

**Department of Environmental Quality
Water Quality Standards, 58.01.02
Docket No. 58-0102-1301**

**Negotiated Rulemaking Summary
Idaho Code § 67-5220(3)(f)**

DEQ initiated this rulemaking docket in response to U.S. Environmental Protection Agency (EPA) disapproval of the water quality standards provision that exempts, from Tier II antidegradation review, those activities or discharges determined to be insignificant (*de minimus* exemption). This provision is set out in IDAPA 58.01.02.052.08.a. This rule docket also includes revisions to IDAPA 58.01.02.055 (treatment of water bodies that do not support designated beneficial uses) for consistency with changes in the Idaho Code and other sections of the water quality standards.

Key information considered by DEQ was provided by the public during the negotiated rulemaking process. Members of the public participated in the negotiated rulemaking process by attending the meeting and by submitting written comments. The negotiated rulemaking record, which includes the negotiated rule drafts, written public comments received, and documents distributed during the negotiated rulemaking process, is available at www.deq.idaho.gov/58-0102-1301.

The negotiated rule drafts contain revisions made based on oral comments received during the meeting and written comments submitted after the meeting. At the conclusion of the negotiated rulemaking process, DEQ formatted the final rule draft for publication as a proposed rule in the Idaho Administrative Bulletin.

One issue concerning insignificant activity or discharge (Subsection 052.08.a) raised during the negotiated rulemaking process remains unresolved:

Subsection 052.08.a.i, of the draft rule provides that, if the cumulative decrease in assimilative capacity from conditions as of July 1, 2011 is equal to or less than 10%, then, taking into consideration the size and character of the activity or discharge and the magnitude of its effect on the receiving stream, DEQ may determine that the degradation is insignificant. Greater Yellowstone Coalition (GYC) submitted written comments proposing a revision that would include in the language that addresses the factors DEQ should consider when determining degradation is insignificant, a reference to the bioaccumulative character of the pollutants discharged. GYC stated that the language as written “does not consider the bioaccumulative nature of pollutants, which may not be reflected in the size and character of the activity or discharge or the magnitude of its effect on the receiving stream, and thus does not address EPA’s main concern with the language of the rule that EPA rejected in its remand decision.” GYC suggested that DEQ include this issue in a guidance document if the bioaccumulative language is not adopted. After consideration of these comments, DEQ determined that the draft rule language as written is broad enough to address GYC’s concerns, that the character of the discharge and the magnitude of its effect on the receiving stream will allow DEQ, where appropriate, to consider the bioaccumulative nature of the discharge. Therefore, DEQ believes the additional language is unnecessary and it has not been added to the draft rule.

GYC also disagreed with some of the changes DEQ proposed to the TMDL provisions in Subsection 055.02 of the Water Quality Standards. GYC objected to DEQ adding language that states TMDLs do not need to be developed for water bodies where other pollutant control requirements are expected to achieve full support of uses and compliance with water quality standards in a reasonable period of time. GYC believes this language is unnecessary, inappropriate in this section, and confusing. DEQ did respond to this comment by reorganizing the section in order to make it more clear, but retained the language to which GYC objected because DEQ believes the language is accurate and appropriate to be included in this section. It is unclear whether DEQ’s reorganization of the section resolves GYC’s objection.