



REGION 10

SEATTLE, WA 98101

December 19, 2024

Dr. Mary Anne Nelson
Surface and Wastewater Division Administrator
Idaho Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706-1255

Dear Dr. Nelson:

The U.S. Environmental Protection Agency has completed its Clean Water Act review of the new and revised water quality standards at IDAPA 58.01.02.401.01, submitted to the EPA by the Idaho Department of Environmental Quality by letters dated August 7, 2012, and April 15, 2019. Under section 303(c) of the CWA, 33 U.S.C. § 1313(c), states must submit new and revised WQS to the EPA for review and action, and the EPA must ensure that those WQS are consistent with the CWA and its implementing regulations. The details of the EPA's actions are outlined below and are further described in the enclosed technical support document.

The EPA's action applies only to waters in the state of Idaho and does not apply to waters that are within Indian Country, as defined in 18 U.S.C. § 1151. Nothing in this action shall constitute an approval or disapproval of a WQS that applies to waters within Indian Country. The EPA, or authorized Indian Tribes, as appropriate, retain the authority to establish WQS for waters within Indian Country.

Summary of the EPA's Actions

1. Approval of a Non-substantive Edit to Existing WQS

Pursuant to section 303(c)(3) of the Clean Water Act, 33 U.S.C. § 1313(c)(3), and 40 CFR Part 131, the EPA is approving Idaho's non-substantive revision to IDAPA 58.01.02.401.01.e¹ (Idaho docket 58-0102-1803; submitted to the EPA on April 15, 2019).

Please refer to the enclosed technical support document for the EPA's disapproval action rationale and a description of the WQS in effect for CWA purposes.

¹ Idaho's 2019 submission cites the provision as IDAPA 58.01.02.401.01.c. The EPA cites the provision as IDAPA 58.01.02.401.01.e which is consistent with the WQS that are currently in effect under the CWA. The discrepancy in citations results from Idaho's 2012 removal of the thermal treatment requirements at IDAPA 58.01.02.401.01.c-d and renumbering of the subject provision from 401.01.e to 401.01.c, revisions which are not effective under the CWA.

2. Disapproval Action

Pursuant to section 303(c)(3) of the Clean Water Act, 33 U.S.C. § 1313(c)(3), and 40 CFR Part 131, the EPA is disapproving Idaho's submission of the following new and revised WQS:

- Revisions to Remove Existing WQS at IDAPA 58.01.02.401.01.c-e: The withdrawal of the statewide thermal treatment numeric limits on induced variation for point source wastewater dischargers (Idaho docket 58-0102-1101; submitted to the EPA on August 7, 2012)
- Addition of a New WQS at IDAPA 58.01.02.401.01: The addition of a de minimis temperature allowance of up to 0.3 degrees Celsius above the State's applicable temperature criteria (Idaho docket 58-0102-1803; submitted to the EPA on April 15, 2019)

Remedy to Address the Disapproval

CWA section 303(c)(3) and the federal WQS regulations at 40 CFR 131.21 provide, in part, that when the EPA disapproves a state's new or revised WQS, the EPA shall specify changes that are needed to assure compliance with the requirements of the CWA.

There are no changes necessary to address this disapproval. The effect of the EPA's disapproval is that the currently applicable provisions at IDAPA 58.01.02.401.01 continue to apply for CWA purposes (see *Water Quality Standards in Effect for Clean Water Act Purposes* below). Since the disapproval retains previously approved limits on thermal discharges, and because these provisions remain in Idaho's WQS and are protective of designated aquatic life uses, the EPA is not specifying any changes as the result of this disapproval that Idaho must adopt to meet CWA requirements.

The EPA is providing the following discretionary recommendations for Idaho's consideration:

- The state could consider adopting revised site-specific thermal treatment requirements and submit those revisions to the EPA for review under section 303(c) of the CWA.
- The state could consider additional revisions to its WQS, including revised temperature criteria that take into consideration the latest science on protection of aquatic species, such as the EPA's *2003 Region 10 Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards*, hereafter referred to as the "PNW Temperature Guidance," coupled with a de minimis temperature allowance.

