



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

March 24, 2011

Mike Bussell, 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. Bussell:

I have reviewed the process by which the Idaho Board of Environmental Quality adopted revisions to the Idaho Water Quality Standards (Docket No. 58-0102-1001), and the process by which the Idaho Legislature addressed the rules, and hereby certify that said rules were duly adopted pursuant to state law. Consistent with provisions of state law for public participation, the Department of Environmental Quality used a negotiated rulemaking process that included six meetings 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 prior to the adoption of these rules. A public hearing was not scheduled nor requested.

The rules were reviewed by the Idaho Legislature during the 2011 session. Under House Concurrent Resolution 16, the Legislature rejected certain portions of the rule and approved the remainder of the rule. The Idaho Administrative Procedure Act provides that when a pending rule is approved, amended or modified by a concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution. The concurrent resolution was adopted on March 18, 2011, and therefore, the antidegradation rule became final and effective on March 18, 2011.

The Legislature also adopted House Bill 153 that revised the Idaho Code to include sections addressing antidegradation, including sections regarding the definition of degradation, the treatment of general permits, the identification of tier 2 waters, and insignificant discharges or activities. The new sections added to Idaho law by House Bill 153 correspond to the portions of the rule rejected by House Concurrent Resolution 16. House Bill 153 was signed into law by the Governor on March 22, 2011.

Therefore, the revised Idaho Water Quality Standards, as adopted by House Concurrent Resolution 16, and the revised state water quality statute, as amended by House Bill 153, are effective in the State of Idaho and, upon approval by EPA, would be applicable water quality standards for Clean Water Act purposes. The revised rule and amended statute define the method in which the Idaho Department of Environmental Quality will implement the federal antidegradation requirements.

Yours very truly,

A handwritten signature in blue ink, appearing to read 'Douglas M. Conde', with a long horizontal flourish extending to the right.

Douglas M. Conde
Deputy Attorney General

DMC/pjw

cc: Barry Burnell
Don Essig