



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

MAR 31 1997

Reply To
Attn Of: OW-134

Wallace Cory, Administrator
Division of Environmental Quality
1410 North Hilton
Boise, ID 83706

Re: EPA Approval/Disapproval Action on 1996/1997 Revisions to
Idaho's Water Quality Standards

Dear Mr. Cory:

The Environmental Protection Agency (EPA) has completed a partial review of the Idaho Water Quality Standards (WQS) adopted by the Board of Health and Welfare on November 14, 1996, effective December 1, 1996, and passed by the Legislature at their adjournment in March 1997. In addition, we have reviewed the temporary rule revising the designated uses for Lindsay Creek and West Fork Blackbird Creek adopted by the Board of Health and Welfare on February 11, 1997, which we received for our approval on March 23, 1997. Finally, we have reviewed Idaho's submittal dated March 31, 1997, Board of Health and Welfare Docket No. 16-0102-9601, which includes conversion factors for aquatic life metals criteria and a cyanide criterion adopted on September 11, 1996, and passed by the Legislature at their adjournment in March 1997.

The new or revised WQS that we have completed reviewing under Section (§)303(c)(3) of the Clean Water Act (CWA) include replacements of the disapproval items in our letter dated June 25, 1996, (antidegradation, unclassified waters, and use designations for Lindsay Creek and West Fork Blackbird Creek). We are encouraged by the State's efforts to resolve some items disapproved in June 1996 and look forward to expeditiously reviewing further rulemaking on the outstanding issues.

We anticipate that we will soon complete our review of the remaining new and/or revised WQS provisions not addressed today. Some sections in the March 23 submittal are more specifically related to §303(d), i.e., listing of water quality limited waters and total maximum daily load development. We will be commenting on these sections by separate letter later.

EPA's approval of State WQS is considered a Federal action and EPA must comply with the §7 consultation requirements of the Endangered Species Act (ESA). Section 7 states that "all Federal agencies shall utilize their authorities on furtherance of the purposes of the ESA by carrying out programs for the conservation of endangered and threatened species; each Federal Agency shall insure that any action authorized, funded, or carried out by such agencies is not likely to jeopardize the continued existence of any endangered or threatened species." Today's letter which includes approval of some elements and conditional approval of others is contingent on successful completion of consultation with both Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS). We have initiated discussions with FWS and NMFS about the need for informal or formal consultation on EPA's approval action. Our efforts will include identification of any potential effects to endangered or threatened species from the new and revised WQS regulations. We will keep you informed of this process and its outcome.

We have reviewed the following new and revised elements of the 1997 WQS regulations pursuant to §303(c) of the CWA and the implementing regulations at 40 CFR Part 131. This letter constitutes our formal notification of the results of this review.

I. Approved Items:

1. Section 16.01.02.051. Antidegradation.

EPA disapproved Idaho's previous antidegradation policy because its Tier III protection did not include protection from point sources. Idaho revised this provision to include point sources in a temporary rule effective December 1, 1996, subject to legislative approval. This rule was adopted by the legislature on March 20, 1997. Because this change addresses EPA's concerns and is in accordance with the requirements of 40 CFR 131.12, it is hereby approved. Accordingly, under CWA § 303(c)(4), a federally promulgated antidegradation policy is no longer needed.

2. Section 16.01.02.250.07.a.iv. Numeric Criteria for Toxic Substances.

This incorporates the factors and equations for the conversion of the aquatic life water quality criteria for metals from the total recoverable form to the dissolved form. These conversion factors and equations for arsenic, cadmium, chromium (III), chromium (VI), copper, lead, silver and zinc are the same as the Federal conversion factors and equations as set out in the Stay of the Federal Quality Criteria for Metals, on May 4, 1995, in 40 CFR Part 131.36(c)(4)(iii) and are, therefore, approved.

The adoption of selenium as total recoverable is the same as the Federal criteria form and is, therefore, approved.

The adoption of a cyanide criterion (which is not a metal) measured as weak acid dissociable is approved. The Federal criterion for cyanide put forth in the National Toxics Rule, on December 22, 1992, 40 CFR Part 131.36(b)(1) is expressed as total, as defined in 50 Federal Register 30790 (July 29, 1985). All the data used to derive the Federal criterion were expressed as free cyanide. The criterion itself is basically a free cyanide criterion, although in the absence of an approved method for free cyanide, EPA recommended the criterion be expressed as total. However, the following methods -- total, weak acid dissociable and cyanide amenable to chlorination -- will measure no less than free cyanide and, therefore, are all acceptable for measuring cyanide.

