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Idaho Conservation League

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October 29, 2015

Paula Wilson
DEQ State Office
Attorney General's Office
1410 N. Hilton
Boise, ID 83706

Submitted via email: paula.wilson@deq.idaho.gov

Re: Docket No. 58-0102-1502- Update to Copper Criteria for Aquatic Life

Dear Ms. Wilson;

Since 1973, the Idaho Conservation League (ICL) has been Idaho's voice for clean water, clean air and wilderness—values that are the foundation for Idaho's extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. As Idaho's largest state-based conservation organization, we represent over 25,000 supporters, many of whom have a deep personal interest in protecting Idaho's water quality and aquatic life.

BLM vs. MLR?

Our initial understanding was that the DEQ would be adopting/utilizing the BLM to establish the copper criteria. Use of the BLM seems necessary so as to avoid the need for additional consultation with the Services. At the Rulemaking meeting there was some discussion about potentially utilizing the MLR – both as a cost savings and also to avoid any potential future problems stemming from citing a specific version of the BLM in the rule or the potential that the BLM software package may not be updated or supported in the future. As presented, these seem like valid concerns. However, given that the MLR does not provide results identical to, or is always no less stringent than, the BLM, we do not believe that the DEQ should utilize the MLR at this time.

How to utilize the BLM when certain data is missing?

ESA consultation has determined that the hardness-based methodology is not sufficiently protective. Therefore, in waters with ESA protected species, DEQ and EPA must expeditiously develop BLM criteria for dischargers.

Based on the recent rulemaking meeting, it is not clear to us what the implications are for using the BLM without a full complement of data – both the chemistry and temporal

distribution of data. We request that DEQ specifically address this issue at the next rulemaking meeting.

Ensuring that discharges have collected sufficient data to utilize the BLM method must be a priority for the DEQ and the EPA. To accomplish this data collection, the agencies need to develop a means of directing dischargers to begin collecting this needed data now and not to wait until their next permit cycle and to then direct them to begin collecting the needed data. Waiting for the next permit cycle prior to requiring this monitoring will result in slowing down adoption of BLM criteria in discharge permits by many years and would result in ESA take issues in certain watersheds.

Keep using hardness-based in the interim?

DEQ has reported that many of current dischargers have not collected sufficient data to fully utilize the BLM and DEQ wonders if it would be acceptable to continue utilizing the hardness-based criteria until such time as sufficient data is available to utilize the BLM.

ESA consultation has determined that the hardness-based methodology is not sufficiently protective. Therefore, in waters with ESA protected species, it would not be appropriate to continue utilizing the hardness-based methodology. In waters that do not hold ESA species, it might be appropriate for the DEQ to continue to utilize hardness-based criteria in the interim, as the discharge or the agency collects the necessary data. However, if DEQ is going to utilize a hardness-based criteria in this interim period, it would be necessary for any NPDES permit issued to contain language directing that the agency intends to modify the permit to incorporate the BLM criteria immediately upon collection of sufficient data, irrespective of whether not the period has reached the end of its lifespan.

Additional Rulemaking Meetings

DEQ has scheduled an additional rulemaking session on this matter. We will be attending this session. We hope that DEQ will use future session(s) to explore the unresolved issues noted above and to also discuss the how BLM derived criteria will be integrated into individual permits, issues related to compliance, mixing zones and other issues related to implementation. DEQ is also clearly going to need to develop guidance documents on this issue. It would be good if DEQ would layout the timeline for this action too. It might be that more sessions will be necessary.

Please contact me if you have any questions at 208-345-6933 x 24 or jhayes@idahoconservation.org

Sincerely,



Justin Hayes
Program Director