



Triennial Review Public Scoping

Written Public Comment Summary

July 2005

Introduction

In May 2005, the Idaho Department of Environmental Quality (DEQ) hosted a series of three public scoping meetings to solicit comments on how to improve water quality standards (WQS). The intent of these meetings was to provide a forum to discuss with the public potential triennial review topics and priorities. In addition to these meetings, DEQ sent a letter and informational material (distributed at the public scoping meetings) to interested parties requesting written comments.

DEQ provided an initial list of preliminary topics for triennial review, as candidates for rule language revisions. DEQ provided an overview of the basic intent of current rule language in the water quality standards, need for review, and potential revisions for each of the following topics:

- Antidegradation
- Bacteria
- Designated uses
- Dissolved oxygen
- Low flows and the application of standards
- Miscellaneous
- Mixing zones
- Nutrients
- Temperature
- Toxics

These topics arose from a combination of DEQ analysis/experience, conversations with EPA, and initial targeted stakeholder input. DEQ welcomed comments addressing these and/or other topics that may have been omitted from the list.

Summary

This document summarizes the thirteen written comments (emails, comment forms, and letters) received during the comment period that concluded on July 8, 2005. The summary is organized based on questions posed on the comment form that was included in the mailing materials and provided to public meeting participants. For each question, a brief summary describes the common themes that emerged from all submitted comments. A list of people submitting written comments is included at the end of the document (in some cases, anonymous comments/questions were submitted). Copies of all written comments are available from DEQ upon request (contact Johnna Sandow, 373-0163, Johnna.Sandow@deq.idaho.gov).

What are your recommendations to improve water quality in Idaho?

In general, commenters appreciated the opportunity to participate in the Triennial Review process and encouraged continued reliance on local involvement, outreach, and education to ensure that on-the-ground knowledge dictates water quality designations and improvement efforts. In addition, regulations must reflect realities and not set unrealistic expectations or unattainable uses, which waste time and money. Furthermore, grant financial assistance to water quality projects that will do the most good.

What are your recommendations about the following water quality standards topics that DEQ presented at the scoping meeting? Should these topics be pursued for triennial review? Do you have any specific recommendations on how DEQ should move forward?

The following text summarizes responses to the above question by topic. This summary does not necessarily reflect the views of DEQ, nor does it indicate priorities for future rulemaking activities.

Antidegradation

- DEQ should update its antidegradation policy.
- “At the very least, the interplay between mixing zone allowances and antidegradation’s social and economic effects analysis must be developed as a public process.”

Bacteria

- Bacterial problems must be specifically and accurately identified to be addressed properly. DEQ should consider bacterial speciation to determine source of contamination.
- Bacteria standards should represent the most conservative, scientifically determined regulations to protect beneficial uses.
- Bacteria standards should follow EPA recommendations.
- Bacteria regulation language should be clear to reduce unnecessary costs and ecological and human health risks associated with over-chlorination.
- DEQ should examine alternative forms of bacteria reduction methods aside from chlorination.
- DEQ should tighten regulations for bacteria discharges to safeguard municipal drinking systems, noting a recent Nez Perce E. Coli outbreak.
- DEQ should consider developing and implementing bacteria management plans in order to better control bacteria through the use of Best Management Practices (BMPs) for dischargers.

Designated Uses

Generally, a number of comments suggested that regulations should reflect realities and not set unrealistic expectations or unattainable uses.

- DEQ must ensure beneficial use designations are correct. DEQ should involve local participants in such determinations.
- DEQ should eliminate the presumed uses.
- DEQ should resolve the designated use/presume use/existing use issues.
- DEQ should protect and maintain “high” aquatic life uses to prevent the need to restore these important areas in the future.
- DEQ should “not let EPA set timetables for Idaho. It’s much better to take the extra time on the front end of a process and get it right than to rush to completion and get it wrong.”
- DEQ should update its designated uses for all water bodies on the Nez Perce reservation to reflect a 2002 tribal resolution that designates all of them as primary contact recreation.
- Water bodies recently classified as secondary contact recreation, but that meet primary contact criteria, should be reclassified as primary contact recreation.
- Undesignated water bodies that meet primary contact recreation should be reclassified as such.
- DEQ should examine undesignated water bodies and determine if the presumed uses are appropriate.
- Discussions on new beneficial use categories would be supported.

