



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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WATER
DIVISION

May 14, 2021

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

Re: EPA Comments on Idaho's Arsenic Negotiated Rulemaking Meeting on April 22, 2021 – Docket No. 58-0102-1801

Dear Jason:

Thank you for the opportunity to provide comments to the Idaho Department of Environmental Quality (DEQ) regarding the April 22, 2021 arsenic rulemaking meeting. EPA understands DEQ is still considering preliminary draft rule language No.1 as presented during the December 2020 meeting.

EPA continues to have many of the same concerns we expressed to DEQ in our January 11, 2021 comment letter. In addition, given the available data, as well as the implementation challenges related to a proposed fish tissue criterion, EPA's position is that DEQ's arsenic criterion for fish-only must include a water column value in addition to the proposed tissue criterion. EPA encourages and is willing to work with DEQ to continue to explore all potential options for a water column criterion.

Fish-Only Criterion for Protection of Idaho's Primary and Secondary Recreation Uses

The preliminary draft rule for the fish-only criterion includes only a tissue criterion without a water column criterion as well. There are numerous challenges associated with implementation of a tissue-only criterion, such as difficulty in deriving a water-based limit for permitted dischargers and resources involved in collecting fish tissue data, as well as assessing for surface water impairments and developing TMDLs. Most importantly, EPA has concluded that a fish tissue value alone will not ensure that the designated use is protected and that a water column arsenic human health criterion is needed to protect Idaho's recreational uses.

Water & Fish Criterion for Protection of Idaho's Domestic (Drinking) Water Supply Use

EPA understands that DEQ is currently proposing a narrative criterion for protection of Idaho's domestic water supply use. EPA provided comments regarding this approach in our January 11, 2021 comment letter. EPA re-iterates several of those concerns including:

- 1) Idaho should evaluate whether the proposed narrative approach referencing the Safe Drinking Water Act (SDWA) Maximum Contaminant Level (MCL) adequately considers aggregate risk from exposure to both fish and water. If Idaho decides to pursue this approach for the water + fish criterion, which deviates from how Idaho typically derives criteria to protect the DWS use, please provide a justification.

- 2) The narrative criterion for arsenic contained in footnote k references a numeric criterion in the form of the SDWA MCL. EPA notes that footnote k refers to IDAPA 58.01.08., which is a citation to the entirety of Idaho's Rules for Public Drinking Water Systems. The exact subsection of Idaho's drinking water rules containing information on Idaho's drinking water MCLs is provided in subsection 58.01.08.050.01.b. However, this subsection does not include the actual MCL value for arsenic nor any other contaminants. Please consider revising footnote k to assist with the public's understanding of the proposed value for arsenic, including noting it is incorporated by reference, to make clear that the criterion is the SDWA MCL for arsenic.

Furthermore, footnote k to arsenic in Idaho's table of toxic criteria appears to be a narrative criterion that incorporates a numeric by reference. EPA recommends DEQ provides the numeric value in the table of criteria or if not, please articulate the rationale in writing so we can fully evaluate this approach.

- 3) EPA recommends DEQ further evaluate the duration and frequency associated with the SDWA MCL. During the April 22nd rulemaking meeting DEQ clarified that Idaho uses an annual harmonic mean for human health toxic criteria. If the MCL is to be used in place of an ambient water quality criterion, then the approach for determining compliance with MCLs should also be adopted.

Downstream Protection

The state of Idaho has several shared waterbodies with Washington, Oregon, and the Kalispel tribe, and in accordance with the requirements at 40 CFR 131.10(b), states must "take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters." It is important for DEQ to provide details on implementation of Idaho's arsenic human health criteria to ensure downstream protection.

EPA appreciates DEQ's continued efforts to evaluate and propose potential approaches to revising Idaho's human health arsenic criteria. EPA looks forward to continuing to coordinate this effort with DEQ and provide technical support. 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

Lisa Macchio
Water Quality Standards Coordinator

cc: Michelle Dale, Idaho DEQ