



November 6, 2015

(Via e-mail)

Ms. Paula Wilson
Idaho Department of Environmental Quality
1410 North Hilton
Boise, ID 83706

**RE: Docket No. 58-0102-1201 - Negotiated Rulemaking
Idaho Department of Environmental Quality Proposed Human Health Water
Quality Criteria (HHWQC) and Supporting Information**

Dear Ms. Wilson:

The American Forest & Paper Association (AF&PA) serves to advance a sustainable U.S. pulp, paper, packaging, and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and recyclable resources and are committed to continuous improvement through the industry's sustainability initiative - [Better Practices, Better Planet 2020](#). The forest products industry accounts for nearly 4 percent of the total U.S. manufacturing GDP, manufactures approximately \$210 billion in products annually, and employs nearly 900,000 men and women. The industry meets a payroll of approximately \$50 billion annually and is among the top 10 manufacturing sector employers in 47 states.

AF&PA appreciates the opportunity to comment on the proposed HHWQC and our comments below highlight a few key points regarding those criteria. The final water quality standards that result from this rulemaking will be applicable to AF&PA member facilities in Idaho. AF&PA, therefore, has a direct interest in this rulemaking.

I. Framework for Development and Review of State Water Quality Standards

The Idaho Department of Environmental Quality (IDEQ) is undertaking this rulemaking because on May 10, 2012 EPA rejected Idaho's water quality standards (WQS). As in initial matter, it is worth noting the framework for state development and EPA review of state WQS. States have three options when developing their standards: 1) adopt the EPA national criteria promulgated pursuant to Section 304(a) of the Clean Water Act; 2) modify the national Section 304(a) criteria to reflect site specific circumstances; or 3) develop other "scientifically defensible" criteria.¹

¹ 40 C.F.R. § 131.11(b).

States deriving their HHWQC, therefore, are not required to adopt the identical variables that EPA included in its 2000 Human Health Methodology to develop the national criteria. Indeed, some of those variables are not entirely scientific requirements and also reflect policy choices. For example, the methodology assumes that people consume water that is contaminated to the criteria level and that the exposure occurs every day at that level for 70 years. EPA has stated that this is partially intended to further “the Agency’s goal of pollution prevention....²”

Moreover, EPA has chosen to use a deterministic procedure to derive national HHWQC, while selecting the upper percentile values for nearly all of the parameters in the derivation equation. This is inconsistent with EPA’s own documents that suggest that much less conservative approaches can provide adequate protection of public health. In addition to the assumption that people are daily consuming contaminated drinking water for 70 years mentioned above, implicit in the formula is the assumption that no loss of contaminants occurs with cooking, which again is an unrealistic assumption for many substances. These are just some of the parameters in the equation, but others are equally conservative. This extreme conservatism is “compounded” such that after 3 or 4 such parameter values are selected, virtually the whole population is protected.

Faced with the conservatism built into the equation for national criteria, states can remain confident they are adequately protecting the fish consuming population if they deviate from EPA’s default values when deriving their own criteria to include values that more closely reflect the exposures in their states. For example, other commenters have urged IDEQ not to use the EPA default Relative Source Contribution (RSC) factor of 0.2, and they provide information and data specific to Idaho to support those recommendations. Similarly, in calculating the Fish Consumption Rate (FCR), IDEQ based its calculations on only “Idaho Fish” and properly excluded marine, and certain anadromous and market fish. IDEQ provided a sound scientific rationale for those choices based on data and information specific to Idaho. We urge IDEQ to adopt the RSC recommendations and to maintain its methodology for calculating the FCR.

II. Probabilistic Risk Assessment Approach

AF&PA supports IDEQ’s decision to use a Probabilistic Risk Assessment (PRA) approach for deriving its HHWQC. A PRA-based approach uses distributions of values to represent factors determining exposure and allow for the estimation of a distribution of potential risks. This is preferable to the deterministic method by which EPA derives national criteria because it: is the best science; allows an incorporation of all data for the different inputs that go into calculating HHWQC; avoids compounded conservatism; and, is more transparent, in that it allows the public and stakeholders to see how the range of data affects calculated human health values.

² EPA Response to Scientific Views from the Public on Draft Updated National Recommended Water Quality Criteria for the Protection of Human Health (Docket ID No. EPA-HQ-OW-2014-0135), June, 2015, page 12.

III. Risk Management Choices

AF&PA also supports IDEQ's risk management decision to use a mean fish consumption rate to represent the higher-consuming populations. We are concerned, however, about two critical aspects of the IDEQ methodology. First, IDEQ is developing its state-wide standards on the basis of the fish consumption rate for one higher-consuming population – the Nez Perce Tribe. We believe that using this higher fish consumption rate for a particular population to derive state-wide criteria is not appropriate as it leads to even greater “compounded conservatism” and results in criteria that are unnecessarily stringent to protect human health.

We also do not support IDEQ's choice to apply an incremental cancer risk level of 1×10^{-6} in deriving its criteria, especially when coupled with the other conservative assumptions used to derive the criteria. While we recognize that under Federal guidance, the State has the discretion to make that choice, we note that under that guidance, IDEQ could also use a risk level of 1×10^{-5} .

Setting human health water quality criteria in Idaho based on a theoretical excess lifetime cancer risk level of 1×10^{-6} is a poor public policy choice. This policy would reduce potential cancer incidence by a fraction of a cancer case per year compared to criteria set at 1×10^{-5} (see below). But, such a policy also imposes costs on cities, counties, rate payers and industry of potentially several billion dollars, harming the economy of the state.³ In addition, as noted above, these risk calculations contain needlessly conservative assumptions such as that people drink 2.4 liters (about 2.5 quarts) of untreated surface water. This policy choice actually harms public health because it diverts resources from reducing other risks that are much more significant.

Comments submitted by the Idaho Association of Commerce and Industry (IACI) on August 21, 2015, citing material previously submitted by ARCADIS, demonstrate that there is no measurable difference in the number of excess cancers expected for Idaho residents under criteria based on 1×10^{-5} versus 1×10^{-6} . Specifically, deriving criteria based on a 1×10^{-5} allowable excess lifetime cancer risk management goal for the population size of Idaho in 2012 would be expected to lead to an increase of 0.23 cancers per year among average Idahoans-- from 2570.00 to 2570.23 cancers per year in Idaho in 2012. Using a 1×10^{-6} excess lifetime cancer risk, the increase in annual cancer incidence would be 0.023 cancers—or going from 2570.00 to 2570.023 cancers per year. The difference in the number of excess cancers resulting from the application of criteria based on the different risk levels is so small it is not measureable, and would be lost in the year-to-year variation in cancer incidence. Yet, as noted, it could cost several billion dollars, harming local governments and industry in the state.

³ See comments of Clearwater Paper Company submitted today.

Thank you for the opportunity to provide our comments. If you have any questions, please contact me at 202/463-2581 or jerry_schwartz@afandpa.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Schwartz". The signature is fluid and cursive, with a prominent flourish at the end.

Jerry Schwartz
Senior Director
Energy and Environmental Policy