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IDAHO MINING ASSOCIATION

November 8, 2010

Via email: rosie.alonzo@deq.idaho.gov

Idaho Board of Environmental Quality
c/o Craig D. Harlen, Chairman
1410 North Hilton
Boise, Idaho 83706

RE: Pending Rule Docket No. 58.0102-1001 – Antidegradation Implementation Procedures

Dear Chairman Harlen and IDEQ Board Members:

IACI and IMA have reviewed the Water Quality Standards – Antidegradation Implementation Procedures proposed for approval by the Idaho Board of Environmental Quality. These organizations are seeking to have these procedures: (a) be consistent with legislative directive (in terms of statute and stringency direction), (b) avoid costly and burdensome requirements, and (c) meet the environmental requirements of the Clean Water Act. We propose the following changes to these procedures.

General Permits

General permits are important as they provide for efficient issuance of environmental requirements to provide for effective environmental protection. We believe that the antidegradation procedures need to be integrated with the streamlined characteristic of general permits.

052.03. General Permits. For general permits issued on or after July 1, 2011, the Department will conduct antidegradation review, including ~~a-any required~~ Tier II analysis, at the time at which general permits are certified. For general permits that the Department determines adequately address antidegradation, review of individual applications for coverage will not be required unless it is required by the general permit. For general permits that the Department determines do not adequately address antidegradation, the Department shall ensure that antidegradation is adequately addressed. To achieve this, the Department may conclude that other conditions, such as the submittal of additional information or individual certification at the time an application is submitted for coverage under a general permit, are necessary in the general permit to provide reasonable assurance of compliance with the antidegradation policy. If supported by the permit record, the Department may also conclude that discharges authorized under a general permit are insignificant and that the pollution controls required in the general permit are the least degrading alternative as specified in Subsection 052.08.c.

Identification of Tier I and Tier II Waters

A fundamental aspect of the Antidegradation Procedures is the identification of Tier II high quality waters. The regulated community does not believe that waters identified as impaired (303(d) listed waters) should be classified as high quality waters unless special technical criteria are met as proposed below.

052.05 c. Water bodies identified in the Integrated Report as not fully supporting will receive Tier I protection, except as follows:

i - For aquatic life uses listed only for one ~~or more~~ of the following causes: dissolved oxygen, ~~nutrients,~~ pH, ~~sediment,~~ or temperature, if biological: or aquatic habitat parameters show a healthy, balanced biological community is present, as described in the "Water Body Assessment Guidance" published by the Idaho Department of Environmental Quality, then the water body shall receive Tier II protection for aquatic life. If these data are insufficient to determine a healthy, balanced biological community is present, then the water body will be provided an appropriate level of protection on a case-by-case basis using information available at the time of a proposal for a new or reissued permit or license.

Insignificant Discharge

We believe that EPA guidance and CWA case law only require a Tier II analysis for significant degradation. It is important that a provision for "insignificance" be workable and practicable. The following language is proposed to achieve this:

052.08.a. Insignificant Activity or Discharge. The Department shall consider the size and character of an activity or discharge or the magnitude of its effect on the receiving stream and shall determine whether it is insignificant. If an activity or discharge is determined to be insignificant, then no further Tier II analysis, as set forth in Subsections 052.08.b., 052.08.c., and 052.08.d., shall be required.

i. The Department shall determine insignificance when the proposed change in an activity or discharge, from conditions as of July 1, 2011:

(1) Will not increase ambient concentrations by more than ten percent (10%); ~~and~~

(2) ~~Will not cumulatively decrease assimilative capacity by more than ten percent (10%).~~

ii. The Department reserves the right to request additional information from the applicant in making a determination a proposed change in an activity or discharge is insignificant.

Alternatives Analysis/Socioeconomic Analysis

The alternatives and socioeconomic analysis in the proposed rule (subsection 052.08.c) needs clarification to ensure that: (a) the alternatives are economically feasible and (b) also consider activities such as mining and silviculture, which may have discharges after the commercial activity has occurred. Proposed changes:

052.08.c.iv. In selecting the preferred alternative the applicant shall:

(1) Evaluate economic impacts (total cost effectiveness, incremental cost effectiveness) of all technologically feasible alternatives;

(2) Rank all technologically feasible treatment alternatives by their cost effectiveness at pollutant reduction;

(3) Consider the environmental costs and benefits across media and between pollutants; and

(4) Select the least degrading option or show that a more degrading alternative is justified based on Subsections 052.08.c.iv(1), ~~or~~ 052.08.c.iv.(2), or 052.08.c.iv.(3) above.

052.08.d. Describe the important social or economic development associated with the activity which can include clean up/restoration of a closed facility;

We would appreciate the Board's consideration of our comments and concerns as we look for ways to make this rule work for Idaho's business and industry with minimal impact by the rule while meeting statutory obligations.

Sincerely,



Alex LaBeau
IACI President



Jack Lyman
IMA Executive Director

cc: Barry Burnell, Idaho Dept. of Environmental Quality
Alan Prouty, IACI Environment Committee Chair