Antidegradation and Nonpoint Source Pollution in the West

H. Michael Anderson

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ANTIDEGRADATION AND NONPOINT SOURCE POLLUTION IN THE WEST

By

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For

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By H. Michael Anderson

I. Introduction

Degradation of pristine rivers and streams through logging, road building, and other land management activities is a subject of growing public concern. Traditional reliance on best management practices has proven to be an inadequate safeguard to protect water quality, particularly in steep, erosive watersheds. Consequently, environmentalists are now urging federal and state regulators and land managers to use the antidegradation requirements of existing law to prevent the degradation of high quality waters by nonpoint source pollution. Recent efforts in Idaho to implement antidegradation requirements provide an interesting test case for other western states.

II. Background on Antidegradation

A. **Federal Regulations.**

40 C.F.R. 131.12 requires states to adopt and implement an antidegradation policy consisting of the following three elements.

1. Maintain water quality necessary to fully protect existing instream uses. This is the absolute floor of water quality protection (48 Fed. Reg. 51,403 (1983)) and prohibits pollution that would

cause any mortality or significant growth or reproductive impairment of resident fish species (see reference 7, p. 3).

2. Where water quality is higher than necessary to protect instream uses, maintain the existing level of water quality unless it has been determined that allowing lower water quality is necessary to accommodate important economic or social development. This exemption from absolute nondegradation of high quality waters is intended to apply only in extraordinary circumstances (see reference 7, p. 7). In Idaho, it has been the most controversial antidegradation issue.

3. In rivers and other water bodies that a state designates as Outstanding National Resource Waters (ONRW), existing water quality must be maintained. Only short-term changes in water quality are permissible (see reference 6, p. 2-14).

B. Historical Overview

1. Antidegradation policy stems from the purpose of the Water Quality Act of 1965: to "enhance the quality and value of...water resources."

2. In 1968, Secretary of Interior Stewart Udall directed all states to include an antidegradation policy in their water quality standards. The states formally adopted the antidegradation policy but did not implement it (see generally reference 1).

3. The Federal Water Pollution Control Act of 1972 retained the purposes of the 1965 Act to maintain and enhance water quality.

4. Regulations promulgated by the Environmental Protection Agency (EPA) in 1975 established the current three-tiered approach to antidegradation (40 Fed. Reg. 55,340 (1975)).

5. In 1982, an EPA proposal to eliminate all but the first tier of the policy met with strong public and Congressional opposition. The final regulations made few changes in existing policy except to strengthen it (48 Fed. Reg. 51,407 (1983)).

C. **Nonpoint Source Pollution.**

1. Antidegradation policy applies to nonpoint source activities (see reference 7, p. 6, and reference 9, p. 4). However, federal and state agencies

have not been able to agree on implementation methods.

2. Land management agencies such as the U.S. Forest Service have argued that the use of best management practices (BMPs) is tantamount to compliance with state water quality standards. Although federal courts have ruled otherwise (see Northwest Indian Cemetery Protective Assoc. v. Peterson, 795 F.2d 688 (9th Cir. 1986)), land management plans continue to rely on BMPs to meet legal requirements.

3. Under pressure from other agencies, EPA has taken the compromise position that BMPs must be designed to meet state water quality standards and that the use of BMPs is presumed to meet -- but does not necessarily meet -- state standards (see references 4 and 9).

4. EPA's most recent statement on implementing antidegradation requirements for nonpoint sources is as follows (see attachment A):

> [I]mplementation of BMPs...does not constitute implementation of an antidegradation policy. Antidegradation

requirements become an issue only when it is determined that a particular activity will still degrade water quality even after "all reasonable and economically feasible" BMPs have been applied. In those situations, the State, to be consistent with the antidegradation policy, would have to:
1. Inform the public and provide them with an opportunity to comment on the proposed action; and
2. Find that the degradation is necessary to accommodate important social or economic development.

