



Clearwater Paper Corporation
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Spokane, WA 99201

June 27, 2014

Paula Wilson
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706

**RE: Docket No. 58-0102-1401 Negotiated Rulemaking
Rulemaking initiated to updated mixing zone policy
Mixing Zones & Impaired Waters**

Dear Ms. Wilson:

Clearwater Paper is pleased to offer this comment letter on the subject rulemaking. We appreciate the Idaho Department of Environmental Quality's (IDEQ) work on this very important matter and look forward to participating as this rulemaking proceeds.

IDEQ did not provide a response to the comment offered in our June 6th letter relative to impaired waters and the use of mixing zones (060.01.a). We regard this section of rule as the most important language in the proposed rule and we urge DEQ to review what other states have done relative to this important consideration.

With the most recent version of the subject rulemaking IDEQ did not change the proposed language in 060.01.a. *"Mixing zones shall not be authorized for a given pollutant when the receiving water does not meet water quality criteria for that pollutant."*

Comment: The language at 060.01.a creates an instantaneous compliance problem for a discharger when a water body undergoes a 303(d) listing.

Prior to a 303(d) listing, a discharger could be in compliance with their NPDES permit but when a 303(d) listing is finalized, the source could be immediately out of compliance with Idaho law, subject to enforcement and third party litigation, all while complying with their discharge permit. The proposed language creates a regulatory disconnect between Idaho law and the language in NPDES permits. There would be no timely opportunity to resolve this regulatory disconnect if the proposed language is adopted and an impairment listing occurs.

Comment: The language at 060.01.a circumvents Idaho's TMDL process.

The objective of a TMDL is to bring a water body back into compliance with water quality criteria over time by setting allocations that reduce pollutant loading to receiving water. In other

jurisdictions, there are examples of pollutants being traded among dischargers to affect compliance with water quality criteria. Dischargers should be allowed to make their case to Idaho DEQ relative to why they deserve more or less of a TMDL allocation. For Idaho to ban mixing zone for impaired waters obfuscates the TMDL process and takes potentially creative and innovative tools off the table. Mixing zones are defined by pollutant concentrations – not pollutant loadings. Actual pollutant loadings are much more important to water body health and viability than mixing zones. Idaho would be well served to focus on the objective – bringing water bodies back from non-attainment using all available Clean Water Act tools and rather than establish an “a priori” ban on mixing zones for impaired waters.

Comment: The language at 060.01 prevents any new dischargers (storm or NPDES) into impaired waters regardless of the pollutant loading.

The language in 060.01.a would preclude even a de minimus addition into an impaired water body. Consider a water body segment impaired for temperature. Under the proposed language in the mixing zone rule, a new discharge of a 0.1 GPM at 0.1° F above the water quality criteria could not be discharged into the receiving water. Idaho DEQ should have the flexibility to access and find that impacts from new and/or existing dischargers are de minimus and irrelevant to a receiving water body's impairment status.

Comment: The language at 060.0.a prevents dischargers from renewing permits on impaired water regardless of the mass loading or TMDL status.

Similar to the above comment, the language at 060.01.a precludes a permit renewal regardless of the size of a mixing zone if the receiving water is impaired. TMDL implementation typically requires multiple permit cycles. The impact of the language at 060.01.a would force end-of-pipe limits on dischargers at the next permit renewal. Unless modified, this language will result in permits not being renewed for extended periods of time (as is happening currently in Oregon), force end-of-pipe limits before a permit can be renewed, create the need for very large allocation of public and private resources to meet end of pipe limits and/or threaten or close industrial operations.

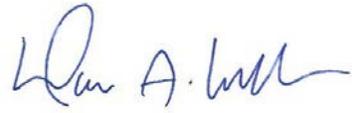
Comment: The language at 060.01.a is not consistent with the assimilative capacity associated with some pollutants.

Certain pollutants (i.e., temperature) can be assimilated by receiving waters. To force an end-of-pipe limit (by rule) on pollutants that can be assimilated is not reasonable public policy and incongruous with the TMDL process.

On behalf of Clearwater Paper, we appreciate the opportunity to provide comments on this important matter and look forward to participating with IDEQ as this rulemaking goes forward.

Please contact me at 509-344-5956 or marv.lewallen@clearwaterpaper.com with questions.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Marv A. Lewallen". The signature is fluid and cursive, with a large initial "M" and "L".

Marv Lewallen
Vice President – Environmental, Energy & Sustainability

C: Don Essig
Doug Conde