

**PROPOSED AMENDMENTS TO THE STANDARDS OF QUALITY FOR  
WATERS OF THE STATE, UAC R317-2**

August 20, 2008

[VIA E-MAIL WMOELLMER@UTAH.GOV]

[VIA FACSIMILE 801-538-6016]

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WATER QUALITY

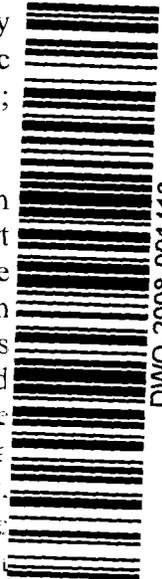
**Re: Proposed Water Quality Standards - Comments on R317-2**

Dear Dr. Moellmer:

Utah Manufacturers Association (UMA), on behalf of its more than 800 member companies, has reviewed the July 15, 2008 rulemaking revisions to the water quality standards and submits the following comments focused on (1) the proposed site-specific selenium standard for the Gilbert Bay region of Great Salt Lake (12.5 mg/kg in bird eggs); and (2) the proposed selenium standard assessment methodology.

Proposed Selenium Standard. UMA fully supports the outcome of the selenium standard setting process and encourages adoption of the proposed standard for the Gilbert Bay region of Great Salt Lake. The proposed bird egg-based standard relies on multiple layers of conservative assumptions and would be based on a lower effects concentration than relied on by EPA for developing other national water quality criteria and by states (including Utah) for developing water quality standards. Additionally, the proposed standard reflects a well-documented science-based number that ensures protection of the beneficial uses of the Great Salt Lake. UMA further understands that one purpose of a triennial review is to provide a regulatory mechanism for evaluating and, as necessary, revising water quality standards. As such, the proposed selenium standard will always be subject to scrutiny and can, if ever necessary, be modified to reflect new and relevant information.

Proposed Selenium Standard Assessment Methodology. UMA has significant concerns with the proposed selenium assessment methodology. UMA recognizes and supports the view that ongoing monitoring of the lake (as developed in conformance with an appropriately crafted plan) will allow regulators and the public to closely track the water quality of the lake enabling timely responses to any changing data trends. The proposed assessment methodology is not that plan for a number of reasons, some of which are identified below.



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- The Proposed Assessment Methodology is Arbitrary. As proposed, the assessment methodology bases regulatory responses on arbitrarily selected thresholds. In fact, the suggested management levels would trigger actions at conditions that the majority of the Science Panel believe pose no ecological concern.
- The Proposed Assessment Methodology Would Create An Arbitrary De Facto Second Standard. As proposed, the assessment methodology would cap point source discharges at a number far below the above-referenced well-reasoned, amply supported egg-based water quality standard. The cap on point source discharges would create a de facto “second standard” that would essentially discount the years of study that resulted in the proposed standard promulgation. It may even preclude reliance on trading and other mechanisms that could effectively limit selenium loading to Great Salt Lake should those reductions ever be necessary.
- The Assessment Methodology Proposes Potentially Ineffective Responses. The information obtained to date indicates that capping point source discharge loads to Great Salt Lake may be ineffective given the fact that they comprise less than a third of all selenium loading that goes into the lake. In short, the proposed methodology does not adequately account for the conditions in the lake and the data needed to assess the lake. UMA encourages the collection of information that will allow for a critical, science based review of lake conditions and water quality trends rather than reactive, unstudied responses.
- The Assessment Methodology Proposes an Approach Fundamentally Inconsistent with Other Water Quality Standard Requirements without Justification. As part of this proposed rulemaking, the Division has specified thresholds for conducting Level II anti-degradation reviews based on percentage of available assimilative capacity. The Division has proposed an alternative threshold in this assessment methodology. The distinction has not been explained. The Division should reconsider creating alternative thresholds for Great Salt Lake where not justifiable to avoid program implementation in a piecemeal, arbitrary fashion. Similarly, the anti-degradation program (as it currently exists) and as proposed, does not require Level II review for existing discharge permits upon reissuance. In contrast, the proposed assessment methodology would require Level II review for existing permit reissuance. There has been no substantive explanation for deviating from the anti-degradation requirements. Moreover, it is possible that these “more stringent” applications of the federal program are

William Moellmer  
August 20, 2008  
Page Three

inconsistent with Utah law and its requirements to be no more stringent than the federal program.

- The Proposed Assessment Methodology Fails to Incorporate Adaptive Management. The Proposed Assessment Methodology would establish a threshold for conducting a Level II anti-degradation review (which as indicated above is flawed) but provides no mechanism for feedback aimed at implementing the findings of that review (including information identified as part of the economic analysis required for such a review). The proposed approach could, therefore, result in arbitrary and costly responses to changing lake conditions.

As identified above, the triennial review provides great opportunity for ongoing scrutiny of conditions in Great Salt Lake. UMA believes an Assessment Methodology should be designed to create a specific, tiered monitoring plan that will ensure data exist to make clear, defensible decisions. Accordingly, UMA believes that a monitoring plan may be best adopted as part of guidance (also issued after stakeholder participation) that would maintain the Division's flexibility to best respond to changing lake conditions and needs.

Thank you for the opportunity to comment and for your consideration of the comments on behalf of the manufacturing industry in Utah. This industry is a critical part of our economy and is far larger in economic impact than all other sectors of the economy combined. We urge your favorable consideration.

Sincerely,

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