



Association of Idaho Cities

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April 28, 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 April 7, 2010 Draft
Antidegradation Implementation Procedures Proposed Rule

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 stormwater infrastructure, also have substantial interest in the cost and environmentally effective delivery of waste water and stormwater services.

AIC is pleased to participate in this important rulemaking concerning development of antidegradation implementation procedures required by the Clean Water Act. AIC provides the following four general comments concerning the draft proposed rules for consideration by IDEQ. AIC has a number of additional specific concerns regarding the April 7 draft rule and will provide those to DEQ at the appropriate time in the rule-making process (see our general comment #4 below).

1. Support for State Adoption of Antidegradation Implementation Procedures

AIC supports adoption of antidegradation implementation procedures into Idaho State Water Quality Standards as required by the Clean Water Act. Idaho has many waters that are impaired and have had Total Maximum Daily Loads (TMDLs) developed or that are currently identified as not meeting standards that will either have TMDLs or other measures that at a minimum, appear to require Tier 1 protection. Idaho also has many high quality waters that deserve protection under Antidegradation Tiers 2 or 3.

AIC looks forward to participating with all stakeholders in developing implementation procedures that satisfy Clean Water Act requirements and will serve to improve impaired waters, maintain waters currently meeting standards, and maintain high quality waters throughout the state.

2. EPA Antidegradation Regulation: Minimum Requirements

EPA Antidegradation policy and implementation procedure requirements (40CFR131.12) include four minimum elements. Three of the four elements appear to be included in the states antidegradation policy and proposed implementation procedures (Tiers 1-3). The requirement at 131.12(a)(4), antidegradation policy and implementing methods for thermal discharges consistent with section 316 of the Act, appears to be missing.

AIC recommends IDEQ examine this portion of the federal water quality rules and report back to the group at the next negotiated rule meeting concerning the need to include this in the proposed rule. The State and all stakeholders have an interest in the proposed implementation procedures being complete and meeting at least the minimum required elements for EPA approval.

3. Four Part List: Tier 2 ½ and Special Resource Waters

The proposed rule includes a four part list that add the optional Tier 2½ designation and proposes all Special Resource Waters as Tier 2 ½ waters.

EPA identifies Tier 2 ½ as waters as “more stringent than Tier 2 (high-quality waters), but somewhat less stringent than the prohibition against any lowering of water quality in “Tier 3” (ONRWs).”¹

Special Resource Waters (SRWs) were nominated and designated as the result of adoption of an antidegradation policy nearly twenty years ago. SRWs are designated in Idaho water quality standards for a number of reasons including and in addition to high quality (e.g. outstanding aesthetic or recreational value; unique ecological qualities...).

Of the approximately 289 designated SRW waters, water quality ranges from pristine wilderness area rivers (e.g., Selway and Lochsa Rives) to waters on the impaired waters list (e.g., Boise River, Brownlee Reservoir) to high recreational use waters that within the last year have experienced toxic blue green algae blooms that resulted in public health related closure (e.g. Lake

¹ 1994, U.S. EPA, Water Quality Standards Handbook, Second Edition, Chapter 4 Antidegradation, p 4-2

Lowell, July 9, 2009 <http://www.publichealthidaho.com/PDF/Blue-Green-Algae-Joint-Lake-Lowell-PR.pdf>).

AIC appreciates the value of a Tier 2 ½ designation to provide an additional level of antidegradation that would be available to the state and potentially could be supportive of addition of a fourth antidegradation tier. However, the proposed use of SRW designation as Tier 2 ½ waters, which have significant variation in water quality and which were designated decades ago, and frequently for reasons other than water quality, appears to lack adequate rationale or consistency with the intent of antidegradation implementation goals and requirements for the state of Idaho to warrant serious consideration at this time.

AIC recommends IDEQ examine this portion of the proposed rule and report back to the group at the next negotiated rule meeting concerning the need to include Tier 2 ½ and SRWs in the proposed rule.

4. Many Options and Additional Discussion Needed

IDEQ has identified a number of important implementation procedure options or choices in the proposed rule (e.g. Tier 2 ½; restoration exemption; parameter or waterbody approach; 3 year data review; offsets; measurable change definition; other definitions...). These issues will require additional discussion prior to finalization of a proposed rule. However, only one three hour meeting to work through all of these issues and detailed language has been scheduled. IDEQ and the stakeholders have significant additional work before them to obtain a successful outcome for this rule.

In addition, IDEQ announced at the April 22 rule-making meeting that it intends to develop a companion guidance document for implementation of the antidegradation policy and procedures. The timing and content of that document will have a substantial effect not only on the content of the rule but also on how permittees might ultimately be affected by the overall process.

AIC understands the urgency of the proposed rulemaking and recommends that additional meetings be added to the schedule (e.g. two per month in May, June, and July). Additional meetings will allow the group to work through the options available to the state so a rule can be crafted that meets the requirements of the Act and provides for thoughtful consideration and deliberate selection of the implementation procedure options that are available and make sense for the State of Idaho.

Sincerely,



Ken Harward
Executive Director