# Legislative Services Office
## Idaho State Legislature

Eric Milstead
Director

*Serving Idaho's Citizen Legislature*


## MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Environment, Energy & Technology Committee

**FROM:** Principal Legislative Research Analyst - Katharine Gerrity

**DATE:** October 08, 2015

**SUBJECT:** Department of Environmental Quality

IDAPA 58.01.02 - Water Quality Standards - Proposed Rule (Docket No. 58-0102-1201)

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.02 - Water Quality Standards. According to the department, on May 10, 2012, the Environmental Protection Agency (EPA) disapproved its July 7, 2006 water quality standard rule submittal which affects 167 of Idaho's revised human health criteria for 88 toxic pollutants. The department states that in 2006 it changed the fish consumption basis for determining the toxic standard from 6.5 g/day to 17.5 g/day based on EPA's nationally recommended fish consumption rate. However, EPA indicated that it believed the criteria did not protect Idaho's designated uses and was unable to determine whether the 17.5 g/day rate was consistent with federal regulations. The department goes on to state that EPA identified several sources of information on local and regional fish consumption that it claims Idaho did not consider before using the default fish consumption rate. The department states that EPA claimed that the information it reviewed suggested that fish consumption among some of Idaho's population groups is greater than 17.5 g/day.

The department states that in May 2014 the EPA proposed updates to its national criteria recommendations to states and tribes, for protection of human health. The updates were based on a new national fish consumption rate of 22 g/day, as well as new information on body weight, drinking water intake, chemical toxicity, bioaccumulation of toxins in fish tissue and the relative magnitude of contribution to exposure to toxins from various sources other than fish and water. The department states that EPA's proposal was finalized on June 29, 2015, providing new or updated criteria for 94 chemicals, some not currently present in Idaho's rules. The rule proposal updates criteria for numerous toxic substances, some of which are revised and some of which are new.

The department indicates that negotiated rulemaking was conducted and that eighteen hearings were held between October 2012 and August 2015. During this time the department also conducted a yearlong survey on fish consumption and notes that at the same time, the Nez Perce Tribe and Shoshone-Bannock Tribes were also conducting similar surveys. The department confirms that the standards included in the proposed rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated

by the federal government. The rulemaking appears to be authorized pursuant to Sections 39-105, 39-107 and 39-3601, Idaho Code.

cc: Department of Environmental Quality
Paula J. Wilson

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October 28, 2015

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Id 83706-1255

Dear Paula J. Wilson:

The Senate and House Subcommittees for review of administrative rules have reviewed the proposed changes to the Department of Environmental Quality rules:

**IDAPA 58.01.02 - Water Quality Standards - Proposed Rule - Docket No. 58-0102-1201**

No meeting will be held, and we are pleased to report that no objections will be filed.

Sincerely yours,

Katharine J. Gerrity

Katharine Gerrity
Principal Legislative Research Analyst

KAG/jk

cc:


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