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RE Docket No. 58-0102-1001 Proposed Rulemaking

Please accept these comments from Idaho Rivers United. Idaho Rivers United is a non-profit river conservation organization dedicated to protecting and restoring the rivers of Idaho. Based in Boise, Idaho Rivers United has 3,500 members.

“Antidegradation is an integral part of a state’s or tribe’s water quality standards, as it provides important protections that are critical to the fulfillment of the Clean Water Act objective: to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”
Ephraim S. King

Definitions:

59. Measurable

The definition is vague. “Smaller changes” should be clarified. It should mean changes that are not measurable as defined in the 2nd sentence. There is ambiguity in the 2nd sentence from the use of the term “generally.” Words like “generally” don’t work well in definitions. Exceptions should be spelled out with as much specificity as possible. The Department can reserve the right to consider calculated changes measurable in cases where changes that cannot be determined with 95% confidence are found to be significant to human health or aquatic life protection.

Antidegradation Policy

051.

01. Existing use as defined at 010.36 is a use that was attained “on or after November 28, 1975.” If the phrase “existing in stream water use” means “existing use” as defined, for clarity it should be replaced with the defined term, “existing use.” If it means something different, it should be replaced with the defined term “existing use” to properly protect the water.

04. Assigned Criteria. When are criteria assigned to protect a water body and why? How are the assigned criteria associated with the designated uses, the presumed uses and any existing uses?

052. Implementation

01. The Department should not maintain a list of Tier I or Tier II waters.

03. Any action, emergency or otherwise, that requires a new or reissued permit or license, should be subject to antidegradation review.

04. What does “adequately address antidegradation mean”? For Tier II waters, it should mean “to maintain and protect high quality waters and not to allow for any degradation beyond a de minimis level without having made a demonstration, with opportunity for public input, that such

a lowering is necessary and important.” The Department should establish the authority to conduct an antidegradation review or require submittal of additional information or individual certification if it is determined that the general permit does not provide the aforementioned protection.

06. Identification of Tier I and Tier II Waters

The Department should insure that water bodies are appropriately classified as Tier I or Tier II in order to properly review all pollutants that would enter the water from the new or reissued permit (and use assimilative capacity). Impairment in the receiving water should not allow exploitation of any of the water’s assimilative capacity without Tier II review. All existing assimilative capacity must be preserved unless it is proven that degradation is necessary and important. This can be done in a number of different ways using either the waterbody-by-waterbody or parameter-by-parameter approach. The approach identified in section 06. would allow loss of assimilative capacity without Tier II review.

06. **b.** The type, quantity and quality of the available information that will be acceptable should be spelled out. The existing language allows the decision to be made based on inadequate, out-of-date, and/or biased information. In addition, there needs to be direction given on what will be done when enough, qualified information is not available at the time of the proposal. How will the needed information be collected to ensure the water body is classified appropriately?

06.**c.** Can a water body be identified as a Tier I water for aquatic life uses and Tier II for recreational uses or vice-versa?

06.**c.i.**(3) Same as response to 06.**b.**

06.**c.ii.** What level of protection does the water body receive if water quality data does not show impairment for recreational uses, and what if there is not enough data to determine impairment for recreational uses?

07. Tier I Review

a. Three terms are used, “assigned criteria,” “criteria (adopted),” and “numeric criteria.” Clarification would enhance the applicability of this section.

This should apply to only the assigned criteria that are not being met. Given that the receiving water could meet other assigned criteria, available assimilative capacity for any given pollutant should always be subject to Tier II protection, regardless of whether the criteria for other pollutants is satisfied

b. The water body should be reviewed under Tier II if the receiving water meets or surpasses assigned criteria. Available assimilative capacity for any given pollutant should be subject to Tier II protection, regardless of whether the criteria for other pollutants are satisfied. All existing assimilative capacity must be preserved unless it is proven that degradation is necessary and important. No change should be allowed to degrade ambient water quality without a Tier II review.

08. Evaluation of Effect...

This does not adequately account for the non-static nature of water quality. What if there are major pollution discharge violations in the receiving water – so the existing water quality is really bad. Then the polluter gets packed off to jail and the existing water quality improves dramatically. The determination of improvement, no change or degradation could change. How will that Department make sure that the objectives of the Clean Water Act are still being met. Can you reopen the antidegradation review?

c. Offsets should be upstream of the degradation in water quality due to the proposed activity or discharge. Offsets should not be granted for actions that are already required in 09.**b.**

d. Measurable has a special definition in these rules and it would be clearer if this read, “measurable, as defined in this rule” or whatever the appropriate technicaleese is.

09. Tier II Analysis

Exploitation of less than 10% of the water bodies’ assimilative capacity may, in some cases, be significant. The Department must be authorized to prohibit discharges that cause or contribute to the exploitation of less than 10% of the assimilative capacity. The applicant must provide the information required by the Department to correctly judge the significance of the activity or discharge.

b. The Department must ensure that other source controls are achieved before allowing any degradation of high water quality.

c. The Department must ensure that there are no reasonable alternatives to discharging at a level which causes degradation. The objective is to avoid the degradation not reduce it. The alternatives analysis must be expected to examine all strategies to avoid the degradation, and only if these are not available consider strategies that would reduce the degradation.

iii. The Department must be authorized to require the applicant to examine specific alternatives or provide additional information to conduct the analysis.

iv.(2) The applicant must consider the environmental costs and benefits across media and between pollutants.

Submitted by,

A handwritten signature in cursive script that reads "Liz Paul".

Liz Paul
Boise River Campaign Coordinator