



Association of Idaho Cities
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June 30, 2020

Paula Wilson
Idaho Department of Environmental Quality
1410 N Hilton
Boise, ID 83705

Re: Idaho Water Quality Standards, 2020 Triennial Review Comments

Dear Ms. Wilson/Paula,

The Association of Idaho Cities (AIC) serves to advance the interests of the cities of Idaho through legislative advocacy, technical assistance, training, and research. Idaho cities play important roles as primary implementers of the Clean Water Act, representing over 70% of all Idaho residents. These stakeholders have significant interests in the development of water quality standards, rules, and guidance related to the protection of human and aquatic life. AIC is actively engaged in water quality issues through the work of our Environment Committee, chaired by Boise City Council President Elaine Clegg and our Municipal Water Users Group.

The Idaho Department of Environmental Quality (DEQ) is seeking comments on the Idaho 2020 Triennial Review with the goals to identify priorities to develop and/or revise the Idaho water quality standards (i.e., beneficial use designations and associated criteria). These State of Idaho reviews occur once every three years, sometimes in response to EPA's development and publication of water quality criteria under section 304(a) of the Clean Water Act, based on recommendations to protect aquatic life and recreation uses. AIC notes that the 304(a) criteria are federal recommendations, not regulations.

AIC appreciates the opportunity to comment and looks forward to working with our State and other partners in the development of Idaho priorities that impact Idaho cities. Should you have questions concerning our attached comments, please feel free to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. Bell".

Johanna M. Bell, PE
AIC Policy Analyst – Environment

Attachment

cc: Kelley Packer, AIC Executive Director
Tom Jenkins, AIC President
Elaine Clegg, AIC Environment Committee Chair
Jess Byrne, Idaho Department of Environmental Quality, Deputy Director
AIC Municipal Water Users
AIC IPDES Task Force



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General Comments

AIC appreciates the DEQ's efforts to engage stakeholders on these and other important efforts to coordinate the various State of Idaho responsibilities to comply with the Clean Water Act (CWA). The range of 2020 Triennial Review issue papers, from revisions to beneficial use designations, review of EPA-recommended criteria, to the development of a performance-based approach for temperature criteria, represent a comprehensive overview of some of the more important public and environmental health challenges facing Idaho. AIC commends the DEQ's efforts, but also recognizes there are numerous events and factors that will impact these efforts between now and the 2023 Triennial Review.

For example, AIC understands that in addition to the current 2% budget reduction for the DEQ, there may be an additional 5% budget holdback placed upon the department later this year, depending on how the State budget fares during this time of global pandemic. The implications of the budget reduction and holdback on the Surface Water Quality Bureau indicates that, at least for the next few years, the resources to implement the current programs (e.g., ambient quality and beneficial use reconnaissance monitoring, updating the arsenic and recreation use criteria, among others) may be extremely limited. This puts into question whether Idaho has adequate resources to tackle the development of many of the criteria development or improvement opportunities covered in the 2020 Triennial Review issue papers.

Therefore, AIC's overall recommendation is for the DEQ to carefully assess priorities to ensure first that critical environmental and health risks are being addressed. Second, in order to bolster compliance and capacity among our members, we recommended that the existing criteria, and criteria under development, have associated implementation and compliance guidance developed to inform strategic program funding priorities by our members, and regulatory oversight by the DEQ. Examples of guidance and supporting DEQ programs we believe will help our members include how to comply with the existing ammonia,¹ temperature, and narrative nutrient criteria; such that our members' response to the DEQ's directions **do not** cause more harm to the environment and public health (i.e., than would otherwise be caused through alternative policies and compliance scenarios).²

Specific Recommendations

AIC respectfully provides the following comments on the Idaho Triennial Review priorities:

Issue Paper: EPA §304(a) Recommended Criteria—Microcystins and Cylindrospermopsin

AIC is extremely concerned about Idaho diverting limited resources in the development of these criteria. We support swimming recreation & drinking water intake advisories only; but do not

¹ For ammonia, the appropriate application of Monte Carlo analysis could be encouraged by DEQ staff through initial conditions review, whether additional data are likely to result in a revised 'reasonable potential to exceed' results, and, if so, providing additional time and technical resources to AIC members to collect the necessary data and conduct the DEQ-supported analysis.

