



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue
Seattle, WA 98101

Reply to
Attn Of: OWW-135

DEC 20 2005

Barry N. Burnell, Administrator
Water Quality Program
Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706

Re: Approval of Idaho State Final Integrated Report 2002 (303(d) List and 305(b) Report) submitted for approval July 23, 2004.

Dear Mr. Burnell:

The Environmental Protection Agency (EPA) has conducted a complete review of Idaho's 2002 Section 303(d) List and supporting documentation and information. Based on this review, EPA has determined that Idaho's list of water quality limited segments (WQLSs) still requiring TMDLs meets the requirements of Section 303(d) of the Clean Water Act ("CWA" or "the Act") and EPA's implementing regulations. Therefore, EPA hereby approves Idaho's Section 303(d) List. The statutory and regulatory requirements, and EPA's review of Idaho's compliance with each requirement, are described in the attachment to this letter.

Idaho Department of Environmental Quality (IDEQ) submitted their final 2002 303(d) List, including a response to public comments, a final list methodology, a priority ranking and an Integrated Report on the status of Idaho's waters, to EPA on July 23, 2004. EPA received Idaho's 303(d) List as a hard copy on July 27, 2004. EPA is acting only on the waters listed in Category 5 of the Integrated Report which constitutes the 303(d) List.

The public participation process sponsored by IDEQ included public hearings around the state, solicitations of public comments and preparation of a responsiveness summary explaining how the State considered public comment in the final listing decisions.

We recognize and appreciate the excellent work of staff and managers at Idaho in developing the final 2002 § 303(d) List. In particular, Mike Edmondson has performed a very thorough job in preparing Idaho's Integrated Report. We consider him one of the most knowledgeable state staff in these matters and we appreciate his work. We look forward to continuing to work with you on this process to address the water quality issues in the state. If you have any questions please contact Lisa Jacobsen of my staff at (206) 553-6917 or the manager of the Watershed Unit, Christine Psyk at (206) 553-1906.

Sincerely,

Michael F. Gearheard, Director
Office of Water and Watersheds

Enclosure

cc: Michael Edmondson, IDEQ
Michael McIntyre, IDEQ

INTRODUCTION

The Environmental Protection Agency (EPA) has conducted a complete review of Idaho's 2002 Section 303(d) list and supporting documentation and information and, based on this review, EPA has determined that Idaho's list of water quality limited segments (WQLSs) still requiring TMDLs meets the requirements of Section 303(d) of the Clean Water Act ("CWA" or "the Act") and EPA's implementing regulations. Therefore, by this order, EPA hereby APPROVES Idaho's Section 303(d) list. The statutory and regulatory requirements, and EPA's review of Idaho's compliance with each requirement, are described in detail below.

STATUTORY AND REGULATORY BACKGROUND

I. Identification of WQLSs for Inclusion on Section 303(d) List

Section 303(d)(1) of the Act directs States to identify those waters within its jurisdiction for which effluent limitations required by Section 301(b)(1)(A) and (B) are not stringent enough to implement any applicable water quality standard, and to establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters. The Section 303(d) listing requirement applies to waters impaired by point and/or nonpoint sources, pursuant to EPA's long-standing interpretation of Section 303(d).

EPA regulations provide that States do not need to list waters where the following controls are adequate to implement applicable standards: (1) technology-based effluent limitations required by the Act, (2) more stringent effluent limitations required by State or local authority, and (3) other pollution control requirements required by State, local, or federal authority. See 40 CFR 130.7(b)(1).

