



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706 • (208) 373-0502

C.L. "Butch" Otter, Governor
Curt Fransen, Director

July 8, 2014

Daniel Opalski, Director
Office of Water and Watershed, Region 10
U.S. Environmental Protection Agency
1200 6th Ave.
Seattle, WA 98101

Re: Submission of revised water quality standards for approval: Antidegradation insignificance provisions (Idaho Docket 58-0102-1301T).

Dear Mr. Opalski:

Consistent with the Clean Water Act 303(c) and 40 CFR 131.20, revised water quality standards (WQS) are hereby submitted for EPA approval. In response to EPA's disapproval of the previous insignificance provisions, Idaho DEQ undertook rulemaking to revise the antidegradation implementation provision in the Water Quality Standards and also undertook revisions to the Idaho Code Water Quality Act to correct the Antidegradation Policy and Implementation section. Idaho's temporary/pending rule Docket 58-0102-1301T makes the following changes, as recommended in EPA July 2013 disapproval letter, to the antidegradation implementation provisions of Idaho's WQS: clarification of DEQ's discretionary ability to make a determination of insignificance when loss of assimilative capacity is less than 10%. The attached justification provides the details of the changes and DEQ's rationale for making the change.

These changes were adopted on May 8, 2014 as a temporary rule by the DEQ board. They became effective under State of Idaho administrative procedures on June 4, 2014. There was an opportunity for public comment before the Board. In addition to changes in 58.01.02.052, language under 58.01.02.055 was changed to improve consistency with the antidegradation provisions adopted in 2011 and 2012. These changes were adopted in response to legislation passed during the 2014 session of the Idaho Legislature to make the current water quality standards consistent with Idaho law.

This temporary /pending rule also makes changes to section 055 of Idaho's WQS regarding "Water Quality Limited Waters and TMDLs". The changes to section 055 harmonize this section of our WQS with the new antidegradation language in section 052. As EPA has previously determined that the language in section 055 is not actionable WQS under section 303(c) of the CWA, we point this out only for your information; changes to section 055 are not being submitted for EPA approval.

As temporary rules, these changes expire at the end of the 2015 session of the Idaho Legislature. However, the change to the Idaho Code Water Quality Act providing DEQ the discretion to determine antidegradation insignificance was signed into law and was made effective on March 11, 2014. DEQ is pairing the temporary rule with a pending rule of these same changes. The companion pending rule will go to the 2015 Idaho legislature for final approval as a permanent rule change. At that time DEQ will notify EPA that the temporary rule has become permanent. DEQ took this unusual step of temporary/proposed rulemaking to make Idaho rules consistent with Idaho law and to implement the law and rule changes for use in NPDES permitting. DEQ is also requesting that EPA take action on the rule submittal package from June 8, 2012. This package included changes to 58.01.02.052 regarding general permits and identification of Tier II waters as well as some housekeeping changes regarding designated uses for 8 Lower Boise River tributaries. In EPA's 2013 disapproval of the antidegradation *de minimis* provisions, EPA specifically stated that no action had been taken yet on the remainder of that submission, but that EPA intends to act when DEQ adds the *de minimis* provision consistent with the disapproval action.

The rule submittal package includes:

- 1) This cover letter, briefly describing the rulemaking and the contents of the package supporting the rule being submitted for your approval. *File: 58-0102-1301T EPA submittal letter.pdf*
- 2) A justification and supporting documents. *File: 58-0102-1301T JUSTIFICATION for changes to Antidegradation Implementation Policy regarding insignificant degradation.*
- 3) June 8, 2012 DEQ Letter of Submission of revised water quality standards for approval. *File 58-0102-1103 DEQ Letter of Submission of revised water quality standards*
- 4) July 23, 2013 EPA Letter of Disapproval of Antidegradation Implementation Methods. *File 58-0102-1001 EPA Disapproval Letter.pdf*
- 5) August 7, 2013 Notice of Negotiated Rulemaking – Announcing August 28, 2014 negotiated rulemaking to discuss DEQ's intention to revise its Water Quality Standards, IDAPA 58.01.02 as they pertain to insignificant degradation. *File: 58-0102-1301 Negotiated Rulemaking Notice Aug.pdf*
- 6) Public comment summary and scanned copies of sign-in sheets from August 2013 rulemaking meeting. *File: 58-0102-1301 August 2013 Negotiated Rulemaking sign-in sheet.pdf*
- 7) December 4, 2013 Notice of Negotiated Rulemaking – Announcing May 8, 2014 Board meeting to discuss DEQ's intention to revise its Water Quality Standards, IDAPA 58.01.02, as they pertain to insignificant degradation. *File: 58-0102-1301 Negotiated Rulemaking Notice Dec.pdf*

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- 8) House Bill 392 (HB 392), with statutory language that augments the revised rule, passed March 3, 2014 and signed into law March 11, 2014. *File: 58-0102-1301 HB 392 – Amendment of water quality law regarding insignificant degradation.pdf* Declaration of Rulemaking documenting Board's adoption of temporary rule. *File 58-0102-1301T Declaration of Rulemaking.pdf*
- 9) June 4, 2014 Notice of Pending and Temporary Rule –Notice includes text of the affected portions of the water quality standards showing changes from existing rule language in legislative markup format (deletions struck out and proposed additions underlined). *File: 58-0102-1301 Temporary-Proposed Rule Notice.pdf*
- 10) An Attorney General's certification that the rules were adopted according to state law. *File 58-0102-1301T AGs Certification Letter.pdf*

Electronic copies of the above materials are also provided burned onto CD for your convenience.

If you have any questions on this rulemaking and the enclosed supporting materials, please contact Don A. Essig, 208-373-0119, or Don.Essig@deq.idaho.gov

Sincerely,



Barry N. Burnell
Water Quality Division Administrator

BDB:DE:dls

Enclosures

- c: Angela Chung, EPA (with enclosures)
Lisa Macchio, EPA (with enclosures)
Don Essig, DEQ (w/o enclosures)
Doug Conde, DEQ (w/o enclosures)
Michael McIntyre, DEQ (w/o enclosures)



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

July 7, 2014

Dan Opalski, Director
Office of Water and Watersheds
U.S. EPA Region 10
1200 Sixth Ave.
Seattle, WA 98101

RE: Attorney General Certification of Amended Idaho Water Quality Standards

Dear Mr. Opalski,

I have reviewed the process by which the Idaho Board of Environmental Quality (Board) adopted revisions to the Idaho Water Quality Standards (Docket No. 58-0102-1301) and hereby certify that said rules were duly adopted pursuant to state law.

On May 8, 2014, the rules were adopted by the Board as temporary/pending rules. The temporary rules were effective June 4, 2014, and remain in effect until the adjournment of the 2015 Idaho legislative session unless rescinded by the agency. The pending rules will become final and effective immediately upon the adjournment *sine die* of the 2015 Idaho legislative session if approved by the Legislature.

Consistent with provisions of the Idaho Administrative Procedure Act for public participation, the Department of Environmental Quality (DEQ) used a negotiated rulemaking process that included one meeting with stakeholders to develop the rule language. During the negotiated rulemaking process, stakeholders also provided written comments to DEQ. In addition, DEQ provided an opportunity for the public in general to submit comments on the proposed rule prior to adoption of these temporary/pending rules. A public hearing was not scheduled nor requested.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Douglas M. Conde".

Douglas M. Conde
Deputy Attorney General

DMC/pjw

cc: Barry Burnell
Mary Anne Nelson