Water Quality Standards in Effect for Clean Water Act Purposes

As a result of these disapproval actions, the WQS provisions at IDAPA 58.01.02.401.01.a-e currently in effect for CWA purposes are:

58.01.02.401. Point Source Wastewater Treatment Requirements:

Unless more stringent limitations are necessary to meet the applicable requirements of Sections 200 through 300, or unless specific exemptions are made pursuant to Subsection 080.02, wastewaters discharged into surface waters of the state must have the following characteristics:

*01. **Temperature.** The wastewater must not affect the receiving water outside the mixing zone so that:*

a. The temperature of the receiving water or of downstream waters will interfere with designated beneficial uses.

b. Daily and seasonal temperature cycles characteristic of the water body are not maintained.

c. If the water is designated for warm water aquatic life, the induced variation is more than plus two (+2) degrees C.

d. If the water is designated for cold water aquatic life, seasonal cold water aquatic life, or salmonid spawning, the induced variation is more than plus one (+1) degree C.

e. If temperature criteria for the designated aquatic life use are exceeded in the receiving waters upstream of the discharge due to natural background conditions, then Subsections 401.01.c. and 401.01.d. do not apply and instead wastewater must not raise the receiving water temperatures by more than three tenths (0.3) degrees C above the natural background conditions.

The EPA appreciates the efforts of your staff and their ongoing work to update Idaho's WQS. Recently, in a letter dated September 5, 2024, Idaho committed to a rulemaking timeline to revise the state's existing numeric temperature criteria. The EPA supports this important effort and looks forward to continuing close collaborations with you and your staff. If you have any questions regarding this letter, please contact me at (206) 553-0171 or shaw.hanh@epa.gov or Jason Pappani, the EPA staff lead, at (208) 378-5756 or pappani.jason@epa.gov.

Sincerely,

Hanh Shaw, Manager
Standards, Assessment and Watershed
Management Branch
Water Division

ENCLOSURE

1. Technical Support Document

cc (e-copy): Julia Achabal, Surface Water Bureau Chief, Idaho Department of Environmental Quality
Beth Spelsberg, Sr. WQS Scientist, Idaho Department of Environmental Quality

Technical Support Document

The EPA's Clean Water Act Action to Disapprove New and Revised Idaho WQS:

- 1) Removal of the Thermal Treatment Numeric Limits on Induced Variation (submitted August 7, 2012) and
- 2) Addition of a De Minimis Temperature Allowance for Thermal Discharges Above the Applicable Numeric Temperature Criteria (submitted April 15, 2019)

AND

Clean Water Act Approval of Non-substantive Revisions

December 19, 2024

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I. Introduction

This Technical Support Document explains the basis for the U.S. Environmental Protection Agency's (EPA's) action under section 303(c) of the Clean Water Act (CWA), 33 U.S.C. 1313(c), and the federal water quality standards (WQS) regulations at 40 CFR Part 131.

The EPA is disapproving Idaho's submission of the following new and revised WQS:

- Removal of the Thermal Treatment Numeric Limits on Induced Variation from Idaho's currently effective WQS, Idaho Docket 58-0102-1101 (submitted August 7, 2012); and
- Adoption of a new WQS that provides a De Minimis Temperature Allowance for Thermal Discharges, Idaho Docket 58-0102-1803 (submitted April 15, 2019).

The EPA is approving Idaho's non-substantive revision to the following WQS:

- Addition of language at the end of the current WQS that provides a De Minimis Temperature Allowance for Thermal Dischargers above natural background conditions, Idaho Docket 58-0102-1803 (submitted April 15, 2019).

