



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

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OFFICE OF  
WATER AND WATERSHEDS

April 2, 2015

Don Essig  
Idaho Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706

RE: EPA comments on Idaho's Discussion Paper #8 Implementation Tools

Dear Don:

EPA appreciates the opportunity to provide comments to the Idaho Department of Environmental Quality (DEQ) on the discussion paper, Idaho Fish Consumption Rate and Human Health Water Quality Criteria, Implementation Tools, which DEQ presented at the March 12, 2015 negotiated rulemaking meeting. EPA is very appreciative of the challenging work that DEQ has undertaken thus far in consideration of revising its human health water quality criteria. In addition, EPA appreciates DEQ's efforts to consider implementation tools that could be utilized in making progress towards meeting revised human health criteria. Below is a summary of EPA's specific comments on the discussion paper.

SPECIFIC COMMENTS

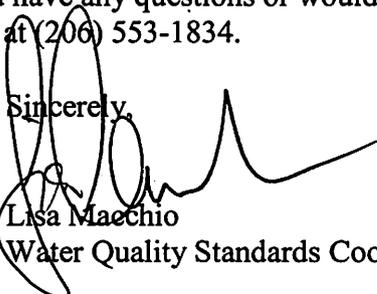
1. Intake credits (pg. 3). As I noted at the meeting, intake credits are not a tool that EPA reviews and acts on under Section 303(c) of the Clean Water Act. An intake credit tool would be reviewed under the National Pollutant Discharge Elimination (NPDES) program and implementation regulations. EPA recommends that DEQ be clear to the public that any intake credit tool would be incorporated and addressed under Idaho's rules regulating the Idaho Pollutant Discharge and Elimination System Program.
2. EPA notes that the paper does not include a discussion on renewal of variances. It would have been useful to include such a discussion in this paper, as the requirements for renewal of variances is an important component in the framework of this implementation tool. As DEQ further considers variances and any changes to language in its regulations regarding variances, it would be helpful to have further conversations on what additional language would be needed in Idaho's rules. As you know, EPA is in the process of specifying its federal requirements for variances and hopes to finalize the national water quality standards regulatory revisions this summer (likely after the May 15, 2015 date that DEQ stated on p. 5 of its discussion paper). Therefore, EPA encourages DEQ to work closely with EPA when developing revisions to the state's variance authorizing provisions so that they are consistent with the applicable federal requirements.
3. EPA would like to clarify a statement in the discussion paper that concerns variances in EPA Region 5 states in the Great Lakes region. DEQ states, "In Region 5 states (Illinois, Indiana,

Michigan, Minnesota, Ohio, and Wisconsin), variances are widely used (ODEQ 2011) and preferred in some cases to other tools such as compliance schedules” (pg. 6). To clarify, there is no issue of “preference” in deciding between a compliance schedule and a variance or UAA. If the WQS *is* attainable, neither a variance nor a UAA are permissible and a compliance schedule *may* be allowed if time is needed to achieve compliance. A variance or UAA is *only* permissible where a WQS is demonstrably not attainable, at least for the term of the variance.

4. In its discussion paper, DEQ identifies “restoration water quality standards as having been proposed but not approved for Florida only” (pg. 6). EPA believes that the wording DEQ chose to describe the situation with respect to Florida may have been confusing for those not knowledgeable of the details regarding the Florida federal rulemaking. To clarify, Florida did not propose a restoration water quality standard for impaired waters; EPA proposed it in a federal rulemaking for Florida. Based on public comment and evaluation of the current flexibilities available to Florida, EPA decided not to promulgate a restoration WQS tool specifically for Florida as proposed. EPA concluded that the range of implementation tools available to Florida provided adequate flexibility to implement EPA’s final rule for Florida.

I appreciate the opportunity to provide you with EPA’s comments and look forward to continued work with DEQ on this effort. If you have any questions or would like to discuss these comments further, please contact me at (206) 553-1834.

Sincerely,



Lisa Macchio

Water Quality Standards Coordinator