



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

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OFFICE OF
WATER AND
WATERSHEDS

July 30, 2018

Brian Reese
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706

RE: The EPA's Comments on Idaho's Preliminary Draft Negotiated Rule (Draft #1)
Revisions to Idaho's Allowance for De Minimis Increase to Temperature for Point Sources,
Docket No. 58-0102-1803

Dear Brian:

Thank you for the opportunity to provide comments to the Idaho Department of Environmental Quality (DEQ) on the preliminary draft negotiated rule to revise Idaho's allowance of a de minimis increase in surface water temperature attributed to point sources. DEQ is proposing to revise the water quality standard provision that provides three tenths degrees Celsius (0.3 degrees C) temperature increase for point source discharges if a water body is exceeding the numeric temperature water quality standards due to natural conditions to a provision allowing for a 0.3 degrees C increase over the ambient temperature, regardless of the cause for the exceedance of the numeric criteria.

The EPA has reviewed DEQ's preliminary rule draft #1 and offers the following comments for your consideration.

Based on information provided during the July 20, 2018 negotiated rulemaking meeting, the EPA understands DEQ proposes revising the language at IDAPA 58.01.02.401.01.c. as follows (strikeout indicates language proposed for deletion):

58.01.02.401. Point Source Wastewater Treatment Requirements

01. Temperature. The wastewater must not affect the receiving water outside the mixing zone so that:

- c. If temperature criteria for the designated aquatic life use are exceeded in the receiving waters upstream of the discharge ~~due to natural background conditions~~, then wastewater must not raise the receiving water temperatures by more than three tenths (0.3) degrees C.*

The EPA recommends DEQ consider revising the rule to allow a 0.3 degrees C increase *above numeric criteria or natural background conditions only*, and not the ambient water temperature. Such a revision would allow the current TMDL and NPDES permitting practice to continue and is consistent with other relevant Idaho water quality standards. Addition of such language is consistent with EPA's statements in the EPA Region 10 Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards.¹

¹ U.S. Environmental Protection Agency, 2003. EPA Region 10 Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards, EPA 910-B-03-002, Region 10 Office of Water, Seattle, Washington.

The EPA understands that in some situations, implementing the current provision at 58.01.02.401.01.c. can result in temperature waste load allocations (WLAs) and temperature permit limits which are not readily achievable and that Idaho is interested in exploring water quality standards revisions to help address these situations on a case by case basis. However, it is not clear how the proposed rule would protect Idaho's aquatic life beneficial uses, since the starting point for the allowed temperature increase would be the ambient water temperature instead of the protective numeric criteria or the natural background condition. A 0.3 degrees C increase to a temperature in exceedance of the water quality standard cannot be assumed to be de minimis if the aquatic life use is already in a compromised state. Without a demonstration that the ambient level is protective of the aquatic life uses for the specific waterbody, establishing a baseline of ambient temperature and adding a 0.3 degrees C de minimis allowance would be inconsistent with the water quality standard (WQS) regulations regarding establishing criteria to protect the designated use. Furthermore, the loading analysis in any TMDL would need to demonstrate that the total load (point and nonpoint) ensures that all relevant Idaho WQS are met. If the resulting temperature and total heat load allowed by this provision exceeds other WQS (e.g. numeric criteria or natural conditions), it is not clear how such a TMDL would be determined to be consistent with all relevant WQS. For example, any increased load given to point sources as a result of this new rule would necessitate further reductions (possibly below criteria) to nonpoint sources to ensure that all applicable criteria are met.

The EPA also has questions and concerns about how the new rule would be implemented. First, it is not clear how DEQ would determine the ambient temperature conditions in those situations when ambient is above the numeric, since this has the potential to be a moving target. It would be important for DEQ to clarify this during the negotiated rulemaking as well if the current version moves forward for formal public comment.

Second, during the July 20, 2018, negotiated rulemaking meeting discussions, DEQ clarified that the intent is to apply the 0.3 degrees C increase cumulatively across point sources. The EPA recognizes DEQ has been applying the current 0.3 degrees C allowance cumulatively and the intent is for this provision to apply cumulatively, however this is not clear in either the current provision or the proposed revision. The EPA recommends DEQ consider additional language that states the 0.3 degrees C allowance is cumulative across all point sources where the criteria apply.

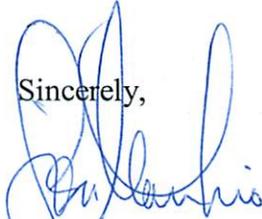
The EPA encourages DEQ to coordinate with other states and consider a range of options for addressing temperature through water quality standards revisions and other CWA programs, such as TMDLs and NPDES permits. As DEQ is aware, Oregon and Washington are facing similar issues and are exploring how best to address temperature through CWA programs. This involves consideration of water quality standards revisions that may be used on a state-wide or case-by-case basis, such as variances and site-specific (individual or performance-based) approaches. The work being done on variances in other states such as Colorado and Wisconsin may be worthwhile for DEQ to consider. The EPA is committed to providing technical support on these approaches.

For implementation considerations, such as NPDES permit development, DEQ may want to consider thoroughly investigating technology options and compiling a summary of available

options and technologies, which may identify other reasonable solutions and narrow the list of particularly problematic situations. The EPA understands Washington published treatment recommendations for municipal wastewater treatment facilities in 2007 and Colorado is investigating treatment technologies.

EPA remains committed to supporting DEQ as it continues to explore potential approaches to addressing temperature and is available to assist you. If you have any questions or would like to discuss these comments further, please contact me at (206) 553-1834.

Sincerely,



Lisa Macchio
Water Quality Standards Coordinator