

Negotiated Rule Draft No. 2
Docket No. 58-0102-2001, Dated July 20, 2020

This draft includes revisions based on the June 11, 2020, meeting discussion and review of written comments received. The revisions are highlighted in yellow.

DEQ is not requesting public comments on this draft. The next comment period will commence upon publication of the proposed rule in Idaho Administrative Bulletin on September 2, 2020.

Water Quality Standards
IDAPA 58.01.02

251. SURFACE WATER QUALITY CRITERIA FOR RECREATION USE DESIGNATIONS.

Effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. ~~58-0402-4802~~ 58-0102-2001 have been approved.

01. *E. Coli* Bacteria. Waters designated for recreation are not to contain *E. coli* bacteria, used as indicators of human pathogens, in concentrations exceeding: (4-11-06)

a. Geometric Mean Criterion. Waters designated for primary or secondary contact recreation are not to contain *E. coli* bacteria in concentrations exceeding a geometric mean of one hundred twenty-six (126) *E. coli* organisms per one hundred (100) mL based on a minimum of five (5) samples taken every three (3) to seven (7) days over a thirty (30) day period. (4-11-06)

b. Use of Single Sample Values. A water sample exceeding the *E. coli* single sample maximums below indicates likely exceedance of the geometric mean criterion, but is not alone a violation of water quality standards. If a single sample exceeds the maximums set forth in Subsections 251.01.b.i., 251.01.b.ii., and 251.01.b.iii., then additional samples must be taken as specified in Subsection 251.01.c.: (4-11-06)

i. For waters designated as secondary contact recreation, a single sample maximum of five hundred seventy-six (576) *E. coli* organisms per one hundred (100) mL; or (4-11-06)

ii. For waters designated as primary contact recreation, a single sample maximum of four hundred six (406) *E. coli* organisms per one hundred (100) mL; or (4-11-06)

iii. For areas within waters designated for primary contact recreation that are additionally specified as public swimming beaches, a single sample maximum of two hundred thirty-five (235) *E. coli* organisms per one hundred (100) mL. Single sample counts above this value should be used in considering beach closures. (4-11-06)

c. Additional Sampling. When a single sample maximum, as set forth in Subsections 251.01.b.i., 251.01.b.ii., and 251.01.b.iii., is exceeded, additional samples should be taken to assess compliance with the geometric mean *E. coli* criteria in Subsection 251.01.a. Sufficient additional samples should be taken by the Department to calculate a geometric mean in accordance with Subsection 251.01.a. This provision does not require additional ambient monitoring responsibilities for dischargers. (4-11-06)

251. SURFACE WATER QUALITY CRITERIA FOR RECREATION USE DESIGNATIONS.

Not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. ~~58-0402-1802~~ 58-0102-2001 have been approved.

01. Toxics Criteria. Waters designated for recreation must meet the Fish Only water quality criteria set forth in Subsection 210.01.b. (4-11-19)

02. Fecal Indicators. Waters designated for recreation must meet criteria for indicator organisms bacteria of fecal contamination. Either of the following indicator ~~criteria would be considered~~ criteria is sufficient for determining compliance with the fecal indicator criteria: (4-11-19)

a. E. Coli Bacteria.

i. Waters designated for recreation are not to contain *E. coli* bacteria, used as indicators of human pathogens, in concentrations exceeding: (4-11-06)

i.a. Geometric Mean Criterion. ~~Not to contain E. coli in concentrations exceeding a~~ The geometric mean of one hundred twenty-six (126) *E. coli* counts per one hundred (100) mL based on a minimum of five (5) samples taken every three (3) to ~~seven eleven (711)~~ thirty forty-five (3045) days over a ~~thirty forty-five (3045)~~ day period; or (4-11-19)

ii.b. Statistical Threshold Value (STV). ~~No greater than ten percent (10%) of valid samples collected over a thirty (30) day period are to contain E. coli bacteria in concentrations exceeding an~~ The STV of four hundred and ten (410) *E. coli* counts per one hundred (100) mL in more than ten percent (10%) of samples collected over a thirty forty-five (3045) day period. When considering an STV exceedance, the Department shall ensure that representative samples have been collected to represent the forty-five (45) day duration; ~~or~~. (4-11-19)

ii. For public swimming beaches, a single sample value of two hundred thirty-five (235) E. coli counts per one hundred (100) mL should be used in considering beach closures.

