness and anarchy that has invaded this process by which the IDEQ

has attempted to transform and illegal NPDES permit into an equally illegal IPDES permit.
The appeal of Nat'l Mining Ass'n v. US ACE includes this rebuke that applies to IDEQ today;
SILBERMAN, Circuit Judge, concurring:

I join the opinion of the court and write separately only to make explicit what I think implicit in our opinion. We hold that the Corps's interpretation of the phrase "addition of any pollutant to navigable waters" to cover incidental fallback is "unreasonable," which is the formulation we use when we have first determined under Chevron that neither the statutory language nor legislative history reveals a precise intent with respect to the issue presented--in other words, we are at the second step of the now-familiar Chevron Step I and Step II analysis. See, e.g., Whitecliff, Inc. v. Shalala, 20 F.3d 488 (D.C.Cir.1994); Fedway Associates, Inc. v. United States Treasury, 976 F.2d 1416 (D.C.Cir.1992); Abbott Labs. v. Young, 920 F.2d 984 (D.C.Cir.1990); Associated Gas Distribs. v. FERC, 899 F.2d 1250 (D.C.Cir.1990). As our opinion's discussion of prior cases indicates, the word addition carries both a temporal and geographic ambiguity. If the material that would otherwise fall back were moved some distance away and then dropped, it very well might constitute an "addition." Or if it were held for some time and then dropped back in the same spot, it might also constitute an "addition." But the structure of the relevant statutes indicates that it is unreasonable to call incidental fallback an addition. To do so perforce converts all dredging--which is regulated under the Rivers and Harbors Act-- into discharge of dredged material which is regulated under the Clean Water Act.

Moreover, that Congress had in mind either a temporal or geographic separation between excavation and disposal is suggested by its requirement that dredged material be discharged at "specified disposal sites," 33 U.S.C. § 1344 (1994), a term which simply does not fit incidental fallback.

The Corps attempts to avoid these difficulties by asserting that rock and sand are magically transformed into pollutants once dredged, so all dredging necessarily results in an addition of pollutants to navigable waters. But rock and sand only become pollutants, according to the statute, once they are "discharged into water." 33 U.S.C. § 1362(6) (1994). The Corps's approach thus just leads right back to the definition of discharge.

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