A. Clean Water Act Requirements for Water Quality Standards

The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters with an interim goal, where attainable, to achieve water quality that provides for the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water. Under section 303(c) of the CWA and federal implementing regulations at 40 CFR 131.4, states and authorized Tribes¹ (hereafter referred to as "states") have the primary responsibility for reviewing, establishing, and revising WQS. These standards include the designated uses of a waterbody or waterbody segment, the water quality criteria necessary to protect those designated uses, and an antidegradation policy. This statutory and regulatory framework allows states to work with local communities to adopt appropriate designated uses (as required in 40 CFR 131.10(a)) and adopt criteria to protect those designated uses (as required in 40 CFR 131.11(a)).

States are required to hold public hearings for the purpose of reviewing applicable WQS at least once every three years and, as appropriate, modifying and adopting standards (40 CFR 131.20). Each state must follow applicable legal procedures for revising or adopting such standards (40 CFR 131.5(a)(6)) and is required to submit a certification by the state's attorney general, or other appropriate legal authority within the state, that the WQS were duly adopted pursuant to state law (40 CFR 131.6(e)). The EPA's review authority and the minimum requirements for state WQS submittals are described at 40 CFR 131.5 and 131.6, respectively.

Section 303(c) of the CWA requires states and authorized Tribes to submit new or revised WQS to the EPA for review and action. The EPA reviews these changes and approves the WQS if they meet the requirements of the CWA and the EPA's implementing regulations.

¹ The term "authorized tribe" means a tribe eligible under CWA section 518(e) and 40 CFR 131.8 for treatment in a similar manner as a state (TAS) for the purpose of administering a water quality standards program.

The EPA considers four questions (described below) when evaluating whether a particular provision is a new or revised WQS. If all four questions are answered “yes” then the provision would likely constitute a new or revised WQS that the EPA has the authority and duty to approve or disapprove under CWA section 303(c)(3).²

1. Is it a legally binding provision adopted or established pursuant to state or tribal law?
2. Does the provision address designated uses, water quality criteria (narrative or numeric) to protect designated uses, and/or antidegradation requirements for waters of the United States?
3. Does the provision express or establish the desired condition (e.g., uses, criteria) or instream level of protection (e.g., antidegradation requirements) for waters of the United States immediately or mandate how it will be expressed or established for such waters in the future?
4. Does the provision establish a new WQS or revise an existing WQS?

If the EPA approves a state’s WQS submission, such standard(s) shall thereafter be the applicable standard(s) for CWA purposes. When the EPA disapproves a state’s WQS, the EPA shall notify the state and specify why the WQS is not in compliance with the requirements of the CWA and federal WQS regulations and specify any changes that are needed to meet such requirements (40 CFR 131.21).

Finally, the EPA considers non-substantive edits to existing WQS to constitute new or revised WQS that the EPA has the authority and duty to approve or disapprove under CWA section 303(c)(3). While such edits and changes do not substantively change the meaning or intent of the existing WQS, the EPA believes it is reasonable to treat such edits and changes in this manner to ensure public transparency as to which provisions are applicable for CWA purposes. The EPA notes that the scope of its review and action on non-substantive edits or editorial changes extend only to the non-substantive edits or changes themselves. The EPA does not re-open or reconsider the underlying WQS that are the subject of the non-substantive edits or editorial changes.

II. The State WQS Submittals

A. Removal of Thermal Treatment Numeric Limits

On August 7, 2012, Idaho submitted for the EPA’s review and action under CWA section 303(c) removal of certain provisions from Idaho’s WQS that require wastewater discharges to meet numeric limits on induced variation for temperature when waters are colder than criteria. These revisions were first submitted to the EPA on July 20, 2011, as part of a temporary rule submission (Idaho docket 58-0102-1101T). The temporary rule comprised both the removal of the statewide thermal treatment numeric limits, as well as a site-specific revision to the thermal treatment requirements applicable to the Lower Boise River Subbasin (IDAPA 58.01.02.278.05). On October 27, 2011, the EPA approved the site-specific salmonid spawning temperature criteria and thermal treatment numeric limits for the Lower Boise River Subbasin (docket 58-0102-1101T). However, at that time, the EPA deferred action on the statewide removal of thermal treatment numeric limits with the expectation that Idaho would address previous comments provided by the EPA (September 2, 2011) and resubmit a revised final rule.