² See https://cdn.ymaws.com/idahocities.org/resource/resmgr/water/2020/temperature_white_paper_marc.pdf, accessed 6/30/2020.

support the development of criterion for CWA compliance purposes. Alternatively, AIC encourages the DEQ and our other agency partners to continue to keep abreast of emerging research to better understand the causes and effective controls, and to revisit this issue during the 2023 Triennial Review.

Issue Paper: Comparison of Current Idaho Aquatic Life Criteria for Ammonia and EPA's §304(a)

AIC recognizes that EPA's recommended criteria will significantly impact wastewater treatment affordability in Idaho. The current ammonia criteria for Idaho is known to provide aquatic life protection with associated water quality based effluent limits in a number of discharge permits in the state. AIC recommends that the DEQ apply some of the very limited resources to develop a better understanding on the presence/absence of the more sensitive species the updated 304(a) criteria is designed to protect. That is, AIC believes it would be good for the DEQ to investigate how prevalent the sensitive species are within Idaho before the DEQ pursues this update to the criteria. Furthermore, the implementation of both the existing and any revised criteria is very important. Please see footnote #1 for AIC's thoughts regarding the need for more DEQ support in the application of Monte Carlo analysis for the current ammonia criteria.

Issue Paper: Salmonid Spawning Use Designation

AIC is taking a neutral position with respect to this proposal; and reiterates our general concerns regarding the very limited resources available to the DEQ Surface Water Bureau anticipated over these next few years.

Issue Paper: Data and Information Needs Necessary for the State of Idaho to Consider Adoption of EPA 304(a) Aquatic Life Criteria for Mercury

AIC understands that EPA disapproved DEQ's deletion of the antiquated and scientifically inferior mercury criteria for aquatic life that were in the rules prior the deletion. This action by EPA has forced application of the prior inferior criteria for CWA purposes *within Idaho*. Because the proposed revision to the mercury criteria for aquatic life reflects improved research and supporting science, AIC supports an update to these criteria at this time, in spite of the limited resources anticipated over these next few years. AIC recommends that DEQ work with EPA and Idaho stakeholders to consider appropriate criteria.

Issue Paper: Lower Snake – Asotin Subbasin (HUC 17060101) Salmonid Spawning Use Designation

AIC is taking a neutral position with respect to this proposal; and reiterates our general concerns regarding the very limited resources available to the DEQ Surface Water Bureau anticipated over these next few years.

Issue Paper: Jacks Creek Aquatic Life Beneficial Use Designation

AIC support the DEQ's efforts within the Jacks Creek valley, based on the understanding that much of the supporting data and analysis have been obtained. AIC encourages the DEQ to work with EPA Region 10, to seek leadership's acknowledgment of how States need more support by EPA so that the resources they expend in seeking appropriate UAAs are not wasted. This is consistent with the Idaho Legislature's Office of Performance Evaluations special report on UAAs issued in 2014.³

³ See <https://legislature.idaho.gov/wp-content/uploads/OPE/NewsReleases/nr140714.pdf>, accessed 6/30/2020

Issue Paper: Performance-based Approach for Temperature Criteria

AIC is taking a neutral position with respect to this proposal; it is one of a number of approaches that can be considered to address the difficult challenges associated with thermal discharges in Idaho (see Footnote 2). AIC suggests that the DEQ's limited resources over these next few years be applied to fundamental thermal discharge program requirements outlined by the CWA that apply to temperature impairment listings (hence also TMDLs) and thermal discharge permitting. AIC has re-read CWA sections 303(d)(1)(B), (D), and 316;⁴ and suggests that an "Idaho solution" to develop and implement a thermal discharge impacts analysis is an essential and high priority issue for all of Idaho and all of Idaho's stakeholders.

⁴ CWA Section 303(d)(1)(B): (B) Each State shall identify those waters or parts thereof within its boundaries for which controls on thermal discharges under section 301 are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife.

CWA Section 303(d)(1)(D): (D) Each State shall estimate for the waters identified in paragraph (1)(B) of this subsection the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for such protection and propagation in the identified waters or parts thereof.

THERMAL DISCHARGES SEC. 316. (a) With respect to any point source otherwise subject to the provisions of section 301 or section 306 of this Act, whenever the owner or operator of any such source, after opportunity for public hearing, can demonstrate to the satisfaction of the Administrator (or, if appropriate, the State) that any effluent limitation proposed for the control of the thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the projection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made, the Administrator (or, if appropriate, the State) may impose an effluent limitation under such sections for such plant, with respect to the thermal component of such discharge (taking into account the interaction of such thermal component with other pollutants), that will assure the projection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on that body of water.