

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1101

NOTICE OF INTENT TO PROMULGATE RULES - 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 following meeting. For those who cannot participate by attending the meeting, information for submitting written comments is provided at the end of this notice.

MEETING SCHEDULE: The negotiated rulemaking meeting will be held as follows. Additional meetings may be scheduled if necessary. For information regarding participation by telephone or scheduling of additional meetings, contact the undersigned. Requests to participate by telephone must be made by May 23, 2011.

**Wednesday, May 25, 2011
9:00 a.m. to 12:00 noon Mountain Time**

**Department of Environmental Quality
Conference Room A
1410 N. Hilton, Boise, Idaho**

PRELIMINARY DRAFT: By May 4, 2011, a preliminary draft of the rule can be obtained at http://www.deq.idaho.gov/rules/water/58_0102_1101_negotiated.cfm or by contacting Paula Wilson at paula.wilson@deq.idaho.gov, (208)373-0418.

DESCRIPTIVE SUMMARY: As NPDES permits are coming up for renewal, the U.S. Environmental Protection Agency (EPA) has begun including thermal effluent limits in reissued permits. The City of Boise NPDES permit renewal is expected to be released as a draft in the summer of 2011 and will be based on current water quality standards unless they are revised promptly. Without this rule change, thermal effluent limits in NPDES permits and costs to meet those limits will be greater than needed to protect aquatic life resources.

- Two parts of Idaho's water quality standards are likely to drive inordinate thermal treatment costs:
1. excessive limits on water temperature rise in Subsections 401.01.c. and d. (aka thermal treatment requirements); and
 2. outdated numeric criteria to protect salmonid spawning.

DEQ proposes to revise the Water Quality Standards, IDAPA 58.01.02, in two sections addressing temperature: 1) the thermal treatment requirements in Subsections 401.01.c. and d. which limit the rise in water temperature due to wastewater treatment plants, and 2) the ambient temperature criteria in Subsection 250.02.f. which protect salmonid spawning.

The origin of Idaho's thermal treatment requirements is unknown but is thought to be based on avoiding 'thermal shock' to fish and providing a level of protection that is largely redundant of and far in excess of that provided by ambient criteria. While 'thermal shock' can be an issue for fish, it is thought to occur when fish encounter abrupt temperature changes of 5-6°C or more, not 1-2°C. DEQ proposes to remove Subsections 401.01.c. and d. and rely on the retained language in Subsections 401.01.a. and b. to provide a more flexible means to address possible thermal shock on a case-by-case basis, in addition to protection provided to aquatic life by ambient temperature criteria in Section 250.

Idaho's current salmonid spawning criteria are based on recommendations from EPA made in the mid 1970s. EPA updated its recommendation regionally in 2003. DEQ also proposes to revise its numeric temperature criteria for protection of salmonid spawning in Subsection 250.02.f.ii. by replacing the current pair of criteria (13°C as a daily

maximum and 9°C as a daily average) with EPA's 2003 recommended single criterion of 13°C as a maximum seven-day average of daily maximums.

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. Although the rule is not expected to lower the level of protection of aquatic life, particularly fish populations, all Idahoans that recreate in, fish from or otherwise enjoy the quality of Idaho's surface waters may be interested in participating in this rulemaking. Those most affected include NPDES permitted dischargers and citizens that pay for municipal sewage treatment.

Upon conclusion of negotiations, DEQ intends to present a rule to the Board of Environmental Quality in June 2011 for adoption as a temporary rule. If adopted by the Board, DEQ will then publish the temporary rule and initiate proposed rulemaking. Adoption of a temporary rule would reduce thermal treatment costs for pending NPDES permit renewals.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Don Essig at don.essig@deq.idaho.gov, (208)373-0119.

For those who cannot participate by attending the scheduled meeting, written comments may be submitted by mail, fax or e-mail at the address below. Written comments on the preliminary draft rule must be received by May 27, 2011. 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 11th day of April, 2011.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov