

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1001

NOTICE OF INTENT TO PROMULGATE RULES - 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 following meetings. For those who cannot participate by attending the meetings, information for submitting written comments is provided at the end of this notice.

MEETING SCHEDULE: 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. Additional meetings may be scheduled if necessary. For information regarding individual participation by telephone or scheduling of additional meetings, contact the undersigned. Individual requests to participate by telephone must be made by April 19, 2010.

Thursday, April 22, 2010 - 9:30 a.m. to 12:30 p.m. Mountain Time		
Dept. of Environmental Quality 1410 N. Hilton, Conf. Rm. D Boise, Idaho	Dept. of Environmental Quality 444 Hospital Way, Suite 300 Pocatello, Idaho	Dept. of Environmental Quality 2110 Ironwood Parkway Coeur d'Alene, Idaho

Wednesday, May 12, 2010 - 9:30 a.m. to 12:30 p.m. Mountain Time		
Dept. of Environmental Quality 1410 N. Hilton, Conf. Rm. D Boise, Idaho	Dept. of Environmental Quality 444 Hospital Way, Suite 300 Pocatello, Idaho	Dept. of Environmental Quality 2110 Ironwood Parkway Coeur d'Alene, Idaho

PRELIMINARY DRAFT: By April 7, 2010, a preliminary draft of the rule can be obtained at http://www.deq.idaho.gov/rules/water/58_0102_1001_negotiated.cfm or by contacting Paula Wilson at paula.wilson@deq.idaho.gov, (208) 373-0418.

DESCRIPTIVE SUMMARY: The Clean Water Act requires Idaho to protect the existing uses of all state waters and to protect high quality waters from degradation that, upon public review, is not necessary and important. This is known as antidegradation. Federal law requires the state to have both an antidegradation policy and methods to implement the policy. Although Idaho has an antidegradation policy in rule, there are no procedures on how to implement the antidegradation policy.

In September 2009, the U.S. Environmental Protection Agency (EPA) was given a 60-day notice of intent to sue by the Idaho Conservation League over EPA's failure, in oversight of Idaho's water quality rules, to require Idaho to adopt an antidegradation implementation procedure. DEQ intends to initiate rulemaking in an effort to forestall the pending legal action against EPA that would force EPA to take action with respect to Idaho's rule. DEQ intends to negotiate a state rule and to develop supporting guidance. If Idaho does not act, EPA will be forced to act, and this may result in a federal rule requiring antidegradation review of state surface waters whenever permits are issued or activities conducted that could reduce surface water quality.

DEQ proposes to revise its Water Quality Standards, IDAPA 58.01.02, to include procedures for implementing efforts to limit degradation of water quality. These rules will likely address:

1. Types of activities subject to antidegradation review;
2. Definition of new or increased discharge;
3. Definition of degradation and information needed to determine degradation;
4. Various levels of protections and how it is decided which level of protection applies;
5. Exemptions to antidegradation review;
6. Waste treatment alternatives analysis to identify least degrading option;
7. Socio-economic analysis needed to justify degradation; and
8. What is needed to document existing sources of pollution are meeting required controls.

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 2010 and then present the final proposal to the Idaho Board of Environmental Quality for adoption of a pending rule in the fall of 2010. If adopted by the Board, the pending rule will be reviewed by the 2011 Idaho Legislature.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Don Essig at don.essig@deq.idaho.gov, (208)373-0119.

For those who cannot participate by attending the scheduled meetings, written comments may be submitted by mail, fax or e-mail at the address below. Written comments on the preliminary draft rule must be received by April 28, 2010. For information regarding submission of written comments on subsequent drafts of the negotiated rule, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 11th day of March, 2010.

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