

# IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.02 - WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1502

### NOTICE OF 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 public may participate by telephone and web conferencing at any of the meeting locations or with individual connections. 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.

#### \*ORIGINATING LOCATION – LIVE MEETING\*

**DEQ State Office  
Conference Center  
1410 N. Hilton, Boise, Idaho**

#### \*TELEPHONE AND WEB CONFERENCE LOCATIONS\*

<b>DEQ Coeur d'Alene Regional Office 2110 Ironwood Parkway Coeur d'Alene, Idaho</b>	<b>DEQ Pocatello Regional Office 444 Hospital Way #300 Pocatello, Idaho</b>
<b>Meeting Dates and Times</b>	<b>Telephone &amp; Web Conferencing Information</b>
October 28, 2015 9:00 a.m. to 3:00 p.m. Mountain Time	Contact the undersigned by <b>October 20, 2015</b> to make arrangements for participation by telephone and web conferencing
November 24, 2015 9:00 a.m. to 3:00 p.m. Mountain Time	Contact the undersigned by <b>November 17, 2015</b> to make arrangements for participation by telephone and web conferencing

**PRELIMINARY DRAFT:** The preliminary draft rule can be obtained at [www.deq.idaho.gov/58-0102-1502](http://www.deq.idaho.gov/58-0102-1502) or by contacting Paula Wilson at [paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov), (208) 373-0418.

**DESCRIPTIVE SUMMARY:** This rulemaking has been initiated to update DEQ's existing hardness dependent criteria by using EPA's 2007 304(a) copper criteria. This update is 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 toxicity of copper to aquatic life is highly variable depending on physicochemical factors within a water body. The effect of hardness on metal toxicity has long been acknowledged as one such factor and is reflected in DEQ's current hardness dependent criteria, whereby the acute and chronic criteria are determined based on the total hardness of the receiving water body. However, DEQ's current hardness dependent criteria do not take into account the effects of other physicochemical properties of the receiving water body which affect toxicity, leading to DEQ's current criteria being either over- or under-protective of aquatic life.

This action is identified in NOAA's biological opinion (BiOp) on Idaho's criteria for toxic substances to support aquatic life. This BiOp concluded that the current copper criteria (as well as other toxics criteria) were under-protective of aquatic life support and would result in adverse modification of critical habitat. NOAA's recommendation is to use EPA's 2007 304(a) copper criteria, which uses other physicochemical properties of the water (e.g., pH, DOC, etc.) to predict water-body specific criteria known as the Biotic Ligand Model (BLM). NOAA has called for state adoption and EPA approval or EPA promulgation of these criteria by May 2017. Because of this, DEQ's 2014 triennial review identified revision of the aquatic life criteria for copper as a high priority. By adopting a copper criterion based on the BLM, DEQ will be able to use the most current state of the science to ensure that the criteria are more precise and are neither unnecessarily burdening dischargers nor increasing risk to aquatic life.

In short, this rule will replace the existing hardness dependent criteria for copper with a similar, albeit more detailed, modeled approach. DEQ will also explore an alternative, simplified version of the BLM, using a multiple linear regression model for copper toxicity which could be adopted as an equation. DEQ anticipates there may also be need for language dealing with how the BLM for copper is to be applied in situations where data on physiochemical properties of a water body are limited, such as default model inputs. Additionally, DEQ anticipates there may be need for language dealing with implementation of the BLM criteria for assessment and permitting purposes; e.g., providing a single reference value to account for the variability in multiple instantaneous criteria.

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 2016 and then present the final proposal to the Idaho Board of Environmental Quality for adoption of a pending rule in the fall of 2016. If adopted by the Board, the rule will be reviewed by the 2017 Idaho Legislature.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning this rulemaking, contact Jason Pappani at [Jason.pappani@deq.idaho.gov](mailto:Jason.pappani@deq.idaho.gov), (208)373-0515.

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 November 9, 2015. 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 7th Day of October, 2015.

Paula J. Wilson, Hearing Coordinator  
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