² What is a New or Revised Water Quality Standard under 303(c)(3)? Frequently Asked Questions, EPA No. 820F12017 (Oct. 2012). Available at <https://www.epa.gov/sites/production/files/2014-11/documents/cwa303faq.pdf>

As required under Section 67-5226(5) Idaho Code, the temporary rule was noticed as a proposed rule in the August 3, 2011, issue of the Idaho administrative bulletin. An opportunity for public comment on the proposed rules was open from August 3 to September 2, 2011. The proposed rule was adopted as a pending rule (as presented) by the Idaho Board of Environmental Quality on November 10, 2011, became effective under Idaho law on March 29, 2012, and was certified as duly adopted by the Idaho Attorney General. The public had the opportunity to provide oral comments to the Idaho Board of Environmental Quality on the proposed rule at a board meeting on November 10, 2011. On August 7, 2012, Idaho submitted the final rule to the EPA, which contained the same materials provided to the EPA in the temporary rule package on July 20, 2011, along with a supplemental justification for the removal of the statewide thermal treatment numeric limits.

Idaho submitted the following documents to the EPA in accordance with the minimum requirements of a WQS submittal at 40 CFR 131.6.

2012 Submittal Documents:

- Cover letter from Barry Burnell, Idaho Department of Environmental Quality, Water Quality Division Director, to Mike Bussell, the EPA Region 10 Office of Water and Watersheds Director, dated August 7, 2012, and incorporating the July 20, 2011, submittal to the EPA of the temporary rule
- Supplemental justification for removal of the statewide thermal treatment numeric limits, August 2, 2012, and supplementary attachments included with the July 20, 2011 submittal
- Notice of Temporary and Proposed Rule, August 3, 2011
- Public comment summary and Idaho's response, undated
- Notice of Pending Rule – Idaho Board of Environmental Quality Announcement of Rule Adoption, December 7, 2011
- Notice of Legislative Action – 2012 Idaho Legislature Approval and Effective Date, March 29, 2012
- Attorney General's certification that the rules were adopted according to state law, April 13, 2012

The EPA completed its CWA section 303(c) review and, for the reasons set forth in Section III below, disapproves Idaho's 2012 revisions to remove IDAPA 58.01.02.401.01c-e (docket 58-0102-1101).

B. De Minimis Temperature Allowance Background

On April 15, 2019, Idaho submitted revisions to its WQS at IDAPA 58.01.02.401.01 that describe point source wastewater treatment requirements to limit temperature increases in receiving waters that exceed applicable temperature criteria. Specifically, Idaho adopted a new provision to allow a 0.3 degrees Celsius "de minimis" temperature allowance above applicable temperature criteria. Idaho also submitted a non-substantive revision to the existing WQS at IDAPA 58.01.02.401.01.e to clarify the currently effective 0.3 degrees Celsius "de minimis" temperature allowance for waters that exceed numeric criteria due to natural background conditions is an allowance above the natural background condition.

Idaho issued the proposed rule for public comment on September 5, 2018. The comment period was open from September 5 to October 5, 2018.

The public had the opportunity to provide oral comments to the Idaho Board of Environmental Quality on the proposed rule at a board meeting on November 14, 2018. The rule revisions were adopted on November 14, 2018, became effective under state law on April 11, 2019, and were certified by the Idaho Attorney General on April 12, 2019, as duly adopted pursuant to state law. Idaho submitted the following documents to the EPA in accordance with the minimum requirements of a WQS submittal at 40 CFR 131.6.

