

**IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY**

**58.01.02 – WATER QUALITY STANDARDS**

**DOCKET NO. 58-0102-1801**

**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 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. Individuals interested in participating by telephone and web conferencing should contact the undersigned by the date provided in the table below. 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 will be scheduled if necessary.

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

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

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**Thursday, April 19, 2018 - 9:00 a.m. to 12:30 p.m. (MDT)**

**Contact the undersigned by *April 12, 2018* to make arrangements for participation by telephone and web conferencing**

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**AND**

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**Wednesday, May 23, 2018 - 9:00 a.m. to 12:30 p.m. (MDT)**

**Contact the undersigned by *May 16, 2018* to make arrangements for participation by telephone and web conferencing**

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

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**DEQ Coeur d’Alene Regional Office  
2110 Ironwood Parkway  
Coeur d’Alene, Idaho**

**DEQ Pocatello Regional Office  
444 Hospital Way #300  
Pocatello, Idaho**

The meeting locations will be accessible to persons with disabilities, and language translators will be made available upon request. Requests for these accommodations must be made no later than five (5) days prior to the meeting date. For arrangements, contact the undersigned.

**PRELIMINARY DRAFT RULE:** DEQ did not draft a preliminary draft rule for public review prior to the first meeting. The first meeting has been scheduled for the purpose of presenting information on arsenic toxicity, exposure factors, options for deriving criteria, and setting a path forward. More information regarding this rule docket is available at [www.deq.idaho.gov/58-0102-1801](http://www.deq.idaho.gov/58-0102-1801).

**DESCRIPTIVE SUMMARY:** This rulemaking has been initiated to update Idaho's human health criteria for arsenic.

In May 2016, EPA entered into a consent decree with Northwest Environmental Advocates to reconsider EPA's 2010 approval of Idaho's human health criteria for arsenic. In September 2016, EPA disapproved Idaho's human health criteria of 10 µg/L arsenic for both consumption of fish only and consumption of fish & water. The consent decree requires that EPA propose new human health criteria for arsenic by November 15, 2018, and that EPA either approve Idaho's submittal of revised human health criteria for arsenic or promulgate federal criteria by July 15, 2019. This rulemaking will enable Idaho to adopt human health criteria for arsenic under state rulemaking and may prevent federal promulgation of criteria for Idaho by EPA.

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. DEQ will explore the use of updated arsenic toxicity information and bioaccumulation factors to derive human health criteria for consumption of fish only and consumption of fish & water using Idaho specific inputs for cancer risk factor and fish consumption rates. In addition, DEQ will collect ambient water quality data to determine background concentrations of arsenic in Idaho waters. 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 fall of 2018 and then present the final proposal to the Idaho Board of Environmental Quality (Board) in November 2018 for adoption of a pending rule. If adopted by the Board, the rule will be reviewed by the 2019 Idaho Legislature.

**EFFECTIVE FOR CLEAN WATER ACT PURPOSES:** Water quality standards adopted and submitted to EPA since May 30, 2000, are not effective for federal Clean Water Act (CWA) purposes until EPA approves them (see **40 CFR 131.21**). This is known as the Alaska Rule. This rulemaking will be promulgated so that the existing rule, which continues to be effective for CWA purposes, remains in the Idaho Administrative Code until EPA approves the rule revisions. Notations explaining the effectiveness of the rule sections are also included. Upon EPA approval, the revised rule will become effective for CWA purposes and the previous rule and notations will be deleted from the Idaho Administrative Code. Information regarding the status of EPA review will be posted at <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>

**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.

Written comments may be submitted by mail, fax or email at the address below. Information regarding public comment opportunities provided throughout the negotiated rulemaking process for this rule docket will be available at [www.deq.idaho.gov/58-0102-1801](http://www.deq.idaho.gov/58-0102-1801) or by contacting the undersigned.

DATED this 4th day of April, 2018.

Paula J. Wilson  
Hearing Coordinator  
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