



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
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Department of Environmental Quality
State Water Quality Programs

OFFICE OF
WATER AND WATERSHEDS

September 7, 2010

Mr. Barry Burnell
Water Quality Program
Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

Dear Mr. Burnell:

The Environmental Protection Agency (EPA) commends the State of Idaho on its decision to work toward adoption of antidegradation implementation procedures; and, we appreciate the effort that the Idaho Department of Environmental Quality (IDEQ) has made in conjunction with interested stakeholders through its negotiated rulemaking process. Our understanding of the status of Idaho's rulemaking process is that IDEQ is soliciting public comment on a draft rule in September 2010; will forward a proposed rule to the Board of Environmental Quality in November 2010; and, if the Board adopts the proposed rule, it will be considered as a pending rule by the Idaho legislature in its 2011 session that extends from January 2011 to approximately April 2011.

We want to emphasize the importance of Idaho moving forward in accordance with its current schedule to adopt antidegradation implementation procedures which are required under Clean Water Act regulations at 40 CFR 131.12. As you are aware, EPA is currently in litigation regarding the need for antidegradation implementation procedures in Idaho. In consideration of the State's ongoing rulemaking process, EPA has delayed taking action with respect to Idaho's antidegradation implementation procedures. EPA has been actively involved in the State's rulemaking process since its inception, attending negotiated rulemaking sessions and commenting on various drafts of the rule. EPA intends to continue its participation by commenting on the proposed rule as appropriate during the September 2010 public comment period. However, if the legislature does not adopt rules delineating antidegradation implementation procedures, and IDEQ does not submit those antidegradation implementation procedures to EPA for review and approval after the end of the 2011 legislative session, then EPA will consider its options available under the Clean Water Act (CWA), including issuing a determination under section 303(c)(4)(B) of the CWA.

Such a determination would evaluate whether Idaho's antidegradation program is consistent with the requirements of the CWA. If EPA issued a determination that Idaho needs antidegradation implementation procedures, EPA would have an obligation to propose and promulgate any necessary procedures for the State if the State did not promptly do so. Please note that this letter does not constitute a determination pursuant to CWA section 303(c)(4)(B).

It is also important that the antidegradation implementation procedures adopted by Idaho be consistent with the CWA and its implementing regulations. This includes the procedures being applicable to all "waters of the United States" in Idaho, and all activities that require a permit under federal law or a state certification pursuant to section 401 of the CWA (such as CWA Section 402 NPDES permits, CWA section 404 permits, and FERC licenses). Assuming Idaho is successful in adopting and submitting antidegradation implementation procedures in accordance with its current schedule, EPA will carefully review them to ensure they are consistent with the CWA and its implementing regulations.

If we can be of any further support during the remainder of your process, please do not hesitate to contact me at 206-553-1906 or Bill Beckwith of my staff at 206-553-2496.

Sincerely



Christine Psyk, Associate Director
Office of Water and Watersheds

cc: Mr. Michael McIntyre, IDEQ
Mr. Don Essig, IDEQ

