



Association of Idaho Cities

3100 South Vista, Suite 310, Boise, Idaho 83705
Telephone (208) 344-8594
Fax (208) 344-8677
www.idahocities.org

October 1, 2010

Ms. Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706-1255

Via e-mail: paula.wilson@deq.idaho.gov

RE: Association of Idaho Cities Comments on the September, 2010 Draft
Antidegradation Implementation Procedures Proposed Rule (Public Comment Draft)

Dear Ms. Wilson:

The Association of Idaho Cities (AIC) was founded in 1947 as a nonpartisan, nonprofit corporation, owned, organized, and operated by Idaho's city governments. AIC represents over 200 Idaho cities before the Idaho State Legislature and the U.S. Congress and provides regular training to city officials on budgeting, open meeting laws, ethics, Idaho Code, environmental regulations, elections, and planning and zoning issues.

AIC has a substantial interest in the protection of human health and the environment, particularly related to Clean Water Act implementation. Municipalities have contributed substantially to the success of the Clean Water Act in Idaho and to improved water quality in the state. Municipalities anticipate a continuing role in successful implementation of current and future Clean Water Act requirements. Idaho municipalities, as the primary funders of waste water and storm water infrastructure, also have substantial interest in the cost and environmentally effective delivery of waste water and storm water services.

AIC supports the State developing and adopting antidegradation implementation procedures that fully meet Clean Water Act requirements and is pleased to participate in this important rulemaking concerning development of antidegradation implementation procedures for Idaho to meet the requirements of the Clean Water Act.

First, AIC appreciates the substantial and substantive work that DEQ has invested in this rule-making process to date. The many white papers that DEQ has developed have been very useful, as was the data analyses related to ways to classify waters as Tier I or Tier II based on biological information.

We also appreciate DEQ's receptiveness to making changes to the rule in response to verbal and written comments provided by AIC and other participants in the rulemaking

process. In particular, AIC supports the following important changes that have occurred to the draft rule to date:

- Use of a Water body by Water body approach (AIC still has concerns with some of the current rule language, as described below)
- Addition of reference to section 316 for thermal discharges
- Changes to the Offsets language to allow downstream as well as upstream offsets where appropriate
- New discharge quality based on the permit application information
- IDEQ, rather than the applicant, will conduct the "Other Controls" compliance evaluation
- Defining the significance threshold at 10% and modifying criteria for determining "insignificance" with respect to evaluating cumulative effects"
- Substituting the term "reasonable" for "feasible" in the alternatives language (note feasible is still used in subsection 052.06.c.iv.(1) and AIC suggests changing it to "reasonable"), and noting that only appropriate alternatives need be evaluated
- Deletion of Bioconcentration Factor (BCF) language and definition
- Changing the classification of waters that have not been assessed to a case-by-case determination based on available information from the default to Tier II
- Formally defining "highest statutory and regulatory requirements for point sources" as all applicable effluent limits required by the Clean Water Act and other permit conditions, including compliance schedules or consent orders

Finally, AIC provides the following comments on the September 2010 Public Comment Draft:

1. Identifying Tier I and Tier II Waters

AIC appreciates the changes DEQ has made so far relating to identifying Tier I and Tier II waters. We agree that it is appropriate that waters not assessed and waters with insufficient biological data should not be defaulted to Tier II, but be evaluated on a case-by-case basis using available information.

From a point source perspective, we recommend that DEQ develop a list of Tier I and II waters in the supporting guidance so dischargers know what level of effort is necessary to support a new or increased discharge permit application rather than waiting for each permit application to determine the antidegradation status.

To limit the scope and effort of this, the list could be initially limited to waters with existing NPDES permits, and expanded over time as new permits or licenses are proposed. The list should be periodically updated as the status of water bodies changes (e.g., perhaps in concert with five-year reviews of TMDLs). Watershed and Basin Advisory Groups should be consulted for the initial list development and the periodic updates.

2. Alternative Analyses and Socioeconomic Justification

As noted previously, AIC supports the language changes in the “Alternatives Analysis” section of Draft No. 6.

One additional comment is that at 052.06.c.iv.(1) the draft still uses the term “feasible”, which is not consistent with terminology change made at 052.06.c. in response to previous AIC comments, and should be changed to “reasonable,” to be consistent with the language throughout the document.

This section also requires that alternatives be ranked by cost-effectiveness. The ranking language should be clarified so that it only applies to those alternatives subject to the socioeconomic justification. If this justification is not needed, there is no reason to require applicants to estimate the costs of all alternatives.

We suggest that this section be modified. It appears that this section was largely taken from the State of Washington’s rule which are requirements that pre-date and are more stringent than those required in the Clean Water Act (i.e. AKART). We do not believe this language is appropriate or consistent with the approach necessary for Idaho to adopt approvable antidegradation implementation procedures. The Washington language requires an extensive and difficult list of analyses. For example, municipal wastewater agencies traditionally have no experience or expertise in the area of human health effects. The proposed rule requires permittees to “quantify” the benefits and costs of “potential health impacts,” “impacts to direct and indirect uses associated with high quality water,” and “retention of assimilative capacity for future activities or discharges”? These criteria are very broad in potential scope and extremely difficult to quantify in a rigorous or defensible manner.

Although subpart 052.06.d.iv. suggests that qualitative analyses may be used, it further states that such qualitative analyses can only be used when those factors “cannot be quantified.” These factors can nearly always be quantified to some extent, but in most cases it will be very difficult and/or costly to do so, with considerable uncertainty about the accuracy of defensibility of the analyses. This will have the unintended consequence of making the socioeconomic justification step in the process nearly unattainable, and certainly subject to alternative interpretations and hence challenges by third parties.

