



December 1, 2021

Mr. Dan Opalski  
Office of Water and Watersheds, Region 10  
U.S. Environmental Protection Agency  
1200 6<sup>th</sup> Ave., Suite 155  
Mail Stop: OWW-192  
Seattle, WA 9811

Subject: Submission of revised water quality standards for approval: Update of Recreation Criteria for Bacteria, Idaho rule docket 58-0102-2001.

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 rulemaking was initiated to (1) revise water quality criteria based on stakeholder comments and concerns regarding the implementation of the bacteria criteria, and (2) delete obsolete rule language contained in Subsection 260.02.

During 2019 legislative review of pending rule Docket No. 58-0102-1802, stakeholders raised concerns regarding the implementation of Idaho bacteria criteria as presented in the pending rule. On March 18, 2019, the House adopted House Concurrent Resolution No. 23 (HCR23) to reject Subsection 251.02, adopted as a pending rule under Docket No. 58-0102-1802. On March 19, 2019, HCR23 was introduced in the Senate and referred to the Senate Health & Welfare Committee. HCR23 was not reported out of committee; the pending rule docket became final and effective on April 11, 2019.

Idaho initiated this rulemaking, Docket No. 58-0102-2001, to consider revisions to bacteria criteria language in Section 251 regarding the geometric mean criterion for *E. coli* and enterococci and whether to include data sufficiency clauses or statements addressing the minimum sample number for assessing compliance with the recreational criteria, and to consider revision of statistical threshold values (STV) as criteria.

On April 1, 2020, the notice of negotiated rulemaking was published in the Idaho Administrative Bulletin and posted on DEQ's website. DEQ conducted another series of negotiations to better understand the stakeholder concerns regarding the recommended and subsequently proposed criteria. During these negotiations, DEQ agreed to include several provisions to help clarify the intent and implementation of the criteria. Specifically, language was included to address concerns regarding the implementation of the STV, increasing the time period used in

calculating geometric mean values, and including a recommendation for public swimming beaches.

Docket No. 58-0102-2001 also included the deletion of Subsection 260.02 including footnotes. Subsection 260.02, Variances from Water Quality Standards, Specific Variances, was adopted by the Idaho Board of Environmental Quality in 2000 and approved by the Idaho Legislature in 2001 (Docket No. 58-0102-0002). On May 29, 2003, DEQ submitted the final rule to EPA. On May 7, 2010, EPA disapproved the variance; therefore, Subsection 260.02 is not effective for Clean Water Act purposes and has been identified for deletion.

At the conclusion of the negotiated rulemaking process, DEQ formatted the final draft for publication as a proposed rule. The proposed rule was published in the September 2, 2021, issue of the Idaho Administrative Bulletin, followed by a formal 30-day comment period. The Idaho Board of Environmental Quality (Board) adopted the pending rule on November 19, 2020.

These revised water quality standards were submitted to the Idaho Legislature for review during the 2021 session and are currently in effect as temporary rules. To ensure that the codified rules continue beyond their expiration date with no lapse in the effect of the rules, the Board adopted IDAPA 58.01.02, Water Quality Standards, including the revisions made under Docket No. 58-0102-2001, as temporary rules pursuant to Idaho Code § 67-5226 under Omnibus Rule Docket No. 58-0000-2100. During its meeting on May 20, 2021, the Board promulgated Omnibus Rule Docket No. 58-0000-2100, and the temporary rules took effect on July 1, 2021. Pursuant to Idaho Code § 67-5226(6), DEQ also initiated proposed rulemaking in the fall of 2021 for Omnibus Rule Docket No. 58-0000-2100 (which likewise includes the Docket No. 58-0102-2001 revisions). The proposed rule will be presented to the Board for adoption as a pending rule, which will then be submitted to the Idaho Legislature for review during the 2022 session. If necessary, DEQ will utilize the temporary rule process to ensure the Docket No. 58-0102-2001 revisions remain in effect under Idaho law.

The 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 approval;
- 2) April 1, 2020, Notice of Negotiated Rulemaking;
- 3) September 2, 2020, Notice of Proposed Rule announcing opening of 30-day public comment period on proposed rule;
- 4) Negotiated Rulemaking Summary prepared pursuant to Idaho Code § 67-5220(3)(f), including the summary of public comment and DEQ's response;
- 5) November 19, 2020, Notice of Adoption of Pending Rule announcing adoption by the DEQ Board;
- 6) July 21, 2021, Notice of Omnibus Rulemaking – Adoption of Temporary Rule, Docket No. 58-0000-2100 (includes only pages relating to Docket No. 58-0102-2001);
- 7) DEQ document “Comprehensive Tracked Changes of Rule Revisions Prepared for EPA Submittal of Docket No. 58-0102-2001”; and
- 8) An Attorney General’s certification that the rules were adopted according to state law.

If you have any questions on this rulemaking and the enclosed supporting materials, please contact Beth Spelsberg at (208) 373-0158 or [elizabeth.spelsberg@deq.idaho.gov](mailto:elizabeth.spelsberg@deq.idaho.gov).

Sincerely,

A handwritten signature in blue ink that reads "Mary Anne Nelson". The signature is written in a cursive style with a large initial "M".

Mary Anne Nelson, PhD  
Administrator, Surface & Wastewater Division