



Idaho Association of
Commerce & Industry
The Voice of Business in Idaho®

May 22, 2014

Ms. Paula Wilson
Idaho Department of Environmental Quality
1410 North Hilton Street
Boise, ID 83706

Dear Ms. Wilson:

The Idaho Department of Environmental Quality (DEQ) has requested comments on the first draft of changes to the Mixing Zone Policy found in the Water Quality Standards at 58.01.02.060. The Idaho Association of Commerce & Industry (IACI) is the leading trade association of Idaho businesses, representing about three hundred members of all sizes engaged in diverse commercial and industrial enterprises, and is the leading voice for business on environmental matters in Idaho.

The proposed changes to the Mixing Zone Policy are significant. IACI has the following comments on this initial draft and looks forward to discussions with the DEQ on changes to this Policy.

Topics for discussion include:

- Use of mixing zones in water quality limited receiving waters;
- What is unreasonable interference to existing beneficial uses;
- Nonpoint source discharges; and
- Other topics: stormwater and lakes.

Water Quality Limited Receiving Waters

The proposed rule prohibits a mixing zone for any pollutant when the receiving water does not meet water quality criteria for that pollutant. IACI recommends that the Policy instead provide the flexibility for a mixing zone for such pollutants as long as TMDL or similar requirements are met. For example, existing water quality rules provide measures on how to handle increases in temperature in a receiving water (including mixing zones) if certain conditions are met [see IDAPA 58.01.02.401.01.c]. How is the proposed Mixing Zone Policy to work with such existing rules.

Unreasonable Interference to Beneficial Uses

The crux of the proposed changes is found in 060.01.d.; the proposed language in this section is meant to replace “(A)fter a biological, chemical, and physical appraisal of the receiving water and the proposed discharge...” found in the current rule. The proposed language is very problematic to implement as a number of the requirements in “d” are subject to considerable interpretation. Examples include:

- How is interference with fish passage, spawning, egg incubation or rearing determined? For example, does this mean that a mixing zone cannot be located where a “redd” is located? To get a mixing zone does the applicant have to survey the potential mixing zone area and look for: redds, eggs, or evidence that “rearing” is occurring? How will mixing zones be impacted by spawning areas that can vary from year to year?
- What are the criteria for determining “thermal shock” or loss of cold water refugia?
- For endangered species, what is considered from a water quality perspective “destruction or adverse modification to critical habitat?”
- How will acute toxicity to aquatic life outside of the zone of initial dilution be determined?

The existing restrictions for the size of mixing zones are intended to address a number of the items listed in the proposed rule. For example, there are limitations on the width of a mixing zone, proximity to shoreline and volume to ensure that there are fish passage corridors, refugia, etc. [see 060.01.e.i-iv. in the existing rule]. IACI believes that the proposed language will result in Endangered Species Act (ESA) Section 7 like investigations for all mixing zones with the possibility of considerable subjectivity as to how the proposed requirements are met. Additional discussion in the rulemaking process is needed to develop language that addresses “biological, chemical and physical appraisal” in a science-based and practicable approach.

Nonpoint Sources

IACI supports the proposed rule establishing a point of compliance of nonpoint sources. However, IACI believes that the rule should allow the creation of a mixing zone if there are specific conditions that allow the establishment of such a zone.

Stormwater and Lakes/Reservoirs

The proposed changes to the Mixing Zone Policy have eliminated the requirements associated with a discharge to lakes and reservoirs. Also, stormwater discharges are not addressed. IACI believes that the Mixing Zone Policy needs to include discharges to lakes and reservoirs and stormwater discharges.

We appreciate the opportunity to submit these comments, and we will continue to participate in the rulemaking process.

Sincerely,



Alex LaBeau
President

cc: Alan Prouty, Chair
IACI Environment Committee