



Association of Idaho Cities

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

July 16, 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 July 14, 2010 Draft Antidegradation Implementation Procedures Proposed Rule (Draft No. 6)

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 is pleased to participate in this important rulemaking concerning development of antidegradation implementation procedures required by 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 recent data analyses related to ways to classify waters as Tier I or Tier II based on biological information.

We also very much appreciate DEQ's receptiveness to making reasonable changes to the rule in response to both verbal and written comments provided by AIC. 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% (AIC still has concerns with the "cumulative" element of the current proposed language)
- 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

Finally, AIC provides the following comments on Draft No. 6:

1. Identifying Tier I and Tier II Waters

AIC generally supports the use of biological data to identify high quality Tier II waters. However, we do not support the default assignment of Tier II in all cases where aquatic biota have not been assessed or where there are no data. As shown in DEQ's white paper, the default assignment leads a significant number of presumed Tier II waters (e.g. the entire mainstem Snake River and its reservoirs and portions of the Boise River and Indian Creek). The approach also results in 64% of NPDES discharges in the state being to presumed Tier II waters.

We believe that the process for assignment of aquatic life tiers can be improved through use of three criteria (biological data, hydrologic/habitat modification, and 303(d) status) and exercise of DEQ's best professional judgment (BPJ). A number of our streams and rivers have been subject to extensive hydrologic modification, channelization, habitat alteration, and/or urbanization. Many of these waters are also listed as impaired for multiple pollutants or primarily serve as irrigation water conveyance canals or drains.

DEQ's process for antidegradation status determination will be important. Regional office staff could identify Tier I eligible water bodies or DEQ could ask for input from Watershed Advisory Groups and Basin Advisory Groups. WAGs generally are very knowledgeable about their watersheds and the biological and chemical data that are available for them. For example, we note that two NPDES facilities occur on the IDEQ's July 8 Tier I and our Special Resource Water

(SRW) list which EPA and IDEQ have previously determined as Tier II waters. Collectively, we need to and can do better than simply presuming Tier II for all water bodies lacking biological data.

We also suggest that NPDES permittees in a given watershed/waterbody be treated consistently with respect to antidegradation status. For example, Boise's Lander Street facility is Tier II and the West Boise plant five miles downstream is Tier I. There are no significant changes in hydrology, habitat, TMDL listing status, or biology at these two facilities. Another example is Indian Creek, water quality declines in the downstream direction, however the two upper Indian Creek facilities are identified as Tier I and the downstream City of Nampa facility appears to be Tier II. Based on the biological, hydrologic, habitat, and 303(d) information, the antidegradation Tier for Indian Creek and the Lower Boise River should be Tier I (e.g. extensive hydrologic and habitat modification, multiple 303(d) pollutants, similar biology).

For other water bodies for which there are no biological data, and for which BPJ would not be simple or straightforward, we recommend that DEQ assign Tier I status to those that are on the 303(d) list and Tier II to those that are not on the 303 (d) list or are on for temperature only.

We also recommend that DEQ establish a process for upgrading from Tier I to II for waters that become high quality waters due to implementation of TMDLs or other activities. One approach could be to include the antidegradation Tier review as part of DEQ's 5-year TMDL review process. DEQ should exercise BPJ for certain 303(d)-listed waters such as the Lochsa River that are obviously high quality overall, despite listings for parameters such as temperature.

Finally, some permittees discharge to water bodies that are subject to Superfund site designation and remediation actions (e.g., Page, Mullen, Smeltonville) or for discharges to streams with Use Attainability Analyses (UAAs) or potentially statewide variances. It seems reasonable that such water bodies should be assigned Tier I status until remediation activities restore water quality to the point where variances are no longer needed.

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 appears to be a consistency or typographical error, and should be changed to "reasonable," to be consistent with the language elsewhere in 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.

Although the Socioeconomic Justification section has not yet been discussed in a rule-making meeting—It is scheduled for the July 21st meeting--we suggest that this section be substantially modified. We recognize that this section was largely taken from the State of Washington's rule which has requirements more stringent than 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. Although subpart 052.06.d.iv. suggests that qualitative analyses may be used, it further states that such 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. 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

We appreciate DEQ changes to this section to date but continue to have practical concerns with the proposed cumulative cap for ambient conditions or 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 assessment of remaining assimilative capacity and ambient conditions will be technically difficult to determine. Monitoring data generally are of insufficient number to determine the ambient or 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. 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 at the time of permit application.

4. State Resource Waters (SRWs)

AIC supported the removal of SRWs from the rule as “Tier 2.5” waters. We understand that SRWs will be discussed again 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 (see Attachment A to this letter). 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 appears to prohibit any new or increased point source discharge above the design capacity contained in the existing permits. This is a substantive issue for all of the Idaho cities currently discharging to SRWs as it effectively caps NPDES discharges at current levels regardless of socioeconomic or other considerations that are considered for Tier II waters.

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 the SRW Teir 2.5 requirements in the current draft be removed and that SRWs be evaluated on a case-by-case which we anticipate will result in Tier II designation for the majority of Tier II waters.

5. Other Sources Language

We appreciate the clarification that DEQ will be responsible for the compliance evaluation for Other Sources. We also appreciate the verbal clarification at the July 8th meeting that DEQ interprets “the highest statutory and regulatory requirements for all new and existing point sources” to be technology-based and water quality-based effluent limits.

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We recommend that the definition of “highest statutory and regulatory requirements” as technology and water quality based effluent limits be included in the draft rule and IDEQ’s future antidegradation implementation guidance.

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,

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

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	Bonnars Ferry WTP	Nez Perce		
3	Bonnars 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						