September 28, 2010

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
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Re: Proposed Rule Docket No. 58.0102-1001
Antidegradation Implementation Procedures

Dear Ms. Wilson:

Potlatch Corporation (Potlatch) submits the following comments to the subject proposed rule.

Potlatch is a forest land management company which owns and manages approximately 820,000 acres of forest land in Idaho. As such, forestry activities on Potlatch's lands are subject to applicable requirements under the Idaho Forest Practices Act (FPA). Practices implemented under the FPA are designed to protect water quality and to minimize any degradation. Accordingly we support the recognition in the proposed rule that practices under the FPA are "cost effective and reasonable BMPs for nonpoint sources."

We have also reviewed the joint letter from IACI and IMA and support the comments therein. However, Potlatch would like to emphasize a few issues in the proposed rule that are particularly important to Potlatch.

1. Existing Permits and Activities. We appreciate IDEQ's recognition in the Rule that the anti-degradation analysis be confined to new and increased discharges that exceed significant thresholds above baseline conditions. Accordingly, existing activities and discharges are considered part of the baseline conditions in the water body. We believe this approach is in keeping with the requirements of the Clean Water Act, EPA guidance as well as judicial cases interpreting anti-degradation requirements. However, as you may be aware there have been some recent decisions from federal appellate courts concerning forestry type activities which may now require an NPDES Permit although EPA rules had specifically exempted such activities from obtaining a NPDES Permit in the past. Until these decisions are either clarified by the United States Supreme Court or by Congress, there is continued uncertainty in the forestry industry as to the scope of these decisions. We believe it would be inequitable and unfair to treat these activities which may now be subject to a NPDES Permit as a "new permit" or "license" under the proposed rule. This is particularly so when the forestry activities and implementation of the associated best management practices occurred many years ago consistent with FPA practices and in reliance upon EPA rules. In these instances it is appropriate to treat such activities as part of the baseline conditions and not as new permits. Therefore we strongly support clarifying the definition of "existing activity or discharge" to address this issue.

2. General Permits. To the extent Potlatch may be required to obtain Clean Water Act permits in the future, it appears likely that such permits would be in the form of a general permit issued by either EPA or the U.S. Army Corps of Engineers. The point of general permits is to create a streamlined process to obtain permit coverage quickly and with certainty of the particular permit requirements. We are concerned that the anti-degradation review may substantially delay or even preclude the ability of a company to obtain coverage under general permits. Accordingly, we urge IDEQ to work closely with the permitting federal agencies to ensure that before general permits are issued all anti-degradation requirements are satisfied. It appears that the EPA and Corps permit process already ensures that anti-degradation is satisfied in terms of ensuring only insignificant impacts occur, ensuring that the least degrading pollution control alternative is implemented, and that all decisions are made in a public process thereby ensuring that all appropriate socio-economic issues are properly considered. Accordingly we support any presumptions IDEQ could legitimately include in the rule to allow for streamlined anti-degradation review during the issuance of a general permit.

3. 303(d) Waters and Tier II Waters. We believe that only water bodies that meet all water quality standards should be candidates for Tier II protection under the proposed rule. It does not make sense to treat a water body as "impaired" for purposes of 303(d) listing and to adopt a different definition of "impairment" for purposes of identifying a Tier II water as is suggested in the proposed rule. There may be some water bodies that are fully meeting all beneficial uses and are only on the 303(d) list because an applicable criterion for the water body is not being met. This would suggest the applicable criteria for the particular water body is over protective or unnecessary. We believe the appropriate way to address these situations would be for IDEQ to first remove the water body from the 303(d) list or, if necessary, adopt more appropriate criteria before the water body should be treated as a Tier II water under anti-degradation implementation procedures.

4. Special Resource Waters (SRWs). It is not clear to us why IDEQ is not addressing SRWs in the subject proposed rule. Clearly SRWs have always been part of Idaho's anti-degradation policy. The proposed rule is a significant state rule implementing all aspects of Idaho's anti-degradation policy. It does not seem logical to ignore SRWs. We agree with the joint comments of IACI/IMA that SRWs should be addressed in the proposed rule and that these waters should be treated like all other waters for purposes of anti-degradation implementation. Namely that SRWs which meet all water quality standards should be Tier II waters and SRWs that are not meeting standards should be Tier I waters.

Thank you for the opportunity to comment on the proposed rule.

Very truly yours,

Mark Benson
Vice President Public Affairs