



May 5, 2017

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 25, 2017 negotiated rulemaking presentation regarding updates to the state's copper aquatic life criteria. GEI Consultants and Windward Environmental, along with our client, the Copper Development Association (CDA), would like to offer several items for your staff to consider in the June 2017 negotiated rulemaking meeting.

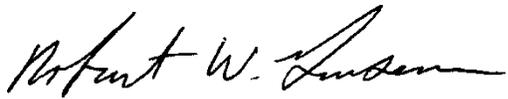
We greatly appreciate the efforts taken by IDEQ to develop guidance for implementing the biotic ligand model (BLM) and for soliciting, and incorporating, stakeholder input throughout this process. The latest version of the draft guidance presented during the recent rulemaking meeting represents a valuable resource for understanding the quality of data that should be collected and for understanding how the BLM can be used to derive copper water quality criteria. However, we believe there are several areas that would benefit from additional detail and clarification in order to provide better practical application of the BLM for the regulatory (e.g., permit writers) and regulated communities (e.g., permit-holders):

- As we've commented previously, we strongly encourage IDEQ to use this opportunity during the negotiated rulemaking process to address how BLM-based criteria will be incorporated into permit limits and whether these updated criteria/limits would trigger antidegradation/anti-backsliding review. We recommend that the sections that preliminarily addressed these issues in previous versions be expanded upon and reincorporated into the draft guidance. The IDEQ staff responsible for developing this guidance are likely the best suited for resolving these challenging topics, rather than having this being taken up by a separate agency (i.e., Permits) who may be less familiar with the model. If BLM-based standards are to be adopted for the receiving water, there needs to be a clear, defensible method for developing related BLM-based effluent limitations in discharge permits. This would provide stakeholders with more regulatory certainty and relieve the burden on other agencies that will also be affected by this rulemaking.
- We ask for clarification on what would constitute a "conservative percentile" of the IWQC distribution when reconciling the time-variable BLM-generated criteria. The draft guidance states that "Users must demonstrate that the selected percentile will be protective of aquatic life and will not lead to a frequency of copper exceedance of individual IWQCs at the site more than once in three years." It would be helpful for the guidance to more explicitly define how it can be demonstrated that the percentile is protective and that it would not be exceeded more than once in three years. The Fixed Monitoring Benchmark (FMB) approach (an example provided in the draft guidance) explicitly calculates a protective copper concentration that is directly related to the once in three years exceedance frequency. Otherwise, selection of some percentile of IWQC is, essentially, arbitrary because it does not consider corresponding dissolved copper concentrations. If methods other than the FMB are allowed, then the current draft guidance would benefit from specific detail on how the conservative percentile is selected, based on the available

data from a site, to ensure the required level of protection. Furthermore, detail should be provided as to how the selected protective value would be applied in 303(d) list impairment assessments.

We appreciate the opportunity to provide comments on the proposed implementation guidance and would welcome additional opportunity to participate in the development process. Please let us know if you have any questions and we look forward to discussing this with you further during the June meeting.

Sincerely,  
GEI CONSULTANTS, INC.



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