



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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C.L. "Butch" Otter, Governor
Toni Hardesty, Director

April 15, 2011

Mike Bussell, Director
Office of Water and Watersheds, Region 10
U.S. Environmental Protection Agency
1200 6th Avenue
Seattle, Washington 98101

Re: Submission of revised water quality standards for approval: Antidegradation Implementation Procedures (Idaho docket 58-0102-1001)

Dear Mr. Bussell:

In order to meet the requirement in 40 CFR 131.12 that Idaho identifies its methods for implementing Idaho's antidegradation policy, DEQ is hereby submitting: (1) Revisions to Idaho's water quality standards (WQS), and (2) House Bill 153, which amends the Idaho Code provisions regarding antidegradation.

Rulemaking was initiated by DEQ with a notice of negotiated rulemaking published in the April 7, 2010 Idaho Administrative Bulletin. Six rulemaking meetings were held in Boise, with the first on April 22, 2010 and the final on July 21, 2010. Many individuals and interest groups participated in the negotiation, including EPA regional staff in person. In addition to participating in the meetings, stakeholders submitted written comments to DEQ during the negotiated rulemaking process. DEQ published a proposed rule in the Sept. 1, 2010 Idaho Administrative Bulletin announcing a 30-day public comment period. No request for public hearing was received and none was held. Eighteen comments were received from the public. A compilation of comments and DEQ's response is attached.

The proposed rule was revised in response to public comment and presented to the Idaho Board of Environmental Quality on November 10, 2010. DEQ held a working session with the Board the day before to go over DEQ's revised proposal. Testimony before the Board on November 10th was both for and against the revised proposal. Christine Psyk, EPA Region 10, spoke in support of the proposed rule. The Idaho Association of Commerce and Industry (IACI) argued for certain changes in the rule. Several other people gave testimony. The Board adopted a revised proposal as presented by DEQ and a pending rule was noticed in the January 5, 2011 Idaho Administrative Bulletin.

DEQ's pending rule was reviewed by the Idaho Legislature during the 2011 session. Under House Concurrent Resolution 16, the legislature rejected certain portions of the rule, and approved the remainder of the rule. The rule as revised by the legislature became final and effective on March 18, 2011, the date the concurrent resolution was adopted.

The legislature also adopted House Bill 153 that revised the Idaho Code to include sections addressing antidegradation. The new sections added to Idaho law by House Bill 153 correspond to the portions of the rule rejected by House Concurrent Resolution 16. House Bill 153 was signed into law on March 22,

2011. The rule as revised by the legislature and House Bill 153 describe the methods for implementing Idaho's antidegradation policy, so both the rule and House Bill 153 must be reviewed by EPA. To aid in your review, DEQ has created a document that combines the adopted rule and the statutory changes. The combined document is attached.

Please note that the proposed and pending rule display changes in legislative format, that is using a format which shows deletions struck out and additions underlined. The language regarding ORWs in section 052 of the proposed rule (section 052.07 of the final rule) is underlined. The vast majority of this language is not new language, but rather existing language that was simply moved from other sections of the WQS to a new section in 052. DEQ has highlighted on the combined document the new language in section 052.07, and it is only this new language which DEQ is submitting to EPA for review.

In addition to the published notices, DEQ created an e-mail list of participants and other likely interested parties to which DEQ sent notice of meeting dates, rule drafts, comments and response and other documents distributed during this rulemaking. A record of the rulemaking process can be accessed on line at: http://www.deq.idaho.gov/rules/water/58_0102_1001_final.cfm. Individuals may also have subscribed to receive e-mailed updates via 'govdelivery.com' of this rulemaking. The rulemaking record included on the referenced website may also assist in EPA's review.

The rule submittal package includes:

- 1) This cover letter, briefly describing the rulemaking, its justification and the contents of the package supporting the rule being submitted for your approval, *file: 58-0102-1001 Rule submittal cover letter to EPA.pdf*;
- 2) April 7, 2010 Notice of Negotiated Rulemaking – Announcing DEQ's intention to revise its Water Quality Standards, IDAPA 58.01.02, to include procedures for implementing efforts to limit degradation of water quality, *file: 58-0102-1001 Notice of negotiated rulemaking.pdf*;
- 3) Scanned copies of sign-in sheets from rulemaking meetings, *file: 58-0102-1001 Negotiated Rulemaking Meeting Sign-in Sheets.pdf*;
- 4) September 1, 2010 Notice of Proposed Rule – Announcing opening of 30-day public comment period on proposed rule language resulting from negotiations, including text of the affected portions of the water quality standards showing changes from existing rule language in legislative markup format (deletions struck out and proposed additions underlined) and availability of supporting documents, *file: 58-0102-1001 Notice of proposed rule.pdf*;
- 5) Summary of public comment and DEQ's response, *file: 58-0102-1001 Antidegradation Proposed Rule, Response to Comments.pdf*;
- 6) January 5, 2011 Notice of Pending Rule – Announcing adoption by the DEQ Board and providing a descriptive summary of changes from the proposed rule, *file: 58-0102-1001 Notice of pending rule.pdf*;
- 7) House Concurrent Resolution 16 (HCR 16), rejecting portions of DEQ's rule, and approving the remainder, adopted by the Legislature on March 18, 2011, *file: 58-0102-1001 HCR 016 - Amendment of pending rule on antidegradation.pdf*;
- 8) House Bill 153 (HB 153), with statutory language that augments the revised rule, passed March 18, 2011 and signed into law March 22, 2011, *file: 58-0102-1001 H0 153 - Amendment of water quality law regarding antidegradation.pdf*; along with Legislative Committee Hearing minutes, *file: 58-0102-1001 Senate Resources Committee Minutes_hb153.pdf*;

- 9) Those sections of the WQS that were revised as published in the Idaho Administrative Code, *file: 58-0102-1001 Sections 10, 051 & 052 from IDWQS_2011 with highlighted changes*;
- 10) A document created by DEQ which shows the effective language by combining HCR 16 and HB 153, *file: 58-0102-1001 Antidegradation Pending Rule with HCR 016 & HB 153 changes*;
- 11) DEQ clarification of antidegradation rule and HB 153, *file: 58-0102-1001 Clarification of antidegradation rule and HB 153*;
- 12) An Attorney General's certification that the rules were adopted according to state law, *file: 58-0102-1001 Attorney General Certification letter*; and
- 13) Electronic copies of the above materials as well as the final rulemaking record from DEQ's web page 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)
Don Essig, DEQ (w/o enclosures)
Doug Conde, DEQ (w/o enclosures)
Michael McIntyre, DEQ (w/o enclosures)