



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

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OFFICE OF  
WATER AND  
WATERSHEDS

October 11, 2018

Brian Reese  
Idaho Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706

RE: The EPA's Comments on Idaho's Proposed Rule, Revisions to Idaho's Allowance for De Minimis Increase to Temperature for Point Sources, Docket No. 58-0102-1803

Dear Brian:

Thank you for the opportunity to provide comments to the Idaho Department of Environmental Quality on the proposed rule to revise Idaho's allowance of a *de minimis* increase in surface water temperature attributed to point sources. DEQ is proposing to revise the water quality standard provision that provides three tenths degrees Celsius (0.3 degrees C) temperature increase for point source discharges if a water body is exceeding the numeric temperature water quality standards due to natural conditions.

The EPA has reviewed the proposed rule and offers the following comments for your consideration.

The proposed rule at IDAPA 58.01.02.401.01.c. is as follows (strikeout indicates language proposed for deletion and underline is new language):

*58.01.02.401. Point Source Wastewater Treatment Requirements*

*01. Temperature. The wastewater must not affect the receiving water outside the mixing zone so that:*

- 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.*

The EPA is pleased to see the proposed rule reflects the concerns the EPA provided to DEQ in our July 30, 2018 comment letter. The proposed rule would allow the current Total Maximum Daily Load development procedures and National Pollutant Discharge Elimination System permitting practices to continue, which we understand was DEQ's primary intent. The proposed rule is also consistent with other relevant Idaho water quality standards. However, as currently written, the proposed rule could be used in non-TMDL settings. If it is DEQ's intention to use this provision in non-TMDL settings, EPA recommends that DEQ provide additional clarification on how it would be used in those instances.

Given DEQ's intent is to revise and align the rule language consistent with current practices, for simplicity purposes the EPA recommends DEQ include a new separate provision to address circumstances where the 0.3 degree C *de minimis* temperature increase above numeric criteria could be granted to point sources. This would provide additional clarity with respect to when a *de*

de minimis allowance could be granted in each circumstance; the current provision regarding a de minimis allowance above natural background remains unchanged, and the new provision would address when the de minimis allowance could be granted above the applicable numeric criteria.

The EPA recognizes a de minimis allowance provision for temperature is consistent with the EPA's statements in the Region 10 Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards.<sup>1</sup>

During the July 20, 2018, negotiated rulemaking meeting discussions, DEQ clarified that its intent is to apply the 0.3 degrees C increase cumulatively across all point sources. The EPA recognizes DEQ has been applying the current 0.3 degrees C allowance cumulatively, however this is not clear in either the current provision or the proposed revision. As stated in the EPA's July 30, 2018 comment letter to DEQ, the EPA recommends DEQ consider adding language to the rule that states the 0.3 degrees C allowance is cumulative across all point sources where the criteria apply. DEQ's response was that clarification on this matter was provided to EPA in a February 5, 2004 letter from Toni Hardesty of DEQ to Randall Smith of the EPA. We would like to reiterate the July 30, 2018 comment to add the clarifying language in the final rule; however, if DEQ does not specify in the final rule that the intent is for the provision to apply cumulatively, then we recommend at a minimum, that DEQ develop guidance reiterating clearly the intention, and describing how it would be implemented in TMDLs and NPDES permits.

Furthermore, the EPA notes that DEQ's 2004 clarification letter addresses the current version of the de minimis provision which only speaks to situations in which temperature exceed criteria naturally, and the 0.3 degrees C allowance above natural is to be applied cumulatively across all point sources in those situations. The proposed revision also addresses situations where temperature of the receiving water does not exceed criteria naturally, and situations where 0.3C allowance would be applied to the applicable numeric temperature criteria. This situation is not addressed in DEQ's 2004 clarification letter. While it could be DEQ's intent that the 0.3C provision apply cumulatively in these circumstances as well, the EPA recommends DEQ provide clarification in writing, with preference that the clarification be included in rule language.

The EPA understands that in some situations, implementing the current provision at 58.01.02.401.01.c. can result in temperature waste load allocations and temperature permit effluent limits that may not be readily achievable, and that Idaho is interested in exploring water quality standards revisions to help address these situations on a case-by-case basis. The EPA encourages DEQ to coordinate with other states and consider a range of options to address temperature through water quality standards revisions and other CWA programs, such as TMDLs and NPDES permits. As DEQ is aware, the states of Oregon and Washington are facing similar issues and are exploring how best to address temperature through CWA programs. This involves consideration of water quality standards revisions that may be used on a state-wide or case-by-case basis, such as variances and site-specific (individual or performance-based) approaches. The work on variances in

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<sup>1</sup> U.S. Environmental Protection Agency, 2003. EPA Region 10 Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards, EPA 910-B-03-002, Region 10 Office of Water, Seattle, Washington.

other states such as Colorado and Wisconsin may be worthwhile for DEQ to consider. The EPA is committed to providing technical support to DEQ to evaluate these approaches.

The EPA remains available to assist DEQ as you continue to explore potential approaches to addressing temperature. If you have any questions or would like to discuss these comments further, please contact me at (206) 553-1834.

Sincerely,

  
for Lisa Macchio  
Water Quality Standards Coordinator

