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May 18, 2015

Paula Wilson
IDEQ State Office
Attorney General's Office
1410 N. Hilton
Boise, ID 83706

**RE: Docket No. 58-0102-1201 - Negotiated Rulemaking
IDEQ Policy Recommendations on Criteria Calculations**

Dear Ms. Wilson:

Clearwater Paper is pleased to offer this comment letter on the subject rulemaking. We appreciate the Idaho Department of Environmental Quality's (IDEQ) work on this very important matter and look forward to our continued participation in this rulemaking process.

We believe that IDEQ's policy recommendations are individually and collectively science-based risk management decisions that EPA has always appropriately left to each state to develop when adopting human health water quality criteria (HHWQC).

We are offering specific comments on some of IDEQ's Policy Recommendations on Criteria Calculation as presented on April 21, 2015, and associated with the subject rulemaking.

Deterministic or Probabilistic

Clearwater Paper strongly supports the use of probabilistic risk assessment (PRA) for developing Idaho's HHWQC and congratulates IDEQ for making a choice that advances the use of science in setting public policy and regulations. We believe this choice is consistent with the directive in Idaho law for IDEQ to use the best available science when setting human health criteria. PRA clearly offer many advantages in evaluating risk to the public. This approach supports the fact that the risks from eating fish and drinking untreated surface water vary across the population of Idaho. PRA is the best choice to set logical and well informed water quality criteria. Idaho joins Florida as the first two U.S. states in using the best available scientific tools in setting environmental standards.

By using PRA, IDEQ will have the full capability to develop HHWQC that specifically meet policy choices that align with EPA guidance. We urge IDEQ to use this approach for carcinogens and non-carcinogens. This will allow IDEQ to apply reasonable policy choices and make a statistical determination of how hazardous quotients (HQs) and lifetime cancer risks vary across Idaho's fish consuming population.

Include or Exclude Market Fish

As IDEQ has correctly determined, the only market fish to have any nexus with Idaho water quality is Rainbow Trout. While including all market fish in a fish consumption rate calculation would yield a conservative result, the salient notion is that only fish caught in Idaho waters can be impacted by local water quality criteria. It would be overly conservative to arbitrarily include market fish in a fish consumption rate calculation in risk levels that are overstated and not defensible. As Clearwater Paper has commented previously, many of the parameters going into the calculation of HHWQC criteria are conservatively set and when taken in aggregate yield an overly conservative result. IDEQ's decision to only include Rainbow Trout in the determination of market fish is accurate and represents sound scientifically-based decision making.

Include or Exclude Anadromous Fish

Excluding Anadromous fish in setting Idaho's HHWQC is consistent with applying the best available science in establishing regulations. Anadromous fish present in Idaho's waters can potentially collect only a negligible amount of contaminants (if any) from their time in Idaho waters, so to include their consumption in a risk assessment associated with setting criteria for Idaho waters would be inaccurate, overly conservative and not consistent with the state's goal of using best available science in rule makings. Clearwater Paper supports the IDEQ scientific based policy choice to exclude anadromous fish in updating Idaho HHWQC.

Risk and Human Health Protection

Clearwater Paper encourages IDEQ to fully consider that different levels of risk that are allowed under EPA guidance for different segments of a population. To reiterate previous Clearwater Paper comments, EPA guidance allows a carcinogenic lifetime risk of 1×10^{-6} or 1×10^{-5} to a general population as long as "highly exposed" populations are protected at 1×10^{-4} . The Idaho Legislature has supported the idea that IDEQ should consider a range of risks in other environmental programs. See Idaho Code § 39-7210 (Idaho Land Remediation Act). Clearwater Paper supports IDEQ to consider a range of risks consistent with EPA Guidance when setting HHWQC.

Relative Source Contribution

Clearwater Paper supports the use of the best available data including chemical specific relative source contribution (RSC) assessments and encourages IDEQ to establish HHWQC for non-carcinogens using the most accurate data for RSC's. While we appreciate and understand the possible use of EPA default values for RSC's, IDEQ has made calculation choices (PRA, an Idaho specific fish consumption rate, etc.) that are more accurate and technically applicable than using "default" approaches and data. Using more refined and accurate values for RSC's is consistent with IDEQ's technical approach of using best available data and calculational procedures.

Note that EPA approved the use of RSC values of 100% (1.0) for the Spokane Tribe's HHWQC in 2013. This choice by the Tribe and EPA's subsequent approval is inconsistent with EPA's messaging on this parameter in Oregon and Washington and is clearly non-conservative. Nevertheless, EPA's approval of an RSC value of 100% should confirm the amount of discretion that EPA allows each state and tribal agency to rely upon in making risk-based management decisions. Again, we support IDEQ efforts to use "best available data" for all aspects of this rule making.

Bio-Accumulation Factor/Bio-Concentration Factor

Clearwater Paper supports the use of Bio-Accumulation Factors (BAFs) and encourages the department to adopt state and/or water body specific BAFs. As noted in the above comments, this choice represents using the best available science.

Body Weight and Drinking Water Intake

Clearwater Paper supports the use of the best available data to establish the most representative distribution of body weights and drinking water intake for Idahoans. Using the best available probability distributions for these parameters and a probabilistic risk assessment approach will allow IDEQ to make the best possible risk choice in setting HHWQC and have results that are representative across the entire population.

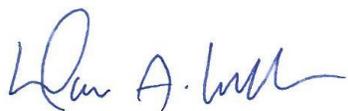
Protectiveness of Criteria

Clearwater Paper appreciates the spirit of IDEQ's recommendation statement, "We recommend that our criteria not be allowed to become less protective going forward." We interpreted this statement to mean the DEQ does not intend to relax their risk policy choices in setting HHWQC. Water quality criteria are updated continuously across the U.S. based on new and better information and this adaptive approach is an important underpinning of the Clean Water Act.

Toxicology is a very immature science and there are frequent changes to the understanding of the risks associated with specific chemicals. IDEQ's statement in their April 21, 2015, presentation could be interpreted that water quality criteria can never become numerically less stringent. However, the best available science should drive changes to the numeric criteria. The numeric criteria should be allowed to change with better science. EPA rules instruct states that water quality criteria must be based on sound scientific rationale (40 CFR § 131.11(a)). Idaho law also has this requirement (Idaho Code § 39-107D, requiring human health criteria be based on the best available science and 39-3601 requiring IDEQ water quality rules to be no more stringent than federal requirements).

On behalf of Clearwater Paper, we appreciate the opportunity to provide comments on this important matter and look forward to participating with IDEQ as this rulemaking goes forward. Please contact me at 509-344-5956 or marv.lewallen@clearwaterpaper.com with questions.

Sincerely yours,



Marv Lewallen
Vice President – Environmental, Energy & Sustainability