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## Idaho Conservation League

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Paula Wilson  
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Attorney General's Office  
1410 N. Hilton  
Boise, ID 83706

Submitted via email: [paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

### **Re: Docket No. 58-0102-1401 - Preliminary Draft Negotiated Rule - Draft No. 1**

Dear Ms. Wilson;

Since 1973, the Idaho Conservation League (ICL) has been Idaho's voice for clean water, clean air and wilderness—values that are the foundation for Idaho's extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. As Idaho's largest state-based conservation organization, we represent over 25,000 supporters, many of whom have a deep personal interest in protecting Idaho's water quality and fisheries.

Thank you for providing us an opportunity to review and comments on portions of DEQ's proposed mixing zone language. It is our understanding that DEQ wishes to receive comments on sections section .0.60.01 b., e., f., and h of the draft rule text. As such our comments today are limited to these portions of the draft. Our comments on these portions are attached.

We anticipate that we will have additional comments on these matters as amended in future drafts.

Please contact me if you have any questions at 208-345-6933 x 24 or [jhayes@idahoconservation.org](mailto:jhayes@idahoconservation.org)

Sincerely,

Justin Hayes  
Program Director

## General Comments

ICL does not support the use of mixing zones. We do not believe that it is appropriate to authorize the violation of water quality standards in portions of a water body. If a discharger wishes to discharge at levels that will violate current water quality standards, we believe that the discharger should seek a variance or a site-specific water quality standard. If the discharger is able to demonstrate that the receiving water and the designated uses can be protected by the application of a site-specific criteria less stringent than the regular water quality standard then they should proceed in this manner, rather than operate under a 'mixing zone' construct. If they are not able to successfully apply for and receive a variance or a site-specific criteria for the area in which they discharge, they should comply with existing water quality standards (WQS).

Additionally, we believe that it is never appropriate for the *acute* water quality standards to be violated within a waterbody. With regard to this draft rule language, we do not believe that the violation of acute WQS should be allowed in a zone of initial dilution.

Notwithstanding our objection to the use of mixing zones and zones of initial dilutions, we provide the following comments to DEQ's draft language.

### Section 0.60.01.b

This text imprecisely states that water quality within in mixing zone may exceed water quality standards. I believe that DEQ means to say that chronic WQS for the pollutant for which DEQ has authorized mixing zones may be exceeded in the mixing zone that DEQ authorizes for that specific pollutant. Similarly, acute WQS may only be exceeded in a ZID. Further, *all* water quality standards must be met at the boundary.

DEQ uses the term "design condition." However, this term is not defined.

### Section 0.60.01.e

There appears to be some confusion as to whether or not this section would apply to all of a single facility's points of discharge into a single receiving water or to all of a single facility's points of discharge into an entire watershed. Our belief is that this provision should apply to all of a single facility's points of discharge into the entire watershed.

### Section 0.60.01.h

This section provides that mixing zones shall meet certain restrictions, then states that DEQ may authorize mixing zones that vary from these restrictions per 0.60.01.i.

Recognizing that 0.60.01.i will be the subject of a future comment period, we will state now that we do not believe that DEQ should be authorized to approve any mixing zones that vary from the restrictions in 0.60.01.h.

Part i: What is the justification for allowing a mixing zone to extend to up to 25% of the width of the stream? Why not 10%?

Also, the width of a stream is often dependent on the amount of water in the stream at any particular time. Sections 0.60.01.h.ii and 0.60.01.h.iii contain provisions that base certain aspects of mixing zones on various low or critical flow scenarios. We believe that 0.60.01.h.i should similarly contain some means of determining which stream width DEQ is talking about – does DEQ mean the width of the stream at flood stage or at the critical volume per 210.03.b? In the name of consistency, it would seem reasonable to us utilize the stream width that would be defined per the shoreline described in 0.60.01.h.ii.

Part ii: What is the justification for allowing a mixing zone to extend as close to the shore as is provided by this section?

Part iii: What is the justification for allowing a mixing zone to include to up to 25% of the “critical volume” of the stream flow? Why not 10%?

#### Additional Comments

0.60.01.b mentions ‘zone of initial dilution’ and section 0.60.01.h describes restrictions on the sizing of mixing zones. However, neither of these sections discusses the sizing of the zone of initial dilution. This seems like a significant oversight. While the definition of zone of initial dilution (at 010.117) states that the zone “should be as small as practical,” a more rigorous framework is required in these rules.

We support the deletion of rule language authorizing the use of mixing zones in lakes and reservoirs. Due to the potential for slow mixing in lakes and reservoirs, the current rule language on this matter authorized mixing zones that could result in aquatic species being exposed to pollutant levels that exceed the time limitations associated with both acute and chronic water quality standards.