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May 5, 2017

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

Submitted via email: paula.wilson@deq.idaho.gov

Re: Docket No. 58-0102-1701, Update to Selenium Criteria

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 aquatic life.

We provide these comments to you somewhat under duress. As we stated at the recent rulemaking meeting, we do not believe that DEQ is providing sufficient time for the public to review and comment on the issues that are being contemplated in this rulemaking. The seven day period provided to review the materials that are related to setting a new selenium standard is too short of a time to provide for adequate review.

Scope of Comments

DEQ's rulemaking presentation, presented on 4/27, presented both EPA's Aquatic Life Ambient Water Quality Criterion for Selenium in Freshwater 2016 and also a version of a 'site specific' criteria derived by removing sturgeon data from information utilized to develop the EPA 2016 criterion.

It is our understanding that this comment period is only related to the consideration of the adoption of the 2016 EPA Selenium Criteria – as demonstrated by the document circulated by DEQ, entitled "Draft No. 1." And, that this comment period is not in regards to the development of site specific criteria. For the record, we currently oppose the deletion of sturgeon data to generate a site specific selenium criteria.

Consultation Required

The adoption of the selenium criteria developed by the EPA may be appropriate for Idaho, provided that the FWS and NOAA undertake consultation and determine these criteria to

be protective. We must wait for the services to undertake their consultations before we feel comfortable endorsing the EPA proposal – and by extension, DEQ’s proposal.

“New” Selenium Inputs

During our review the EPA documents related to their selenium criteria, there were several aspects that caused us to wonder how Idaho would integrate certain aspects of the criteria. The EPA document provides that there are two specific circumstances where the fish tissue concentrations do not fully represent potential effects on fish and aquatic ecosystems: 1) “fishless” waters, and 2) areas with new selenium inputs. The term ‘new inputs’ is further described by EPA.

We wonder how Idaho will characterize the annual pulses of selenium observed in certain SE Idaho waters. While it is the case that the activities that placed the selenium in locations that result in contamination of waterbodies frequently occurred a number of years ago, the annual pulses induced by runoff have the characteristics of ‘new’ inputs rather than steady releases. To the degree that these behave as new inputs, the EPA recommends that the fish tissue criterion *not* take precedence over the water column criterion elements. Language found in DEQ’s Draft No. 1 at footnote ‘r,’ sub-footnote number 4 is relate to this matter. How will DEQ address this?

Protection of Human Health

The DEQ has provided no information to demonstrate that adoption of the proposed Aquatic Life criteria will not result in harmful impacts to human health. We are concerned that compliance with these proposed criteria will result in situations that allow fish to be contaminated with sufficient amounts of selenium that humans consuming the fish will be harming themselves. We ask that DEQ provide additional information to the rulemaking participant regarding this matter; specifically, how regulating selenium such that fish tissue is allowed to exceed human safety thresholds is protective of human health.

Protection of Non-Fish Aquatic Life and Aquatic Dependent Life

The DEQ has provided no information to demonstrate that adoption of the proposed Aquatic Life criteria will not result in harmful impacts to non-fish aquatic and non-fish aquatic dependent life. We are concerned that compliance with these proposed criteria will result in situations that harm non-fish aquatic life and aquatic dependent life. We ask that DEQ provide additional information to the rulemaking participant regarding this matter

Please contact me if you have any questions at 208-345-6933 x 24 or jhayes@idahoconservation.org

Sincerely,



Justin Hayes
Program Director