

# Potential Triennial Review Items

DEQ has identified items in the current water quality standards (IDAPA 58.01.02) that are in need of revision. The list below is categorized into five major categories: antidegradation, beneficial uses, criteria, policy and housekeeping. Each category begins with a description of the category, and within each category is a reference to the associated rule item and a short description of the change that DEQ would like to make. The public is invited to bring items to DEQ's attention that are not currently on this list as well as help DEQ prioritize the items currently identified.

## ANTIDEGRADATION ITEMS

**As one of the three main requirements of water quality standards, antidegradation refers to the policy of protecting water quality which is better than the minimum to support beneficial uses. This policy is required to ensure that water quality is not degraded to the bare minimums without some degree of oversight and public input regarding the importance of the water body and the impact of the associated degradation.**

**Idaho's antidegradation policy implements a water body by water body approach. This approach evaluates the current status of beneficial use support to determine if the water quality should be considered better than necessary to support the use. The water body is deemed Tier 2 if it is better than necessary to support those beneficial uses. Degradation may be allowed in water bodies that are classified as Tier 2 if it can be shown that the degradation is necessary and important to the social or economic development of the area. This is referred to as a Tier 2 analysis.**

**Idaho DEQ supported a multi-year effort from 2009 through 2011 to negotiate an antidegradation policy and implementation procedures which EPA approved in part in 2012. One part of the antidegradation implementation procedures dealing with insignificant degradation was disapproved due some concern over the language. This has been rectified through subsequent statute and rule changes. DEQ is submitting the rule language and justification for allowing insignificant degradation to EPA this summer.**

### **051. and 052. Antidegradation Policy and Implementation.**

Due to this multi-year effort that has only recently been resolved, DEQ believes that most issues in this area of water quality standards have been adequately addressed and therefore no priorities exist in this category.

## BENEFICIAL USE ITEMS

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***Beneficial uses are one of the three required elements of water quality standards, along with antidegradation and criteria. Beneficial uses refer to the various ways in which people utilize water resources. Some examples of beneficial uses include domestic water supply, agricultural water supply, wildlife and aesthetics.***

***The most notable beneficial uses are aquatic life and contact recreation. These two beneficial uses come specifically from the Clean Water Act's Section 101(a)(2) interim goal to have "water quality that provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water." Idaho water quality standards typically designate an aquatic life use and a contact recreation use to water bodies within the state. These designated uses are shown in the tables in sections 110 through 160. If a water body does not have an aquatic life use or a recreation use designated in that table, the state presumes that the water should protect cold water aquatic life and contact recreation and will apply those criteria specific to those beneficial uses to any undesignated water body.***

***Currently, Idaho's water quality standards have subcategories of aquatic life use specific to cold water aquatic life, seasonal cold water aquatic life, warm water aquatic life, and modified aquatic life uses. An additional subcategory of cold water aquatic life is the salmonid spawning beneficial use. This use is specific to those water bodies where salmonid species (trout, salmon and whitefish) may be spawning.***

***Federal regulations (40 CFR 131.10) require states to specify the appropriate water uses to be achieved and protected. Additionally, Idaho Statute (Title 39 Chapter 36-04) directs the agency to designate beneficial uses for each surface water body. These designations should reflect existing uses (a beneficial use attained within the water body on or after November 28, 1975) without regard to whether the uses are currently being attained or fully supported at the time of designation.***

***As noted in the following list there are several items the agency would like to address to clarify portions of the rule specific to beneficial uses, designation of beneficial uses and determination of support status for designated beneficial uses.***

***For more information regarding beneficial uses please follow this link:***  
***<http://www.deq.idaho.gov/water-quality/surface-water/beneficial-uses.aspx>***

#### **054. Beneficial Use Support Status.**

**03. Use of Data Regarding pH, Turbidity, Dissolved Oxygen, and Temperature.** Add total dissolved gas to this '10% rule'. May be more fitting to add the applicability of a TDG 10% rule into **Section 300, Gas Supersaturation, 01. Applicability of Gas Supersaturation Standard.**

#### **100. Surface Water Use Designations.**

**02. Recreation.** Simplify to one use, just "contact recreation" (no primary vs. secondary).

Other Use Items:

- Add a paragraph, or maybe just a sentence to the intro paragraph mirroring federal regulations that says "in no case will waste transport or assimilation be a designated use for any water", just to be clear. This is already in the definition of beneficial use, but may need to be added here.
- Try to clear up the situation with regard to bull trout and Kootenai River sturgeon, which are not currently recognized as uses but have their own special criteria.
- Revise definition of "seasonal cold" to better describe the use. Reference IDFG fisheries management descriptions.
- Add use categories for intermittent and man-made waters.
- Add language to clarify that most sensitive use is to be protected, and the corresponding criteria apply.

