



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

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WATER  
DIVISION

July 25, 2023

Beth Spelsberg  
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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) *June 2023 Draft 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. EPA appreciates DEQ's consideration of our comments to Draft No. 2 and incorporation into this draft.

We have the following specific comments for your consideration:

**Executive summary, pg. vii, second paragraph**

The Water & Fish criterion is for total recoverable arsenic, while the Fish Only criterion (including translations of the fish tissue) apply to dissolved arsenic. Please indicate if it is necessary to use a conversion factor to compare translated tissue values to the Water & Fish, and, if so, what would that factor be.

**Section 4.1, last paragraph**

The draft guidance states that when sampling for compliance that even though no minimum number of samples is required, the sample should represent the annual average concentration. DEQ should elaborate on how staff or stakeholders can ensure that samples represent annual average concentrations and should clarify how the state will act on water column data. For example, in the absence of multiple samples, would DEQ act on a single sample if it represents an exceedance, and if not, how would DEQ ensure that sufficient samples are obtained to compare to criteria?

**Section 4.3, first sentence**

Guidance discusses using site-specific translation for CERCLA actions. The rule language limits CWA application of site-specific translation to "...development of effluent limits, TMDL targets, or water column targets for fishless waters." While translation may be appropriate for non-CWA applications such as CERCLA actions, the guidance should clarify that these applications are not CWA applications of the criteria, and may need to reference appropriate authorities under CERCLA or state regulations.

**Section 5.1**

EPA suggests that any sampling and analysis plan should include a description of the intended use of the data (e.g., translation for fishless water, or effluent limit development) as this may affect the sampling

location and timing. In addition, the guidance should suggest analysis to determine sampling locations and how those locations were determined to be representative of the Assessment Unit.

**Section 5.1.1, first paragraph**

The definition for game fish provided in Section 4.1.1 is “fish routinely pursued by recreational anglers and can be consumed” and are listed based on the Idaho Department of Fish and Game (IDFG) rules. In Section 5.1 of the draft guidance, in addition to a reference to Section 4.1.1, the definition is restated as “fish routinely pursued in the evaluated water body” without mention of angler consumption. We recommend that, in order to ensure clarity and consistency, DEQ define game fish species through reference to IDFG rules at the first mention of game fish only.

**Section 6**

The text and the text box use different phrases when referring to the location of sampling for bioaccumulation modeling for fishless waters. The text box uses “immediate downstream” while the text uses “nearest water body.” The rule language at IDAPA 58.01.02.210.e states that ... *“In fishless waters, surface water and fish tissue from the immediate downstream waters may be used for bioaccumulation modeling.”* For consistency within guidance and with the rule, the guidance should use “immediate downstream” whenever discussing the location of sampling for bioaccumulation modeling for fishless waters.

**Section 7, pg. 30, last bullet**

Should clarify that the translated water column value is compared to the annual arithmetic mean of the samples taken.

**Section 11, 3<sup>rd</sup> paragraph**

The discussion of RPTE analysis in Section 11 implies that RPTE analysis requires water column data, while Section 11.1 states that either fish tissue or water column data can be used for RPTE. Section 11 should be revised to reflect that fish tissue data can also be used for RPTE.

**Section 11, 5<sup>th</sup> paragraph**

EPA suggests that the guidance clarifies how DEQ will ensure protection of downstream waters within and outside of Idaho’s borders. Because Idaho arsenic human health criteria are less stringent than downstream jurisdictions, it is important that DEQ consider downstream effects when implementing the arsenic HHC in CWA programs. EPA suggests the following language be added to the first sentence:

“IPDES regulations require permit writers to assess the impact of discharges on downstream water quality *and address situations where the discharge will cause, have the reasonable potential to cause, or contribute to an excursion above downstream water quality standards*”

**Appendix A, Human Health Water Quality Criteria for Arsenic**

Suggest removing DI (drinking water intake) term from equation. It is not defined, and since the equation was not used for deriving the Water & Fish criterion, it is unnecessary and confusing to include in the equation.

**Appendix B. Example #2 DWS and recreational use waters with fish**

ii(1) indicates that a water column violation would be considered a criterion exceedance, even if tissue element was met. Our understanding of the rule language is that if the Water & Fish water column criterion is met, and the tissue element of the Fish Only criterion is met, then the water body would be full support of both the DWS use (Water & Fish criterion) and recreation uses (Fish Only fish tissue element supersedes water column element). Suggest DEQ reevaluate this example and revise if necessary.

**Appendix B. Example #3 Fishless recreational use waters**

The description at *ii(1)* is confusing. The rule requires that for fishless waters, translation of the fish tissue criterion element is based on paired water and fish tissue from *the immediate downstream water body*. In other words, translations *must* be based on spatially paired data. The resulting translation can then be used to determine compliance in the upstream, fishless water.

In the example at *iii(1)* it is suggested that a fishless water would be considered impaired if downstream fish tissue exceed the criterion. This seems inconsistent with other provisions of the guidance, where data are applied to a water body, defined as an assessment unit. If the fishless water is not within the same assessment unit as the fish tissue sample, it seems like it would be inappropriate to base listing decisions on the fish tissue data, regardless of support status.

EPA would like to thank you for the opportunity to comment on the draft guidance. If you have any questions, please feel free to contact me at (208) 378-5756 or by email at [pappani.jason@epa.gov](mailto:pappani.jason@epa.gov).

Sincerely,



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