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Adam Krantz

November 5, 2015

Paula Wilson
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706
Via *Electronic Mail*: paula.wilson@deq.idaho.gov

Re: Docket No. 58-0102-1201 - Proposed Rule

Dear Ms. Wilson:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to comment on the Idaho Department of Environmental Quality's (IDEQ) proposed rulemaking to update the state's human health criteria (Docket No. 58-0102-1201). NACWA is a national trade association representing the interests of nearly 300 public wastewater treatment utilities across the United States, including four utilities in Idaho. NACWA's members collectively treat and reclaim the majority of the wastewater generated each day nationwide.

NACWA has been tracking Idaho's human health criteria rulemaking effort since early 2014 and submitted comments in April 2014, supporting Idaho's consideration of Probabilistic Risk Assessment. Based on NACWA's engagement to date, the rulemaking process has been thorough, transparent and open, with multiple opportunities for public comment and stakeholder input. Though NACWA is not taking a position on the specific technical elements of Idaho's proposal, the Association understands that the state, throughout its process, has considered a range of perspectives and input and has developed a rule package that is consistent with the Clean Water Act (CWA) and is supported by NACWA members in the state.

While Idaho has not formally submitted its rule to EPA Region 10 for review, the Region has already expressed concern with some of the state's "proposed policy decisions"¹ and informally stated that the package needs to be more protective along the lines of the Oregon criteria and the proposed federal criteria for the state of

¹ Letter from Lisa Macchio, Water Quality Standards Coordinator, EPA Region 10 to Don Essig, IDEQ, May 29, 2015.

Washington. EPA Region 10 appears to have predetermined the approvability of the rule package before it had been completed and before a final rule has even been submitted to EPA for review.

As it did in Oregon and Washington, EPA appears to be trying to influence the outcome of a state rulemaking to suit its policy preferences. Section 303 of the CWA clearly outlines the authority and responsibility of the states to develop and regularly review and revise water quality standards. EPA's authority to review those standards is limited to determining whether the state has adopted uses "consistent with the requirements" of the CWA and criteria that "protect the designated water uses." Based on our understanding of the rule, Idaho has proposed a package that clearly meets these benchmarks.

As NACWA pointed out in a May 13, 2015 letter to Region 10 Administrator Dennis McLerran², EPA routinely engages with the states before formal criteria submittal and often significantly influences the content of state proposals, seeking to ensure full approval and avoid the need for formal EPA disapproval or promulgation of federal standards. Whether due to a lack of resources or political will, states have often succumbed to this "informal" pressure from EPA and made revisions to their rules, even if the changes were counter to the state's policy and risk choice positions.

State standards must, by law and regulation, reflect the best available science. But the standards development process also incorporates numerous state policy and risk decisions. This is where Idaho has demonstrated a sound and thoughtful process for evaluating what policy and risk decisions will work best for the state and be consistent with the CWA. Idaho has done its homework to consider the current science and EPA guidance and has made the tough policy and risk decisions to develop a rule that it believes protects human health for the citizens of the state and Native American tribes within the state – responsibilities that lie squarely within Idaho's purview. In performing its CWA-required review function – whether during the rule development process or during its official standards review – EPA must not overstep its authority and substitute its policy preferences over legitimate state policy decisions that are "consistent with the applicable requirements" of the CWA.

There remains concern among some industrial dischargers, nongovernmental organizations, and Native American tribes in Idaho over the content of the state's proposal. It is important that the state consider all comments on the proposed rule and evaluate them in the context of the science, EPA guidance and the entire set of policy and risk choices to ensure the final rule is protective of human health and consistent with the CWA. EPA Region 10 has demonstrated its willingness to apply pressure and suggest that states only submit rule packages that contain preferred federal policy preferences. These tactics are inconsistent with the CWA's cooperative federalism foundation and history that provides the states the responsibility for developing and approving water quality standards.

NACWA encourages Idaho to retain state autonomy in development of a human health rule based on science and state policy choices that are consistent with the CWA.

² NACWA Letter to Dennis McLerran from K. Kirk, May 13, 2015.

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NACWA appreciates the opportunity to comment on the proposed rulemaking. Please contact Chris Hornback at chornback@nacwa.org if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Krantz". The signature is fluid and cursive, with a large loop at the end.

Adam Krantz
Chief Executive Officer

cc: Dennis McLerran, EPA Region 10