



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706 • (208) 373-0502
www.deq.idaho.gov

C.L. "Butch" Otter, Governor
John H. Tippetts, Director

January 8, 2019

Mr. Dan Opalski
Office of Water and Watersheds, Region 10
U.S. Environmental Protection Agency
1200 6th Ave., Suite 155
Mail Stop: OWW-192
Seattle, WA 98101

Re: Submission of revised water quality standards for approval: Update of Aquatic Life Criteria for Copper, Idaho rule docket 58-0102-1502.

Dear Mr. Opalski:

Consistent with the Clean Water Act §303(c) and 40 CFR 131.20, revisions to Idaho's water quality standards (WQS) are hereby submitted for EPA approval. Rulemaking was initiated to amend the Idaho Water Quality Standards by updating Idaho's existing hardness dependent criteria to EPA's 2007 section 304(a) copper criteria.

Idaho initiated this rulemaking, rule docket 58-0102-1502, in response to a Reasonable and Prudent Alternative identified in National Oceanic and Atmospheric Administration's (NOAA) biological opinion (BiOp) on Idaho's criteria for toxic substances to support aquatic life.

The BiOp concluded that the current hardness-based copper criteria were not always protective of aquatic life and would result in adverse modification of critical habitat. NOAA's recommendation was to use EPA's 2007 section 304(a) copper criteria, which uses other physicochemical properties of the water (e.g., pH, dissolved organic carbon, etc.) to predict water-body specific criteria using a model known as the Biotic Ligand Model (BLM).

These criteria replace the existing hardness dependent criteria for copper with a similar, albeit more detailed, modeled approach. Additionally, the proposed rule references the "Implementation Guidance for the Idaho Copper Criteria for Aquatic Life: Using the Biotic Ligand Model" which details procedures for implementing the criteria including determining minimum data requirements for BLM inputs and guidance for estimating protective criteria when data are incomplete or absent.

Rule negotiation with the public was announced in the October 2015 issue of the Idaho Administrative Bulletin, as well as on DEQ's web page and by direct email. Nine negotiated rulemaking and guidance development meetings were held between October 28, 2015, and July 18, 2017. Four preliminary drafts of the rule were prepared including the preliminary draft provided for the first negotiated rulemaking meeting. Each draft had a public comment period in addition to the meeting negotiations.

A fifth draft was published as the proposed rule in the September 6, 2017 Idaho Administrative Bulletin, followed by a formal 30-day comment period.

The rule was presented to the Idaho Board of Environmental Quality on November 16, 2017, and adopted as a pending rule with the exception of proposed changes to Section 004.01 regarding incorporation of guidance by reference.

The pending rule was noticed in the January 3, 2018 edition of the Idaho Administrative Bulletin and finalized by the 2018 Idaho Legislature, becoming effective under Idaho Law on March 28, 2018.

DEQ has an online record of the rulemaking process that includes all the rule drafts and comments received, presentations given, and materials distributed, which can be accessed at: <http://www.deq.idaho.gov/laws-rules-etc/deq-rulemakings/docket-no-58-0102-1502/>. In addition to the documents itemized below, all materials that are posted at this URL are hereby incorporated by reference in this submittal.

The rule submittal package includes:

- 1) This cover letter, briefly describing the rulemaking, its justification, and the contents of the package supporting the rule being submitted for approval [*file: 1) 58-0102-1501 Submittal Cover Letter.pdf*];
- 2) October 7, 2015 Notice of Negotiated Rulemaking [*file: 2) 58-0102-1502 Notice of Negotiated Rulemaking_10.07.2015.pdf*];
- 3) September 6, 2017 Notice of Proposed Rule announcing opening of 30-day public comment period on proposed rule [*file: 3) 58-0102-1502 Notice of Proposed Rule_09.06.2017.pdf*];
- 4) Summary of negotiated rulemaking prepared for DEQ's Board, including the summary of public comment and DEQ's response, [*file: 4) 58-0102-1502 Summary of Negotiated Rulemaking.pdf*];
- 5) January 3, 2018 Notice of Pending Rule announcing adoption by the DEQ Board, [*file: 5) 58-0102-1502 Notice of Pending Rule_01.03.2018.pdf*];
- 6) Notice of final rules from May 2, 2018 Idaho Administrative Bulletin, docket 58-0102-1502 is highlighted on page 8, [*file: 6) 58-0102-1502 Notice of Final Rules_05.02.2018.pdf*];
- 7) An Attorney General's certification that the rules were adopted according to state law, [*file: 7) 58-0102-1502 Attorney Generals Certification Letter.pdf*];
- 8) Final Draft *Implementation Guidance for the Idaho Copper Criteria for Aquatic Life*, [*file: 8) 58-0102-1502-implementation-guidance-idaho-copper-criteria-aquatic-life-1117.pdf*];
- 9) Final report *Statewide Monitoring for Inputs to the Copper Biotic Ligand Model*, [*file: 9) 58-0102-1502-statewide-monitoring-inputs-copper-biotic-ligand-model-0817.pdf*];

Mr. Dan Opalski

January 8, 2019

Page 3

In addition, electronic copies of the above materials have been burned onto CD for your convenience.

If you have any questions on this rulemaking and the enclosed supporting materials, please contact Jason Pappani at (208) 373-0515 or jason.pappani@deq.idaho.gov.

Sincerely,



Barry N. Burnell
Water Quality Division Administrator

BNB:JP:tg

Enclosures

c: Lisa Macchio, EPA (with enclosures)
Jason Pappani, DEQ (w/o enclosures)
Mark Cecchini-Beaver, DEQ (w/o enclosures)