STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706 • (208) 373-0502
www.deq.idaho.gov

C.L. "Butch" Otter, Governor
John H. Tippets, Director

December 13, 2016

Dan Opalski, Director
Office of Water and Watersheds, Region 10
U.S. Environmental Protection Agency
1200 6th Ave.
Seattle, WA 98101

Re: Submission of revised water quality standards for approval: Human Health Criteria Update, Idaho rule docket 58-0102-1201.

Dear Mr. Opalski:

Consistent with the Clean Water Act §303(c) and 40 CFR 131.20, revisions to Idaho's water quality standards (WQS) are hereby submitted for EPA approval. This rule revises Idaho's human health criteria contained in section 210 of Idaho's water quality standards, titled Numeric Criteria for Toxic Substances for Waters Designated for Aquatic life, Recreation, Or Domestic Water Supply Use. Within this section only the human health criteria applicable to recreation and domestic water supplies uses are affected, the aquatic life criteria were not changed.

This rulemaking was initiated in response to EPA's May 10, 2012 disapproval of an update to Idaho's human health criteria submitted to EPA on July 7, 2006. In that disapproval EPA found that Idaho's criteria derivation, which followed EPA's recommendations, did *"not demonstrate that the criteria protect Idaho's designated uses."* More particularly EPA faulted Idaho for using EPA's default national fish consumption rate rather than considering regional data that *"suggests that fish consumption among some Idaho population groups is greater than 17.5 g/day."* While Idaho had in its 2005 rulemaking considered regional fish consumption data, in particular the 1994 CRITFC study, after deliberation Idaho decided to engage in renewed rulemaking. DEQ so informed EPA in a letter dated Aug 6, 2012. While EPA's action and Idaho's rulemaking effort focused primarily on fish consumption rates appropriate to Idaho, this is but one of several inputs to criteria derivation that were taken into account in this rule.

Although this rule mainly involves changes in human health criteria values in the table in section 210.01of the Idaho WQS, it also makes several other related as well as unrelated changes to Idaho's water quality standards. All the changes are itemized in the attachment "Summary of Changes in Idaho WQS made by Rule Docket 58-0102-1201".

Rule negotiation with the public was announced in the September 5, 2012 volume of the Idaho Administrative Bulletin, as well as on DEQ's web page and by direct e-mail. The first meeting with the public was held on October 4, 2012, seventeen additional meetings were held in the ensuing three

Printed on Recycled Paper

years. Most of this time was needed to design and execute Idaho fish consumption surveys and then analyze the results. The results did not become available until the summer of 2015. The surveys included efforts funded by both Idaho and EPA. Idaho surveyed the general adult population as well as resident adult anglers. Parallel efforts funded by EPA surveyed the Nez Perce and Shoshone-Bannock Tribes. EPA also funded tribal heritage fish consumption studies. While the surveys were being conducted Idaho DEQ continued to meet regularly with the rulemaking committee to present and discuss several policy issues surrounding human health criteria. The dates of our meetings and topics discussed are listed in the Rulemaking Timeline attached to this letter.

On June 29, 2015 EPA released its final 304(a) criteria update changing many of the inputs used in Idaho's criteria derivation, and forcing DEQ to rework the criteria. An additional August 6, 2015 meeting was added to present the reworked preliminary proposed rule. Informal public comment was accepted on the preliminary proposal for 14 days. A proposed rule was published in the October 7, 2015 Idaho Administrative Bulletin opening a 30-day formal public comment period.

In response to public comment the proposed rule was revised prior to presentation to DEQ's Board. Major changes at this time were 1) moving from a probabilistic risk assessment basis for criteria calculation to the traditional deterministic approach, 2) basing all criteria on Nez Perce Tribe's mean consumption of Group 2 fish, a value of 66.5 g/day, and 3) basing criteria for carcinogens on an incremental increase in lifetime risk of cancer of 10^{-5}. The revised proposal was presented to the Idaho Board of Environmental Quality at a special meeting held on December 10, 2015. This meeting provided additional opportunity for public comment. The DEQ Board adopted the revised proposal as a pending rule without further change. The pending rule was noticed in the January 6, 2016 Idaho Administrative Bulletin and finalized by the 2016 Idaho Legislature, becoming effective under Idaho law on March 25, 2016.