b. Enterococci. Waters designated for recreation are not to contain enterococci bacteria, used as indicators of human pathogens, in concentrations exceeding: (4-11-19)

i. Geometric Mean Criterion. ~~Not to contain enterococci bacteria in concentrations exceeding a~~ The geometric mean of thirty-five (35) enterococci counts per one hundred (100) mL based on a minimum of five (5) samples taken every three (3) to ~~seven eleven (711)~~ thirty forty-five (3045) days over a ~~thirty forty-five (3045)~~ day period; or (4-11-19)

ii. Statistical Threshold Value (STV). ~~No greater than ten percent (10%) of valid samples collected over a thirty (30) day period are to contain enterococci bacteria in concentrations exceeding an~~ The STV of one hundred and thirty (130) enterococci counts per one hundred (100) mL in more than ten percent (10%) of samples collected over a thirty forty-five (3045) day period. When considering an STV exceedance, the Department shall ensure that representative samples have been collected to represent the forty-five (45) day duration. (4-11-19)

c. For each indicator, compliance with the geometric mean criterion supersedes the STV criterion when applied to the same data set over the same time period provided minimum sampling requirements described in Subsection 251.02.a.i. or 251.03.b.i. are met. Effluent Bacteria Samples. When comparing effluent bacteria samples to the criteria, the averaging period shall be thirty (30) days or less based on a minimum of five (5) samples.

(Break in Continuity of Sections)

260. VARIANCES FROM WATER QUALITY STANDARDS.

01. Variances. Variances from meeting certain water quality standards may be granted by the Department provided they are consistent with the following requirements: (8-24-94)

a01. Procedure for Granting a Variance. When granted by the Department, individual variances are to be pollutant and discharger specific, and shall be granted pursuant to the following procedure: (3-15-02)

i.a. Prior to granting a variance, the Department shall publish notice of the Department's tentative determination to grant a variance and shall receive written comments for not less than thirty (30) days after the date the notice is published. The notice shall contain a clear description of the impacts of the variance upon the receiving stream segment. The Department shall also provide an opportunity for oral presentation of comments, if requested in writing within fourteen (14) days of the notice, by twenty-five (25) persons, a political subdivision, or an agency. (3-15-02)

ii.b. The Department's final decision with respect to a variance may be appealed pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." The Department shall maintain and make available to the public an updated list of variances. (3-15-02)

b02. Demonstration that Meeting a Standard is Unattainable. In order to obtain a variance from a water quality standard, the discharger must demonstrate that meeting the standard is unattainable based on one or more of the following grounds: (8-24-94)

i.a. Naturally occurring pollutant concentrations prevent the attainment of the standard; or (8-24-94)

ii.b. Natural, intermittent, or low flow conditions or water levels prevent the attainment of the standard; or (4-5-00)

iii.c. Human caused conditions or sources of pollution prevent the attainment of the standard and cannot be remedied or would cause more environmental damage to correct than to leave in place; or (8-24-94)

iv.d. Dams, diversions or other types of hydrologic modifications preclude the attainment of the standard, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in attainment of the standard; or (8-24-94)

v.e. Physical conditions related to the natural features of the water body, unrelated to water quality, preclude attainment of the standard; or (8-24-94)

vi.f. Controls more stringent than technology-based effluent limitations would result in substantial and widespread economic and social impact. (8-24-94)

e03. Documentation Submitted by Discharger. The discharger must submit to the Department documentation that treatment more advanced than required by technology-based effluent limitations have been considered and that alternative effluent control strategies have been evaluated. (8-24-94)

d04. Effectiveness of the Variance. Any variance granted by the Department will remain in effect for a period of five (5) years or the life of the permit. (8-24-94)

i.a. Upon expiration of the five (5) year time period or permit, the discharger must either meet the standard or must re-apply for the variance in accordance with these rules. (8-24-94)

ii.b. In considering a re-application for a variance, the Department will require the discharger to demonstrate reasonable progress towards meeting the standard. (8-24-94)

~~**02. Specific Variances.** In addition to any variances listed separately from these rules as described in Subsection 260.01.a.ii., the following variances have also been granted by the Department in accordance with Subsection 260.01: (3-15-02)~~

~~**a.** The South Fork Coeur d'Alene River Sewer District (Page Wastewater Treatment Facility) is granted variances from meeting water quality standards in Section 250 for ammonia and chlorine, and Section 210 for cadmium, lead, and zinc, discharged to the West Page Swamp, located in T49N, R2E, S32, Boise Prime Meridian. (3-30-01)~~

~~**b.** The variances provided in Subsection 260.02.a. are conditioned upon the discharges showing reasonable progress toward reducing their discharge of ammonia and chlorine. Reasonable progress shall be measured according to the terms of the state's certification of the discharges. (3-30-01)~~

~~**Note:** Final rule submitted to EPA on May 29, 2003 (docket 58-0102-0002). This revision grants a variance to the South Fork Coeur d'Alene River Sewer District (Page Wastewater Treatment Facility) from meeting water quality standards for ammonia, chlorine, cadmium, lead, and zinc discharged to the West Page Swamp. On May 7, 2010, EPA disapproved the variance; therefore, Subsections 260.02.a. and b. are not effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.~~