#### **101. Nondesignated Surface Waters.**

**02. Man-made Waterways.** Consider additional clarification of what man-made waters are and the possibility of creating a man-made waters beneficial use category; would need to develop criteria to support a man-made water beneficial use.

**03. Private Waters.** Revise to be consistent with federal rule at 40 CFR 131.33(h).

#### **109-160. Use Designations.**

- ~70 % of state waters are still undesignated. Designate appropriate uses for those water bodies that have been assessed as fully supporting.
- Revise existing use designations as necessary.

#### **252. Surface WQC for Water Supply Use Designations.**

**01(b)i. Table of Designated Small Public Water Supplies.** Add a statement in this section clarifying that the column C1 toxics criteria apply to domestic water supplies.

Add the following water body AUs to the domestic water supplies table:

1. Orofino Creek, City of Pierce. ID17060306CL039\_04

2. Canal Gulch Creek, City of Pierce. ID17060306CL039\_02
3. Big Meadow Creek, City of Troy. ID17060306CL061\_02
4. Elk Creek, City of Elk River. ID17060308CL030\_03

## *CRITERIA ITEMS*

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***Criteria specify the minimum quality of water needed to protect a designated beneficial use. Criteria are one of the three (3) required elements of water quality standards, along with use designations and a process to protect high quality waters (antidegradation).***

***Water quality criteria can be expressed as a specific concentration of a substance in water, or less commonly fish tissue. These are numeric criteria, having a value, like a speed limit on a highway. These concentrations are based on scientific knowledge of exposure and toxicological effects either to people (human health criteria) or fish and aquatic insects (aquatic life criteria).***

***There are also narrative criteria. These are simple ‘words only’ statements like “Water shall be free from toxic substances in toxic amounts”. They are akin to a speed limit that says “Drive no faster than conditions make safe”. Narrative criteria supplement numeric criteria, filling gaps where numeric criteria are hard to develop. This difficulty can be because of great natural variability, or more commonly because of limited scientific knowledge of exposure and toxicity, especially for substances with recently expanding or changing use, or recently brought into use.***

***The federal regulations governing criteria at 40 CFR 130.11 direct in part “... criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use.” Scientific knowledge changes with time and so criteria periodically need revision. The Environmental Protection Agency is charged with reviewing the science and recommending criteria for states to consider adopting.***

***Idaho’s water quality standards have all the elements above – criteria to protect human health and aquatic life, some expressed as numbers and others as narrative statements. Several of these criteria have become dated or are in need of clarification based on experience in their implementation.***

## 200. General Surface Water Quality Criteria.

**03. Deleterious Materials.** Take the statements “These materials do not include suspended sediment produced as a result of nonpoint source activities” out and incorporate the idea/limitation instead in definitions of various materials/substances in definition section; these words really are not needed given the separate narrative for sediment.

## 210. Numeric Criteria for Toxic Substances.

**01. Criteria for Toxic Substances. (a)** Inappropriately applies column C2 criteria (human health organism only basis) to protection of aquatic life.

Additional items:

- In the statements about application of toxics criteria **(a, b, and c)** the words “waters designated for” occurs, implying these criteria do not apply to undesignated waters; should be changed to “waters protected for”.
- There is no statement about whether the human health criteria are for dissolved or total analysis of sample. While this likely only applies to metals and the practice has been to use totals, this should be explicitly stated.
- Identify in the table of criteria which of the human health criteria are carcinogens.
- Update aquatic life criteria for lindane, dieldrin, and copper.
- Adopt aquatic life water column criteria to replace 12 ng/L Hg criterion.

**03. Applicability. (b)** Low flow design language has caused some confusion, questions about where and when or even if any exceedance of criteria is allowed. Language needs to be very clear that exceeding criteria is expected, and is okay, within the mixing zone, and will even occur outside mixing zone on occasions when receiving water flows are less than design flows.

