STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706 • (208) 373-0502

C.L. "Butch" Otter, Governor
Curt Fransen, Director

August 6, 2012

Mike Bussell, Director
Office of Water, Region 10
US Environmental Protection Agency
1200 6th Avenue
Seattle, WA 98101

Dear Mr. Bussell:

This letter is in response to the Environmental Protection Agency's (EPA) May 10, 2012 disapproval of the Department of Environmental Quality's (DEQ) human health criteria for toxic pollutants that was submitted to EPA for review on July 7, 2006. EPA's disapproval is based upon the assertion that DEQ did not consider several sources of information regarding local and regional fish consumption before using the national default fish consumption rate to set criteria. [1]

As required by 40 CFR 131.21(a)(2), EPA in its May 10, 2012 disapproval specified the changes EPA believes are necessary for Idaho to meet the applicable requirements of the Clean Water Act and EPA's regulations. DEQ has determined that it will take the action EPA specified was needed to remedy the disapproval. Accordingly, DEQ intends to "evaluate local and regional fish consumption information to determine whether its statewide criteria are protective of designated uses." DEQ will include in its review and evaluation that information identified by EPA in its disapproval letter.

DEQ believes it is critical to involve interested stakeholders in its evaluation of fish consumption information and any necessary revisions to the Idaho human health criteria. Therefore, DEQ intends to publish a notice of intent to promulgate a rule that will invite interested parties to participate in the evaluation of information and any necessary rule making. Of course, EPA's involvement in this process will be essential, and DEQ asks that EPA provide a representative to participate.

DEQ intends to publish the notice of intent to promulgate a rule in the September 2012 Idaho Administrative Bulletin. The notice will include the date for an initial meeting of interested parties. DEQ anticipates the first meeting will be held in October. Prior to the initial meeting, DEQ will begin its evaluation of the fish consumption information so that the conclusions of DEQ's evaluation can be shared with interested parties early in the negotiated rulemaking

[1] DEQ disagrees with EPA's assertions and believes that the factual record does not support EPA's disapproval. Nevertheless, DEQ is committed to carrying out the actions outlined in this letter.

process. DEQ also intends to provide, at the initial meeting, a proposed schedule to complete the rulemaking process.

In the disapproval letter, EPA offered its assistance in the event DEQ desired to undertake a new fish consumption survey. DEQ believes an Idaho specific fish consumption survey could provide valuable information to ensure that the Idaho criteria are protective. To support the development of Idaho criteria, DEQ believes such a survey must be credible to all stakeholders and should be performed under DEQ oversight by a highly qualified, neutral entity. DEQ looks forward to working cooperatively with EPA regarding a fish consumption survey. DEQ also believes this is a topic for interested stakeholders, and intends to include this in its discussion with interested parties initiated through the notice of intent to promulgate a rule.

In the disapproval letter, EPA also noted a need to update human health criteria for acrolein and phenol based on information developed subsequent to DEQ's submission of the criteria to EPA for review in 2006. DEQ also intends to propose an update of the acrolein and phenol criteria to reflect the latest relevant information.

This letter in no way should be interpreted to limit DEQ's right to pursue any claims or defenses it may have in the event that, notwithstanding DEQ taking the actions outlined in this letter, EPA determines to proceed with the promulgation of a rule, or in the event a third party brings a legal action against EPA regarding the EPA May 10, 2012 disapproval of the DEQ human health criteria for toxic pollutants.

Please let me know if you have any questions or concerns regarding the course of action DEQ has outlined in this letter.

Sincerely,

Barry N. Burnell

Barry N. Burnell
Water Quality Division Administrator

BNB:dls