Accordingly, these numeric criteria are scientifically defensible and are approved as meeting the requirements of 40 CFR § 131.11.

II. Conditionally Approved Items:

Uses for Lindsay Creek and West Fork Blackbird Creek.

As mentioned, Idaho's submission for approval includes a temporary rule revising the designated uses for Lindsay Creek, CB 210, in the Clearwater Basin, and West Fork Blackbird Creek, SB 4211, in the Salmon Basin. The temporary rule designates secondary contact recreation for Lindsay Creek, and designates cold water biota and salmonid spawning for West Fork Blackbird Creek. The temporary rule was adopted on February 11, 1997, and became effective on March 1, 1997.

The addition of these designated uses remedies the deficiencies which formed the basis for EPA's June 25, 1996, disapproval of the uses for these stream segments. With respect to Lindsay Creek, the revised use designation now includes a recreational use. Although the use is designated "secondary contact recreation," the associated bacteriological criterion is as stringent as the federally recommended criterion for primary contact recreation. Thus, the use designation in question will provide for swimmable water. With respect to the West Fork Blackbird Creek, the revised use designation now protects appropriate aquatic life uses for this stream.

While these revisions meet the substantive requirements of 40 CFR Part 131, and are in effect, the State has not completed certain procedural steps. The revisions were noticed in the State regulatory bulletin with a public comment period ending May 28, 1997. We also understand that, following this public comment period, the temporary rule will be resubmitted to the Board of Health and Welfare by September 1997, and will go before the State Legislature by its next regularly scheduled session, i.e., March 1998.

Given this reasonably expeditious schedule, EPA is conditionally approving the revised use designations for Lindsay Creek and West Fork Blackbird Creek. If these use designations are modified by the Board or Legislature, EPA's approval will expire, and EPA will review and approve or disapprove the modification. If the temporary use designations are adopted as final rules, EPA's approval will become unconditional.

Since the temporary rules are currently in effect and meet the substantive requirements of 40 CFR Part 131, there is at this time no need, under CWA § 303(c)(4), for a Federal promulgation for these segments. However, because of the conditions attached to EPA's approval, EPA expects to hold in abeyance its proposed rule for these segments, rather than to withdraw it, to enable EPA to act immediately to promulgate in the event that the temporary rule is modified to be less protective.

We intend to monitor the progress of these use designations to be sure that the conditions of this approval are met.

III. Other Items

Section 16.01.02.101.01. Unclassified Surface Waters.

EPA disapproved Idaho's previous unclassified waters provision because it did not provide for protection of fishable/swimmable uses prior to classification. Idaho has revised this section to provide protection for beneficial uses, including all fishable/swimmable uses, "where attainable." Because this language is ambiguous as to what uses apply before a showing of attainability is completed and what criteria apply to unclassified waters prior to classification, EPA is seeking clarification from the State on how to interpret the newly revised unclassified waters provision. In particular, EPA needs to know whether fishable/swimmable uses apply unless shown to be unattainable, or whether fishable/swimmable uses have to be shown to be attainable before being protected, with only the former being approvable. The newly revised language does not specify which criteria would apply, even if fishable uses are assumed. To date, EPA has been given various, not wholly consistent oral and written representations of how this provision is to be interpreted.

Under the circumstances, EPA needs a definitive written clarification articulating what criteria apply to unclassified waters prior to classification.

This clarification will confirm for EPA that the State intends this provision to provide for fishable/swimmable uses in unclassified waters unless the state documents to EPA's satisfaction that such uses are unattainable.

Because of the uncertainty regarding how the newly adopted unclassified waters provision is to be interpreted, EPA is unable to approve this provision at this time. Without additional acceptable clarification from the State, EPA intends to disapprove the newly adopted unclassified waters provision by June 23, 1997, in accordance with §303(c) of the CWA.

If you have any questions concerning this letter please contact me at (206) 553-0422, or have your staff contact Lisa Macchio, Water Quality Standards Coordinator for Idaho at (206) 553-1834.

Sincerely,



Philip G. Millam
Director
Office of Water

cc: Larry Koenig, DEQ-Boise
Susan Burke, DEQ-Boise
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