



Greater Yellowstone Coalition

People protecting the lands, waters, and wildlife of the Greater Yellowstone Ecosystem, now and for future generations.

BOZEMAN • CODY • IDAHO FALLS • JACKSON

162 N. Woodruff Ave. • Idaho Falls, Idaho 83401 • (208) 522-7927 • www.greateryellowstone.org

October 11, 2013

Paula Wilson
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706
Tel: (208) 373-0418
Fax: (208) 373-0481
E-mail: paula.wilson@deq.idaho.gov

**RE: GYC's Comments on Preliminary Draft Negotiated Rule, Docket No. 58-0102-1301
(Draft No. 3)**

Dear Paula,

Greater Yellowstone Coalition ("GYC") submits the following comments regarding Draft No. 3 of the proposed Negotiated Rule, Docket No. 58-0102-1301 ("Draft Rule 3"). For the reasons stated in our previous comments, it is clear that GYC has a substantial interest in the outcome of these proceedings and the rule at issue.

Comments on Draft Rule 3

Changes to Antidegradation Implementation Provisions

As written, we still believe that the current rule does not appropriately address EPA's concern that degradation caused by bioaccumulative pollutants should not be considered insignificant due to their accumulative nature. Draft Rule 3 only calls on IDEQ to take into consideration the size and character of the activity or discharge and the magnitude of its effect on the receiving stream in determining whether degradation may be significant and thus require Tier II review. This language does not consider the bioaccumulative nature of pollutants, which may not be reflected in the size and character of the activity or discharge or the magnitude of its effect on the receiving stream, and thus does not address EPA's main concern with the language of the rule that EPA rejected in its remand decision. We thus again ask that IDEQ add the following language:

taking into consideration the size and character of the activity or discharge, the magnitude of its effects on the receiving stream, and if relevant, the bioaccumulative character and nature of pollutants

This language would more appropriately address EPA's concerns about bioaccumulative pollutants and will ensure that IDEQ in the future does not fail to consider the persistent and toxic impacts of bioaccumulative pollutants. If IDEQ declines to adopt this language, then the guidance directing implementation of these rules must clarify that it is inappropriate for IDEQ to consider degradation caused by bioaccumulative pollutants as insignificant.

Changes to Water Quality Limited Waters and TMDLs Provisions

Based upon comments submitted by the Idaho Association of Commerce and Industry ("IACI") on September 13, 2013, IDEQ added the following language to 055.02:

TMDLs do not need to be developed for water bodies where other pollutant control requirements are expected to achieve full support of uses and compliance with water quality standards in a reasonable period of time. Such water bodies shall be identified as Category 4(b) waters in the Integrated Report.

This language is repetitive and unnecessary, as well as inappropriate here. First, the title of the subsection is "Water Bodies Needing Development of a Total Maximum Daily Load (TMDL)." Thus, there is no need to state within the subsection which water bodies may or may not require a designated TMDL. To add language regarding Category 4(b) waters would only be repetitive and confuse the purpose of this provision. Furthermore, because there are other waters that are impaired but do not require a TMDL -- for example waters categorized under Category 4(a) and Category 4(c) -- it is clear that IACI is trying to insert this language as a self-fulfilling purpose to stress a situation that is irrelevant here. Adding this language suggests that the only situation in which TMDLs are not required is "where other pollutant control requirements are expected to achieve full support of uses and compliance with water quality standards in a reasonable period of time." Such is not the case, and thus we urge IDEQ to strongly reconsider insertion of this language.

Second, as drafted Section 055.02 already states as follows:

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 require the development of TMDLs or other equivalent processes, as required under Section 303(d)(1) of the Clean Water Act.

The underlined language makes it clear that Section 303(d)(1) of the Clean Water Act may allow for other means of ensuring a water body meets designated or existing beneficial uses in lieu of development of TMDLs.

Third, States cannot make a final determination to forego development of a TMDL for impaired waters unless and until EPA approves an Integrated Report requesting Category 4 designation. As written, this language does not provide for this requirement. Furthermore, as stated above, if a water body is approved by EPA as not requiring a TMDL under Category 4, this provision would not apply. Inserting this language will only confuse the application of this provision.

Fourth, the language “to achieve full support of uses” is repetitive. A water body that complies with water quality standards will generally support designated and existing uses, and thus there is no need to include language about supporting uses. Again, adding superfluous language here will confuse the point of this provision, which should remain as straight-forward as possible. Indeed, all of the EPA guidance documents which we reviewed only referred to including a water body in Category 4(b) if pollution controls would achieve compliance with water quality standards - we found no reference to the impact of pollution controls on designated uses.

Sincerely,



Andrea Santarsiere
Idaho Conservation and Legal Associate