## 250. Surface Water Quality Criteria for Aquatic Life Use Designations.

### 02. Cold Water.

**Dissolved Oxygen.** Current criteria do not match EPA’s 1986 ‘Gold Book’ recommendations; DEQ has a minimum of 6.0 mg/L at all times, while EPA’s recommendation is for a minimum of 4.0 mg/L coupled with a 30-day mean of 6.5 mg/L. EPA’s recommendations may not work with ESA concerns, but the point is state criteria are out of date, and more importantly lack the sophistication to deal with variable conditions. EPA’s recommendations for DO contain language on natural conditions rules lack. This is a problem since Idaho’s elevation leads to lower atmospheric pressure and lower DO saturation concentrations. Alternatively, DEQ could add a statement that DO measurements are to be corrected to sea level pressure before comparison to the criteria.

**Ammonia.** Adopt new 304(a) recommendation for ammonia criteria.

**Salmonid Spawning.** DEQ would like to parallel changes in DO (see section above), and use work done on identification of salmonid spawning when and where to support adoption of EPA’s regionally recommended temperature criterion.

## 251. Surface WQC for Recreation Use Designations.

**01. E. Coli Bacteria.** Consider adopting EPA's new 304(a) recommendations.

### POLICY ITEMS

**Policies include variances, mixing zones, compliance schedules and the like. These are not required to be part of a state's water quality standards. Their inclusion is allowed and often helpful in practical implementation of the standards. Changes in law, regulation and litigation over the years in addition to experience in implementation helps mold what is sound policy. It is Idaho's hope to revisit and revise as needed the policies contained in the water quality standards.**

## 010. Definitions.

**50. Hypolimnion.** Clarify what is a "rapid temperature drop", probably need guidance as well.

**58. Man-made Waterways.** Using the term 'waters' or 'water conveyance' rather than 'waterways' would better correspond with Section 100 on surface water use designations and definition of 'waters of the state'. Would be helpful to explicitly mention other types of man-made waters such as ponds (i.e. Park Center Pond, stock ponds, flood control basins).

**66. Nonpoint Source Activities.** This definition is outdated. Many construction sites (and stormwater) are now regulated as point sources. Might be useful to take language in paragraph (h) "activities not subject to regulation under federal national pollutant discharge elimination system" up front and then provide a list of activities included, but not limited to. "Federal national" phrasing is awkward, strike federal.

**113. Waters and Waters of the State.** Not complete, does not reflect the 2000 legislative changes.

Potential Additions:

- Wetlands – define these; either within waters of the state (above), or separately.
- Define "viable aquatic life community" (used in Section 100.01.a).

## 060. Mixing Zone Policy.

Rulemaking is currently underway.

## 070. Application of Standards.

**06. Application of Standards to Intermittent Waters.** Expand to include ephemeral waters. Optimum flows identified in rule do not make sense for all channel sizes and should be revised. A simple fix for this situation may be to preface sentences about optimum flows with the words "absent information to the contrary", so as to provide flexibility. Another option may be to define a new use category for waters that are seasonal.

### **080. Violation of WQS.**

**01. Discharges Which Result in Water Quality Standards Violation.** (a) downstream waters/protection has become important on a national scale. Language here likely needs to be revised, strengthened, see:

<http://water.epa.gov/scitech/swguidance/standards/narrative.cfm>

**02. Short Term Activity Exemption.** Some of the items listed under (b) probably don't fit the requirements of (a) (e.g. dredge and fill activities, not as a broad category, perhaps in a more limited sense of maintaining navigation or flood control). Item (x) under (b) "Activities which result in overall enhancement or maintenance of beneficial uses" would likely fit better under paragraph (a). The STAE provision is intended to apply to individual activities of short duration and unique characteristics where typical permit conditions or nonpoint source Best Management Practices are not applicable. Should clarify that STAEs are not intended for project activities that are considered routine nonpoint source activities, and project activities can otherwise meet the intent of IDAPA 58.01.02.350 with the application of best management practices, monitored for effectiveness and modified if needed.

### **090. Analytical Procedures.**

Needs to be updated or expanded on.

### **276. Dissolved Oxygen Standards for Waters Discharged from Dams, Reservoirs, and Hydroelectric Facilities.**

Add DEQ's expectations for temperature of waters flowing out of lakes and reservoirs to this Section or to the next reserved Section (277). In essence, a stream that is an outlet of a lake or reservoir should initially have similar quality to the water in the lake or reservoir.

