

Written comment deadline for this draft – September 6, 2013

052. ANTIDegradation Implementation.

The antidegradation policy shall be implemented as follows: (3-18-11)

(Break in Continuity of Subsections)

08. Tier II Analysis. A Tier II analysis will only be conducted for activities or discharges, subject to a permit or a license, that cause degradation. The Department may allow significant degradation of surface water quality that is better than assigned criteria only if it is determined to be necessary to accommodate important economic or social development in the area in which the waters are located. The process and standard for this determination are set forth below. (3-18-11)

a. Insignificant Activity or Discharge. The Department shall consider the size and character of an activity or discharge or the magnitude of its effect on the receiving stream and shall determine whether it is insignificant. If an activity or discharge is determined to be insignificant, then no further Tier II analysis for other source controls (Subsection 052.08.b.), alternatives analysis (Subsection 052.08.c.) or socioeconomic justification (Subsection 052.08.d.) is required. (3-29-12)

i. The Department ~~shall~~ may determine insignificance when the proposed change in an activity or discharge, from conditions as of July 1, 2011, will not cumulatively decrease assimilative capacity by more than ten percent (10%). ~~(3-29-12)~~

ii. The Department may request additional information from the applicant in making a determination whether a proposed change in an activity or discharge is insignificant. (3-29-12)

b. Other Source Controls. In allowing any degradation of high water quality, the Department must assure that there shall be achieved in the watershed the highest statutory and regulatory requirements for all new and existing point sources and cost-effective and reasonable best management practices for all nonpoint source controls. In providing such assurance, the Department may enter together into an agreement with other State of Idaho or federal agencies in accordance with Sections 67-2326 through 67-2333, Idaho Code. (3-18-11)

c. Alternatives Analysis. Degradation will be deemed necessary only if there are no reasonable alternatives to discharging at the levels proposed. The applicant seeking authorization to degrade high water quality must provide an analysis of alternatives aimed at selecting the best combination of site, structural, managerial and treatment approaches that can be reasonably implemented to avoid or minimize the degradation of water quality. To identify the least degrading alternative that is reasonable, the following principles shall be followed: (3-18-11)

i. Controls to avoid or minimize degradation should be considered at the earliest possible stage of project design. (3-18-11)

ii. Alternatives that must be evaluated as appropriate, are: (3-18-11)

(1) Relocation or configuration of outfall or diffuser; (3-18-11)

(2) Process changes/improved efficiency that reduces pollutant discharge; (3-18-11)

(3) Seasonal discharge to avoid critical time periods for water quality; (3-18-11)

- (4) Non-discharge alternatives such as land application; and (3-18-11)
- (5) Offsets to the activity or discharge's effect on water quality. (3-18-11)
- iii. The Department retains the discretion to require the applicant to examine specific alternatives or provide additional information to conduct the analysis. (3-18-11)
- iv. In selecting the preferred alternative the applicant shall: (3-18-11)
 - (1) Evaluate economic impacts (total cost effectiveness, incremental cost effectiveness) of all technologically feasible alternatives; (3-18-11)
 - (2) Rank all technologically feasible treatment alternatives by their cost effectiveness at pollutant reduction; (3-18-11)
 - (3) Consider the environmental costs and benefits across media and between pollutants; and (3-18-11)
 - (4) Select the least degrading option or show that a more degrading alternative is justified based on Subsections 052.08.c.iv.(1), 052.08.c.iv.(2), or 052.08.c.iv.(3) above. (3-29-12)
- d. Socioeconomic Justification. Degradation of water quality deemed necessary must also be determined by the Department to accommodate important economic or social development. Therefore, the applicant seeking authorization to degrade water quality must at a minimum identify the important economic or social development for which lowering water quality is necessary and should use the following steps to demonstrate this: (3-18-11)
 - i. Identify the affected community; (3-18-11)
 - ii. Describe the important social or economic development associated with the activity which can include cleanup/restoration of a closed facility; (3-18-11)
 - iii. Identify the relevant social, economic and environmental health benefits and costs associated with the proposed degradation in water quality for the preferred alternative. Benefits and costs that must be analyzed include, but are not limited to: (3-18-11)
 - (1) Economic benefits to the community such as changes in employment, household incomes and tax base; (3-18-11)
 - (2) Provision of necessary services to the community; (3-18-11)
 - (3) Potential health impacts related to the proposed activity; (3-18-11)
 - (4) Impacts to direct and indirect uses associated with high quality water, e.g., fishing, recreation, and tourism; and (3-18-11)
 - (5) Retention of assimilative capacity for future activities or discharges. (3-18-11)
 - iv. Factors identified in the socioeconomic justification should be quantified whenever possible but for those factors that cannot be quantified a qualitative description of the impacts may be accepted; and (3-18-11)
 - v. If the Department determines that more information is required, then the Department may require the applicant to provide further information or seek additional sources of information. (3-18-11)
- e. Process. (3-18-11)

i. Analysis. The Department in cooperation with State of Idaho designated management agencies and/or federal agencies will collect information regarding the other source controls specified in Subsection 052.08.b. The applicant for a new or reissued permit or license is responsible for providing information pertinent to determining significance/insignificance of proposed changes in water quality and completing an alternatives analysis and socioeconomic justification as appropriate and submitting them to the Department for review. (3-29-12)

ii. Departmental review. The Department shall review all pertinent information and, after intergovernmental coordination, public notice and input, make a determination as to whether there is assurance that the other source controls specified in Subsection 052.08.b. shall be achieved, and whether degradation of water quality is necessary to accommodate important economic or social development. (3-29-12)

iii. Public Involvement. The Department will satisfy the public participation provisions of Idaho's continuing planning process. Public notice and review of antidegradation will be coordinated with existing 401 certification notices for public review. (3-18-11)

