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Submitted via email: [paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov) and [jason.pappani@deq.idaho.gov](mailto:jason.pappani@deq.idaho.gov)

**RE: Water Quality: Docket No. 58-0102-1803 – Allowing Additions of Heat to Temperature Impaired Waters**

Dear Ms. Wilson and Mr. Pappani,

Thank you for the opportunity to comment on Docket No. 58-0102-1803 – DEQ's proposed rulemaking to allow additions of heat to water bodies impaired by temperature.

Since 1973, the Idaho Conservation League has been Idaho's leading voice for clean water, clean air and wilderness—values that are the foundation for Idaho's extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. As Idaho's largest state-based conservation organization, we represent over 30,000 supporters, many of whom have a deep personal interest in protecting Idaho's water quality and aquatic species.

Our detailed comments follow this letter. Please do not hesitate to contact me at 208-345-6933 ext. 23 or [ahopkins@idahoconservation.org](mailto:ahopkins@idahoconservation.org) if you have any questions regarding our comments or if we can provide you with any additional information on this matter.

Sincerely,

Austin Hopkins  
Conservation Associate

*RE: Idaho Conservation League comments on Water Quality: Docket No. 58-0102-1803 – Allowing Additions of Heat to Temperature Impaired Waters*

Cc:

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## **ICL Opposed to Proposed Rule Change**

A number of substantial questions were raised during the July 20<sup>th</sup> rulemaking meeting. DEQ lacked a clear answer to a number of these questions (see comments below). As such, we are opposed to this proposed rule change given the ambiguity regarding how this rule change would be implemented as well as the lack of analysis or supporting material demonstrating this change would fully comply with all Clean Water Act (CWA) requirements.

The CWA prohibits the discharge of pollution that would “cause or contribute” to a violation of water quality standards. As presented, we fail to see how allowing thermal discharges into water bodies impaired by temperature would comply with this requirement of the CWA. This is especially concerning given the ambiguity surrounding how DEQ would ultimately implement this proposed rule change.

## **Duration of Public Comment Opportunity**

We disapprove of the allotted time DEQ has provided stakeholders for providing feedback on this proposed rule change. Pursuant to Idaho Code 67-5222(1), DEQ is required to “afford all interested persons reasonable opportunity to submit data, views and arguments, orally or in writing.” The ten (10) days provided to interested persons is hardly sufficient to review and formulate substantive comments in response to the information presented by DEQ during the July 20<sup>th</sup> meeting. DEQ should provide, at a minimum, thirty (30) days for interested persons to review and comment on this information given the significant impacts this change could have on aquatic species in Idaho.

## **Treatment of Nonconservative Pollutants**

DEQ has repeatedly cited the “nonconservative” nature of temperature pollution as a rationale for their unique treatment of this pollutant. We request that DEQ please provide the statutory and regulatory citations that authorize treating the introduction of temperature in a manner that differs from other pollutants.

## **Scale of Applicability in Rule**

During the rulemaking session DEQ claimed that the 0.3 °C addition will be dispersed amongst point sources throughout an assessment unit. As written, there is nothing in this rule that would require this, and instead these changes could be interpreted as granting a 0.3 °C increase to each individual point source. We request that DEQ please provide an explanation of how they intend to interpret the rule such that the 0.3 °C

would be dispersed amongst point sources, including any memorandums, analysis, or similar materials regarding their intended approach.

### **Clarity on Defining Ambient Temperature**

DEQ has yet to clearly articulate how they will define ambient temperature, to which they will add the 0.3 °C. We are not able to fully and accurately assess the impacts of this rule change without knowing how DEQ will implement the proposed rule change. We request that DEQ please provide their definition of ambient water temperature as it would be interpreted and applied under the proposed rule, as well as an explanation of how they decided upon their chosen definition and application approach.

### **Assessing Cumulative Impacts**

DEQ has also yet to articulate what approach they will implement to assess the cumulative impacts resulting from the implementation of this rule change. While each scenario will undoubtedly be different, DEQ should still have a formalized approach for assessing cumulative impacts. Again, we are not able to fully and accurately assess the impacts of this rule change without knowing how DEQ would implement the proposed rule. We request that DEQ please provide an explanation on the approach they will take to assess the cumulative impacts resulting from implementation of the proposed rule.

### **Demonstration of Protecting Beneficial Uses**

If this rule is ultimately approved, DEQ must have a process for demonstrating that this new standard remains protective of beneficial uses. We request that DEQ please explain what their process will be for making such a demonstration. If DEQ has yet to formalize a process then we would suggest postponing this rulemaking until such a time that DEQ has the necessary provisions in place to satisfy all requirements of the CWA.

### **Distributing 0.3 C Among Multiple Discharges**

DEQ states they will distribute the 0.3 °C temperature increase across all dischargers within an assessment unit. We ask for clarity on the exact method they will use to achieve this.

Further, Appendix A in DEQ's *Effluent Limit Development Guidance* (ELDG) document stipulates the significant figures and precision required for permit limits and reporting. For temperature, the required precision is 0.1, in both °C and °F. If multiple facilities were to share the 0.3 °C increase, it is plausible that the cumulative impact could

exceed the 0.3 °C *de minimis* value. For example, say the 0.3 °C is divided amongst three (3) dischargers within an assessment unit. In theory, each discharger would be allocated 0.1 °C; however, based on the monitoring accuracy required by DEQ, each discharger could plausibly be discharging up to 0.2 °C (the allocated 0.1 °C plus up to 0.1 °C in instrument error) unbeknownst to DEQ. Thus, the cumulative heat addition from the three dischargers – which was not to exceed 0.3 °C – could potentially be as much as 0.6 °C, double the *de minimis* value. DEQ must consider this aspect when defining their method for allocating thermal exceedances to multiple dischargers.

### **Research Neighboring States**

DEQ should conduct a thorough analysis of what neighboring states are doing to address this issue. During the rulemaking it was advised that DEQ look into Oregon and Colorado's attempts at addressing temperature issues. Idaho should have a thorough understanding of the successes and failures of neighboring states prior to proceeding with this proposed rule change.