

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 – WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1803

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 meeting 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 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 will be scheduled if necessary.

ORIGINATING LOCATION – LIVE MEETING	
DEQ State Office Conference Center 1410 N. Hilton, Boise, Idaho	
Friday, July 20th, 2018 - 9:00 am to 12:30 pm (MDT)	
TELEPHONE AND WEB CONFERENCE LOCATIONS	
DEQ Coeur d’Alene Regional Office 2110 Ironwood Parkway Coeur d’Alene, ID 83814	DEQ Pocatello Regional Office 444 Hospital Way #300 Pocatello, ID 83201
<i>Contact the undersigned by July 13, 2018, to make arrangements for participation by telephone and web conferencing.</i>	

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: The preliminary draft rule is available at www.deq.idaho.gov/58-0102-1803 or by contacting the undersigned.

DESCRIPTIVE SUMMARY: This rulemaking has been initiated to allow insignificant additions of heat in waters that exceed applicable temperature criteria. Currently, Idaho’s point source treatment requirements limit point sources of heat to raising receiving water temperatures by no more than 0.3°C when the receiving water is naturally warmer than numeric criteria. There is not an allowance for any increase, however small, when it cannot be shown receiving water temperatures are naturally warmer than criteria.

Idaho has many very small point sources. All add some heat to the waters to which they discharge. And, in most cases, the water bodies to which they discharge are warmer than Idaho’s numeric temperature criteria set to protect aquatic life for a portion of each year. Heat is a non-conservative pollutant, and the sources of heat can be relatively

small. This rulemaking proposes allowing NPDES/IPDES regulated human sources of heat loading to cause no more than a de minimus 0.3°C increase in receiving water temperatures. This would allow a 0.3°C increase to waters that are exceeding the numeric temperature criteria upstream for the designated aquatic life use. DEQ proposes to accomplish this by striking the words “due to natural conditions” for the current allowance for human use in Subsection 401.01.c.

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 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, (208) 373-0515.

Written comments may be submitted by mail, fax or email at the address below. The written comment deadline on the preliminary draft rule is July 30, 2018. Information regarding public comment opportunities provided throughout the negotiated rulemaking process is available at www.deq.idaho.gov/58-0102-1803 or by contacting the undersigned.

Dated this 4th day of July, 2018.

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