



May 9, 2016

Paula Wilson  
Idaho Department of Environmental Quality  
1410 N. Hilton, Boise, ID 83706

**Re: Negotiated Rulemaking - Water Quality Standards/Copper Criteria, Docket No. 58-0102-1502**

Dear Ms. Wilson,

Thank you for the opportunity to provide comments on the Idaho Department of Environmental Quality's (IDEQ) April 20, 2016 negotiated rulemaking presentation regarding updates to the state's copper aquatic life criteria. On behalf of our client, the Copper Development Association (CDA), we would like to offer several items for your staff to consider in the June 2, 2016 negotiated rulemaking meeting.

Foremost, we are encouraged to see the options for Biotic Ligand Model (BLM)-based, statewide standards laid out within last month's presentation and greatly appreciate IDEQ's time and effort to provide clear options for stakeholder input.

Currently, we have a strong preference for Option 1, which was stated as "[m]ove forward with current preliminary draft rule – all implementation (including defaults) in guidance." We support this Option because, as IDEQ indicated in the meeting, it provides the most flexibility for stakeholders. But with respect to the BLM software, as we have commented on previously, we would prefer the rule reference be as general as possible. The simplest approach would be adoption of the BLM by reference to USEPA copper criteria document (EPA-822-R-07-001 February 2007) as this would be the most direct way of addressing the issues raised in the National Marine Fisheries Service's (NMFS) Biological Opinion and would most likely meet the May 2017 Reasonable and Prudent Alternative deadline. Additionally, this will still leave room for IDEQ to explore other implementation options and may open the door to simplified BLMs and other tools that are evolving and may benefit stakeholders, yet still generate aquatic life criteria that are consistent with the 2007 national EPA criteria.

We do, however, understand the need for the model reference, if included in the final rule, to be consistent with Idaho's Administrative Procedure Act. We therefore encourage IDEQ to explore options for referencing the BLM software version criteria not as a specific version number of the BLM software, but instead allow use of the current version of the model that derives criteria concentrations that are consistent with the 2007 USEPA copper criteria. As covered in our November 9, 2015 comment letter to IDEQ, the version numbering of the BLM software reflects both changes to the user interface and also changes to the BLM calculation or "engine," with engine 2.12 being the one specifically used to calculate USEPA freshwater water quality criteria concentrations. Therefore, an updated version number does not necessarily mean the way the criteria are calculated would be different than previous versions. If IDEQ must include a version number reference in the final rule, we recommend using language in proposed footnote xx to the numeric criteria table in Section 210 of 58-01-02, that reads "Aquatic life criteria for copper are derived from the Biotic Ligand Model software version 2.2.3 or the most recent software version that derives criteria consistent with USEPA copper criteria (EPA-822-R-07-001 February 2007), using engine 2.12." This would allow more flexibility in the model version to be used by stakeholders (as even v2.2.3 has been already been updated to v3.1.2.37) and would still ensure freshwater aquatic life water quality criteria concentrations are consistent with USEPA (2007).

Option 4 may be also be beneficial, but our support for that path (or any others where default criteria or default parameters to derive criteria are involved) is contingent on 1) a clear implementation process for replacing or updating criteria derived on the basis of default parameters, and 2) a clear strategy for avoiding unnecessary anti-degradation and anti-backsliding issues. Furthermore, there needs to be strong evidence that this strategy is accepted by both permits and standards staff. This is a non-trivial consideration as it could potentially undermine the whole intent of advancing the state of the science for deriving protective criteria and effluent limitations. As such, we ask that IDEQ engage permits staff early in the guidance development- and rulemaking process.

It is critically important to provide a clear implementation path for replacing criteria derived on the basis of default BLM parameters once site-specific data are available. This is because the conservative nature of these default values would likely derive equally conservative criteria concentrations that may effectively become permanent or difficult to update if the regulatory process is too burdensome. The goal of the BLM is to derive the most accurate levels of aquatic life protection, and criteria based on default parameter values will not achieve the accuracy the BLM was developed to provide. Furthermore, as we have already seen in Colorado, anti-degradation and anti-backsliding may result in permit limits defaulting back to historical hardness-based no impact limits if the new BLM-based standards in the receiving waters would result in a "new or increased impact" in the permit. Permittees and other stakeholders may ultimately not benefit from their investments and efforts in the collection of site-specific BLM data and participation in regulatory hearings to adopt new standards if the BLM-based standards are not incorporated into their permits. While we do understand the differences in how Idaho is implementing the BLM compared to Colorado (i.e., statewide versus site-specific), the same permit and implementation issues may still arise, and thus, we ask that IDEQ address them during the current negotiated rulemaking process.

We appreciate the opportunity to provide comments on the proposed water quality standards and would welcome the opportunity to participate in the guidance development process. The experiences we have gained in other states may help inform the development process and we would be glad to share our lessons learned along the way. Please let us know if you have any questions and we look forward to discussing this with you further during the June 2 meeting.

Sincerely,  
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