DEQ has an online record of the complete rulemaking process that includes all the discussion papers, presentations given, comments received, rule drafts and supporting materials distributed. This can all be accessed at: http://www.deq.idaho.gov/laws-rules-etc/deq-rulemakings/docket-no-58-0102-1201/. All materials posted at this URL and all the documents that are listed in the document entitled "Idaho Human Health Criteria Update Justification and Compliance with CWA Requirements" are hereby incorporated by reference in this submittal.

In addition to the documents above, this rule submittal package includes:

1) This cover letter, briefly describing the rulemaking, its justification, and the contents of the package supporting the rule being submitted for your approval, *[file: 1) 58-0102-1201 EPA submittal letter - 2016 Human Health Criteria Update.pdf]*;

2) Aug 6, 2012 letter notifying EPA of DEQ's intent to engage in this rulemaking, *[file: 2) 58-0102-1201 Bussell M (Toxic pollutants) 8-6-12.pdf]*;

3) September 6, 2012 Notice of Negotiated Rulemaking, *[file: 3) 58-0102-1201 Negotiated Rulemaking Notice_Admin Bulletin 2012-09.pdf]*;

4) October 7, 2015 Notice of Notice of Proposed Rule announcing opening of 30-day public comment period on proposed rule, *[file: 4) 58-0102-1201 Proposed Rule Notice_Admin Bulletin 2015-10.pdf]*;

5) Summary of negotiated rulemaking prepared for DEQ's Board, *[file: 5) 58-0102-1201 HHC Rulemaking Summary.pdf]*;

6) Summary of public comment and DEQ's response, including copies of meeting sign-in sheets, *[file: 6) 58-0102-1201-public-comment-summary-1215.pdf]*;

7) Rulemaking Timeline, *[file: 7) 58-0102-1201 Rulemaking Timeline - Human Health Criteria for Toxic Pollutants.docx]*;

8) Summary of Changes in Idaho WQS made by Rule Docket 58-0102-1201, *[file: 8) 58-0102-1201 Summary of Changes in Idaho WQS made by Rule Docket 58-0102-1201.docx]*;

9) Idaho Human Health Criteria Technical Support Document – 2015; *[file: 9) 58-0102-1201Human Health Criteria Technical Support Document- 2015, Dec 2015.pdf]*;

10) Idaho Human Health Criteria Update Justification and Compliance With the CWA, *[file: 10) 58-0102-1201* Idaho Human Health Criteria Update Justification and Compliance With the CWA.pdf*]*;

11) January 6, 2016 Notice of Pending Rule – Announcing adoption by the DEQ Board, *[file: 11) 58-0102-1201 Pending Rule Notice_Admin Bulletin 2016-01.pdf]*;

12) Notice of final rules from May 4, 2016Adminstrive Bulletin, docket 58-0102-1201 is highlighted on page 22, *[file: 12) 58-0102-1201 Final Rules Notice_Admin Bulletin 2016-05.pdf]*;

13) An Attorney General's certification that the rules were adopted according to state law, *[file: 13) 58-0102-1201 Attorney General Certification Letter.pdf]*;

Electronic copies of the above materials have been provided on CD for your convenience, including a replica of DEQ's rulemaking web page and all the documents therein, as well as folder 'Additional Supporting Documents' we wish to be part of the record for EPA's consideration.

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

Sincerely,

Barry N. Burnell

Barry N. Burnell
Water Quality Division Administrator

DE:BNB:tg

Enclosures

c: Lisa Macchio, EPA (with enclosures)
Lon Kissinger, EPA (with enclosures)
Jason Pappani, DEQ (w/o enclosures)
Don Essig, DEQ (w/o enclosures)
Doug Conde, DEQ (w/o enclosures)