



**UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY
REGION 10**

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WATER
DIVISION

November 20, 2020

Jason Pappani
Surface Water Bureau Chief
Idaho Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706-1255

Re: EPA Comments on Idaho's Negotiated Rulemaking - Revision of Idaho's Human Health Criteria for Arsenic, Docket 58-0102-1801

Dear Jason:

Thank you for the opportunity to provide comments to the Idaho Department of Environmental Quality (DEQ) regarding the proposed approaches Idaho is considering for deriving arsenic human health criteria. At this time, EPA is still evaluating the proposed approaches DEQ presented during the November 5, 2020 negotiated rulemaking meeting. However, we offer the following preliminary comments, suggestions, and questions for your review and consideration.

Bioaccumulation Factor (BAF)

We appreciate DEQ's efforts to gather Idaho data and thinking about an approach to derive a statewide Idaho specific BAF from the data. Both EPA and DEQ have recognized the current Idaho data reveal uncertainty in the relationship between water and fish arsenic concentrations. EPA would like to talk further with DEQ about potential options to account for the uncertainty, including gathering more data or evaluating the existing data in different ways. Given the current rulemaking schedule, it appears there is sufficient time for DEQ to give further consideration to additional options regarding a BAF for arsenic. We look forward to engaging with you further regarding potential approaches for deriving a BAF for arsenic.

Organism Only Criterion

It is unclear how DEQ's proposed approach for an organism (fish) only arsenic human health criterion using a "screening" water column value combined with a fish tissue criterion would be implemented. How does DEQ intend to use the screening value and where would this be codified, in rule or in a separate guidance document?

What are the circumstances/situations where DEQ foresees tissue data would be collected and by whom and for what purposes? It would be helpful for DEQ to provide detail regarding how it envisions implementation, specifically in Clean Water Act programs such as IPDES permits, TMDLs and listing and assessment. EPA believes having this additional detail is helpful to stakeholders and the public in further evaluating DEQ's proposed approaches for arsenic human health criteria.

Organism Plus Water Criterion

For the organism plus water arsenic criterion, one of the proposed approaches is a narrative criterion. As provided in DEQ's presentation, the examples were as follows:

Narrative Criteria - Compliance with fish + water criteria for Arsenic based on not impairing the use
Examples:

- *For waters designated as DWS [domestic water supply], waters must be free of inorganic arsenic in concentrations that would impair the DWS use.*
- *Inorganic arsenic must not exceed concentrations that would require additional treatment or removal prior to delivery as public drinking water.*

EPA believes more discussion is needed regarding any proposed approach for a narrative criteria for arsenic, its consistency with the statutory and regulatory requirements, and how such narrative would be implemented. As you know, the specific requirements regarding criteria for toxic pollutants are provided in the CWA as well as the federal water quality standards regulations.¹ Section 303(c)(2)(b) of the CWA states:

Whenever a State reviews water quality standards... such State shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act for which criteria have been published under Section 304(a), the discharge or presence of which in the affected water could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants. (Emphasis added)

EPA greatly appreciates DEQ's continued efforts to evaluate and propose potential approaches to revising Idaho's human health arsenic criteria for the public to consider. EPA looks forward to continuing to provide technical support to DEQ on this work. Please do not hesitate to contact me at (206) 553-1834 or at macchio.lisa@epa.gov if you have any questions.

Sincerely,

Lisa Macchio
Water Quality Standards Coordinator

cc: Michelle Dale, DEQ

¹ Arsenic is considered a toxic pollutant under section 307(a) of the CWA.