III. Idaho: A Test Case

A. Background.

1. In 1985 EPA disapproved Idaho's antidegradation standard because it applied only to point sources. Under Idaho's standards, nonpoint sources were required merely to use BMPs and to refrain from causing "serious injury" to beneficial uses. Any degradation short of serious injury caused by a nonpoint source activity complying with BMPs was permitted (see attachment B).

2. In 1986, EPA threatened to promulgate a federal antidegradation standard for Idaho if the state adopted a system that regulated nonpoint source activities solely with BMPs. Governor John V. Evans thus vetoed H.B. 711 and established a

Nonpoint Source Interagency Team (NPSI) to develop a consensus position. As a result of the NPSI process, the state adopted a "feedback loop" system to monitor water quality and modify BMPs (see reference 10).

B. Classification and Public Participation

1. In 1987, the NPSI team attempted to address the antidegradation issue by classifying all rivers and streams in the state into three categories, consistent with the three-tiered approach in 40 C.F.R. 131.12. Class A would be outstanding waters where water quality cannot be lowered; Class B would consist of other high quality waters that can be degraded if socially and economically justified; and Class C would be already degraded waters, where water quality cannot be lowered further (see reference 11).

2. The state agencies proposed to divide Class B waters into two categories. B-1 would primarily include waters that flow through roadless areas and other federal lands and that support important beneficial uses such as anadromous fisheries and

community water supplies. All other high quality waters would be classified B-2.

3. For nonpoint source activities affecting Class B-1 waters, the state agencies envisioned soliciting extensive public input on a case-by-case basis. No public input on nonpoint source activities in B-2 waters would be considered after the initial classification process.

C. **Litigation, Legislation, and Negotiation.**

1. In September 1987, the timber industry withdrew from the NPSI team in protest against the proposed antidegradation system. The industry argued that the system far exceeded federal requirements. However, EPA rejected as inadequate a weaker proposal submitted by the state in October (see attachment C).

2. Environmentalists sued EPA in federal court to force federal promulgation of an antidegradation standard in Idaho. Plaintiffs alleged that EPA was more than two years overdue in taking action.

3. Governor Cecil D. Andrus convened negotiations between environmental and industry groups. After

negotiations failed, the state legislature passed a bill adopting antidegradation policy language and relying on BMPs for implementation.

4. In March 1988, Governor Andrus vetoed H.B. 652 because it did not "establish a satisfactory process for managing pollution from nonpoint sources." The state will adopt antidegradation policy language in 40 C.F.R. 131.12 immediately. The Governor set an October 1, 1988 deadline for adopting an implementation plan through negotiations. Plaintiffs agreed to stay their lawsuit until that time.

IV. Conclusion: Implications for Western States and Land Managers

1. Idaho is not unique; antidegradation issues are receiving increased attention in Colorado, California, Montana, and elsewhere (see, e.g., reference 8).

2. Federal land managers are best prepared for implementation, since NEPA and forest planning already require environmental analysis and public participation. Mid-level, Integrated Resource

Management planning for individual watersheds may be an appropriate approach.

3. Nonpoint source inventories and management programs under section 319 of the 1987 Clean Water Act amendments could be a basis for statewide implementation. States should identify threatened high quality waters and prescribe appropriate evaluation and public input procedures.

V. References

1. Hines, "A Decade of Nondegradation Policy in Congress and the Courts: The Erratic Pursuit of Clean Air and Clean Water," 62 Iowa L. Rev. 643 (1977).

2. Goba, "Federal Supervision of State Water Quality Standards Under the Clean Water Act," 36 Vand. L. Rev. 1167 (1983).

3. Van Putten and Jackson, "The Dilution of the Clean Water Act," 19 J. of Law Reform 863 (1986).

4. Anderson, "Water Quality Planning in the National Forests," 17 Envtl. L. 591 (1987).

5. Federal Water Pollution Control Administration, U.S. Dep't of Interior, Compendium of Department of Interior Statements on Non-degradation of Interstate Waters (1968).

