CITY OF POST FALLS

Public Services Department

Date: June 17, 2010

To: Paula.Wilson@deq.idaho.gov

From: Mike Neher, Environmental Manager

Re: Negotiated Rulemaking - Water Quality Standards, Docket No. 58-0102-1002

The City of Post Falls would like to provide the following comments to Draft #4 of the Anti-degradation Implementation Procedures. Thank you.

Comment #1

p. 3, sec. 04.d. Offsets:

In some cases, it may be environmentally beneficial to allow offsets above the point of degradation, even though these offsets may occur downstream of the point of discharge. An example would be the case of a dissolved oxygen standard at a critical stream segment that is indirectly affected by upstream nutrient loading. A suggested revision to Draft #4 would be:

"…These offsets in pollution must be upstream, result in documented improvement in water quality immediately above the point of discharge, and occur before the new or increased discharge is allowed to begin, except that these offsets in pollution may be below the point of discharge and above the point of compliance when the Director determines that such offsets are necessary for effective management of specific water quality criteria, such as dissolved oxygen."

Comment #2

p. 8, New Definitions

Existing Discharge:

For anti-degradation review purposes, it is important to distinguish quantities of pollutants that are currently permitted versus those that are proposed. As mentioned at the meeting of June 15, 2010, the presumption is that existing discharge permits have taken into consideration potential water quality impacts at the permitted full discharge rate. The anti-degradation review would be relative to the full discharge allowed by permit, not the actual flow.

The current draft language for Existing Discharge refers to "a legal discharge…whether permitted or not." However, section 400.01.c. specifically prohibits "unauthorized discharge from a point source" therefore no discharge is legal unless it is "authorized." If "authorized" mean "permitted," then a "legal discharge" means a "permitted discharge," in which case the current draft language needs to be revised.

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Also, there was discussion during the meeting concerning discharges authorized by a current general permit being re-permitted under an individual discharge permit. This is a valid position if the general permit does not authorize specific quantities of pollutant discharge. If the general permit does specify a quantity limit for the pollutant of concern, then the discharge of that pollutant should be considered existing.

A suggested revision to the definition for Existing Discharge in Draft #4 would be:

"Refers to the quantity of pollutant discharge authorized by a current discharge permit. Existing, unpermitted pollutant discharges will be presumed to be new discharges unless the Director determines to the contrary based on a review of the available evidence."

New Discharge:

Using the same reasoning as above, a suggested revision to the definition for Existing Discharge in Draft #4 would be:

"Refers to the proposed quantity of pollutant discharge and to currently unpermitted pollutant discharges. Existing, unpermitted pollutant discharges will be presumed to be new discharges unless the Director determines to the contrary based on a review of the available evidence."

Comment #3

Anti-degradation Review Process (general comment):
As part of a review procedures manual, it would be helpful to provide a decision tree diagram to assist the IDEQ reviewer in making a determination of degradation/non-degradation. The diagram would also be helpful to permittees in their understanding of the review process.

Comment #4

p. 15, section 350.03. Approved Best Management Practices:
This section refers to a number of documents and rules. These documents and rules may from time to time become updated or obsolete, so it might be useful to state that the applicable edition is the one current at the time of the review.

Comment #5

p. 18, section 401.03. Chlorine Residual:
This section states: "The wastewater must not affect the receiving water outside the mixing zone so that its total chlorine residual exceeds eleven one-thousandths (0.011) mg/l." As written, this standard implies a level of precision equal to 0.001 mg/L. According to Standard Methods, the detection limit for chlorine residual in water is typically 0.01 mg/L or greater, depending on method and conditions, so the implied precision of 0.011 is contrary to the proposed definition of "measurable." Also, this standard can be found in a draft California policy document, "Total Residual Chlorine and Chlorine-Produced Oxidants Policy of California (2004)" which proposes a total chlorine residual objective of 0.019 mg/L as a 1-hour average and 0.011 mg/L as a 4-day average. This raises an important question concerning the objectives of section 401: what is the time period over which these standards apply? It would make practical sense for the section 401 standards to apply to average conditions over a period of time because instantaneous, transient conditions may have an insignificant affect on aquatic life.

A suggested revision to section 401 is:

"Unless more stringent limitations are necessary…wastewaters discharged into surface waters of the state must have the following characteristics when averaged over a period of four days:"

A suggested revision to section 401.03, Total Chlorine Residual is:
"The wastewater must not affect the receiving water outside the mixing zone such that its total chlorine residual exceeds one one-hundredth (0.01) mg/L."

Preferably, to be consistent with the definition of "measurable" the section could be revised to: "The wastewater must not affect the receiving water outside the mixing zone such that its total chlorine residual is measurable."

Comment #6

Significance Thresholds Discussion Paper:
IDEQ has taken a well-reasoned approach toward defining Significance Thresholds. Defining a "de-minimus discharge" as less than 10% of the assimilative capacity of a water body makes good sense, when coupled with a cumulative cap for that water body, which when reached would trigger further review of new dischargers to ensure the assimilative capacity is not exceeded. The questions remain:

- What should the cumulative cap be? Since a de-minimus discharge cannot exceed 10% of the assimilative capacity, a 50% cap would be reasonable for the following reasons. A lower cap, for example 10%, would mean that as few as one new permit could trigger in-depth reviews of all forthcoming applications. Whereas a higher cap, say 80%, would leave an uncomfortably thin regulatory cushion within which to provide the detailed review needed to avoid exceeding the assimilative capacity. Half way seems to be a reasonable compromise.

- When the assimilative capacity is reached, should there be any requirement for existing dischargers to "share" the allocated capacity (or waste load allocations) with new dischargers, or does this process effectively create permanently exclusive discharge rights on a first-in-time, first-in-right basis? This is a difficult policy issue that ties in with the pollutant trading policy and should be further evaluated and discussed.

Comment #7

General Comment:
The discussion papers on Significance Thresholds, New Discharges, and WbW vs PbP are very good. We appreciate the careful reasoning and thorough research by the authors, and are encouraged that IDEQ is working hard to provide maximum practical flexibility for Idaho while meeting the minimum federal requirements.