2019 Submittal Documents:

- Cover letter from Barry Burnell, Idaho Department of Environmental Quality, Water Quality Division Director, to Dan Opalski, the EPA Region 10 Office of Water and Watersheds Director, dated April 15, 2019
- Notice of Negotiated Rulemaking, July 4, 2018
- Summary of Negotiated Rulemaking including Response to Public Comments, August 17, 2018
- Notice of Rulemaking – Proposed Rule, 30 day public comment announcement and track-changes version of WQS for surface waters of the state, IDAPA 58.01.02.401.01 in Docket 58-0102-1803, September 5, 2018
- Idaho Board of Environmental Quality Meeting Minutes, November 2018
- Notice of Pending Rule announcing adoption, December 5, 2018
- Attorney General's certification that the rules were adopted according to state law, April 12, 2019
- Omnibus Rulemaking Notice of Final Legislative Action, May 1, 2019

The EPA completed its CWA section 303(c) review and, for the reasons set forth in Section III below, disapproves Idaho's 2019 adoption of a new WQS at IDAPA 58.01.02.401.01. The EPA is approving Idaho's non-substantive revision to the existing WQS at IDAPA 58.01.02.401.01.e (Docket 58-0102-1803).

III. The EPA's Action on Idaho's New and Revised WQS

This section explains the basis for the EPA's disapproval of the new and revised WQS submitted by Idaho on August 7, 2012, and April 15, 2019.

This action applies only to water bodies under the jurisdiction of the State of Idaho and does not apply to waters within Indian Country, and nothing in this letter and technical support document shall constitute an approval or disapproval of a WQS that applies to waters within Tribal jurisdiction.

A. The EPA's Action on the Removal of Statewide Thermal Treatment Numeric Limits on Induced Temperature Variations

In accordance with its CWA authority, 33 U.S.C. 1313(c)(3) and 40 CFR 131.21, the EPA disapproves revisions to IDAPA 58.01.02.401.01.c – e that would remove from Idaho's WQS requirements for

wastewater discharges to comply with numeric limits on induced variation to waterbody temperatures, submitted to the EPA on August 7, 2012 (Idaho Docket Number 58-0102-1101).

The disapproved revisions to the WQS provisions at IDAPA 58.01.02.401.01.c – e are excerpted below. The underlined text indicates Idaho’s new and/or revised language (in the excerpt below, only the provision numbering is new) and the ~~strikeout~~ text indicates the previous rule language that Idaho removed from its WQS in the 2012 WQS submittal.

58.01.02.401. Point Source Wastewater Treatment Requirements: *Unless more stringent limitations are necessary to meet the applicable requirements of Sections 200 through 300, or unless specific exemptions are made pursuant to Subsection 080.02, wastewaters discharged into surface waters of the state must have the following characteristics:*

*01. **Temperature.** The wastewater must not affect the receiving water outside the mixing zone so that:*

...

~~*c. If the water is designated for warm water aquatic life, the induced variation is more than plus two (+2) degrees C.*~~

~~*d. If the water is designated for cold water aquatic life, seasonal cold water aquatic life, or salmonid spawning, the induced variation is more than plus one (+1) degree C.*~~

~~*e. c. If temperature criteria for the designated aquatic life use are exceeded in the receiving waters upstream of the discharge due to natural background conditions, then Subsections 401.01.c. and 401.01.d. do not apply and instead wastewater must not raise the receiving water temperatures by more than three tenths (0.3) degrees.*~~

Rationale for Disapproval

Idaho’s currently effective thermal treatment numeric limits are specific, quantifiable limits on temperature increases in receiving waters that protect against adverse effects to sensitive aquatic life and preserve important thermal diversity to support Idaho’s aquatic life uses.³ Removal of the statewide thermal treatment numeric limits on induced temperature variations in receiving waters (IDAPA 58.01.02.401.01.c – e) would adversely impact designated aquatic life uses, including causing or contributing to adverse effects to sensitive species such as coldwater salmonids that are listed as threatened or endangered under the Endangered Species Act.⁴ Retention of the thermal treatment numeric limits will ensure that thermal diversity is maintained and protected, including the protection of existing cold-water areas, and thus protect sensitive aquatic life uses. Idaho’s 2012 submittal did not

³ The EPA’s PNW Temperature Guidance (p. 33) recommends that states adopt WQS to protect salmonids from thermal plume impacts including lethal temperatures, thermal shock, blocking migration, impacts to sensitive life stages (spawning, egg incubation, fry emergence) and the loss of thermal diversity and cold water refugia.