6. U.S. Environmental Protection Agency, Water Quality Standards Handbook (1983).

7. U.S. Environmental Protection Agency, Questions and Answers on: Antidegradation (1985).

8. U.S. Environmental Protection Agency, Guidance on Implementing the Antidegradation Provisions of 40 C.F.R. 131.12, Region 9 (1987).

9. U.S. Environmental Protection Agency, Nonpoint Source Controls and Water Quality Standards (1987).

10. Idaho Department of Health and Welfare, Nonpoint Source Interagency Team Final Report (1986).

11. Idaho Department of Health and Welfare, Planning for the Future of Idaho's Water: An Antidegradation Plan for Managing Water Quality in Idaho (1987).

ATTACHMENT A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 1987

OFFICE OF WATER

NPS: FY-88-23

MEMORANDUM

SUBJECT: Nonpoint Source Controls and Water Quality Standards

FROM: Carl F. Myers, Chief Carl F. Myers
Nonpoint Sources Branch (WH-565)

TO: All Regional Water Quality Branch Chiefs

ATTN: All Regional Nonpoint Source Coordinators
All Regional Water Quality Standard Coordinators

Attached is a copy of our response to a letter requesting clarification of our recent guidance on "Nonpoint Source Controls and Water Quality Standards" in Chapter 2 of the Water Quality Standards Handbook sent to you on August 19, 1987. It is important for you to review this response since there have been some misunderstandings and it is important that we work from the same point in clarifying questions about the guidance.

The letter to Barry Ross of the Federation of Fly Fishers sets forth three basic principles to be considered when evaluating the guidance and stresses that each guidance statement must be viewed in the context of these three principles and of the entire guidance itself. The attachment, entitled "Summary: Nonpoint Source Controls and Water Quality Standards", serves to further clarify the relationship between key guidance statements and the stated three basic principles.

In short, these documents summarize the relationship between BMPs and State WQSs explained in the updated guidance and reiterate that the guidance simply articulates longstanding Agency policy. This should serve as the foundation for your response to public inquiry and concern about the implications of the updated guidance.

Attachment

cc: Bill Whittington

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 23 1987

OFFICE OF
WATER

Mr. Barry L. Ross
Federation of Fly Fishers
491 South Walnut
Boise, Idaho 87312

Dear Mr. Ross:

Thank you for your September 29, 1987, letter expressing concern with EPA's August 19, 1987, guidance, "Nonpoint Source Controls and Water Quality Standards."

Your letter reflects some recent misunderstandings of EPA policy that have arisen from certain portions of the above guidance being quoted out of context. This guidance, which updates previous guidance commonly called SAM-32, is built upon three basic principles:

1. BMPs must be designed to meet State water quality standards.

2. BMP effectiveness in actually meeting those standards must be demonstrated.

3. If BMPs cannot adequately protect and maintain water quality standards, the State must either revise the BMPs to ensure protection and maintenance of water quality standards or consider revising the standards or re-evaluating the activity.

Each statement in this guidance must therefore be viewed in the context of these principles. I have enclosed the following: "Summary: Nonpoint Source Controls and Water Quality Standards" to demonstrate the relationship of each key statement in this guidance to these principles.

I also want to emphasize that implementation of BMPs as called for in SAM-32 does not constitute implementation of an antidegradation policy. Antidegradation requirements become an issue only when it has been determined that a particular activity will still degrade water quality even after "all reasonable and economically feasible" BMPs have been applied. In those situations, the State, to be consistent with the antidegradation policy, would have to:

1. Inform the public and provide them with an opportunity to comment on the proposed action; and

2. Find that the degradation is necessary to accommodate important social or economic development.

In summary, this guidance does not establish any new Agency policy. It simply articulates the longstanding Agency policy concerning the role of water quality standards in controlling nonpoint sources of pollution.

Thank you for your continued interest in water quality.

