

# IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.02 - WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1401

### NOTICE OF INTENT TO PROMULGATE - NEGOTIATED RULEMAKING

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality," Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

**METHOD OF PARTICIPATION:** Those interested in participating in the negotiated rulemaking process are encouraged to attend the meetings at one of the following locations. The meeting locations will be connected by telephone and web conferencing. For those who cannot participate by attending the meetings, information for submitting written comments is provided at the end of this notice.

**MEETING SCHEDULE:** The negotiated rulemaking meetings will be held as follows. Additional meetings may be scheduled if necessary. For information regarding individual participation by telephone and web conferencing or scheduling of additional meetings, contact the undersigned. Individuals interested in participating by telephone and web conferencing should contact the undersigned by the dates provided in the table below.

<b>*ORIGINATING LOCATION -- LIVE MEETING*</b>	
<b>DEQ State Office Conference Rooms A and B 1410 N. Hilton, Boise, Idaho</b>	
<b>Thursday, May 1, 2014 9 a.m. to 12:30 p.m. Mountain Time Contact Paula Wilson by April 24, 2014 to make arrangements for participation by telephone and web conferencing</b>	<b>Thursday, June 12, 2014 9 a.m. to 12:30 p.m. Mountain Time Contact Paula Wilson by June 6, 2014 to make arrangements for participation by telephone and web conferencing</b>
<b>*TELEPHONE AND WEB CONFERENCE LOCATIONS*</b>	
<b>DEQ Pocatello Regional Office 444 Hospital Way #300 Pocatello, Idaho</b>	<b>DEQ Coeur d'Alene Regional Office 2110 Ironwood Parkway Coeur d'Alene, Idaho</b>

**PRELIMINARY DRAFT:** By April 9, 2014, a preliminary draft of the rule can be obtained at [www.deq.idaho.gov/58-0102-1401](http://www.deq.idaho.gov/58-0102-1401) or by contacting Paula Wilson at [paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov), (208)373-0418.

**DESCRIPTIVE SUMMARY:** A mixing zone is defined as "an area or volume of the receiving water surrounding or adjacent to a wastewater discharge where the receiving water, as a result of the discharge, may not meet all applicable water quality criteria or standards" (IDAPA 58.01.02.010.61). Mixing zones are granted to NPDES dischargers to calculate the "reasonable potential to exceed" (RPTE) water quality criteria, which serve as the basis for effluent limits in discharge permits. If a mixing zone is not granted by DEQ, the discharger receives end-of-pipe limits. End-of-pipe limits are much more stringent and typically require facilities to undertake technology upgrades, which can be very resource intensive. Mixing zones are used as a tool to help meet the goals of the Clean Water Act (CWA) while also giving the regulated community reprieve from meeting more stringent, and often very costly, effluent limits. Use of mixing zones is recognition that usually it is not necessary to meet ambient water quality everywhere in the receiving water in order to support beneficial uses.

DEQ's current Mixing Zone Policy (IDAPA 58.01.02.060) was adopted over 20 years ago (1991) and contains language that is outdated and/or is no longer relevant. Since the inception of DEQ's Mixing Zone Policy in 1991, numerous updates to Idaho's water quality standards have been made. DEQ recognizes that some parts of the current rule need to be revised in order to meet the intent of related policies. DEQ has also determined from working with dischargers that the current mixing zone rule is ambiguous and does not clearly articulate mixing zone requirements.

In recent years, there has been an increasing interest in, and investigation of, the agency's methods for establishing mixing zones. As technology and information availability have expanded and improved, the methods for establishing mixing zones have also changed. It is clear that changes to the rule are needed in order to be reflective of current procedures and tools used to appraise the biological, chemical, and physical properties of the receiving water, and the proposed discharge, in order to best establish mixing zones.

The text of the rule will be drafted by DEQ in conjunction with a negotiating committee made up of persons having an interest in the development of this rule. Idahoans that recreate in, drink from, or fish Idaho's surface waters and all who discharge pollutants to those same waters may be interested in participating in this rulemaking.

Upon conclusion of negotiations, DEQ intends to publish a proposed rule for public comment in the summer of 2014 and then present the final proposal to the Idaho Board of Environmental Quality for adoption of a pending rule in the fall of 2014. If adopted by the Board, the rule will be reviewed by the 2015 Idaho Legislature.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning this rulemaking, contact Mary Anne Nelson at [mary.anne.nelson@deq.idaho.gov](mailto:mary.anne.nelson@deq.idaho.gov), (208)373-0173.

For those who cannot participate by attending the scheduled meetings, written comments may be submitted by mail, fax or email at the address below. Written comments on the preliminary draft rule must be received by May 15, 2014. For information regarding submission of written comments on subsequent drafts of the negotiated rule, to receive copies of submitted written comments, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 28th day of February, 2014.

Paula J. Wilson, Hearing Coordinator  
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