



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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WATER
DIVISION

February 28, 2023

Beth Spelsberg
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706
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Re: EPA comments on draft arsenic implementation guidance

Dear Ms. Spelsberg:

Thank you for the opportunity to provide comments on the Idaho Department of Environmental Quality (DEQ) *Draft No. 1- Implementation Guidance for Idaho's Human Health Water Quality Criteria for Arsenic*. The U.S. Environmental Protection Agency (EPA) appreciates and supports DEQ's efforts to develop guidance through stakeholder input.

We have the following comments for your consideration:

Same Water Body

The rule language requires that a fish tissue sample be collected from the same water body within the same calendar year. The guidance should clearly define what is considered "the same water body" for the purposes of using the fish tissue criterion element. For example, does DEQ define same water body as within the same assessment unit, or would multiple assessment units be combined for purposes of applying the fish tissue criterion element? The guidance should provide a specific and concrete definition of what is considered "the same waterbody."

Representative Game Fish Species

The guidance makes reference to Idaho Fish and Game (IDFG) classification of game fish species and suggests that interested parties should work with DEQ and IDFG when developing a monitoring plan in order to identify representative game fish species. The guidance should expand on this discussion to clearly identify what constitutes "representative." EPA suggests that the guidance should clarify that if, after consultation with IDFG, it is determined that there are multiple resident game fish species at a given water body, at a minimum, a sample (i.e., minimum of five fish, of the same species, collected within the same calendar year) of each game fish species that could be legally sampled and harvested should be collected for application of the fish tissue element. Conversely, if samples do not represent all the resident game fish species that can be legally collected or harvested then DEQ should be clear that the water column criterion element will be the applicable element until samples from all game fish species can be collected and analyzed.

Site Specific Translation

During rulemaking, DEQ stated that application of the BAF translation would be application specific; i.e., specific to a TMDL or permit and would not be considered a new site specific criteria for a

particular water body. DEQ should clarify in the guidance if site specific translations are application specific and should detail how the public and other interested stakeholders will be notified.

The rule language provides a preference for trophic level weighted BAFs when applying site specific translations, and describes how to calculate a trophic level weighted BAF when data are available for each trophic level. However, the guidance does not describe whether and how to calculate a site specific BAF when data are not available for every trophic level. The guidance should provide instruction on whether and how to derive BAFs when data are not available for all three trophic levels.

In addition, DEQ should consider providing trophic level designations for common Idaho gamefish species within the guidance document. This would provide certainty and consistency across applications of the site specific translator.

Currently, there is no discussion on what constitutes a “scientifically defensible method for deriving a protective BAF.” The guidance should clearly detail how DEQ will evaluate whether an alternative BAF derivation is scientifically defensible and protective and detail how the public and other interested stakeholders will be provided an opportunity to review and comment on the application of an alternative BAF method prior to implementation in Clean Water Act programs.

Fishless waters

The guidance should clarify that when modeling bioaccumulation for fishless waters, fish tissue and water column samples must be from the same water body, and that both fish tissue and water column samples must meet the requirements of the rule subsection 210.03.e.v.

Consistency with rule language

There are instances where the guidance appears to be inconsistent with rule language.

Section 4.2.1, pg. 14, second full paragraph:

If a monitoring plan is developed in which applicant would like to utilize fish tissue data to develop a water column value and suitable game fish are not available, then according to the proposed rule other resident fish species can be used. However, DEQ recommends utilizing downstream gamefish for the calculation (see section 5 on Fishless Waters).

This statement appears to be inconsistent with the rule language. Although the rule preferences the use of game fish, it does not provide for extrapolation from alternate sites when other, non-game fish species are present at a site. Furthermore, the rule language states that if representative fish cannot be collected from a site, and the site is not fishless, then the water column element of 4.3 µg/L is the applicable element. As such, EPA recommends deleting the second italicized sentence above.

Section 9, pg 22, first bullet:

For contact recreation use criteria, if fish tissue data from at least five individuals of the same species are available, where the smallest individual is no less than 75% of the total length (size)

of the largest individual, compare the fish tissue data results to the applicable tissue criterion element (Fish Only). If the annual arithmetic average tissue value is less than the criterion, the AU will not be listed as impaired.

The application of the size requirements (*where the smallest individual is no less than 75% of the total length (size) of the largest individual*) is not found within the rule language. Furthermore, the *annual arithmetic average* should apply to the water column element, not to fish tissue. The rule requires that the fish tissue element is “*Not to be exceeded...*” meaning that if a fish tissue sample collected in accordance with the provisions of the rule language (i.e., minimum of five fish, of the same species, collected from the same water body, within the same calendar year) exceeds the tissue criterion, then the water body would be considered out of compliance with water quality standards.

During the February 14, 2023, guidance development meeting, there was discussion about the requirement to collect a minimum of five fish of the same species to apply the fish tissue criterion element. DEQ should clarify in guidance that this minimum is required in rule, and that the absence of a minimum five fish of a single species is considered insufficient fish tissue data, and therefore the water column element would be the applicable criterion element.

EPA suggests that Idaho review and revise the guidance document to ensure it is consistent with the rule language, and affirm that sufficient fish tissue is defined in rule and therefore cannot be changed through guidance.

We look forward to working with DEQ as you continue to develop the arsenic implementation guidance. Please feel free to contact me at (208) 378-5756 or pappani.jason@epa.gov if you have any questions.

Sincerely,



Jason Pappani
Idaho WQS Coordinator