Sincerely,

/s/

Lawrence J. Jensen
Assistant Administrator
for Water

Enclosure

cc: Bob Burd, EPA Region X

SUMMARY: NONPOINT SOURCE CONTROL AND WATER QUALITY STANDARDS

BMPs MUST BE DESIGNED TO MEET WATER QUALITY STANDARDS (WQS)

- It is recognized that BMPs are the primary mechanism to enable the achievement of WQS.
- It is intended that proper installation of State approved BMPs will achieve WQS.
- For proposed nonpoint source activities, BMPs designed and implemented in accordance with a State approved process will normally constitute compliance with the Clean Water Act.
- Once BMPs have been approved by the State, the BMPs become the primary mechanism for meeting WQS.
- Proper installation, operation, and maintenance of State approved BMPs are presumed to meet a landowner's or manager's obligation for compliance with applicable WQS.

BMP EFFECTIVENESS MUST BE DEMONSTRATED

- Once the BMPs have been installed/applied and sufficient time has elapsed to establish the controls and monitor their effectiveness, attainment or maintenance of WQS and other water quality goals should be verified.
- If subsequent evaluation indicates that approved and properly implemented BMPs are not achieving WQS, the State should take steps to:

  1. Revise the BMPs;
  2. evaluate the WQS for appropriateness;
  3. or both.

- Through the iterative process of monitoring and adjustments of BMPs and/or WQS, it is anticipated and expected that BMPs will lead to achievement of WQS.

IF BMPs CANNOT ADEQUATELY PROTECT AND MAINTAIN WATER QUALITY STANDARDS, THE STATE MUST EITHER REVISE THE BMPs TO ENSURE PROTECTION AND MAINTENANCE OF WATER QUALITY STANDARDS OR CONSIDER REVISING THE STANDARDS OR RE-EVALUATING THE ACTIVITY.

- IF WQS are not being met, then the State may require that the NPS controls be modified or the practice causing the nonpoint source pollution cease.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

IDAHO CONSERVATION LEAGUE, et al., Plaintiffs, v. ROBIE G. RUSSELL, et al., Defendants, and THE INTERMOUNTAIN FOREST INDUSTRY ASSOCIATION, et al., Defendant-Intervenors.	No. CV 87-1326 AFFIDAVIT OF LYNN M. McKEE

LYNN M. McKEE, having been duly sworn upon his oath, hereby deposes and says:

1. I am the Director of the Idaho Operations Office of the United States Environmental Protection Agency (EPA) in Boise, Idaho. I have held this position since 1978.

2. My duties and responsibilities as Operations Office Director include coordination between EPA and the State of Idaho on issues of mutual concern. One of the most significant issues of concern to the State and EPA

has been the consistency of the State's water quality antidegradation policy with EPA's requirements under the Clean Water Act.

3. During my entire tenure as Director, I have been closely involved with issues relating to the State's water quality standards.

4. In a letter dated June 10, 1985, the Regional Administrator for EPA Region 10 notified the State of Idaho that its antidegradation standard was inconsistent with the Clean Water Act in two respects. First, dams and hydroelectric projects were exempted from the State's antidegradation policy. Second, the policy explicitly covered only point sources with nonpoint sources limited to a "serious injury" standard. Under the "serious injury" standard, nonpoint sources that complied with "best management practices" ("BMPs") were made exempt from further controls unless these sources caused serious injury to a designated or protected use of the receiving water.

5. The State was informed in the June 1985 letter that EPA would take immediate action to remove the exemption for dams and hydroelectric facilities, but that EPA would defer federal promulgation for one year with respect to coverage of nonpoint sources. The purpose of this one-year deferral was to give the State an opportunity to develop its own solution to this sensitive issue.

6. Idaho removed the exemption for dams on December 18, 1985. EPA approved the State's revision on May 12, 1986.

7. In March 1986, the Idaho legislature passed legislation known as House Bill No. 711. One of the principal effects of that bill was to establish a system in which BMPs would be the sole basis for regulating nonpoint sources, with no mechanism to develop more stringent BMPs if they failed to protect water quality. On April 2, 1986, the EPA Acting Regional

Administrator for Region 10 informed Idaho that passage of this legislation would cause EPA to begin rulemaking on an antidegradation policy for Idaho. Governor Evans vetoed that bill on April 3, 1986.