⁴ US EPA Region 10. Biological Evaluation of USEPA’s Proposed Approval of Idaho’s Temperature Water Quality Standards, June 30, 2023.

provide the information or analysis needed to support the conclusion that removal of these WQS will protect the most sensitive aquatic life uses. In fact, in the supplemental technical justification in the final 2012 submittal, the state acknowledged that protecting cold water is important, including protection of waters that are colder than the applicable criteria.

Idaho's supplemental justification supporting the removal of the thermal treatment numeric limits suggested that Idaho's antidegradation policy would limit increases in receiving water temperatures to 10% or less of the assimilative capacity. Idaho asserted in the supplemental justification that the remaining general narratives about use protection at IDAPA 58.01.02.401.01(a-b) would be adequate to protect sensitive salmonids. However, Idaho did not sufficiently explain how, in the absence of thermal treatment numeric limits, it would interpret and implement the general narratives at IDAPA 58.01.02.401.01.a-b to ensure protection of aquatic life uses.

Furthermore, Idaho's 2003 natural conditions criteria implementation document⁵ acknowledges the importance of the thermal treatment limits to protect waters colder than criteria. Specifically, the thermal treatment limits were identified by the state as the mechanism by which waterbodies with natural temperatures that are colder than the numeric criteria will be protected:

“Further for temperature, allowable increases due to thermal discharges are specifically limited to 1.0°C for waters designated for cold water aquatic life. We interpret this allowance as a presumption that so long as stream temperatures are still lower than applicable numeric limits, a 1.0°C increase would not likely be adverse to aquatic life uses of the stream. If there we [*sic*] evidence that such an increase would likely be adverse, more stringent limitations could be imposed. Thus if natural stream temperatures were naturally cooler than numeric criteria, then the temperatures would not be allowed to increase up to the numeric criteria. For example, if the criterion for a natural stream were a daily average of less than 19°C, and the highest measured daily average was 15°C, new or increased temperature sources⁵ would be limited to causing an increase of 1.0°C at the edge of the mixing zone, for a 16°C maximum daily average. An increase of 4.0°C, to the 19°C daily average criterion would not be allowable.”⁶

This implementation guidance was cited in the National Marine Fisheries Service 2008 Biological Opinion on EPA's approval of the natural conditions criteria.

Consistent with the CWA and its implementing regulations at 40 CFR part 131, the EPA disapproves Idaho's removal of the thermal treatment numeric limits.

Remedy to Address the Disapproval

The effect of the EPA's disapproval is that Idaho's thermal treatment numeric limits remain in effect under the CWA. Because these provisions remain in Idaho's WQS and are protective of designated aquatic life uses, no changes are necessary to meet the requirements of the CWA. Therefore, the EPA

⁵ Mebane and Essig 2003. Concepts and Recommendations for Using the “Natural Conditions” Provisions of the Idaho Water Quality Standard. Available at: <https://www2.deq.idaho.gov/admin/LEIA/api/document/download/4833>.

⁶ See e.g., Pages 5-6 “#5” from Mebane and Essig 2003

is not specifying any required changes that Idaho must adopt to meet CWA requirements (see section below, *Water Quality Standards in Effect Under the CWA*).

Idaho has the option of adopting revised site-specific thermal treatment requirements and submitting those revisions to the EPA for review under section 303(c) of the CWA. This could include, for example, adjusting the numeric limits based upon the site-specific requirements for certain waterbodies. The EPA is available to assist if the state would like to pursue this approach.

