

**FINAL PROPOSAL**  
**Dated November 1, 2017**

WATER QUALITY STANDARDS, DOCKET NO. 58-0102-1502

The proposed rule was published in the Idaho Administrative Bulletin, September 6, 2017, Vol. 17-9, pages 294 through 309. The Department of Environmental Quality recommends that the Board take the following action:

IDAPA 58.01.02

Section 004	ADOPT AS PROPOSED
Section 210	ADOPT AS REVISED

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

**58.01.02 – WATER QUALITY STANDARDS**

**DOCKET NO. 58-0102-1502**

**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment *sine die* of the Second Regular Session of the Sixty-fourth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Sections 39-105, 39-107, and 39-3601 *et seq.*, Idaho Code.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 6, 2017, Vol. 17-9, pages 294 through 309. After consideration of public comments, Subsection 210.03.c.v. has been revised. The remainder of the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov/58-0102-1502](http://www.deq.idaho.gov/58-0102-1502) or by contacting the undersigned.

**IDAHO CODE SECTION 39-107D STATEMENT:** This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Jason Pappani at [Jason.pappani@deq.idaho.gov](mailto:Jason.pappani@deq.idaho.gov), (208)373-0515.

Dated this 3<sup>rd</sup> day of January, 2018

Paula J. Wilson  
DEQ Administrative Rules Coordinator  
Idaho Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

**Revisions to Proposed Rule for Board Consideration, Docket No. 58-0102-1502  
(dated November 1, 2017)**

The revisions made to the proposed rule are highlighted. Only the rule section containing revisions is included.

**210. NUMERIC CRITERIA FOR TOXIC SUBSTANCES FOR WATERS DESIGNATED FOR AQUATIC LIFE, RECREATION, OR DOMESTIC WATER SUPPLY USE.**

**03. Applicability.** The criteria established in Section 210 are subject to the general rules of applicability in the same way and to the same extent as are the other numeric chemical criteria when applied to the same use classifications. Mixing zones may be applied to toxic substance criteria subject to the limitations set forth in Section 060 and set out below. (3-25-16)

c. Application of aquatic life metals criteria. (3-25-16)

v. *Copper Criteria for Aquatic Life.* ( )

(1) *Aquatic life criteria for copper shall be derived using:* ( )

*(a) Biotic Ligand Model (BLM) software that calculates criteria consistent with the “Aquatic Life Ambient Freshwater Quality Criteria – Copper”: EPA-822-R-07-001 (February 2007); or* ( )

*(b) An estimate derived from BLM outputs that is based on a scientifically sound method and protective of the designated aquatic life use.* ( )

*(2) To calculate copper criteria using the BLM, the following parameters from each site shall be used: temperature, pH, dissolved organic carbon (DOC), calcium, magnesium, sodium, potassium, sulfate, chloride, and alkalinity. The BLM inputs for humic acid (HA) as a proportion of DOC and sulfide shall be based on either measured values or the following default values: 10% HA as a proportion of DOC,  $1.00 \times 10^{-3}$  mg/L sulfide. Measured values shall supersede any estimate or default input.* ( )

*(3) BLM input measurements shall be planned to capture the most bioavailable conditions for copper.* ( )

*(4) A criterion derived using BLM software under Subsection 210.03.c.v.(1)(a) shall supersede any estimated criterion derived under Subsection 210.03.c.v.(1)(b). Acceptable BLM software includes the “US EPA WOC Calculation” for copper in BLM Version 3.1.2.37 (October 2015).* ( )

*(5) Implementation Guidance for the Idaho Copper Criteria for Aquatic Life. The “Implementation Guidance for the Idaho Copper Criteria for Aquatic Life: Using the Biotic Ligand Model” describes in detail methods for implementing the aquatic life criteria for copper using the BLM. This guidance, or its updates, will provide assistance to the Department and the public for determining minimum data requirements for BLM inputs and how to estimate criteria when data are incomplete or unavailable. The “Implementation Guidance for the Idaho Copper Criteria for Aquatic Life: Using the Biotic Ligand Model” is available at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706, and on the DEQ website at [www.deq.idaho.gov/58-0102-1502](http://www.deq.idaho.gov/58-0102-1502).* ( )

*Subsection 210.03.c.v is not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1502 have been approved.*