



Greater Yellowstone Coalition

People protecting the lands, waters, and wildlife of the Greater Yellowstone Ecosystem, now and for future generations.

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October 31, 2012

Idaho Department of Environmental Quality
Attn: Ms. Paula Wilson
1410 North Hilton
Boise, ID 83706
E-Mail: Paula.Wilson@deq.idaho.gov
Tel: (208) 373-0418

**Re: Docket No. 58-0102-1201 Negotiated Rulemaking on Toxics Criterion
and Idaho's Fish Consumption Rate**

Dear Ms. Wilson:

On October 4, 2012, the Idaho Department of Environmental Quality (“IDEQ”) hosted a meeting to discuss the toxics criterion negotiated rulemaking in accordance with the above-referenced docket and the potential need to propose a new fish consumption rate in Idaho as part of the rulemaking. The Department discussed the background of the Idaho’s current fish consumption rate and how the rate may affect human health criteria determinations made through the upcoming negotiated rulemaking process. Although the original deadline for submitting comments on this issue was set for October 11, 2012, the Department indicated during the October 4 meeting that it would accept initial comments through November 7, 2012. These comments respond to that request.

The Greater Yellowstone Coalition (“GYC”) is a 501(c)(3) non-profit organization dedicated to protecting the wildlands, wildlife, and other outstanding natural resources of the Greater Yellowstone Ecosystem. GYC has offices in Idaho, Wyoming, and Montana with more than 27,000 members and supporters nationwide. GYC has a strong interest in the management of Idaho waters and their associated wildlife and recreational resources. GYC’s members regularly use and enjoy Idaho waters for activities such as fishing, hiking, boating, hunting, wildlife viewing, spiritual renewal, biological and botanical research, photography, and other pursuits. GYC’s members’ use and enjoyment of Idaho waters may be substantially impacted by the above-referenced proposed rulemaking process.

First, GYC believes that IDEQ needs to spend some time gathering more information than that currently available in order to appropriately determine and justify a new fish consumption rate. The stated purpose of this rulemaking is to evaluate local and regional fish consumption information to determine whether Idaho's statewide criteria are protective of designated uses and, if the current criteria are not protective, to determine appropriate new criteria. In order to complete this evaluation, IDEQ needs accurate and reliable data to determine fish consumption rates by various populations throughout Idaho. The current information available to IDEQ, as presented during the October 4 meeting, is severely limited and while useful, is insufficient to allow IDEQ to complete this evaluation process.

As presented at the October 4 meeting, IDEQ has evaluated 19 surveys in relation to setting a potential fish consumption rate. Of these 19 surveys, 1 was a national survey, 16 were regional surveys taken from Oregon, Washington, or Alaska, and only 2 surveys were taken in Idaho or included at least some data collected within Idaho. The two surveys including data from Idaho were from 1989 and 1994. And of these two surveys, only one of them scored an overall quality rating greater than 10.

IDEQ has asked that the public comment on 6 of these 19 surveys, all of which scored an overall quality rating greater than 10. However, whereas only 1 of these surveys includes local Idaho data, it is difficult to conclude that the other 5 surveys could justify a fish consumption rate that will only apply to Idaho. In fact, chances are that fish consumption rates in Oregon, Washington, and Alaska – all states with large coastal areas – are greater than those of Idaho. Utilizing surveys from those states may be beneficial in that data would likely lead to a higher than necessary fish consumption rate, leading to more protective human health criteria for Idahoans. That being said though, it could be reasonably anticipated that industry pollutants that may be negatively affected by more protective human health criteria may challenge a rate based on out-of-state surveys, and it is not clear if such a rate would be legally defensible. For these reasons, we feel that IDEQ must take the time to conduct its own local, regional, and state-wide surveys that will capture information from a broad spectrum of people in Idaho.

More specifically, we believe that IDEQ should collect and utilize data from a range of resources in order to acquire the most accurate information available. This may include a range of surveys, including consumption surveys aimed at individuals that may be distributed in-person, via telephone, via e-mail, via mail, or through the IDEQ website. Information may also be acquired through angler surveys or diaries. All surveys, where possible, should be distributed across a wide range of Idaho regions and should include tribal communities which may consume more fish on a regular basis than other communities. All surveys should be as detailed as possible to include characteristics of the individuals surveyed (including age, height, weight, gender, etc.) and information pertinent to the fish at issue (including species, source of fish, size, preparation methods, etc.). Surveys should also be conducted throughout different times of the year to account for potential seasonal changes in fish consumption rates.

Additionally, IDEQ has questioned whether a fish consumption rate should include market fish and/or anadromous fish. We believe that surveys should aim to collect information on all fish consumption, including fish that are purchased on the market and anadromous fish that may only spend part of the year or part of their life cycle in Idaho. Excluding this information would make it impossible to ensure that Idaho's fish consumption rate is truly protective. Although including this information may make surveys and calculations more expensive and complicated, excluding it would mean that any fish consumption rate used would be superficial in its aims to protect consumers in Idaho.

One factor that also must be considered throughout this process is bioaccumulation of certain toxins. Some toxins, for example selenium and mercury, bioaccumulate in fish, meaning that the substance accumulates faster than it is lost. This phenomenon creates a greater risk of toxic poisoning, even if environmental levels of the toxin are not very high. IDEQ must analyze and account for bioaccumulation in setting criteria levels for any substances that may bioaccumulate in fish, water, or in the atmosphere.

Finally, IDEQ has asked the public to determine what level of protection is necessary. We believe that the toxic criteria should be set to protect populations with the highest risk of exposure, which will likely be those with the highest fish consumption rate. To do otherwise would mean that only some Idahoans are protected through the criteria levels set, which would create a great injustice and unnecessarily put people at risk. Based on the information received from its various surveys, IDEQ should set criteria as strict as necessary to protect all Idahoans.

Sincerely,



Andrea Santarsiere
Idaho Conservation and Legal Associate