B. The EPA's Action on De Minimis Temperature Allowance

In accordance with its CWA authority, 33 U.S.C. 1313(c)(3) and 40 CFR 131.21, the EPA disapproves Idaho's adoption of a new WQS provision at IDAPA 58.01.02.401.01, submitted to the EPA on April 15, 2019, allowing for inclusion of a "de minimis" temperature allowance of up to 0.3 degrees Celsius above the applicable temperature criteria or natural background conditions for waterbodies receiving wastewater discharges.⁷ In addition to this disapproval, the EPA is approving the non-substantive revision to IDAPA 58.01.02.401.01.c, submitted to the EPA on April 15, 2019.

The EPA's Disapproval of a New De Minimis Temperature Allowance IDAPA 58.01.02.401.01

The new WQS provision at IDAPA 58.01.02.401.01 is excerpted below. The underlined text indicates new and/or revised language included in Idaho's 2019 WQS submittal.

58.01.02.401 Point Source Wastewater Treatment Requirements: *Unless more stringent limitations are necessary to meet the applicable requirements of Sections 200 through 300, or unless specific exemptions are made pursuant to Subsection 080.02, wastewaters discharged into surface waters of the state must have the following characteristics:*

*01. **Temperature.** The wastewater must not affect the receiving water outside the mixing zone so that:*

...

d. If temperature criteria for the designated aquatic life use are exceeded in the receiving waters upstream of the discharge, then wastewater must not raise the receiving water temperatures by more than three tenths (0.3) degrees C above numeric criteria.

Rationale for Disapproval

Idaho has not provided analyses to support a conclusion that a 0.3 degrees Celsius allowance above Idaho's numeric temperature criteria is scientifically defensible and protective of all designated aquatic

⁷ In Idaho's 2019 submission the newly adopted provision is cited as IDAPA 58.01.02.401.01.d. This citation conflicts with the thermal treatment requirement at 401.01.d that is currently in effect under the CWA. For ease of reference, the EPA cites to the CWA-effective WQS. For the de minimis provision subject to this disapproval action that is not CWA-effective the EPA will use a general citation to section 401.01.

life uses in Idaho. In the submittal letter and other materials submitted with the WQS revisions, the state referenced the 0.3 degrees Celsius allowance as an addition to already effective criteria and did not analyze the impacts of the resultant temperature(s) on sensitive coldwater fish and potential effects to Idaho's designated aquatic life uses.

Although the PNW Temperature Guidance supports the adoption of a de minimis temperature allowance above numeric temperature criteria or natural background temperatures, it presumes that the allowance would be added to numeric temperature criteria, consistent with the scientific and technical considerations that informed the Guidance's recommendations. In contrast, Idaho's numeric temperature criteria were adopted and approved prior to publication of the PNW Temperature Guidance and do not reflect the same technical and scientific foundations that informed the Guidance's recommendations.

Consistent with the CWA and its implementing regulations at 40 CFR part 131, the EPA disapproves Idaho's de minimis temperature allowance.

Remedy to Address the Disapproval

The effect of the EPA's disapproval is that, as of the date of this action, the currently applicable provisions at IDAPA 58.01.02.401.01 continue to apply for CWA purposes (see Section IV below). Since the disapproval retains previously approved limits on thermal discharges, and because these provisions remain in Idaho's WQS and are protective of designated aquatic life uses, the EPA is not specifying any changes as the result of this disapproval that Idaho must adopt to meet CWA requirements.

Idaho has informed the EPA of its intentions to revise temperature criteria statewide, by letter dated September 5, 2024. If Idaho revises its temperature criteria such that it takes into consideration the latest science on protection of aquatic species, such as the technical and scientific underpinnings that informed the PNW Temperature Guidance, it could choose to adopt a de minimis allowance based on those revised criteria. The technical basis for the PNW Temperature Guidance is discussed in the companion document, titled *Technical Synthesis; Scientific Issues Relating to Temperature Criteria for Salmon, Trout, and Char Native to the Pacific Northwest*.⁸ These documents were the result of a joint effort by the EPA, National Marine Fisheries Service and US Fish and Wildlife Service to synthesize the science on the effects of temperature on salmonids. The EPA is available to provide assistance to the state, if needed.

