



Association of Idaho Cities

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May 19, 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 May 6, 2010 Draft
Antidegradation Implementation Procedures Proposed Rule ("Draft No. 2")

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 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 wastewater 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 implementation aspects of the Draft No. 2 rule and will provide those to IDEQ at the appropriate time in the rule-making process.

1. Additional Meetings Scheduled

IDEQ has identified a number of important implementation procedure options or choices in the proposed rule. These issues will require additional

discussion prior to finalization of a proposed rule. In our comment letter to IDEQ dated April 28, 2010, AIC recommended four additional meetings beyond the two IDEQ originally announced, two each in June and July. We are pleased that IDEQ has recognized the value of additional meetings and has scheduled them. These 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 available to the State.

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

Draft No. 1 of the proposed rule included a four part list that added the optional Tier 2½ designation and proposed all Special Resource Waters (SRWs) as Tier 2 ½ waters. In our April 28 comment letter, AIC noted several challenges to this proposed tier given the numerous designated SRWs and the tremendous range in characteristics and quality of these waters. AIC recommended that 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.

In Draft No. 2, and as discussed at the May 12 negotiated rulemaking meeting, IDEQ deleted Tier 2 ½ from the policy portion of the rule. The implementation portion of Draft No. 2 still includes Tier 2 ½, which AIC understands was an editing oversight that will be corrected in future versions of the implementation procedures.

3. Parameter by Parameter Approach

In both Draft No. 1 and 2, and in both meetings, IDEQ has indicated a preference for a “parameter by parameter” approach, rather than the “waterbody by waterbody” approach that is also available to the State. At the May 12 meeting IDEQ promised a “white paper” describing the two options and reasons for IDEQ’s preference for the proposed parameter by parameter approach.

AIC believes this will be one of the more critical decisions in this rule-making process. We understand there are pros and cons of both approaches, and that further discussion and careful consideration will be needed. We understand this will be the primary agenda item for the June 2nd negotiated rulemaking meeting. We believe it is vital for all parties to receive the white paper well in advance of the June 2nd meeting so all parties have ample time to review and consider the advantages and disadvantages of both options available to the State.

AIC is inclined at this early stage of negotiations to support a waterbody by waterbody approach or perhaps a hybrid approach that incorporates the strengths of each approach. The parameter by parameter approach, at least as currently proposed, appears to create a process that is resource intensive for every new and renewing permittee and the Agency and will substantially increase the time, effort and expense associated with issuance of a new or renewed permits. We understand the importance of this decision and remain

open to consideration of the either approach provided it fully meets the intent and results in full and robust implementation of the antidegradation policy for waters of the State. AIC's goal is to develop an implementation process that is workable, reasonable, and protective of water quality in Idaho.

4. Interim Antidegradation Review Procedures

IDEQ noted in the May 12 meeting that it has interim procedures for permits and licenses that are being developed. IDEQ committed to post those procedures on its website for public review and did so on May 19. Given that interim procedures could have substantial implications for NPDES permits that are currently being drafted and issued we appreciate IDEQ's timely posting of the interim procedures

AIC appreciates the opportunity to comment and participate in the negotiated rulemaking on this important water quality issue. AIC looks forward to reviewing the approach white paper, participating in the June 2, meeting , and the State adopting antidegradation procedures as required by the Act.

Sincerely,

A handwritten signature in black ink that reads "Ken Harward". The signature is written in a cursive, slightly slanted style.

Ken Harward
Executive Director