



CITY OF COEUR D'ALENE

WASTEWATER UTILITY DEPARTMENT

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December 15, 2004

Department of Ecology
Water Quality Program

DEC 17 2004

Mr. Ken Koch
Washington State Department of Ecology
Water Quality Program
PO Box 47600
Olympia, WA 98504

Dear Mr. Koch,

Thank you for the opportunity to comment on the proposed 2002/2004 list of impaired waterbodies according to Section 303(d) of the Clean Water Act for Washington State. These comments are being submitted by the City of Coeur d'Alene, Idaho.

The City has been actively involved in the proposed TMDL for dissolved oxygen in the Spokane River system. We will also be submitting comments on that draft TMDL later this month.

We understand that the proposed 2002/2004 impaired waterbody list is the first list to be submitted to EPA Region since the 1998 list was submitted and approved. This new list, if approved by EPA, will supersede and replace the 1998 list that is in effect now. The 2002/2004 list also proposes 5 major categories within the entire list of impaired waterbodies. Impaired waterbody segments proposed for Category 5 are the only impaired waterbody segments that will require the preparation of a TMDL.

Since 1998, Ecology has also adopted a new policy for listing waterbodies as impaired under section 303(d) of the Clean Water Act (WQ Program Policy 1-11 revised September 2002). The policy explains how Ecology will review valid quality assured data for determinations of impairment. Data that does not meet the policy criteria will not be relied upon to support listings.

The City is concerned that 2 segments one in the Spokane River, and one in Long Lake are being proposed for listing as Category 5 impaired for dissolved oxygen (DO) which were not included in the 1998 list of impaired waterbodies. (All other segments of the Spokane River in WRIA 54 are proposed for placement in Category 1 which means the segments meet the tested water quality standards and are not impaired and do not require a TMDL.)

The data proposed by Ecology to support the listing for dissolved oxygen of these 2 segments (ID numbers 40939 and 15188) were collected in 2001 (identification number 15188 Spokane River) and 2003 (identification number 40939 Long Lake.) This data was clearly collected after

the adoption of the 1998 list. We can only find one listing for dissolved oxygen excursions in the Spokane River or Long Lake in the 1998 list. The listing was for waterbody segment 8452 (using the previous listing numbering system) and was based on only 2 excursions of DO downstream from the segment based on samples collected in 1992. The proposed list for 2002/2004 states that the 2 segments now proposed for listing as impaired due to DO were not listed on the 1998 list so the 1998 segment is not geographically the same as the 1998 listed segment. Ecology's WQPP 1-11 now requires at least 3 data points at different locales within the water body segment to support a listing. Based on WQPP 1-11 the 1992 data used to support the one listing for DO in 1998 cannot be used to support a current listing. The data is also over 10 years old and would be disallowed on that basis as well.

Ecology has also never proposed to prioritize a Spokane River DO TMDL in its annual prioritization process. In 2003 Ecology proposed to fund a TMDL for the Spokane River for total dissolved gases, temperature and PCB's but not for DO. Ecology now proposes to prioritize a DO TMDL for the Little Spokane River in the draft 2004 FY priority list. This draft prioritization will not be proposed for the required public review until after EPA approves the proposed 2002/2004 list so we have not had an opportunity to comment on the proposed prioritization of this TMDL. Ecology must provide an opportunity to comment on prioritization of a TMDL based on an approved list and in the case of the Spokane River and Long Lake, this public process was not conducted. Prioritization also involves an assessment of the fiscal constraints and control technology challenges expected for each prioritized TMDL as part of the Ecology prioritization process and the public review of the proposed priorities. This opportunity was not provided prior to preparation of the draft TMDL for DO for the Spokane River. The public review of the 2002/2004 prioritization of the list once it is adopted and approved by EPA cannot substitute for the process that should have been conducted to solicit and address public comments before the Spokane River DO TMDL was initiated.

Ecology evidently began preparing a TMDL sometime in 2000 without conducting the proper listing and prioritization process. Ecology is proposing to list at least these 2 segments as Category 5 (impaired for DO and requiring a TMDL) in the 2002/2004 list several years after preparation of a TMDL for dissolved oxygen was initiated by Ecology. It appears that Ecology is attempting to provide a rationale for the preparation of the current TMDL after the fact. As we understand the Clean Water Act section 303(d), a waterbody segment must first be placed on the state's 303(d) list and then prioritized to determine when a TMDL should be prepared; not the other way around.

We also have concerns with the quality and quantity of the data proposed to support these 2 listings. Ecology's own WQPP 1-11 describes the quality and quantity of data required by the agency before it will list a waterbody as category 5. The data relied upon for the proposed listing for DO of segment identification number 40939 Long Lake, is presented in a 2003 unpublished (?) study by Cuisimano and the proposed listing states that DO concentration in the lake are depressed due to human caused external and internal BOD loadings. The data relied upon for the proposed listing for DO of segment identification number 15188 Spokane river is contained in a

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2001 unpublished study of data collected at River Mile 60.9 and the proposed listing states that the data shows "excursions" beyond the water quality criteria based on the 7 day average. We have not reviewed either of these unpublished studies to determine whether they meet Ecology's own quality control requirements. Ecology requires that all data used to support a listing assessment be submitted according to QA/QC procedures. Data must also be of sufficient quantity and taken at the appropriate collection locations in order to be relied upon by the agency. Please provide us with copies of these 2 studies so we can provide meaningful comment on these proposed listings.

CDA as a municipality upstream of the Washington state listed water segments addressed in these comments, has a major interest in insuring that Ecology has followed the appropriate state and federal requirements for preparing and submitting a list of impaired waterbodies prior to initiating the TMDL preparation process. The listing and prioritization processes are an important part of the public process and should be followed to ensure that time and money are spent appropriately.

Thank you for your consideration.

Sincerely,



H. Sid Fredrickson
Wastewater Superintendent

C: Mayor and Council
Kris Holm, Attorney
Dave Clark, HDR Engineering
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