Dissolved Oxygen

- DEQ should consider additional metrics to clarify the DO criteria (temporal and instantaneous measurements).
- DEQ should couple existing fixed numeric criteria with percent saturation limits.
- DEQ should consider specifying monitoring and reporting requirements.
- DEQ should consider adopting Oregon’s more stringent DO criteria.

Low Flow and Application of Standards

- DEQ should re-assess intermittent streams throughout the state.
- DEQ should rely on knowledge of natural conditions when determining whether a stream is intermittent or ephemeral.
- DEQ should ignore ephemeral waters based on their current workload.
- DEQ should treat ephemeral streams similarly to intermittent streams, as long as WQs are applied to natural flow conditions, not stream flows that have been manipulated by manmade changes.
- DEQ should not rely on setting an arbitrary low-flow level below which water quality criteria do not apply. Rather, DEQ should treat low flow water quality conditions as a background condition and not allow human activities to further

degrade the system during such periods of low flow. Allowing a point at which to not apply water quality standards seems to be an “invitation to degrade these small systems beyond their ability to recover when flows are higher.”

- DEQ might consider examining optimal and suboptimal flows in relation to the size of the streambed. (*DEQ has thought of this, as well as watershed size, as alternatives to current fixed thresholds.*)
- DEQ should consider linking riparian cover percentages to some criteria then adjust for low- to no-flow conditions.
- Ephemeral water impairment should be evaluated on a case-by-case basis.
- DEQ should consider the receiving water body when evaluating an ephemeral stream. If the receiving water, under natural flow conditions, can assimilate the added load from an ephemeral reach, DEQ may allow water quality to dip below standards for short periods of time. If the water quality of receiving water is already reduced, WQSs in ephemeral streams should be maintained at no worse than natural conditions.
- Similarly, it was suggested that WQSs could be conditioned so that no human activities could further degrade water quality below the naturally lower water quality the stream already experiences during low flow periods.
- DEQ should consider developing a standard for minimal flows for protection of beneficial uses.
- DEQ should evaluate ephemeral streams during flow events since these systems contribute flow and pollutants to downstream systems.

Mixing Zones

This topic received several comments encouraging review and tightening of mixing zone standards.

- DEQ should prohibit mixing zones for bio-accumulative chemicals and for water bodies that support threatened or endangered species or their critical habitat.
- DEQ should consider more restrictive mixing zones. Especially for bio-accumulative chemicals or for water bodies with federally-listed species or their critical habitat.
- The size of mixing zones should be based on the stream system being affected (with a maximum size limit), and linked to the needs of aquatic species, not dischargers.
- The legal validity of mixing zones under the Clean Water Act was questioned. DEQ should examine alternative methods for dischargers to meet WQSs (especially in instances involving bioaccumulative pollutants or federally-listed species).
- DEQ should not allow aquatic life to be harmed, thus the discharge should meet water quality standards at the end-of-pipe.
- DEQ should develop re-use regulations to offer options for applying treated effluent (similar to Washington’s work in the late 1990s).
- DEQ should develop guidance that specifies how Idaho will approach this issue (with respect to 401 certification) in areas where listed species occur.

- DEQ should update its mixing zone policy.

Nutrients

- DEQ should tighten nutrient discharge regulations through both narrative and numeric criteria.
- DEQ should adopt EPA's nutrient criteria for ecoregions in coordination with the development of biocriteria for nutrients.

Temperature

In general, the commenters indicated temperature criteria must be realistic (much of Idaho is desert) and must protect beneficial uses and aquatic resources. However, there was a broad range of opinions of how the temperature criteria should be developed.

