

# IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.02 - WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1501

### NOTICE OF NEGOTIATED RULEMAKING

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality, Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

**METHOD OF PARTICIPATION:** Those interested in participating in the negotiated rulemaking process are encouraged to attend the meeting at one of the following locations. The meeting locations will be connected by telephone and web conferencing. For those who cannot participate by attending the meeting, information for submitting written comments is provided at the end of this notice.

**MEETING SCHEDULE:** The negotiated rulemaking meeting will be held as follows. Additional meetings may be scheduled if necessary. For information regarding individual participation by telephone and web conferencing or scheduling of additional meetings, contact the undersigned. Individuals interested in participating by telephone and web conferencing should contact the undersigned by the date provided in the table below.

<p><b>*ORIGINATING LOCATION - LIVE MEETING*</b> <b>DEQ State Office</b> <b>Conference Rooms A and B</b> <b>1410 N. Hilton, Boise, Idaho</b></p>
<p><b>Tuesday, April 7, 2015</b> <b>9:00 a.m. to 12:30 p.m.</b></p> <p>To make arrangements for individual participation by telephone and web conferencing, contact Paula Wilson at <a href="mailto:paula.wilson@deq.idaho.gov">paula.wilson@deq.idaho.gov</a>, (208)373-0418, by April 2, 2015</p>

<b>*TELEPHONE AND WEB CONFERENCE LOCATIONS*</b>	
<p><b>DEQ Coeur d'Alene Regional Office</b> <b>2110 Ironwood Parkway</b> <b>Coeur d'Alene, Idaho</b></p>	<p><b>DEQ Pocatello Regional Office</b> <b>444 Hospital Way #300</b> <b>Pocatello, Idaho</b></p>

**PRELIMINARY DRAFT:** The preliminary draft rule can be obtained at [www.deq.idaho.gov/58-0102-1501](http://www.deq.idaho.gov/58-0102-1501) or by contacting Paula Wilson at [paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov), (208) 373-0418.

**DESCRIPTIVE SUMMARY:** The purpose of this rulemaking is to add language to the Idaho Water Quality Standards that is consistent with the federal regulations for designating and revising uses assigned to waterbodies, providing basis for guidance on the use designation/revision process.

A Use Attainability Analysis (UAA) is required in order to revise or remove a designated beneficial use that is not an existing use on a waterbody. According to federal Clean Water Act regulation (40 CFR 131.10), a designated use may be changed or removed if it is demonstrated that attaining the designated use is not feasible. The federal regulations describe six reasons for justifying infeasibility of use attainment, as well as limitations on removal of a currently designated use.

Not all waterbody beneficial use designations necessarily reflect the most appropriate use and may benefit from a UAA. Idaho has had mixed success in developing UAAs and changing use designations. Currently DEQ does not

have language in its Water Quality Standards pertaining to the UAA process, and consequently, DEQ has no basis for a policy or guidance document on when a UAA is appropriate or how to perform a UAA. UAA involves considerable data collection, analysis, and resources to meet the high demonstrable threshold required to revise use designations. Without guidance on when a UAA is required and the requirements of a successful UAA, a UAA is difficult and risky.

In 2014 the state of Idaho Office of Performance Evaluations (OPE) submitted Evaluation Report 14-03 to the Joint Legislative Oversight Committee. The Report recommended that DEQ complete its UAA guidance document. In the DEQ response to Report 14-03, DEQ committed to completing the UAA guidance after a basis for UAA guidance was established in the Water Quality Standards. This rulemaking is intended to develop sufficient language regarding the UAA process such that the OPE recommended guidance may be completed. In addition, DEQ proposes to add language clarifying that the presumed uses of cold water aquatic life and recreational uses do not apply to man-made waterways.

The text of the rule will be drafted by DEQ in conjunction with a negotiating committee made up of persons having an interest in the development of this rule. Idahoans that recreate in, drink from, or fish Idaho's surface waters and all who discharge pollutants to those same waters may be interested in participating in this rulemaking.

Upon conclusion of negotiations, DEQ intends to publish a proposed rule for public comment in the summer of 2015 and then present the final proposal to the Idaho Board of Environmental Quality for adoption of a pending rule in the fall of 2015. If adopted by the Board, the rule will be reviewed by the 2016 Idaho Legislature.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning this rulemaking, contact Josh Schultz at [josh.schultz@deq.idaho.gov](mailto:josh.schultz@deq.idaho.gov), (208) 373-0264.

For those who cannot participate by attending the scheduled meetings, written comments may be submitted by mail, fax or email at the address below. Written comments on the preliminary draft rule must be received by April 13, 2015. For information regarding submission of written comments on subsequent drafts of the negotiated rule, to receive copies of submitted written comments, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 6th Day of February, 2015.

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