8. Also on April 3, 1986, Governor Evans created a work group known as the Nonpoint Source Interagency Team ("NPSI"). That group, composed of representatives from the Idaho Department of Lands and the Idaho Department of Health and Welfare ("IDHW"), with participation by the forest and mining industries, tribes, sportsmen's associations and environmental groups (including many of the plaintiffs to this action), was formed to develop a consensus for an antidegradation standard that would adequately cover nonpoint sources.

9. Formation of, and activity by, NPSI was largely the reason for EPA's extension of the original one-year deadline, set in its June 10, 1985 letter disapproving the Idaho antidegradation policy, for the State to develop an adequate policy on its own.

10. NPSI was very active from the date of its formation to September 1987. It met at least seventeen times during that period. A major accomplishment of NPSI was the development of a "feedback loop" for developing BMPs for nonpoint sources, and the elimination of the "serious injury" standard for nonpoint sources. On March 3, 1987, IDHW made these regulatory changes. Under the "feedback" mechanism, in-stream monitoring is conducted to gauge the effectiveness of BMPs; if monitoring shows that water quality is being harmed despite implementation of BMPs, then the BMPs may be made more stringent. Along with this change, Idaho removed the "serious injury" standard for nonpoint sources.

11. This March 1987 promulgation of a "feedback loop" was to provide assurance that existing uses of state waters would be protected from

nonpoint source as well as point source pollution as required by 40 C.F.R. § 131.12(a)(1). Following this revision, NPSI and other State and EPA efforts concentrated on addressing EPA antidegradation requirements relating to 40 C.F.R. § 131.12(a)(2), those that have water quality exceeding the quality needed to support a fishable/swimmable use. These requirements primarily relate to public participation and findings by the State of socio-economic justification for the lowering of water quality.

12. In August 1987, IDHW proposed further revisions to Idaho's standard, based on NPSI recommendations. IDHW initiated formal promulgation of a revised standard in October 1987, but suspended it on November 4, 1987, to seek clarification from EPA on its requirements.

13. NPSI met for the last time on September 11, 1987. At that point the team was very close to a consensus on an antidegradation standard for nonpoint sources. It disbanded shortly after September 11, due to the withdrawal of industry representatives.

14. In October 1987, Governor Andrus appointed a group, largely comprised of the same representatives that comprised NPSI, to be a successor to NPSI. This group, known as the "Antidegradation Negotiating Committee," is concentrating on issues relating to 40 C.F.R. § 131.12(a)(2) requirements. The Committee has held meetings in every month from October 1987 to February 1988. Four such meetings were held in February.

15. EPA is continuing to assist Idaho in its efforts to develop an antidegradation policy covers nonpoint as well as point sources. By letter to IDHW dated November 20, 1987, the EPA Regional Administrator responded to the issues which prompted IDHW to suspend its October 1987

rulemaking. EPA clarified for the State certain aspects of EPA requirements relating to allowable degradation under 40 C.F.R. § 131.12(a)(2). On a less formal basis, EPA is in contact with the State on these issues on a frequent basis.

I declare that the statements I have made above are true and correct to the best of my knowledge.

W. Lynn McKee

Lynn X. McKee

Dated this 7th day of March, 1988 at Boise, Idaho.

Ina A. Worden

Notary Public
Residing at: Boise, Idaho

My Commission Expires:

August 10, 1993

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101

ATTACHMENT C

November 20, 1987

REPLY TO ATTN OF WD-131

Mr. Kenneth Brooks, Administrator
Division of Environment
Statehouse
Boise, Idaho 83720

Dear Mr. Brooks: Ken

Your October 5, 1987, letter to us asked for clarification and guidance concerning the Environmental Protection Agency (EPA) antidegradation policy. Your letter references the August 19, 1987, guidance document from EPA Headquarters entitled, Nonpoint Source Controls and Water Quality Standards" (aka SAM-32). Your letter states further that:

> IDHW interpretation of the August 19 guidance is that there is no requirement for specific activity by public input regarding lowering water quality on high quality waters for nonpoint source activities. Rather, the public participation requirements are satisfied through implementation of the existing continuing planning process (CPP)..."