- DEQ should not try to develop narrative criteria for temperature because they are too ambiguous and difficult to enforce.
- DEQ should adopt EPA's regional temperature guidance (which DEQ participated in creating). The benefits to this approach are that it will assist with interstate and tribal management of fisheries and water quality, and facilitate TMDL development on shared water bodies.
- DEQ should consider guidance and metrics relating to effects of watershed development (logging, agriculture) and natural occurrences (wildfire) on water temperature (refer to the Idaho Department of Lands' Cumulative Watershed Effects process).
- DEQ is not likely to have the resources to create Idaho-specific temperature criteria that are not "one size fits all."
- A seasonal, sliding-scale temperature criteria approach may be acceptable if it is based on the range of natural variability within any given stream. Seasonal criteria should reflect the requirements of critical life stages of aquatic species.
- Temperature increases in the winter are just as critical to aquatic ecosystems as increases during other seasons.
- Temperature criteria should be set conservatively to protect the aquatic resource and the burden of demonstrating the need/value of less restrictive criteria should rest with development interests.
- DEQ should recognize that fish use refuges to escape warm water temperatures.
- DEQ should consider different temperature criteria for the appropriate fish use of stream segments (migratory corridors shouldn't be required to meet salmonid spawning temperature criteria).
- DEQ should consider setting temperature criteria using a basin-by-basin approach.
- DEQ should consider allowing adjustments to the temperature criteria during low-flow periods, if adequate riparian cover is present.
- The 0.3°C limit on human-caused temperature increases should be applied to both point and non-point source pollution.

Toxics

In general, commenters supported adoption of toxic standards that are representative of current scientific understanding to protect human and ecological health.

- DEQ should review the hardness cap issue.
- The arsenic rule was specifically noted as needing attention.
- DEQ should update its toxic criteria to reflect current scientific knowledge on bioaccumulation factors and rates of fish consumption. This is already being done in ongoing rulemaking activities.
- DEQ should adopt EPA's recommended criteria.
- DEQ should protect the population that has the greatest potential for exposure and select criteria that protect the most sensitive members of that population (typically children and pregnant women).
- DEQ should re-evaluate the fish consumption rate that was used to develop the criteria. More specifically, DEQ should adopt the fish consumption values recommended by the Columbia River Inter Tribal Fish Commission (CRITFC).
- DEQ should encourage local entities to employ appropriate technologies that do not create additional environmental impacts (i.e., do not reduce toxics using a technique that increases air pollution or energy consumption).

Additional Topics

The following text summarizes public comments that were received on additional water quality related topics. This summary does not necessarily reflect the views of DEQ, nor does it indicate priorities for future rulemaking activities.

- **Biocriteria:** DEQ should develop biocriteria as applied in other states, including Oregon. (*Note: Oregon does not have bio-criteria in its water quality rules.*)
- **Special Resource Waters (SRW):** Based on water quality standards language, it appears as though SRW are inadequately protected from non-point sources of pollution.
- **Rules Governing Nonpoint Sources of Activities:** DEQ should examine whether this portion of the water quality standards are fulfilling Clean Water Act requirements. Specifically, the commenter referred to the ineffective and inadequate rules contained within the Idaho Forest Practices Act.
- **Violations and Enforcement of WQS/BMPs:** "Examine whether Clean Water Act regulations are being fully met when the regulations found in 58.01.02.350.01 and .02 allow for continued violation of Idaho WQS." This comment was made in reference to the "ineffective" Idaho Forestry Best Management Practices rules that specify best management practices (BMP).

- **Negotiated Rulemaking:** This process should be expanded beyond in-person meetings in Boise that typically restrict participation to either Boise area residents or groups/businesses with sufficient resources for travel. Suggest DEQ examine internet-based video conferencing.

Similar to the public scoping meetings, no clear priorities emerged from the written comments received. The topics that received the most input included low flow and application of standards, mixing zones, temperature, and designated uses.

List of Those Submitting Written Comments

Contact Person	Organization/Affiliation
Justin Hayes	Idaho Conservation League (Program Director)
Kevin Lewis	Idaho Rivers United (IRU) (Conservation Director)
Vern Lolley	Weiser Irrigation District—WAG
David Mabe	National Oceanic & Atmospheric Administration (NOAA)
Mike Mihelich	Kootenai Environmental Alliance (Forest Watch Coordinator)
Rebecca Miles	Nez Perce Tribe (Chairman)
Pat Pendell	Potlatch Corporation
Joe Qualls	Weiser River WAG
Cindy Robertson	Idaho Fish & Game (Staff Biologist)
Mark Solomon	Citizen - Moscow, ID
Tracey Brown	Palouse-Clearwater Environmental Institute (PCEI)
Anonymous	