

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 – WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1803

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This rulemaking action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before September 21, 2018. If no such written request is received, a public hearing pursuant to Section 67-5222(2), Idaho Code, will not be held. The public will have the opportunity to provide oral comments on the proposed rule during the meeting of the Idaho Board of Environmental Quality (Board) scheduled for November 14 and 15, 2018.

DESCRIPTIVE SUMMARY: This rulemaking has been initiated to allow de minimus additions of heat when waters exceed applicable temperature criteria due to man-made causes. Currently, Idaho's point source treatment requirements allow point sources of heat to raise receiving water temperatures up to 0.3°C only when the receiving water is naturally warmer than numeric criteria. There is not an allowance for any increase, however small, when it cannot be shown receiving water temperatures are naturally warmer than criteria.

Idaho has many very small point sources. All add some heat to the waters to which they discharge. And, in most cases, the water bodies to which they discharge are warmer than Idaho's numeric temperature criteria set to protect aquatic life for a portion of each year. Heat is a non-conservative pollutant, and the sources of heat can be relatively small. This rulemaking proposes allowing NPDES/IPDES regulated human sources of heat loading to cause no more than a de minimus 0.3°C increase in receiving water temperatures. This would allow a 0.3°C increase to waters that are exceeding the numeric temperature criteria upstream for the designated aquatic life use even in cases where the exceedance of numeric criteria is not due to natural conditions.

Idahoans that recreate in, drink from, or fish Idaho's surface waters, and any who discharge pollutants to those same waters, may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board in November 2018 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2019 legislative session if adopted by the Board and approved by the Legislature.

EFFECTIVE FOR CLEAN WATER ACT PURPOSES: Water quality standards adopted and submitted to EPA since May 30, 2000, are not effective for federal Clean Water Act (CWA) purposes until EPA approves them (see **40 CFR 131.21**). This is known as the Alaska Rule. This rulemaking will be promulgated so that the existing rule, which continues to be effective for CWA purposes, remains in the Idaho Administrative Code until EPA approves the rule revisions. Notations explaining the effectiveness of the rule sections are also included. Upon EPA approval, the revised rule will become effective for CWA purposes and the previous rule and notations will be deleted from the Idaho Administrative Code. Information regarding the status of EPA review will be posted at <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not applicable.

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220 and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the July 2018 issue of the Idaho Administrative Bulletin, a preliminary draft rule was made available for public review on June 25, 2018, and a meeting was held on July 20, 2018. Key information was posted on the DEQ rulemaking web page and distributed to the public. Members of the public

participated in the negotiated rulemaking process by attending the meetings and by submitting written comments.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions regarding development of the rule. At the conclusion of the negotiated rulemaking process, DEQ formatted the final draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule drafts, written public comments, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0102-1803.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed 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 questions concerning this rulemaking, contact Brian Reese at brian.reese@deq.idaho.gov, (208) 373-0570.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments by mail, fax or email at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before October 5, 2018.

Dated this 5th day of September, 2018.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706-1255
Phone: (208) 373-0418
Fax: (208) 373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0102-1803
(Only Those Sections With Amendments Are Shown.)

401. POINT SOURCE WASTEWATER TREATMENT REQUIREMENTS.

Unless more stringent limitations are necessary to meet the applicable requirements of Sections 200 through 300, or unless specific exemptions are made pursuant to Subsection 080.02, wastewaters discharged into surface waters of the state must have the following characteristics: (4-11-06)

- 01. Temperature.** The wastewater must not affect the receiving water outside the mixing zone so that: (7-1-93)
 - a.** The temperature of the receiving water or of downstream waters will interfere with designated beneficial uses. (7-1-93)
 - b.** Daily and seasonal temperature cycles characteristic of the water body are not maintained. (7-1-93)

c. If temperature criteria for the designated aquatic life use are exceeded in the receiving waters upstream of the discharge due to natural background conditions, then wastewater must not raise the receiving water temperatures by more than three tenths (0.3) degrees C. (3-29-12)

Note: Submitted to EPA as a temporary rule on July 20, 2011, and as a final rule on August 7, 2012 (docket 58-0102-1101). This revision removed the numeric limits on point source induced changes in receiving water temperature. Until EPA approves this revision, the previous treatment requirements published in 2011 Idaho Administrative Code continue to apply and are effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

The previous treatment requirements published in 2011 Idaho Administrative Code are effective for CWA purposes until the date EPA issues written notification that the revisions in Docket Nos. 58-0102-1101 or 58-0102-1802 have been approved.

c. If temperature criteria for the designated aquatic life use are exceeded in the receiving waters upstream of the discharge ~~due to natural background conditions~~, then wastewater must not raise the receiving water temperatures by more than three tenths (0.3) degrees C above numeric criteria or natural background conditions, whichever is greater. (3-29-12)()

Not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-1803 have been approved.

02. **Turbidity.** The wastewater must not increase the turbidity of the receiving water outside the mixing zone by: (7-1-93)

a. More than five (5) NTU (Nephelometric Turbidity Units) over background turbidity, when background turbidity is fifty (50) NTU or less; or (7-1-93)

b. More than ten percent (10%) increase in turbidity when background turbidity is more than fifty (50) NTU, not to exceed a maximum increase of twenty-five (25) NTU. (7-1-93)