II. Consideration of Existing and Readily Available Water Quality-Related Data and Information

In developing Section 303(d) lists, States are required to assemble and evaluate all existing and readily available water quality-related data and information, including, at a minimum, consideration of existing and readily available data and information about the following categories of waters: (1) waters identified as partially meeting or not meeting designated uses, or as threatened, in the State's most recent Section 305(b) report; (2) waters for which dilution calculations or predictive modeling indicate nonattainment of applicable standards; (3) waters for which water quality problems have been reported by governmental agencies, members of the public, or academic institutions; and (4) waters identified as impaired or threatened in any Section 319 nonpoint assessment submitted to EPA. See 40 CFR 130.7(b)(5). In addition to these minimum categories, States are required to consider any other data and information that is existing and readily available. EPA's 1991 Guidance for Water Quality-Based Decisions describes categories of water quality-related data and information that may be existing and readily available. See Guidance for Water Quality-Based Decisions: The TMDL Process, EPA Office of Water, 1991, Appendix C ("EPA's 1991 Guidance"). While States are required to evaluate all

existing and readily available water quality-related data and information, States may decide to rely or not rely on particular data or information in determining whether to list particular waters.

In addition to requiring States to assemble and evaluate all existing and readily available water quality-related data and information, EPA regulations at 40 CFR 130.7(b)(6) require States to include as part of their submissions to EPA documentation to support decisions to rely or not rely on particular data and information and decisions to list or not list waters. Such documentation needs to include, at a minimum, the following information: (1) a description of the methodology used to develop the list; (2) a description of the data and information used to identify waters; and (3) any other reasonable information requested by the Region.

III. Priority Ranking

EPA regulations also codify and interpret the requirement in Section 303(d)(1)(A) of the Act that States establish a priority ranking for listed waters. The regulations at 40 CFR 130.7(b)(4) require States to prioritize waters on their Section 303(d) lists for TMDL development, and also to identify those WQLSs targeted for TMDL development in the next two years. In prioritizing and targeting waters, States must, at a minimum, take into account the severity of the pollution and the uses to be made of such waters. See Section 303(d)(1)(A). As long as these factors are taken into account, the Act provides that States establish priorities. States may consider other factors relevant to prioritizing waters for TMDL development, including immediate programmatic needs, vulnerability of particular waters as aquatic habitats, recreational, economic, and aesthetic importance of particular waters, degree of public interest and support, and State or national policies and priorities. See 57 FR 33040, 33045 (July 24, 1992), and EPA's 1991 Guidance.

ANALYSIS OF IDAHO'S SUBMISSION

I. Identification of Waters and Consideration of Existing and Readily Available Water Quality-Related Data and Information.

EPA has reviewed the State's submission, and has concluded that the State developed its Section 303(d) list in compliance with Section 303(d) of the Act and 40 CFR 130.7. EPA's review is based on its analysis of whether the State reasonably considered existing and readily available water quality-related data and information and reasonably identified waters required to be listed.

A. IDEQ's List Development Process

Idaho's 1998 303(d) list was used as the starting point for developing the 2002 303(d) list. Idaho actively sought data collected by other federal agencies (including the U.S. Geological Survey, U.S. Forest Service and the Bureau of Land Management), state agencies (including Idaho Department of Fish and Wildlife), tribes, local governments,

watershed councils and private and public organizations and individuals. Idaho solicited public comment and held numerous public hearings throughout the state on its draft 303(d) lists, Integrated Reports and its revised list methodology, Water Body Assessment Guidance, Second Edition, Final January 2002 (WBAG II).

IDEQ prepared a final list of impaired waters using data they collected and data received during the public processes. IDEQ categorized the data into three tiers of scientific rigor with more weight given to data with a higher level of scientific rigor. The scientific rigor is explained in the state's listing methodology, WBAG II. IDEQ communicated its three tier collection methods with requirements to the public in the draft and final list methodology, which were available in hard copy and on the Internet. IDEQ clarified what acceptable data is at its public hearings and in the response to public comments document.

IDEQ sent their final 2002 303(d) list, including a response to public comments, a final list methodology, a priority ranking and an Integrated Report on the Status of Idaho's waters, to EPA on July 23, 2004. EPA received Idaho's 303(d) List as a hard copy on July 27, 2004. An on-line database is also available via Internet at: (<http://mapserver.deq.state.id.us/Website/deqwaters/viewer.htm>)

B. Public Participation

IDEQ 2002 Integrated Report (IR) 303(d) list announced a call for data and conducted public comment period, for the listing cycle. Also, IDEQ revised their list methodology, WBAG II, and held a public comment period prior to the draft IR.