You then ask whether this interpretation is correct.

Your interpretation of SAM-32 is incorrect so far as it implies that there is no requirement for specific public input when lowering water quality on high quality waters, and "maybe" if some aspect of the CPP were intended to satisfy the public notification/comment requirements. Let us explain further.

Purpose of the Policy

First, the purpose of an antidegradation policy is clearly stated in the preamble to the EPA Water Quality Standards Regulation:

> "There are provisions contained in this subsection to allow some limited water quality degradation after extensive public involvement, as long as water quality remains adequate to be fishable/swimmable."

The policy was adopted for the purpose of protecting waters whose quality exceeds that defined by water quality standards. For example, the standards protect fisheries by, among other parameters, specifying minimum dissolved oxygen concentrations. Where Idaho waters exceed this minimum standard, a lowering of the quality due to man's activities would be allowed only by following the policy and implementing procedures.

It is not the intent of federal policy to prohibit any lowering of water quality. To do so, however, requires meeting certain procedural requirements. These procedural requirements include: (a) identifying the proposed water quality impacts (i.e., where and to what degree water quality will be lowered); (b) provide the public with the opportunity to comment on those proposed impacts, and; (c) document that lowering of water quality is necessary to accommodate reasonable development in the area in which the waters are located. These principles apply to all waters with quality exceeding adopted standards.

Public Participation

Federal laws and EPA regulations and guidance stress the importance of public participation in decision-making concerning important environmental quality issues. While this is a basic federal requirement the state has some flexibility in designing an approach for specific activities. For example, some states have an annual public review of generic Best Management Practices (BMPs) to decide whether there should be revisions. The U.S. Forest Service and Bureau of Land Management establish public review procedures for their multi-year land management plans. Perhaps to satisfy antidegradation public participation requirements in Idaho there could also be an annual public review of planned, nonpoint source pollution generating activities, by major river basins, that would significantly degrade water quality.

Best Management Practices (BMPs)

We would also like to take the opportunity to touch on the issue of BMPs.

One way to limit water quality degradation is by the implementation of BMPs. These practices include such things as no till farming, building well-designed culverts on logging and mining roads, leaving buffer strips adjacent to fishing streams, and many other proven approaches to controlling nonpoint source pollution.

EPA has had a longstanding policy concerning the role of water quality standards in controlling nonpoint sources of pollution--it is built upon three basic principles:

1. BMPs must be designed to meet state water quality standards (standards consist of stream use designations plus the scientific criteria to protect those uses).

2. BMP effectiveness in actually meeting those standards must be demonstrated.

3. If BMPs cannot adequately protect or maintain water quality, the state may reevaluate the activity according to state law.

Where BMPs Leave Off

BMPs, however, do not constitute the implementation of an antidegradation policy. Antidegradation requirements become an issue only when it has been determined that a particular activity will still degrade water quality, where the quality exceeds the standards, even after "all reasonable and economically feasible" BMPs have been applied.

There may be some instances where the adopted standard is inappropriate and should be revised in line with EPA regulations. This was the case recently in Alaska where several stream use designations were changed because no fish lived in the streams or the streams were not realistically available as a drinking water source. Those uses were therefore dropped from the standards.

I hope our comments will be of value to you in your efforts to resolve the issue of antidegradation implementation in Idaho. EPA has been consistent in expressing the above basic principles for an acceptable policy. It has always been my hope that the state would adopt a policy that makes sense in Idaho and can be approved by EPA. We are willing to help the process in any appropriate way.

