



Association of Idaho Cities

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January 4, 2012

Don Essig
Water Quality Standards Coordinator
Idaho Department of Environmental Quality
1410 North Hilton
Boise, ID 83706

RECEIVED
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DEQ Hearings Coordinator
DOCKET NO. _____

Re: Idaho Toxics Rulemaking

Dear Mr. Essig,

The Association of Idaho Cities was founded in 1947 and is a nonpartisan, nonprofit corporation owned, organized, and operated by Idaho's city governments. The organization serves to advance the interests of the cities of Idaho through legislative advocacy, technical assistance, training and research. AIC is actively engaged in water quality issues through the work of our Environment Committee, chaired by Boise City Councilmember Elaine Clegg.

Idaho Cities, as the primary implementers of the Clean Water Act, have significant interest in the toxics rulemaking recently initiated by the Idaho Department of Environmental Quality. Cities have and will continue to invest in treatment and other measures to improve the quality of surface water and groundwater throughout the state. The State has requested and AIC is providing comments on the general toxics development approach and input concerning the applicability of existing fish consumption studies for criteria development purposes.

Toxics Criteria Approach

AIC recognizes that the toxics water quality criteria are an important state water quality standards issue that could be developed using a number of approaches. Idaho could pursue an approach similar to the State of Oregon, which adopted a high fish consumption rate and associated criteria that for many Oregon waters are unattainable. The Oregon approach also included associated implementation measures that provide Clean Water Act flexibility (e.g. use attainability analyses, variances, alternative control options...) to address criteria that in many cases are unattainable (e.g. Methylmercury...) in Oregon waters.

An advantage of this approach is that it is generally supported by tribal and environmental groups as it appears to address toxics in a significant way. However, because a large proportion of the fish consumed are anadromous fish that spend only a small amount of time in Oregon freshwaters and obtain the majority of their body weight (up to 98%) and bioaccumulative pollutants in the Pacific Ocean or Puget Sound, the stringent freshwater criteria will likely do little to decrease anadromous fish contamination

levels. A disadvantage of the Oregon approach is that regulatory requirements on freshwater dischargers are difficult and expensive to administer and implement and as a practical matter, do not meaningfully address the toxics concentration in anadromous fish (e.g. little if any decrease in fish contamination levels because the source is the Pacific Ocean and Puget Sound, not freshwaters).

A second approach is to develop human health criteria using EPA's human health criteria guidance to ensure the criteria are protective of human health for freshwater using sound science (e.g. criteria to protect Idaho waters, not Puget Sound or the Pacific Ocean), science policy (e.g. Idaho freshwater fish consumption rate), and public health/risk management policy (e.g. fish consumption benefits...). AIC recognizes that if the criteria are based on freshwater fish consumption rates (e.g. exclude marine species), that the rate may be lower and result in less stringent, but fully protective toxics criteria for Idaho waters. In our view, this approach will require new data (e.g. Idaho specific fish consumption data) and thoughtful consideration of the multiple science, science policy, and risk management policy (e.g. marine or fresh and marine; harvest versus purchased...) elements that are included in the human health criteria development process. AIC supports development and adoption of Idaho Toxics Criteria using a process based on sound science, science policy, and public health/risk management based approach.

AIC also recognizes that revision of existing toxics programs (e.g. RCRA, Superfund, Clean Air Act, sediment cleanup standards, FIFRA, international agreements and controls...) to include a broader view of toxics contamination, likely is a much more important tool in controlling actual fish contamination levels than adoption of extremely low water quality criteria for waters in which anadromous fish spend only a small portion of their lifecycle. AIC suggests that a serious review and as necessary, revision of related toxics programs, is necessary to make meaningful progress in the reduction of contamination in anadromous and resident fish contaminant levels.

Fish Consumption Study Review

Based on our review of the six fish consumption studies identified by IDEQ, the reports contain insufficient fish consumption for development of an Idaho fish consumption rate for criteria purposes. Five of six studies were based primarily on consumption of marine species, which are not resident in Idaho waters. The sixth study only included minimal and dated information on freshwater fish consumption in Idaho. While EPA's current human health criteria recommendation to states does provide default fish consumption rates, AIC recommends that the State pursue collection of additional fish consumption data for Idaho waters that will be sufficient to determine toxics criteria for Idaho's freshwaters. The details of fish survey data objectives and methods will be important and we encourage the State, EPA, and stakeholders to spend sufficient time and effort to develop a fish survey study plan that is designed to provide sufficient data to develop an Idaho specific fish consumption rate.

Sincerely,



Ken Harward
Executive Director