



June 27, 2023

Michael Szerlog  
Acting Director, Water Division  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Ave., Suite 155  
Seattle, WA 98101

Re: Submission of revised water quality standards for approval: Update of Idaho's Human Health Criteria for Arsenic, Idaho rule docket 58-0102-2201.

Dear Mr. Szerlog:

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 update Idaho's human health criteria for arsenic.

In May 2016, EPA entered into a Consent Decree with Northwest Environmental Advocates to reconsider EPA's 2010 approval of Idaho's human health criteria for arsenic. In September 2016, EPA disapproved Idaho's human health criteria of 10 µg/L arsenic for both consumption of fish only and consumption of fish & water. The [Consent Decree](#) requires that EPA propose new human health criteria for arsenic by November 15, 2018, and that EPA either approve Idaho's submittal of revised human health criteria for arsenic or promulgate federal criteria by July 15, 2019.

In June 2018, the Court granted the [Unopposed Motion to Modify Consent Decree](#), extending the Consent Decree Paragraph 5 deadlines to November 15, 2022, and the Paragraph 6 deadlines to November 15, 2023.

In June 2022, the Court granted the [Unopposed Second Motion to Modify Consent Decree](#), extending the Consent Decree Paragraph 5 deadlines to November 15, 2023, and the Paragraph 6 deadlines to November 15, 2024.

On April 4, 2018, the notice of negotiated rulemaking was published in the Idaho Administrative Bulletin under [Docket No. 58-0102-1801](#) and posted on DEQ's website. Eight meetings were held between April 2018 and November 2020. On December 9, 2020, a preliminary draft rule was posted on DEQ's website. Five additional meetings were held between December 2020 and November 2021 for a total of 13 negotiated rulemaking meetings. Stakeholders participated by attending the meetings and providing verbal and written comments. At the conclusion of the negotiated rulemaking process, DEQ formatted the final draft for publication as a proposed rule under [Docket No. 58-0102-2201](#). The proposed rule was published in the March 2, 2022, issue of the Idaho Administrative Bulletin followed by a formal 30-day comment period.

The rule was presented to the Idaho Board of Environmental Quality (Board) on May 26, 2022, and adopted as a pending rule. The pending rule was noticed in the July 6, 2022, issue of the Idaho Administrative Bulletin and finalized by the 2023 Idaho Legislature, becoming effective under Idaho Law on April 6, 2023.

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. Idaho Human Health Criteria for Arsenic Technical Justification;
3. An Attorney General's certification that the rules were adopted according to state law;
4. [April 4, 2018, Notice of Negotiated Rulemaking](#);
5. [March 2, 2022, Notice of Rulemaking - Proposed Rule](#) announcing opening of 30-day public comment period on proposed rule;
6. [Negotiated Rulemaking Summary](#) prepared pursuant to Idaho Code § 67-5220(3)(f), including the summary of public comment and DEQ's response;
7. [May 26, 2022, Board Meeting Minutes](#);
8. [July 6, 2022, Notice of Rulemaking – Adoption of Pending Rule](#) announcing adoption by the Board; and
9. [June 7, 2023, Omnibus Notice of Legislative Action - Summary of Action Taken on Pending, Pending Fee, Temporary, and Final Rules](#).

Documents 1 through 3 are attached. Electronic copies of the listed documents and other documents related to this rulemaking are available at <https://www.deq.idaho.gov/water-quality-docket-no-58-0102-2201/> or <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/water-quality-docket-no-58-0102-1801/>. If you have any questions regarding this rulemaking or supporting materials, please contact Beth Spelsberg at (208) 373-0158 or [elizabeth.spelsberg@deq.idaho.gov](mailto:elizabeth.spelsberg@deq.idaho.gov).

Sincerely,



Mary Anne Nelson, PhD  
Administrator, Surface and Wastewater Division

c: Elizabeth Spelsberg, DEQ