Sincerely,

Robie G. Russell
Regional Administrator

STATE OF IDAHO
DEPARTMENT OF HEALTH
AND WELFARE

DIVISION OF ENVIRONMENT
Statehouse
Boise, Idaho 83720

October 5, 1987

Robie Russell
Regional Administrator, Region X
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle WA 98101

Dear Mr. Russell:

As you are aware, the Idaho Department of Health and Welfare (IDHW) has been working with a diverse interest group for the past two years in an attempt to develop agreement over nonpoint source (NPS) pollution management and an antidegradation policy in Idaho. The Nonpoint Source Interagency (NPSI) Team was able to reach agreement in fall 1986 on a NPS pollution management feedback loop. This process acknowledges the use of best management practices (BMPs) in controlling the impacts of NPS activities on water quality and designated uses. This aspect of the process is linked with instream monitoring to evaluate the effectiveness of the BMPs in protecting the uses. If use impacts are observed as a result of the monitoring, the BMPs are modified.

The feedback loop was incorporated into Idaho's Water Quality Standards (WQS) in March 1987. Several new positions in IDHW were approved by the State legislature beginning in July 1987 to help implement the monitoring aspects of the loop. The Department of Lands (IDL) also received additional funding for positions to improve compliance with the Forest Practices Act, the mandatory system of BMPs for forestry activities in Idaho.

Since last fall, the NPSI Team has been working on an antidegradation policy implementation plan for nonpoint source activities. We have made considerable progress on this issue, and presented a proposed plan at numerous public meetings this past summer. IDHW was preparing to formally incorporate the proposed plan into the WQS this fall.

The Department received a copy of the August 19, 1987 guidance document for the U.S. Environmental Protection Agency (EPA) entitled Nonpoint Source Controls and Water Quality Standards. On page two of the guidance is the statement:

> "State adopted WQS shall include designated beneficial uses and water quality criteria to protect those uses as well as include an antidegradation policy. It is intended that proper installation of State approved best management practices will achieve water quality standards..."

Because of the references to NPS pollution management and antidegradation, IDHW is viewing this document as our guideline on what EPA considers acceptable for antidegradation implementation for nonpoint source activities. The statement above, together with others throughout the document, strongly supports the notion that implementation of the nonpoint source pollution management feedback loop is satisfactory to meet the requirements of the federal antidegradation policy.

At a September 11 meeting of the NPSI Team, this guidance was discussed, and state legislative policy advisors present indicated they would have a difficult time supporting an antidegradation plan and policy that appeared to be more stringent and complex than what EPA required. Other members of the NPSI Team, however, indicated that they did not view the EPA guidance in the same light.

IDHW interpretation of the August 19 guidance is that there is no requirement for specific activity by public input regarding lowering water quality on high quality waters for nonpoint source activities. Rather, the public participation requirements are satisfied through implementation of the existing continuing planning process (CPP). The CPP is considered to include development and implementation of NPS management plans such as the forest practices water quality management plan and the agricultural pollution abatement plan; implementation of the NPS pollution management feedback loop, including review of plans for proposed activities; specific regulations development and implemented to deal with NPS activities; and the annual water quality program management document developed by IDHW in cooperation with EPA (the State/EPA Agreement or SEA).

In order to clarify this issue, I am asking whether IDHW's interpretation of the August 19 guidance document is consistent with that of EPA. The Department is proposing amendments to our WQS this fall to incorporate an implementation plan such as I have described for NPS activities. I would appreciate your response to this question as soon as possible, so that we can consider in development of our testimony for the public hearings in early November.

I am also sending you a copy of the proposed amendments which will incorporate the antidegradation policy and implementation plan into Idaho's WQS. I realize that you cannot take an official position on these amendments until we submit them for your approval following the public comment period this fall. However, I would like your opinion as to whether this proposal will meet the minimum requirements of the Water Quality Act and federal regulations regarding antidegradation. Once again, I would appreciate your response on this question by early November.

Sincerely,

Ken Brooks, Administrator
Division of Environment

KB:jt

Enclosure

cc: NPSI Team
Chuck Moss
Greg Forge
Lynn McKee