

Executive Correspondence

Log #: 7272

Gov Log #: None

Gov Batch #: None

Date Assigned: 10/28/2008

Date Due: 11/12/2008

Date Completed:

Constituent: **Andresen, Wayne**

Subject: Spokane TMDL - Inland Empire Paper Company

Assigned to: Susewind, Kelly D

Organization: WQ-Ops

Coordinate With: None Required

Signature Required: DIRECTOR

CC (To be noted on letter)
Grant Pfeifer, Tom Laurie, Melissa Gildersleeve, Ron Lavigne

Phone Log (If Appropriate)

Contact Person	In	Out
Smith, Diane		

Comments:
10/28 - HARDCOPY TO JAY -- See Jim Bellatty's email attached



RECEIVED

OCT 17 2008

DEPARTMENT OF ECOLOGY
OFFICE OF DIRECTOR

3320 N. ARGONNE
SPOKANE, WASHINGTON 99212-2099

PHONE 509.924.1911
FAX 509.927.8461

October 15, 2008

Mr. Jay Manning
Director
Department of Ecology
State of Washington
P.O. Box 47600
Olympia, WA 98504-7600

Ms. Elin D. Miller
Regional Administrator
US EPA, Region 10
1200 Sixth Avenue, Suite 900
Mail Code: RA-140
Seattle, WA 98101

Subject: Spokane River and Lake Spokane Dissolved Oxygen TMDL, May 2008

Dear Mr. Manning and Ms. Miller:

I wanted to take this opportunity to highlight several issues that we hope that your agencies will address in the development of a new dissolved oxygen TMDL for the Spokane River and Lake Spokane. As outlined below, Ecology and EPA have made a number of legal determinations in the past year that require a fundamental reassessment of the TMDL.

1. Consideration of all sources that contribute to depressed DO levels.

It is critical that any revised TMDL consider all potential sources of the dissolved oxygen problem. Ecology cannot legally adopt a TMDL, and EPA cannot approve a TMDL, under 33 U.S.C. § 1313(d)(1)(C), that is arbitrary and capricious. That will be the case if the TMDL does not consider an important aspect of the problem or runs counter to the evidence before the agencies. As such, EPA and Ecology cannot impose Waste Load Allocations (WLAs) as numeric limits until they have accounted for all

Inland Empire Paper Company

Mr. Jay Manning and Ms. Elin Miller

October 15, 2008

Page 2

sources of the dissolved oxygen problem. That has not been done in the draft TMDL with respect to effects of the operation of the Long Lake Dam and a multitude of other point and non-point sources (NPS) in the watershed.

Ecology should in particular follow its own water quality standards and TMDL guidance by fully considering the impact of the Long Lake Dam on dissolved oxygen levels. Ecology has already represented to FERC that there would be no dissolved oxygen problem in Lake Spokane if the dam was not present. Washington water quality standards specifically require that the contribution of dams be recognized and integrated into a TMDL under WAC 173-201A-510(5)(c). It is accordingly essential that the contribution of dams on the river be assessed concurrently with and incorporated into the revised TMDL. As part of this process, Ecology should also make a specific determination as to the level of water quality that is reasonably and feasibly attainable under WAC 173-210A-510. This determination should include an assessment as to whether the existence of dams on the river precludes attainment of the current dissolved oxygen water quality standard under 33 CFR 131.10(g).

A revised TMDL should similarly provide load allocations to all NPS contributing to the dissolved oxygen problem. The draft TMDL failed to adequately address NPS within Spokane County and did not address all NPS in Stevens County or Idaho. Load allocations for NPS must include the implementation of best management practices to reduce nutrient loading in accordance with WAC 173-201A-510(3).

2. Waste Load Allocations should be based on what is reasonably achievable.

A water quality improvement plan based on WLAs that are not technologically achievable is illusory. More importantly, it is not legally defensible. A legally defensible TMDL has to provide reasonable assurance for success and not simply set up dischargers for failure. WLAs should be determined from a cross-section of the best performing full-scale phosphorus reduction technologies and not on speculation or the unsupported claims of a few suppliers.

We urge the agencies to consider whether technology, source reductions and other mitigation will achieve the current dissolved oxygen water quality standards. The Clean Water Act requires a TMDL that actually has a chance of improving water quality. If the WLAs and load allocations cannot be achieved, the agencies should consider the basis for the dissolved oxygen standard through Ecology's triennial review of its water quality standards, a site specific standard or a use attainability analysis.

Inland Empire Paper Company

Mr. Jay Manning and Ms. Elin Miller
October 15, 2008
Page 3

3. The Delta Elimination Plan needs to be specific on available source reduction and credits.

It remains the case that substantial source reduction will be required in addition to new treatment technology. To the extent WLAs may require a delta elimination plan, the TMDL should provide exactly what source reduction opportunities are available and how participation in source reduction will be credited to a discharger. The TMDL will have a much higher chance of succeeding if mitigating measures such as lake aeration are specifically identified.

4. The TMDL should provide a specific credit for phosphorus that is not bio-available.

The new TMDL should consider the fraction of phosphorus discharges that are not bio-available in the Spokane River for a time sufficient to be considered reactive or a nutrient source. This issue should be resolved prior to re-issuance so that there is no dispute under future permits as to how a credit for bio-available phosphorus will be applied. Rather than defer this issue to the future as contemplated in the draft TMDL, it should be resolved, or a mechanism to resolve the issue should be included as part of the revised TMDL.

5. The TMDL should allow for pollutant equivalency for CBOD and ammonia.

At the direction of EPA, draft NPDES permits were issued by Ecology that included numeric limits for CBOD and ammonia. It was a surprise to IEP that its draft permit included final effluent limitations for these parameters, as this represented a significant departure from the MOA. The actual significance of CBOD and ammonia on dissolved oxygen should be determined from the model to establish a pollutant equivalency for CBOD and ammonia in the TMDL and resulting permits. This would provide some measure of flexibility for pollutant trading within each discharger's facility and potentially with other contributors within the watershed as well.