The EPA's Approval of Non-Substantive Changes to IDAPA 58.01.02.401.01.e

In accordance with its CWA authority, 33 U.S.C. 1313(c)(3) and 40 CFR § 131, EPA approves the revised WQS provision at IDAPA 58. 01.02.401.01.e (submitted to the EPA on April 15, 2019) as a non-substantive change, which provides clarity that receiving waterbodies may not receive wastewater discharges by more than 0.3 degrees Celsius above the natural background conditions.

⁸ Technical Synthesis; Scientific Issues Relating to Temperature Criteria for Salmon, Trout, and Char Native to the Pacific Northwest (EPA 910-R-01-007, August, 2001), available at: <https://nepis.epa.gov/Exe/ZyPDF.cgi/P1004J0T.PDF?Dockey=P1004J0T.PDF>

The revision IDAPA 58.01.02.401.01.e is excerpted below. The underlined text indicates new language added to the effective WQS provision included in Idaho’s 2019 WQS submittal.⁹

58.01.02.401 Point Source Wastewater Treatment Requirements: *Unless more stringent limitations are necessary to meet the applicable requirements of Sections 200 through 300, or unless specific exemptions are made pursuant to Subsection 080.02, wastewaters discharged into surface waters of the state must have the following characteristics:*

*01. **Temperature.** The wastewater must not affect the receiving water outside the mixing zone so that:*

...

c. If temperature criteria for the designated aquatic life use are exceeded in the receiving waters upstream of the discharge due to natural background conditions, then wastewater must not raise the receiving water temperatures by more than three tenths (0.3) degrees C above the natural background conditions.

Rationale for Approval

The added language to IDAPA 58.01.02.401.01.e (“above the natural background conditions”) is for clarification purposes and is considered by the EPA to be a non-substantive change. While the Agency has the CWA section 303(c) authority and duty to approve or disapprove non-substantive changes, such revisions do not substantively change the meaning or intent of the existing standard. The EPA’s action on a non-substantive revision does not constitute an action on the underlying previously approved standard.

The EPA approved the previous version of this provision in 2004 at IDAPA 58.01.02.401, which Idaho adopted in 2002.

This additional text provides clarity that the cumulative cap is above the natural background condition, which is implied by the following language in the provision, “*exceeded in the receiving waters upstream of the discharge due to natural background conditions.*” Since the revision does not change the intent or effect of the previously approved WQS provision, the EPA is approving this change as non-substantive revision.

IV. Water Quality Standards in Effect Under the CWA

Given these disapproval actions, the WQS provisions at IDAPA 58.01.02.401.01.a-e in effect for CWA purposes are excerpted below:

⁹ As noted previously, the EPA cites the provision as 401.01.e, consistent with the WQS that are currently in effect. The excerpt from Idaho’s 2019 submission cites the provision as 401.01.c which corresponds to 401.01.e in the currently effective WQS.

58.01.02.401. Point Source Wastewater Treatment Requirements: *Unless more stringent limitations are necessary to meet the applicable requirements of Sections 200 through 300, or unless specific exemptions are made pursuant to Subsection 080.02, wastewaters discharged into surface waters of the state must have the following characteristics:*

01. Temperature. The wastewater must not affect the receiving water outside the mixing zone so that:

a. The temperature of the receiving water or of downstream waters will interfere with designated beneficial uses.

b. daily and seasonal temperature cycles characteristic of the water body are not maintained.

c. If the water is designated for warm water aquatic life, the induced variation is more than plus two (+2) degrees C.

d. If the water is designated for cold water aquatic life, seasonal cold water aquatic life, or salmonid spawning, the induced variation is more than plus one (+1) degree C.

e. If temperature criteria for the designated aquatic life use are exceeded in the receiving waters upstream of the discharge due to natural background conditions, then Subsections 401.01.c. and 401.01.d. do not apply and instead-wastewater must not raise the receiving water temperatures by more than three tenths (0.3) degrees C above the natural background conditions.