



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706 • (208) 373-0502
www.deq.idaho.gov

C.L. "Butch" Otter, Governor
John H. Tippetts, Director

October 31, 2017

Angela Chung, Associate Director
Office of Water and Watersheds, Region 10
U.S. Environmental Protection Agency
1200 6th Ave.
Seattle, WA 98101

Re: Arsenic Human Health Water Quality Criteria Applicable for
Clean Water Act Purposes in Idaho

Dear Ms. Chung:

On September 15, 2016, I received a letter from Daniel Opalski, announcing EPA's "re-review" and disapproval of Idaho's current arsenic human health water quality criteria of 10 µg/L.¹ As you know, EPA Region 10 had previously supported and approved the 10 µg/L criteria, acknowledging in a June 7, 2010 letter that the approval "resolves a longstanding issue regarding Idaho's arsenic criteria" and "we commend the Idaho Department of Environmental Quality (IDEQ) for its efforts to update this provision of Idaho's water quality standards." EPA's 2016 "re-review" of these previously approved criteria was the result of a court-ordered remand without vacatur pursuant to a consent decree between Northwest Environmental Advocates and EPA in District of Oregon Case Number 3:15-cv-01151-HZ. We note the State of Idaho is not a party to that case, the court did not vacate EPA's 2010 approval, and EPA did not seek or receive Idaho's concurrence before entering into the consent decree.

The September 2016 disapproval letter came more than five years after EPA's 2010 approval and well beyond the Clean Water Act's 90-day disapproval deadline. The letter "recommends" Idaho "translate" narrative criteria into numeric arsenic criteria set at 6.2 µg/L to protect consumption of organisms and 0.02 µg/L to protect consumption of water and organisms. However, EPA's recommended numeric criteria have no basis in Idaho's current water quality standards or EPA's current section 304(a) recommendation for arsenic. In addition, the letter does not identify the numeric arsenic criteria currently applicable for Clean Water Act purposes in Idaho.

IDEQ's position is that the previously approved 10 µg/L arsenic criteria remain applicable for Clean Water Act purposes in Idaho, pending further action by Idaho or EPA. Our position is consistent with Clean Water Act section 303(c)(3), which provides that a water quality standard submitted to and approved by EPA "shall thereafter be the water quality standard for the

¹ The letter also notes that EPA has reviewed and disapproved Idaho's 50 µg/L arsenic human health criteria, which were submitted for review in 1999.

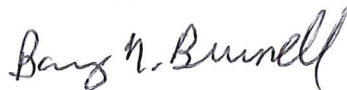
applicable waters of that State.” Section 303 provides only two options for changing an applicable water quality standard: (1) EPA approval of a revised standard submitted by a State, or (2) EPA promulgation of a federal standard through notice-and-comment rulemaking. Nothing in the Clean Water Act or EPA’s regulations allows EPA to change the applicable standard through “re-review” and disapproval of a previously approved standard.

Instead 40 C.F.R. § 131.21(e) provides that the applicable standard “remains the applicable standard until EPA approves a change, deletion, or addition to that water quality standard, or until EPA promulgates a more stringent water quality standard.” EPA’s September 15, 2016 disapproval letter does not approve a change, deletion, or addition to Idaho’s standards, nor does it promulgate a more stringent standard. Further, Idaho has not submitted revised arsenic human health criteria since EPA’s approval of our 10 µg/L criteria and federal rulemaking on the subject is not proposed. Therefore, the 10 µg/L arsenic human health criteria remain the applicable criteria in Idaho.

We understand that EPA is updating its IRIS Toxicological Review of Inorganic Arsenic and, as indicated in the September 15, 2016 letter, expects IDEQ to consider that updated scientific information once available. We also appreciate that EPA may change its section 304(a) recommended criteria for arsenic based on the updated toxicological review. At this time, we believe it is prudent to await EPA’s completion of these efforts before considering revisions to Idaho’s current arsenic criteria.

If you have questions or concerns about this letter, please contact Don Essig, Surface Water Program Manager, at 208-373-0119 or Don.Essig@deq.idaho.gov.

Sincerely,



Barry N. Burnell
Water Quality Division Administrator

BNB:dls

Cc: Don Essig – Don.Essig@deq.idaho.gov