(Break in Continuity of Sections)

055. WATER QUALITY LIMITED WATERS AND TMDLS.

~~01. **After Determining That Reporting Water Body Does Not Support Use Support Status.** After using the provisions in Section 054, and after consultation with the appropriate basin and watershed advisory groups, the Department shall identify water bodies in the appropriate category in the Integrated Report. The Integrated Report shall be published periodically by the Department in accordance with the applicable provisions of the Clean Water Act and shall be subject to public review and comment prior to submission to EPA for approval. determining that a water body does not fully support designated or existing beneficial uses in accordance with Section 054, the Department, in consultation with the applicable basin and watershed advisory groups, shall evaluate whether the application of required pollution controls to sources of pollution affecting the impaired water body would restore the water body to full support status. This evaluation may include the following:~~ (3-18-11)

~~a. Identification of significant sources of pollution affecting the water body by past and present activities;~~ (3-20-97)

~~b. Determination of whether the application of required or cost effective interim pollution control strategies to the identified sources of pollution would restore the water body to full support status within a reasonable period of time;~~ (3-20-97)

~~c. Consultation with appropriate basin and watershed advisory groups, designated agencies and landowners to determine the feasibility of, and assurance that required or cost effective interim pollution control strategies can be effectively applied to the sources of pollution to achieve full support status within a reasonable period of time;~~ (3-20-97)

~~d. If pollution control strategies are applied as set forth in this Section, the Department shall subsequently monitor the water body to determine whether application of such pollution controls were successful in restoring the water body to full support status.~~ (3-20-97)

~~02. **Water Bodies Not Fully Supporting Beneficial Uses Needing Development of a Total Maximum Daily Load (TMDL).** After following the process identified in Subsection 055.01, Those water bodies identified in the Integrated Report as not fully supporting designated or existing beneficial uses and not meeting applicable water quality standards despite the application of required pollution controls shall be identified by the Department as water quality limited water bodies, and shall require the development of TMDLs or other equivalent processes, as described required under Section 303(d)(1) of the Clean Water Act. A list of water quality limited water bodies shall be published periodically by the Department in accordance with Section 303(d) of the Clean Water Act and be subject to public review prior to submission to EPA for approval. Informational TMDLs may be developed for water bodies fully supporting beneficial uses as described under Section 303(d)(3) of the Clean Water Act, however, they will not be subject to the provisions of this Section.~~ (3-18-11)

03. Priority of TMDL Development. The priority of TMDL development for water quality limited water bodies identified in ~~Subsection 055.02—the Integrated Report~~ shall be determined by the Director ~~in consultation with the Basin Advisory Groups as described in Sections 39-3601, et seq., Idaho Code,~~ depending upon the severity of pollution and the uses of the water body, including those of unique ecological significance. In determining the severity of pollution and the effect on uses, the Director shall consider the factors set forth in Section 39-3609, Idaho Code. Water bodies identified as a high priority through this process will be the first to be targeted for development of a TMDL or equivalent process. (3-18-11)

04. High Priority Provisions. ~~Until a TMDL or equivalent process is completed for a high priority water quality limited water body, new or increased discharge of pollutants which have caused the water quality limited listing may be allowed if interim changes, such as pollutant trading, or some other approach for the pollutant(s) of concern are implemented and the total load remains constant or decreases within the watershed. Interim changes shall maximize the use of cost effective measures to cap or decrease controllable human caused discharges from point and nonpoint sources. Once the TMDL or equivalent process is completed, any new or increased discharge of causative pollutants will be allowed only if consistent with the approved TMDL.~~ **Protection of Uses Prior to Completion of TMDLs.** Prior to the completion of a TMDL or equivalent process for water quality limited water bodies, the Department shall, consistent with the antidegradation policy and the provisions in Section 39-3610, Idaho Code, take those actions necessary to ensure that the existing uses of each water body and the level of water quality necessary to protect those uses shall be maintained and protected. Nothing in this section shall be interpreted as requiring best management practices for agricultural operations which are not adopted on a voluntary basis. (3-20-97)

05. Medium and Low Priority Provisions. ~~Until TMDLs or equivalent processes are developed for water quality limited water bodies identified as medium or low priority, the Department shall require interim changes in permitted discharges from point sources and best management practices for nonpoint sources deemed necessary to prohibit further impairment of the designated or existing beneficial uses.~~ **Consistency with TMDLs.** Once a TMDL or equivalent process is completed, discharges of causative pollutants shall be consistent with the load and wasteload allocations in the TMDL. Nothing in this section shall be interpreted as requiring best management practices for agricultural operations which are not adopted on a voluntary basis. (3-20-97)

~~a. In determining the necessity for interim changes to existing activities and limitations upon proposed activities, the Department, in consultation with basin and watershed advisory groups, shall evaluate the water quality impacts caused by past regulated and unregulated activities in the affected watershed. (3-20-97)~~

~~b. Consideration of interim changes shall maximize the use of cost effective and timely measures to ensure no further impairment of designated or existing uses. (3-20-97)~~

06. Pollutant Trading. Development of TMDLs or equivalent processes or interim changes under these rules may include pollutant trading with the goal of restoring water quality limited water bodies to compliance with water quality standards. (3-20-97)

07. Idaho Agriculture Pollution Abatement Plan. Use of best management practices by agricultural activities is strongly encouraged in high, medium and low priority watersheds. The Idaho Agriculture Pollution Abatement Plan is the source for best management practices for the control of nonpoint sources of pollution for agriculture. (3-20-97)