



Association of Idaho Cities
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May 26, 2022

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 – Proposed Final for the Board of Environmental Quality Review and Approval

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 and their utilities play important roles as primary providers of drinking water and implementers of the Clean Water Act. Idaho cities represent over 70% of all Idaho residents. These stakeholders have significant interests in the development of water quality standards, rules, and guidance related to the protection of human and aquatic life.

AIC seeks criteria, rules, and policies that ensure effective protection of Idaho's human health and aquatic life. And, as AIC has commented previously, we appreciate how the Clean Water Act can be implemented by the IDEQ in such a way that supports enhanced effectiveness and compliance statewide.

The Idaho Department of Environmental Quality (IDEQ) initiated this rulemaking in 2018 in response to a Consent Decree between the Northwest Environmental Advocates and the US Environmental Protection Agency (EPA). This rulemaking will allow Idaho to adopt an updated human health criteria for arsenic; criteria that AIC sincerely hopes will be accepted and approved for use in Idaho by EPA.

The current rulemaking by the IDEQ was initiated to utilize Idaho-specific information on inorganic arsenic concentrations in fish and state waters to develop new arsenic human health water quality criteria. The utilization of Idaho-specific information allows the best science and most relevant environmental data to be used to develop arsenic water quality criteria for Idaho.

AIC wishes to extend our compliments to IDEQ leadership and staff on the final criteria and certain important clarifications that seek to ensure effective implementation and beneficial use support.

List of Elements Helpful to Municipalities in the Proposed Update to the Arsenic Criteria

- Under the proposed rule, where fish tissue supersedes water column criterion elements, it would be possible to collect fish tissue data at sites where annual average water column concentrations exceed the water column element if desired.
- In providing a water column criteria element, the final proposed criteria ensures that, when necessary, TMDL targets, effluent limits, or other CWA applications may be calculated without necessitating costly and intensive fish tissue monitoring. It ensures that the beneficial use is protected and that compliance with criteria can be determined when fish might be absent or when acquisition of fish tissue might be precluded. And, because the fish tissue supersedes the water column element, it allows for confirmation of exceedances or translation of fish tissue element when it is determined that collection of tissue is prudent and would be cost effective.
- Because the fish tissue element supersedes the water column element, it is possible to use the direct measure of inorganic arsenic in fish tissue rather than rely on the conservative estimates of bioaccumulation when applying the arsenic criteria.
- Helpful changes have been made to the proposed rule language at subsection 210.01.b, Fish Only, footnote k to clarify that the fish tissue element is based on total recoverable inorganic arsenic in muscle or fillet; the fish tissue element supersedes the water column element provided at least 90 days have passed since any new activity or discharge has occurred within the water body; and the fish tissue element will be applied in accordance with Subsection 210.03.e. We understand this to mean that fish tissue will not be used to determine compliance with the criterion from discharges that have not yet occurred, while acknowledging the rapid assimilation of inorganic arsenic by fish and relies upon the definition of “new activity or discharge” provided in Subsection 010.65.
- The proposed rule language has been revised at 210.03.e.iv to provide for site-specific translation of the fish tissue element in fishless waters. It is necessary to have a water column element to apply in the absence of fish tissue data to ensure protection of the beneficial use in waters where data necessary for translation of the fish tissue element are not available or attainable.
- In fishless waters, surface water from the fishless waters and fish tissue from the immediate downstream waters may be used for bioaccumulation modeling. In the absence of sufficient fish tissue data, the water column element is the applicable element in fishless waters.
- According to Idaho’s Mixing Zone rules and guidance, and because arsenic does not have a BAF >1,000 L/kg, mixing zones for arsenic will not be subject to the same restrictions as other bioaccumulative pollutants (those pollutants with a BAF >1,000), as defined under Idaho WQS.
- AIC supports Idaho’s tribal fish consumption and appreciates the IDEQ defense of the current, EPA-approved approach for the protection of human health. That is, Idaho considered tribal treaty rights when adopting the Human Health Criteria exposure factors found in Subsection 210.05.b.ii and when selecting the fish consumption rate of 0.0665 kg/day adopted in Rule Docket 58-0102- 1201. This consumption rate is based on the mean consumption rate of near coastal, estuarine, freshwater, and anadromous fishes from the Nez Perce Tribe’s fish consumption survey and corresponds to approximately the 70th percentile of the Nez Perce consumption rate. The CWA requires States adopt criteria sufficient to protect designated uses. Idaho WQS do not provide for a subsistence designated use; DEQ includes fishing as part of its secondary contact recreation use. (IDAPA 58.01.02.100.02.b.) Therefore, Idaho’s human health criteria must ensure a level of water quality that allows the safe consumption of fish taken by recreational fishermen. IDEQ agrees that, to ensure criteria are sufficient to protect the

secondary contact recreation use, IDEQ must take into consideration the amount of fish tissue consumed by both the general population in Idaho and any more highly exposed subpopulations, including the consumption of fish by members of Idaho tribes pursuant to tribal fishing rights. IDEQ has done exactly that. It has used the data from both the tribal surveys and the survey of the Idaho general population to set criteria that protect the general population and members of Idaho tribes taking fish pursuant to treaty fishing rights.

AIC appreciates the efforts by all stakeholders, and especially IDEQ staff, as we continue to work together for EPA's approval and Idaho's implementation of the updated Idaho arsenic criteria. Should you have questions concerning these comments, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Bell', written in a cursive style.

Johanna Bell, Policy Analyst

cc: Kelley Packer, AIC Executive Director
Mayor Kevin England, AIC President
Jess Byrne, IDEQ Director
AIC IPDES Task Force