

June 24, 2014

Paula Wilson  
Idaho Department of Environmental Quality  
Attorney General's Office  
1410 N. Hilton  
Boise, ID 83706

Subject: Docket No. 58-0102-1201-Negotiated Rulemaking: Discussion Paper #4

Dear Ms. Wilson:

The following are Idaho Power's comments provided under the above referenced docket. Idaho Power appreciates the opportunity to comment on *Idaho Fish Consumption Rate and Human Health Water Quality Criteria—Discussion Paper #4*.

As Idaho Department of Environmental Quality (DEQ) proceeds with this rulemaking, Idaho Power encourages DEQ to develop data using scientifically defensible methodologies. By doing so, DEQ will be in a more informed position to make policy choices in the public interest that are both effective and efficient—effective in that they accurately address risk to fish consumers in the state of Idaho, and efficient in that they do not include risk that is overstated by utilizing default fish intake and relative source contribution (RSC) values.

#### Market (All) or Local Fish

On page 3 of the discussion paper, Idaho Department of Environmental Quality (DEQ) notes that EPA has urged states and tribes “to develop criteria to protect highly exposed population groups and to use local, state, or regional data over default fish intake values.” The discussion paper further notes that such data is “more representative of their target population.”

Idaho Power agrees that data representing verifiable consumption of target populations should be utilized in setting water quality criteria, just as DEQ should use verifiable consumption data for the population in general. Accordingly, Local Fish, not Market (All), is preferred because it provides the most representative depiction of fish consumption of all populations that can be regulated in the state of Idaho. As noted parenthetically by DEQ on page 3 of the document, DEQ can only regulate, indeed only has jurisdiction to regulate, water quality standards and their effect on Local Fish reared in Idaho waters, not oceans. While DEQ expresses concern on page 6 of the discussion paper that criteria based on Local Fish may “discount the risk associated with consumption of fish from other sources,” DEQ concedes that “excluding market sources of fish...will be more specific to what Idaho water quality standards can regulate.”

It is important to note that it does not necessarily follow that utilizing Local Fish to set water quality standards will discount the risk of consumption from other sources. On the contrary, by including Market (All) Fish, a much more conservative value that may not be representative of actual consumption, DEQ may actually overstate the risk to all population groups, including “highly exposed population groups,” and unnecessarily increase the cost of compliance to the regulated community, resulting in negative impacts to Idaho’s economy and citizens that do not provide corresponding benefits. Therefore, relying on intake values of Local Fish will allow DEQ to make the best policy decision based on verifiable data that is truly representative of Idaho fish consumption for all populations.

In fact, EPA supports this very position. In a frequently asked questions document reflecting EPA policy and guidance on its *2000 Human Health Methodology*, EPA states:

Because the overall goal of the criteria is to allow for a consumer to safely consume from local waters the amount of fish they would normally consume from all fresh and estuarine waters, the FCR does include fish and shellfish from local, commercial, aquaculture, interstate, and international sources. It is not necessary for the FCR to include fish and shellfish species designated as marine species, as that exposure is addressed by relative source contribution (see EPA, “Human Health Ambient Water Quality Criteria and Fish Consumption Rates, Frequently Asked Questions,” page 2, January 2013, emphasis added).

Moreover, while the topic was covered in a previous discussion paper, utilizing a probabilistic modeling approach may offset the concerns identified by DEQ in its two “hypothetical fish consumers” example on pages 3-4. Probabilistic models are widely available and facilitate a statistically valid approach to determining risk across the entire population. Rather than making an overly conservative and more burdensome assumption, DEQ would be able to better approximate the risk in a manner that is more representative of the entire state.

#### Relative Source Contribution

DEQ addresses Relative Source Contribution (RSC) on pages 5-6 of the document. Idaho Power does not agree that a default RSC of 0.2 to 0.8 is necessarily merited. Even EPA has relied on an RSC of 1.0 with respect to water quality criteria related to the Spokane Tribe (see *Technical Support Document for Action on the Revised Surface Water Quality Standards of the Spokane Tribe of Indians*, April 2010, Region 10). Additionally, the State of Washington and OSHA have both utilized an RSC of 1.0 in addressing risk of exposure. Relying on a standard without a critical evaluation of whether the standard is actually representative of the risk to exposed populations should be avoided. Rather, Idaho Power recommends that DEQ utilize an RSC that is developed with transparent and verifiable data that is reflective of Idaho’s unique circumstances.

Conclusion

On page 6, DEQ expresses concern about budget constraints and not being able to rely on the National Cancer Institute methodology to determine intra-person variability for eating fish. Ostensibly, this would be a factor in relying upon EPA standards. While we can appreciate short term budget constraints, Idaho Power encourages DEQ to not sacrifice long-term economic impacts to the state for short-term cost savings by utilizing a standard that may not be representative of target populations. As discussed above, by using scientifically defensible data rather than standard values set by EPA, DEQ will be able to make a policy choice that is informed by the best available data and, thus, representative of Idaho's unique circumstances.

Once again, Idaho Power appreciates the opportunity to comment on Discussion Paper #4. We look forward to additional, productive discussions with the DEQ on this rulemaking.

Best regards,



Sarah W. Higer  
Corporate Counsel

