

from a complete data record of 10 years is at or below the applicable criterion.

(f) *Numeric Intergravel Dissolved Oxygen (IGDO) Criterion for Salmonid Uses.* (1) In water bodies or segments where the bull trout juvenile rearing and spawning or salmon and steelhead spawning though fry emergence designated use applies in the State of Oregon, and during the applicable time periods, IGDO shall be at least 8.0 mg/L, measured as a spatial median, except as provided in paragraph (f)(2) of this section.

(2) Where barometric pressure, altitude, and air temperature preclude attainment of the intergravel dissolved oxygen criterion set forth in paragraph (f)(1) of this section, then the criterion shall be not less than 95 percent of the maximum IGDO level attainable given the barometric pressure, altitude, and air temperature.

(g) *Process for Federal Agencies Responsible for Federally-Owned or Operated Dams to Request that EPA Modify its Water Quality Standards for Oregon.* (1) A Federal agency responsible for a Federally-owned or operated dam may petition EPA to revise a water quality standard in this section. In developing and submitting the petition to EPA, the Federal agency must ensure that:

(i) The petition includes a description of the current function and purpose of the dam.

(ii) The petition is based on a demonstration that normal operation of the dam precludes attainment of the use, that reasonable alternatives are not feasible to restore the water to its original condition, and that there are no feasible and practicable changes to operation, maintenance or structure of the dam that can be implemented that would result in attainment of the water's designated use.

(iii) The Federal agency provides an opportunity for affected jurisdictions and the public to comment on a draft of the demonstration before it is submitted to EPA. The Federal agency must provide EPA with a response to the comments.

(2) In developing the demonstration under paragraph (g)(1) of this section, the Federal agency must address each of the following:

(i) The current purpose and function of the dam including information on how well the dam is performing in meeting the established purpose and function.

(ii) Any feasible, practicable alternatives to current operation and maintenance of the dam that could improve water quality, including

coordination of operations between dams.

(iii) Any feasible, practicable structural modifications to the dam that could improve water quality.

(iv) Any relevant studies of the above factors.

(3) If such a petition is submitted, EPA will conduct a use attainability analysis (UAA) as defined in § 131.3(g) and determine within nine months of the Federal agency's submission whether a modification to the water quality standard is justified. EPA may extend this deadline if a large number of such petitions are submitted during the same time period.

(4) If EPA determines that the use designation should be revised, EPA will propose for public comment a rule to revise the applicable use designation and take final action within 15 months of making the determination in paragraph (g)(3) of this section.

(5) If EPA determines that the use designation should not be revised, EPA will respond to the petition, providing EPA's reasons for not proposing to revise the use designation.

(h) *Variances.* (1) The Regional Administrator, EPA Region 10, is authorized to grant variances from the water quality standards in paragraphs (b) through (d) and (f) of this section where the requirements of this paragraph (h) are met. A water quality standard variance applies only to the permittee requesting the variance, and only to the pollutant or pollutants specified in the variance; the underlying water quality standard otherwise remains in effect.

(2) A water quality standard variance shall not be granted if:

(i) Standards will be attained by all dischargers implementing effluent limitations required under sections 301(b) and 306 of the CWA and by nonpoint sources implementing cost-effective and reasonable best management practices required by the State; or

(ii) The variance would likely jeopardize the continued existence of any threatened or endangered species listed under Section 4 of the Endangered Species Act, or result in the destruction or adverse modification of such species' critical habitat.

(3) Subject to paragraph (h)(2) of this section, a water quality standards variance may be granted if the applicant demonstrates to EPA that attaining the water quality standard is not feasible because:

(i) Naturally occurring pollutant concentrations prevent the attainment of the use; or

(ii) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

(iii) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

(iv) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way which would result in the attainment of the use; or

(v) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like unrelated to water quality, preclude attainment of aquatic life protection uses; or

(vi) Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.

(4) *Procedures.* An applicant for a water quality standards variance shall submit a request to the Regional Administrator of EPA Region 10. The application shall include all relevant information showing that the requirements for a variance have been satisfied. The burden is on the applicant to demonstrate to EPA's satisfaction that the designated use is unattainable for one of the reasons specified in paragraph (h)(3) of this section. If the Regional Administrator preliminarily determines that grounds exist for granting a variance, he shall provide public notice of the proposed variance and provide an opportunity for public comment. Any activities required as a condition of the Regional Administrator's granting of a variance shall be included as conditions of the NPDES permit for the applicant. These terms and conditions shall be incorporated into the applicant's NPDES permit through the permit reissuance process or through a modification of the permit pursuant to the applicable permit modification provisions of Oregon's NPDES program.

(5) A variance may not exceed 3 years or the term of the NPDES permit, whichever is less. A variance may be renewed if the applicant reapplies and demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if the applicant