



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706 • (208) 373-0502

C.L. "Butch" Otter, Governor
Curt Fransen, Director

June 8, 2012

Mr. Michael Bussell, Director
Office of Water and Watersheds, Region 10
US Environmental Protection Agency
1200 6th Avenue
Seattle, Washington 98101

Re: Submission of revised water quality standards for approval: Antidegradation Implementation Procedures – Completion (Idaho docket 58-0102-1103)

Dear Mr. Bussell:

Consistent with the Clean Water Act §303(c) and 40 CFR 131.20, revisions to Idaho's water quality standards (WQS) are hereby submitted for EPA approval. Rulemaking was initiated to make the language on implementation of antidegradation procedures in Idaho's water quality standards consistent with changes in state law brought about by the 2011 Legislature's passage of House Bill 153. Idaho rule docket 58-0102-1103 completes the language in rule regarding Idaho Antidegradation Implementation Procedures approved by EPA on August 11, 2011 (Docket 58-0102-1001).

The submitted docket accomplishes three things. First, it completes the antidegradation rule by adding in to Idaho's WQS legislative language from HB 153 regarding the definition of degradation, the treatment of general permits, the identification of Tier II waters, and insignificant discharges or activities. These sections of rule were stricken by the 2011 Idaho legislature, as explained in last year's submittal of rule docket 58-0102-1001. Second, it follows through on the legislative directive from HB 153 that "Special resource waters listed in the department's rules shall be evaluated in the same fashion as all other waters". This was done by removing mention of special resource waters from the WQS. Third, in housekeeping unrelated to antidegradation, use changes for eight lower Boise River tributaries are reversed to reflect EPA's November 29, 2004 disapproval of those changes.

Because this rulemaking simply followed through on legislative directive or EPA disapproval, there was nothing to negotiate and thus no negotiated rulemaking meeting was held. This lack of negotiation was cleared with Legislative Services. Instead Idaho Department of Environmental Quality (DEQ) went directly to a proposed rule noticed in the July 6, 2011 Idaho Administrative Bulletin announcing a 30-day public comment period. No request for public hearing was received and none was held. Only the Greater Yellowstone Coalition (GYC) submitted comments on several provisions of Idaho's antidegradation implementation procedures already approved by EPA. GYC had not participated in the 2010-11 antidegradation rulemaking. DEQ's response was that no changes to the antidegradation rule could be made in response to GYC's comments because this rulemaking, for antidegradation, was only making changes directed by the 2011 Idaho Legislature.

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The proposed rule was presented to the Idaho Board of Environmental Quality on November 10, 2011 and adopted without change. A pending rule was noticed in the December 7, 2011 Idaho Administrative Bulletin and finalized by the 2012 Idaho Legislature, effective March 29, 2012. As of that date the language in rule regarding antidegradation implementation is complete and no longer requires referring to statute.

In addition to the published notices, DEQ created an online record of the rulemaking process which can be accessed at: <http://www.deq.idaho.gov/laws,-rules,-etc/deq-rulemakings/docket-no-58-0102-1103-final-rule.aspx>. All materials posted at this URL are hereby incorporated by reference in this submittal.

The rule submittal package includes:

- 1) This cover letter, briefly describing the rule, rulemaking, and the contents of the package supporting the rule being submitted for your approval;
- 2) June 30, 2011 memo from Legislative Services;
- 3) July 6, 2011 Notice of Proposed Rule Announcing opening of 30-day public comment period on proposed rule;
- 4) Summary of public comment and DEQ's response;
- 5) December 7, 2011 Notice of Pending Rule – Announcing adoption by the DEQ Board;
- 6) An Attorney General's certification that the rules were adopted according to state law;
- 7) Electronic copies of the above materials burned onto CD for your convenience.

If you have any questions on this rulemaking and the enclosed supporting materials, please contact Don A. Essig, 208-373-0119, or Don.Essig@deq.idaho.gov.

Sincerely,



Barry N. Burnell
Water Quality Division Administrator

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Enclosures

c: Bill Beckwith, EPA (with enclosures)
Justin Hayes, ICL (w/o enclosures)
Don Essig, DEQ (w/o enclosures)
Doug Conde, DEQ (w/o enclosures)
Michael McIntyre, DEQ (w/o enclosures)