For the 2002 303(d) list, Idaho solicited data from February 21, to April 8, 2002, seeking technical information and data on the conditions of Idaho's surface waters. Data received during the "call for data" period and data collected by IDEQ were used to develop the draft Integrated Reports (IR) and 303(d) lists. The draft 2002 IR 303(d) list and list methodology were released for public review from June 2, to August 4, 2003 to provide the public an opportunity to look at and comment on the Integrated Report, including the draft 303(d) list. The summary document includes an index of people and organizations who provided comments, a table of comments and IDEQ's specific response to each commenter. Idaho received 26 written comment letters from individuals and organizations.

IDEQ revised their list methodology, WBAG II, and held a public comment period from February 1, through May 31, 2001. During the public notice for the list methodology, three public workshops were held throughout the state between April 24, and May 17, 2001. Idaho summarized written and oral comments received in a document titled "Public Involvement and Response to Comment Summary, Water Body Assessment Guidance, Second Edition February - 2002 Final". The summary document includes a section on public information and involvement, an index of people and organizations who provided comments, a summary of each comment and its response, and significant changes to WBAG II.

C. EPA's Review Process

EPA received Idaho's Final 2002 303(d) List as a hard copy on July 27, 2004. EPA also reviewed both an on-line version of IDEQ's database, which has a mapping tool, available via Internet at:

<http://mapserver.deq.state.id.us/Website/deqwaters/viewer.htm>., and the electronic copy of the Assessment Database (ADB) of the 303(d) List provided in CD format. (note: The ADB is a database developed by EPA, that Idaho uses to create their Integrated Report.) The final 2002 303(d) list submittal included the following supporting documentation: Integrated Report, Listing Methodology, a summary of Public Comments with IDEQ's response for both comment periods of the IR and List Methodology, and Priority Ranking and Targeting. The Integrated Report identifies the information that was considered and what actions were taken. IDEQ provided a hard copy spreadsheet of all the water bodies that were de-listed during this cycle of the 303(d) list to make it possible to compare changes between 1998 and 2002 lists.

Since the 1998 list IDEQ changed the segment identification of its water bodies. Idaho DEQ followed EPA's recommendation for segmenting waters for the use in ADB and the process is explained in WBAG II, with examples, on how IDEQ categorized and segmented their waters. To make the comparison from one cycle to the next possible, IDEQ provided a crosswalk between the 1998 and the 2002 lists.

EPA reviewed IDEQ's electronic copy of the database to determine which waters had been added to or removed from Idaho's final 2002 303(d) list. Idaho DEQ's electronic version was a complete download of IDEQ's ADB that is accessible to view on Microsoft's Access software. This download provided a snapshot of the assessed data which is currently known as the final 2002 IR (including the 303(d) List). This electronic data base allows tremendous accessibility to supporting data and records for individual water bodies. EPA extensively reviewed Idaho's draft and final 2002 303(d) lists and numerous versions of the list methodology (pre-public, public and final). In addition, EPA communicated regularly with IDEQ and developed an administrative record that includes the draft and final 303(d) list, draft and final list methodologies, prioritization schedule, public notices, e-mails and matrix showing changes between the 1998 list and 2002 lists. IDEQ has provided descriptions of the data and information considered.

EPA concludes that the State properly assembled and reasonably evaluated all existing and readily available data and information, including data and information relating to the categories of waters specified in 40 CFR 130.7(b)(5). The State provided to EPA its rationale for not relying in specific cases on particular existing and readily available water quality-related data and information as a basis for listing waters.

