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October 1, 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 language at 060.01.d.iii is still confusing and it's unclear what DEQ is intending by this section and how it will be implemented.

As noted in our July 25th, 2014 comment letter, it's unclear what DEQ is trying to establish with this section and unclear how it is going to be implemented. Several important questions are unaddressed associated with this rule subsection:

Are the "aquatic organisms" referenced in 606.01.d.iii those within a proposed mixing zone?

How large is the zone of impact of aquatic organisms for bioaccumulative pollutants to be considered in a mixing zone? For example, is it just within the proposed mixing zone, fifty feet downstream, five hundred feet downstream, or five miles downstream?

Clearwater Paper believes that any issues with bioaccumulative pollutants are best addressed through revision to water quality criteria or via 303(d) listings and subsequent TMDL process – not in a mixing zone consideration. Aquatic life that provide a human health risk pathway 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. The need for addressing bioaccumulative pollutants in Idaho waters via mixing zone rules is not well defined (so far) in this rulemaking and we urge DEQ to clarify how this section of rule will be implemented.

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 confusing. Would such a condition require 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.

Clearwater Paper supports the comments offered by IACI in their letter on this very important matter. Their letter makes several very important points on the mixing zone rule and we urge DEQ to carefully consider these comments.

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