6. The TMDL and NPDES permits should provide for reasonable compliance schedules.

As a matter of equity, the TMDL should afford all point sources and NPS the same compliance schedule. Idaho water quality standards, for example, do not set a limit on compliance schedules. Washington water quality standards, while imposing an initial ten year compliance schedule for dams, allow a dam operator to reevaluate the ability to come into compliance with water quality standards at year ten under WAC 173-210A-510. Most NPS are either not regulated, or are regulated under municipal stormwater NPDES permits that do not include any kind of compliance schedule. It is only in the case of Washington point sources that EPA has determined that Ecology may not grant

Inland Empire Paper Company

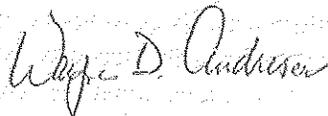
Mr. Jay Manning and Ms. Elin Miller
October 15, 2008
Page 4

a compliance schedule longer than ten years. As a matter of equity, Ecology should amend the state water quality standards to allow for a 20 year compliance schedule for TMDL implementations.

In closing, I want to emphasize that IEP remains committed to achieving the highest possible water quality standards in the Spokane River and Lake Spokane through implementation of the best available control technologies for phosphorus and through available source reduction opportunities. We have demonstrated this commitment through our good faith efforts to implement the 2007 Memorandum of Agreement. Moving forward we hope that your agencies will fully consider the issues outlined above.

Thank you for your consideration of these comments.

Sincerely,



Wayne D. Andresen
President and
General Manager

cc: Governor Christine Gregoire
Senator Maria Cantwell
Senator Patty Murray
Representative Cathy McMorris Rodgers
State Senator Chris Marr
State Representative Timm Ormsby
Christine Psyk – EPA Region 10
Laurie Mann – EPA Region 10
Tom Laurie – WDOE HQ
Grant Pfeiffer – WDOE ERO
Dave Moore – WDOE ERO

Tavernor, Bernadette (ECY)

From: Pastore, Dianne (ECY)
Sent: Monday, October 27, 2008 1:29 PM
To: Tavernor, Bernadette (ECY)
Cc: Bellatty, James (ECY); Moore, David (ECY); Laurie, Tom (ECY)
Subject: FW: Inland Empire Paper to Jay & Elin--Spokane TMDL

Bernadette – this one goes into ECTS for tracking, please—to Water Quality. As Jim B notes, it will take some coordination with EPA and is likely to take a while.

Jim – thanks for the note about process.

From: Bellatty, James (ECY)
Sent: Monday, October 27, 2008 10:02 AM
To: Laurie, Tom (ECY)
Cc: Pastore, Dianne (ECY); Pfeifer, Grant D. (ECY); Darrell, Ginny (ECY); Knight, David T. (ECY ERO); Moore, David (ECY); Hallinan, Patrick J. (ECY); Mann.Laurie@epamail.epa.gov; Gildersleeve, Melissa (ECY); Braley, Susan (ECY); Koch, Richard A. (ECY)
Subject: FW: Inland Empire Paper to Jay & Elin--Spokane TMDL

Tom: we had a meeting with IEP officials last Friday and asked them whether they wanted a written reply to their October 15th letter (attached) or whether it was mostly a FYI of their concerns. Wayne Andresen answered that it was an FYI; then Doug Krapas piped up and said that he wanted a detailed written response. So, it looks like we will need to coordinate with EPA on a written reply to this letter. I assume that this will need to process this reply as an Executive Correspondence? In terms of coordination, I would like David Moore to coordinate with Laurie Mann on a draft joint response. Hopefully, we can get it out the door in the next few weeks. I cautioned IEP that a joint letter would require some extra time and they did not have a problem with that.

On a related note, based on the outcome of our meeting, IEP is clearly anxious about water quality standards (WQS) issues. I expect they we will want to schedule some extra time with us to discuss our WQS interpretation letter (to EPA), UAA's and other WQS related issues. We might find others who want this type of discussion too, but I think we should plan a small scale meeting with IEP after we get beyond our current set of tasks and work plan issues. This is something to plan and anticipate rather than schedule today. It's on the radar.

To date, we have had individual meetings with Spokane County, City of Spokane, Kaiser, IEP and Liberty Lake and they have been productive. David Moore and the various permit managers will continue to schedule monthly visits and meetings with these same entities in addition to our work with EPA, Idaho and the Tribes. Thanks!

From: Laurie, Tom (ECY)
Sent: Friday, October 17, 2008 1:54 PM
To: Bellatty, James (ECY); Arnold, Gary (ECY); Gildersleeve, Melissa (ECY); Braley, Susan (ECY)
Cc: Lavigne, Ronald (ATG)
Subject: FW: Inland Empire Paper to Jay & Elin--Spokane TMDL

FYI – haven't had a chance to go through this yet. May require a response. Dianne has already sent this to David & Grant.

-Tom
360/407-7017

From: Pastore, Dianne (ECY)
Sent: Friday, October 17, 2008 10:53 AM
To: Laurie, Tom (ECY)
Cc: Pfeifer, Grant D. (ECY); Moore, David (ECY)
Subject: Inland Empire Paper to Jay & Elin--Spokane TMDL

Tom – since copies often arrive later than the original, here's a copy of the above-noted letter for you. Please let us know how to approach the response so we may assign it out, appropriately.
Thanks.



Inland
Paper to Ecy

Dianne Pastore | Director's Office | WA Department of Ecology | 360.407.7009