D. Waters not required to be listed

1. Waters Not Listed Due to Water Quality Standards Attained. IDEQ removed a total of 350 water bodies paired with a pollutant because data and information showed water quality standards were attained. EPA believes IDEQ removed these waters from Idaho's Section 303(d) list in compliance with Section 303(d) of the Act and 40 CFR

130.7 and in a manner consistent with IDEQ's List methodology. EPA concludes IDEQ reasonably considered existing and readily available water quality-related data and information and reasonably identified waters to be removed from the list because water quality standards were achieved. Therefore, EPA approves the removal of 350 waters in accordance with 40 CFR 130.7(b)(6).

2. Waters Not Listed Due to TMDLs Approved. Idaho has made considerable progress with developing and obtaining EPA approval of TMDLs. For the 2002 list cycle, IDEQ included 700 water body segment/pollutant pairs in the "TMDL approved" category based on EPA approval of TMDLs for these water body/pollutant combinations. Idaho removed 700 water body segment/pollutant pairs on this basis. Under EPA regulations at 40 CFR 130.7, the 303(d) list is an inventory of water bodies impaired by a pollutant and requiring a TMDL. Thus, EPA approves IDEQ's removal from the 303(d) list of 700 water body segment/pollutant pairs with an EPA approved TMDL.

E. An Analysis of Waters Removed from Idaho's 2002 303(d) List
Just Cause for not listing specific waters

There are 2241 water body segment/pollutant pairs on the 2002 IR 303(d) list. IDEQ added 548 water body segment/pollutant pairs during the 2002 IR 303(d) list cycle. The State has added 548 water body segment/pollutant pairs and demonstrated good cause for not including two previously-listed water body segment/pollutant pairs on its 2002 303(d) list. As provided in 40 CFR 130.7(b)(6)(iv), EPA requested that the State demonstrate good cause for not including these waters.

1. Waters Removed Due to Flaws in the Original Analysis. Consistent with 40 CFR 130.7(b)(6)(iv), EPA concludes that IDEQ provided "good cause" for the decision to remove two water segments paired with a pollutant, 17060207SL008_07 Salmon River – Chamberlain creek to South Fork Salmon River and 17060207SL001_07 Salmon River – South Salmon River to river mile 106. An aspect of good cause is a "flaw in the original analysis that leads to the water being listed in the categories at 130.7(b)(5)." IDEQ removed these water segments paired with a pollutant from the 303 (d) list due to flaws in the original analysis, due to technical listing errors, such as accidental comparison to incorrect criteria, sampling error and duplicate records. In this case the water body segments paired with a pollutant were originally listed in 1992 without any data and the parameter was identified as "unknown." These errors were continued through two more 303(d) listing cycles until this cycle where it has been determined that IDEQ does not have any data that has determined these water bodies as being impaired. Therefore, EPA approves the delisting of these two water segments paired with a pollutant.

II. Priority Ranking and Targeting

EPA also reviewed the State's priority ranking of listed waters for TMDL development as per 40 CFR 130.7(b)(4) "shall include a priority ranking for all listed water quality

limited segments still requiring TMDL”, and concludes that the State properly took into account the severity of pollution and the uses to be made of such waters. EPA reviewed the State's identification of WQLSs targeted for TMDL development in the next two years, and concludes that the targeted waters are appropriate for TMDL development in this time frame. In prioritizing and targeting waters, States must, at a minimum, take into account the severity of the pollution and the uses to be made of such waters. See Section 303(d)(1)(A). As long as these factors are taken into account, the Act provides that States establish priorities.

IDEQ describes its prioritization process and ranking in Principles and Policies for the 2002 Integrated Report June 2004, section 13 on page 16, submitted to EPA with its final 303(d) list submission. IDEQ is working under a settlement agreement that sets a schedule for the development of TMDLs based on Hydrologic Unit, segment, and pollutant through 2007. The schedule is described in Attachment 1 of the settlement agreement made between EPA, IDEQ, and Idaho Conservation League and the Lands Council, signed July 12, 2002.

RECEIVED

DEC 22 2005

**Department of Environmental Quality
State Water Quality Division**