We suggest that DEQ consider other state examples of socioeconomic justification that may be more appropriate for Idaho. One example of EPA-approved antidegradation implementation procedure for socioeconomics that we suggest DEQ consider is Colorado’s.

3. Insignificant Discharge: Cumulative 10% Cap on Assimilative Capacity

We appreciate DEQ changes to this section to date but continue to have practical concerns with the proposed cumulative cap for assimilative capacity used by a new or increased discharge.

The rationale for proposing a 10% cumulative cap was that one facility might seek and obtain multiple lesser increases without having to conduct an analysis for discharge to Tier II waters and obtain a substantial proportion of the allowable Tier II water capacity without analysis. As a practical matter, two problems exist with this approach, methodology/recordkeeping and timeframe.

Methodology/Recordkeeping for cumulative assessment of remaining assimilative capacity will be technically difficult to determine. Monitoring data generally are of insufficient number to determine the percent of assimilative capacity with a high level of confidence. This is compounded by technical complexities associated with changes in ambient conditions and therefore assimilative conditions as time passes.

The proposed method for determination of assimilative capacity is a sliding scale that allows smaller and smaller increases as assimilative capacity decreases and smaller and smaller increases as the ambient conditions are more pristine. For new or increased discharges to very high quality waters, the 10% of ambient threshold will be very small. A similar condition exists for new or increased discharges to waters with little remaining assimilative capacity. The largest allowable increases without an analysis actually occur at about 50th percentile of the remaining assimilative capacity or ambient condition. Because the proposed rule sets the cap at 10% increase of either, the likelihood for multiple permit cycle increases that would significantly impact a Tier II water without triggering an analysis are very remote.

Our recommendation is that each new or increased permit be subject to a 10% threshold of remaining assimilative capacity at the time of permit application.

4. Special Resource Waters (SRWs)

AIC supported the removal of SRWs from the rule as "Tier 2.5" waters. We understood that SRWs would be discussed at the July 21st meeting. With that in mind, we have reviewed EPA's NPDES permit database to compile a list of current NPDES permitted discharges to SRWs (Attachment A). The NPDES Permit Fact Sheet suggests that there are at least 30 municipal wastewater, five municipal water treatment facility, and five stormwater system discharges to SRWs statewide.

The current SRW language prohibits any new or increased point source discharge above the design capacity contained in the existing permits. SRW

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waters include the full range of water quality, from waters with public health closures due to toxic algae blooms (Lake Lowell, 2009) to pristine waters (Middle Fork of the Salmon). A one size fits all designation of SRWs is neither appropriate or practical.

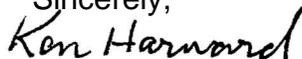
This is a substantive issue for all of the Idaho cities currently or with potential new or increased future discharges (e.g., stormwater MS4s) to SRWs as it effectively caps NPDES discharges at current levels regardless of socioeconomic or other considerations that are considered for Tier II waters. We also note that local, state and federal agencies with road and highway responsibilities (e.g., highway districts, Idaho Transportation Department, U.S. Forest Service, and others) could be significantly impacted by SRW requirement for increased discharge.

Finally, while reviewing the Fact Sheets of NPDES permitted discharges to SRWs, we observed that EPA considers these waters Tier II for antidegradation analysis purposes and that IDEQ 401 certified those permits. Because the State and EPA have long agreed on multiple permits that Tier II is the appropriate antidegradation status for SRWs, we believe that three tiers of antidegradation are consistent with federal requirements and sufficient to protect high quality waters in Idaho.

AIC respectfully suggests that SRWs be reviewed on a case-by-case basis for antidegradation status, which we anticipate will result in appropriate Tier I, II, or III protections for each water currently designated SRW. We also recommend that Section 58.01.02.400.01.b. be modified to state that new or increased discharges of pollutants to SRWs must meet the applicable requirements of the Department's antidegradation designation for each SRW, and strike the language prohibiting discharges above the design capacity of the facility.

Again, AIC is pleased to participate in this important rulemaking and appreciates DEQ's efforts to date to include us and others in what has been a productive and transparent process.

Sincerely,



Ken Harward
Executive Director

Attachment A

NPDES Discharges to Special Resource Waters (SRWs)							
Jun-10	Known discharge to SRW				Potential Discharge to SRW/tribs		
	Municipal	Stormwater	Industrial	Other			
1	Ashton	Boise MS4	Cabinet Gorge PS	Boise Geothermal	Grangeville		
2	Ahsahka H2O&SD	CdA MS4	Idaho Cobalt Project	Bonnors Ferry WTP	Nez Perce		
3	Bonnors Ferry	IDOT #1	Meridian Bear Track Mine	IDF&G Kootenai River Nutrient Injection	Pierce		
4	Cambridge	IDOT #3	Potlatch @ St Maries	USFS: Fenn RS	North Idaho Correction Facility		
5	Cascade	Lakes Hwy Dist	Thompson Creek Mine	USFS: Moose Cr RS			
6	Council			USFS: Slate Cr RS			
7	Driggs						
8	Elk Valley Subdivision (Pine)						
9	Glens Ferry						
10	Hailey						
11	Horseshoe Bend						
12	Kamiah						
13	Ketchum						
14	Kootenai-Penderay SD						
15	Kooskia						
16	Lava Hot Springs						
17	Mackay						
18	Marsing						
19	Meadows Subdivision						
20	New Meadows						
21	Montpelier						
22	Orofino						
23	Orofino WTP						
24	Riggins						
25	Riverside SD						
26	Riverside WTP						
27	St Anthony						
28	Salmon						
29	Southside SD						
30	Stites						