



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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Dirk Kempthorne, Governor
Toni Hardesty, Director

August 8, 2005

Michael Gearheard, Director
Office of Water, Region 10
U.S. Environmental Protection Agency
1200 6th Ave.
Seattle, WA 98101

Re: Submission of revised water quality standards for approval: Idaho docket 58-0102-0302 -
Adoption of methyl-mercury fish tissue criterion and update of selected metals criteria

Dear Mr. Gearheard:

Consistent with the Clean Water Act §303(c) and 40 CFR 131.20, revised water quality standards are submitted for EPA approval. This revision is one of a series of periodic reviews and revisions of Idaho's water quality standards.

The rule now being submitted for your approval adopts for Idaho EPA's 2001 methylmercury fish tissue criterion and update of several other metals criteria recommended by EPA in their National Recommended Water Quality Criteria: 2002. The other criteria include aquatic life criteria for As, Cd, Cr, Ni, & Zn, and human health criteria for Sb & Zn.

As you know, use of a fish tissue criterion under the Clean Water Act is a break from traditional water column criteria. This necessitated development of new implementation procedures for water quality based effluent limits and calculation of total maximum daily loads in order to adapt a fish tissue criterion to these traditional water pollution control programs. Normally Idaho would look to EPA guidance on such matters, at least as a starting point. In the present case, there was not a finalized EPA guidance document available. Thus Idaho spent considerable effort to develop a mercury implementation guidance, accounting in large measure for the length of the rulemaking.

This rulemaking started with a June 2003 petition from Idaho Mining Association (IMA) to update Idaho's mercury criteria. In response to the petition DEQ initiated negotiated rulemaking with the first of fifteen meetings held on Oct. 24, 2003. The rule proposed by DEQ in the Aug 4th, 2004 Idaho Administrative Bulletin reflects extensive discussion during rulemaking and considerably expanded the list of criteria in IMA's petition. Great interest and considerable controversy were evident, so DEQ announced a 45 day public comment period, as well as three public hearings. Two items of particular controversy in the proposed rule were: 1) removal of both the acute and chronic aquatic life criteria for mercury; and 2) removal of the low hardness cap for hardness dependent metals toxicity.

No one testified at the public hearings. Over 160 pages of written comments were received on both the criteria updates and the mercury implementation guidance. After considerable effort to summarize and respond to public comment, DEQ revised its rule proposal to include a 10 mg/L low end hardness cap. DEQ also revised its mercury implementation guidance. The revised rule proposal was considered by the Idaho Board of Environmental Quality on November 18, 2004. Because they did not believe the evidence presented supported a change in the hardness cap, the Board took action to disapprove both DEQ's revised proposal of a 10 mg/L low end hardness cap and the initial proposal of no low end cap. This left the current 25 mg/L low end hardness cap in place.

The Board's pending rule, with all the criteria changes initially proposed, but without a change in the low end hardness cap, was noticed in the January 5, 2005 Idaho Administrative Bulletin. The pending rule was adopted as a final rule by the 2005 Idaho legislature, effective April 6, 2005.

These revisions bring Idaho's toxics criteria more up to date with current science and understanding of toxicity to human health and aquatic life. As detailed in attached records of the rulemaking, Idaho was selective in the EPA recommendations it choose to adopt at this time. Additional criteria updates are being considered in rulemaking that began in April 2005.

The enclosed package includes:

- 1) This cover letter, briefly describing the rulemaking and the contents of the package supporting the rule being submitted for your approval;
- 2) IMA June, 2003 petition and letter of May 24, 2004;
- 3) DEQ Summary of negotiated rulemaking;
- 4) DEQ Summary of criteria updates;
- 5) Stratus Consulting technical memo on metals toxicity at low hardness;
- 6) August 4, 2004 Notice of Rulemaking – Proposed Rule consisting of a descriptive summary of proposed revision, invitation for public review, announcement of public hearings, contact information for the public to obtain technical information supporting the proposed revision, and the actual rule language with proposed deletions struck out and proposed additions underlined;
- 7) Chadwick Ecological Consultants memo on DEQ rulemaking;
- 8) Summary of public comments on rule language and DEQ's response;
- 9) January 5, 2005 Notice of Rulemaking – Pending Rule consisting of a descriptive summary of the changes from the proposed rule, and only those sections of the pending rule substantively different from the proposed rule showing changes from existing rule language with proposed deletions struck out and proposed additions underlined;
- 10) Summary of public comments on Idaho's Implementation Guidance for the Idaho Mercury Water Quality Criteria and DEQ's response;
- 11) Revised final Idaho Implementation Guidance for the Idaho Mercury Water Quality Criteria;

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- 12) Justification for the revised water quality standards; and
- 13) The attorney general's certification that the rules were adopted according to state law.

If you have any questions on this rulemaking and the enclosed supporting materials, please contact Don A. Essig, 208-373-0119, or Don.Essig@deq.idaho.gov

Sincerely,



Barry N. Burnell
State Water Program Administrator

BNB:DE:bmm

Enclosures

- c: Lisa Macchio (with enclosures)
Don Essig (without enclosures)
Doug Conde (without enclosures)
Michael McIntyre (without enclosures)