### **300. Gas Supersaturation.**

Consider adding a statement that the criteria in this section do not apply during periods of involuntary spill (i.e. flood conditions).

## *HOUSEKEEPING ITEMS*

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***These items have been identified as matters which require clean up but will not change the intent or content of the rule. Most often these items correct typographical mistakes, numbering errors, internal and external referencing errors, and outdated terminology.***

### **010. Definitions.**

**24. Designated Beneficial Use or Designated Use.** Remove "and Wastewater Treatment requirements".

### **070. Application of Standards.**

**07. Temperature Criteria.** Correct for the use of the masculine pronoun (he or his) when referring to the Director.

### **109-160. Use Designations.**

Several errors in spelling, numbering, and tallies of streams by HUCs need to be corrected. For example, remove the term “mouth” from the water body descriptions and replace with the name of the water body confluence, as shown below.

### **120. Clearwater Basin.**

**08. Clearwater Subbasin.** C-13 Clearwater River – North Fork Clearwater River to Potlatch River, rather than “mouth”.

**09. Upper North Fork Clearwater Subbasin.** Change forty-nine (49) to forty-eight (48) to accurately reflect the number of WBIDs.

**10. Lower North Fork Clearwater Subbasin.** Change thirty-four (34) to thirty-five (35) to accurately reflect the number of WBIDs.

### **130. Upper Salmon Subbasin.**

**02. Lower Snake-Asotin Subbasin.**

- S-1 Snake River – River Mile 145, T35N R6W S26 to Lower Granite Dam Pool (remove “Idaho/Oregon border” – this isn’t Oregon at this RM, and Asotin River, which is actually Asotin Creek, is in Washington).
- S-2 Snake River – Captain John Creek to River Mile 145, T35N R6W S26 (take out Asotin River and Idaho/Oregon border).

**03. Upper Salmon Subbasin.** Change one hundred thirty-two (132) to one hundred thirty-five (135) to accurately reflect the number of WBIDs.

- S-76 Toxaway/Farley Lake – source to mouth. Correct the definition to reflect lake not stream.

**05. Middle Salmon-Panther Subbasin.** Change eighty-eight (88) to ninety-two (92) to accurately reflect the number of WBIDs.

- S-32 through S-39. S-32 identifies Salmon River North Fork Sheep Creek to Indian Creek. S-39 identifies Salmon River Carmen Creek to North Fork Salmon River. Perhaps change description in table to read: S-32 Salmon River - North Fork Sheep Creek to Indian Creek to S-32 Salmon River – North Fork Salmon River to Indian Creek.

### **140. Southwest Idaho Basin.**

**02. Bruneau Subbasin.**

- SW-20 and SW-21 – “Jarbridge” River, should be Jarbidge River.

**12. Lower Boise Subbasin.**

- SW-3 (a through c): should add “Indian Creek - ” prior to the water body description.

### **150. Upper Snake Basin.**

**04. Upper Henrys Subbasin.** Change fifty-five (55) to fifty-two (52) to accurately reflect the number of WBIDs.

**06. Teton Subbasin.** Change forty-four (44) to sixty-five (65) to accurately reflect the number of WBIDs.

### **210. Numeric Criteria for Toxic Substances.**

**01.** In the Table, the wrong footnote (k, refers to chlorine residual concentrations) on the **asbestos** criterion is used. Remove k footnote from table.

**Footnote (b)** should clarify that the **methylmercury** fish tissue criterion is based on fresh weight.

**02.** The bc factor for **cadmium** is wrong, should be **-3.384 instead of -3.344**.

### **260. Variances from WQS.**

**02. Specific Variances.** This section needs to be deleted. Perhaps replace with language that points out that variances can be viewed on DEQ web page.

### **283. Spokane River, Subsection 110.12, HUC 17010305, Units P-3 and P-4, Site-Specific Criteria for Ammonia.**

This became redundant with the update of ammonia criteria in section 250, it can be deleted. See item above (under 250.02) about revising ammonia criteria.

### **401. Point Source Wastewater Treatment Requirements.**

**03. Total Chlorine Residual.** This criterion is incorporated in the table of toxics criteria and so this rule language is redundant and can be deleted.