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July 14, 2021

Ms. Paula Wilson, Administrative Rules Coordinator  
Idaho Department of Environmental Quality  
1410 N Hilton  
Boise, ID 83706

Re: Docket No. 58-0102-1801 Update to Human Health Criteria for Arsenic – 06/23/2021  
Stakeholder Meeting

Dear Ms. Wilson/Paula,

The Association of Idaho Cities (AIC) serves to advance the interests of the cities of Idaho through legislative advocacy, technical assistance, training, and research. Idaho cities play important roles as primary providers of drinking water and implementers of the Clean Water Act. Representing over 70% of all Idaho residents, our members have significant interests in the development of water quality standards, rules, and guidance related to the protection of human and aquatic life.

#### **Fish Tissue Criterion v. Water Column Criterion**

The Idaho Department of Environmental Quality (IDEQ) has taken the initiative to develop, as recognized by EPA staff themselves, a high-quality dataset of water column and corresponding fish tissue data in order to ascertain inorganic arsenic bioaccumulation. As was stated during the June 23, 2021, stakeholder meeting “a bioaccumulation factor (BAF) simply does not exist for this chemical (i.e., inorganic arsenic) in this State, in these waters.” That is, there is no defensible relationship between water column and fish tissue concentrations in Idaho.

In response, Idaho is proposing to adopt arsenic criteria for fish tissue to address the potential exposure from human consumption due to recreational fishing alone (fish only), coupled with narrative criteria for human exposure due to both drinking water and fish consumption sources (water + fish).

Nonetheless, EPA Region 10 and headquarters staff continue to express “concerns” with the approach proposed to support recreational fish consumption and continue to insist upon water column criterion. Or, as stated in the May 22, 2021, comment letter, EPA staff have “concluded”<sup>1</sup> that the use of fish tissue criterion alone does not ensure that the beneficial use

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<sup>1</sup> See <https://www2.deq.idaho.gov/admin/LEIA/api/document/download/15765>.

of recreational fish consumption will be protected. AIC finds this “conclusion” puzzling, based on that the beneficial use to be protected *is* the human consumption of fish tissue (fish only).

AIC respectfully asserts that challenges associated with deriving requirements for permitted dischargers when implementing a fish tissue only criterion are different than not having the science or ability to predict direct exposure from actual fish consumption. Further, similar challenges were successfully addressed by Idaho during the promulgation of the methyl-mercury fish tissue criteria, which were subsequently approved by the EPA for implementation in Idaho.

Simply put, the EPA’s conclusion is in error.

Furthermore, EPA’s own analysis of arsenic exceedances and associated evaluations to support CWA § 101(a)(2) uses for water + fish recognizes that these criteria are effectively a drinking water standard (i.e., since more than 99% of the assumed exposure is attributable to the drinking water route).<sup>2</sup>

### **Use of Multiple Species and Trophic Levels**

During the June 23, 2021, stakeholder meeting EPA staff verbally encouraged the IDEQ to deviate from the standard protocol of deriving fish tissue criteria by only using the game fish from a single trophic level (i.e., whitefish and/or brook trout) out of a predominance of concern regarding increased exposure due to fish consumption. An exposure to inorganic arsenic to humans which, as the EPA themselves acknowledge, is very small when compared to exposure attributable to the drinking water route (see footnote #2).

That is, EPA staff appeared to suggest on June 23<sup>rd</sup> that a single species or trophic level be used to represent the most sensitive species approach as an alternative to that which is typically used for aquatic life criteria.

AIC respectfully submits that the multiple species and trophic level approach for human health criteria has been developed and applied for decades for sound scientific reasons by EPA and the States under the Clean Water Act, and thus using an aquatic life surrogate sort of approach as suggested during the June 23<sup>rd</sup> meeting is not appropriate. The nature of the duration, magnitude and frequency of exposure and response between human health and aquatic life are dramatically different, and therefore the criteria derivation processes also must be different. Once again, the EPA’s verbally stated conclusion regarding the approach Idaho should take in this matter is in error.

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<sup>2</sup> “For arsenic, the water + fish numeric standard is effectively a drinking water standard (since more than 99% of the assumed exposure is attributable to the drinking water route).” See <https://drive.google.com/file/d/1g-UKJyijjSRZZoxatga1Crz7G0qIPIg/view>.

## Downstream Protection

AIC appreciates how Idaho has several shared waterbodies with Washington, Oregon, **Utah, Montana**,<sup>3</sup> and our tribal partners. The development and implementation of all Idaho water quality criteria are subject to the same 40 CFR 131.10(b) requirements. While EPA's comment regarding the desire for implementation details is shared by AIC (i.e., in that we are also looking forward to more details so that we can ensure beneficial use support and effective utility program funding and implementation), the assurance of downstream protection is considered and addressed in numerous IDEQ Clean Water Act program areas (listings, TMDLs, IPDES permits, etc.). This is not unique to arsenic criteria. Therefore, and will all due respect to EPA Region 10 staff comments submitted on May 22, 2021, AIC looks forward to working with the IDEQ and our adjacent State and tribal partners as we collaborate and achieve the public and aquatic health goals which we all value and treasure.

## Summary

As noted in previous comment letters, AIC supports the draft criteria that IDEQ has developed - namely fish tissue criteria for the recreational consumption of fish (fish only) and narrative criteria for waters that are used for recreational consumption of fishing plus arsenic exposure due to drinking water supply (water + fish).

AIC also believes that implementing guidance must be drafted now to provide for a thorough discussion with EPA staff and other stakeholders. Our concern regarding this need is growing, given the short amount of time now available to develop implementing guidance prior to the necessary Idaho Legislature approval hoped for during the spring 2022 session.

Our position and analysis are aligned with those submitted by the Idaho Association of Commerce and Industry (IACI), and we request that the IDEQ acknowledge AIC's concurrence with their comment letter in response to the June 23, 2021, stakeholder meeting.

AIC appreciates the opportunity to participate in the update to Idaho's human health criteria for arsenic and looks forward to participating in, and providing input to, this important process. Should you have questions concerning these comments, please feel free to contact me.

Sincerely,



Johanna Bell, Policy Analyst

cc: Kelley Packer, AIC Executive Director  
Kevin England, AIC President  
AIC IPDES Task Force

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<sup>3</sup> These States were somehow omitted in the EPA Comment Letter submitted on May 22, 2021. See link at footnote #1.