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July 25, 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.

Comment: The revised language at 010.XX defines bioaccumulative pollutants as those with BAF's greater than 300. It's unclear from the support materials to the proposed rule as to the basis of this definition or the intended use.

The Great Lakes Initiative used a BAF of 1000 to define "bioaccumulative compounds of concern" (BCCs) for the large lake watershed. The BAFs for 22 substances were estimated to be >1000 and these substances garnered special treatment with respect to mixing zones (i.e., mixing zones for BCCs were phased out). It's not clear in the draft rule if this is what IDEQ is intending but the situation in the Great Lakes, a system of large lakes with long retention times, is quite different than the flowing streams and rivers found in Idaho.

It's noteworthy that Florida used a BCF cut point of 300 in their recent analysis to determine a fish consumption rate. That analysis included estimates of shrimp consumption where the shrimp spent some of their life in estuarine waters before moving offshore. Florida assumed that substances with a BCF less than 300 would depurate from shrimp as they moved offshore (where they are caught) and substances with a BCF greater than 300 would be retained in the tissue. This scenario has no direct parallel in Idaho. In the context of bioaccumulation, such a scenario would seem quite implausible considering the very limited spatial size of mixing zones as provided on page 13 of the rule.

Comment: The revised language at 060.01.a offers excellent clarification compared to previous versions of the rule but requires minor editing to clarify the intent.

The semicolon in line 3 of 060.01.a creates some confusion as to the intent of the subsequent phrases. We suggest removing the semicolon. On line four the readability would be improved by removing the comma before the first “that” and substituting “which” for “that” at this point in the sentence.

Comment: The revised language at 060.01.d.i appears unnecessary.

Addition of the phrase "this includes impacts to critical habitat of Endangered Species Act listed species" does not appear to be necessary and potentially causes confusion between implementation of ESA standards and the state mixing zone rule.

Comment: The language at 060.01.d.ii is unclear.

Since the term "cold water refugia" is not defined or referenced in Idaho rules, we recommend this term be defined or deleted from the Rule.

Comment: The language at 060.01.d.iii is confusing and it’s unclear what DEQ is intending by this section.

As noted in the first comment, it’s unclear what DEQ is trying to accomplish with this section. Any issues with bioaccumulative pollutants are best addressed through revision to criteria or via 303(d) listings and subsequent TMDL process. Aquatic life are almost always transient along a stream segment while mixing zones are a small cross sectional area of a stream segment usually only a few hundred feet at most. The need for addressing bioaccumulative pollutants in Idaho waters via mixing zone rules is not well defined or supported by any information in the record.

Also noteworthy is that the current HHWQC derivation methodology (while calling for a BAF as an input parameter) actually uses BCF values because EPA lacks pollutant-specific guidance for BAFs. EPA has, quite recently, proposed to use BAFs instead of the old BCFs and to derive those BAFs using EPA's EPI Suite model (predicated on the work of Arnot and Gobas). This part of EPA's draft HHWQC update is controversial and is also complicated by the fact that model parameters used by EPA for estimating BAFs (e.g., water temperature, fish lipids, trophic structure, etc.) appear to be more representative of large lake ecosystems than flowing waters. How would BAFs be used to calculate water column criteria as described in this section? Also how would the proposed BAF definition be used in such a calculation? Further, the phrase "where tissue levels in aquatic organisms are higher than the criteria would predict" is ambiguous and confusing. Would such a condition required permittees to undertake detailed fish tissue surveys before obtaining a mixing zone? It appears that this section and the proposed BAF definition either needs to be substantially revised or deleted from the rule.

Comment: The language at 060.01.d.vi is unclear.

Use of the undefined terms of "impede" and "recreation" makes this section ambiguous and unclear. What activities are covered by the term "recreation"? When would a mixing zone "impede" recreation?

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,

Marv Lewallen
Vice President – Environmental, Energy & Sustainability