



State of Idaho
DEPARTMENT OF ENVIRONMENTAL QUALITY

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Dirk Kempthorne, Governor
C. Stephen Allred, Director

May 29, 2003

Randall Smith, Director
Office of Water, Region 10
U.S. Environmental Protection Agency
1200 6th Ave.
Seattle, WA 98101

Re: Submission of revised water quality standards for approval
Idaho Docket No. 58-0102-0002

Dear Mr. Smith:

Consistent with the Clean Water Act §303(c) and 40 CFR 131.20, revised water quality standards are submitted for EPA approval. These revisions are part of an ongoing process of revisions of applicable water quality standards that constitute Idaho's Triennial Review Process. A second package of reviews will be submitted very soon with additional reviews approved by the legislature in 2003. The cover letter for on the second submittal will suggest priorities for the approval process for both packages.

A significant part of this docket is temperature criteria to protect bull trout. We delayed submission of this docket to EPA until conclusion of the regional temperature criteria guidance. The rulemaking process for this standard was far along when the regional project began. However, both EPA and DEQ agreed that rather triggering the mandatory CWA timelines for EPA review and approval or disapproval action while the regional effort was ongoing, it would be better to complete the regional review first. DEQ's intention was to either go forward with submitting the existing standard for EPA action, or if warranted by new information, to revise the standard through state rulemaking.

Much new information on bull trout temperature requirements was considered. No information reviewed indicated that our previously determined 13°C maximum weekly maximum temperature (MWMT) would in any way be adverse, and certainly would not jeopardize the continued existence of or impede recovery of bull trout populations. We are aware that bull trout advocates encouraged EPA to recommend an 11°C MWMT standard, while Idaho and Washington had concluded a 13°C MWMT was more appropriate. EPA's final recommendation was a 12°C MWMT.

The Idaho standard is now only 1°C apart from the regional guidance, but we are aware of no scientific reason for changing our 13°C MWMT standard that has already been through complete state rulemaking. This matter seems to have been thoroughly debated and deliberated and more debate probably will not be illuminating. Thus we have concluded our reviews and are now formally submitting this revision to Idaho's water quality standards for EPA review and action as required by the CWA §303(c) and 40 CFR 131.21.

Because under "the Alaska rule" (40 CFR 131.21), water quality standards revised after May 30, 2000 cannot be used for Clean Water Act purposes; and for this standard alone, federally promulgated bull trout criteria are in effect in Idaho (40 CFR 131.33), the delay in submitting this standard for EPA action had no environmental consequences. Similarly, the delay in submitting other components of the dockets had few if any practical effect – a use change for Hells Canyon reservoirs codifies previous agency interpretation and application of criteria for the use, and a variance initiated to facilitate CERCLA activities has not appeared to be a significant influence in cleanup activities.

The enclosed package includes:

- 1) Notice of Proposed Rulemaking, consisting of a descriptive summary of proposed revisions, invitation for public review, contact information for the public to obtain technical information supporting the proposed revision, and the revisions with proposed deletions struck out and proposed additions underlined.
- 2) Notice of Pending rule, showing the substantive changes from the proposed rule text that resulted from public participation through the public hearing, written comment, and testimony at the meeting of the Board of Environmental Quality. Please note that only those sections that have changed from the original proposed text are printed in the notice of pending rule. Together, the "Notice of Pending rule" and the unchanged sections of the "Notice of Proposed Rulemaking" describe the State action being submitted for review and approval.
- 3) The Department's Response to Comments. The Response to Comments' table of contents shows which comments and responses are relevant to the present submission.
- 4) The attorney general's certification that the rules were adopted according to state law; and
- 5) Supporting analyses for revised water quality standards. These include:
 - a) A summary entitled "Supporting Analyses for Docket No. 58-0102-0002", 21 pp.
 - b) An analysis entitled "Update of Bull Trout Temperature Requirements" 48 pp."
 - c) Copies of 11 reports referenced in the supporting analyses, which we thought might be inconvenient for reviewers to locate.

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These rules have been through publication as proposed rules, public hearings and solicitation of comments period, adoption by the Board of Environmental Quality, and reviewed and approved by the Idaho Legislature. These are permanent rule changes.

Sincerely,



DAVID MABE
Administrator
Idaho Water Quality Programs

DM:dlc

Enclosures

Cc: Lisa Macchio (without enclosures)
Don Essig (with enclosures)
Doug Conde (without enclosures)
Michael McIntyre (without enclosures)