

# Downstream Waters Protection

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## Rule

### Discharges Which Result in Water Quality Standards Violation (IDAPA 58.01.02.080.01)

*No pollutant shall be discharged from a single source or in combination with pollutants discharged from other sources in concentrations or in a manner that:*

- a. Will or can be expected to result in violation of the water quality standards applicable to the receiving water body **or downstream waters** [emphasis added]; or*
- b. Will injure designated or existing beneficial uses; or*
- c. Is not authorized by the appropriate authorizing agency for those discharges that require authorization.*

## Discussion

On the national level, the U.S. Environmental Protection Agency (EPA) has become increasingly concerned with federal regulation at 40 CFR 131.10(b) that in adopting water quality standards (WQS) states “shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.” This issue was brought to the forefront as a result of the growing hypoxia problem in the Gulf of Mexico and the direct connection to inadequate nutrient criteria in upstream Mississippi drainage states. As a consequence of this national concern, EPA (Region 10) has questioned whether Idaho’s current language at 58.01.02.080.01(a) (above) meets the requirement of 40 CFR 131.10(b); the State of Idaho believes that it does.

In early 2013, EPA headquarters convened a workgroup of state and EPA personnel, following an earlier fall (2012) meeting of EPA regional water quality standards managers who identified the need to address the issue and proposed ways in which states could remedy the issue. That effort has culminated in the development of four templates which include recommended rule language changes that EPA believes states should adopt to address the subject (<http://water.epa.gov/scitech/swguidance/standards/narrative.cfm>). EPA also continues to work on a decision tool for “downstream protection” template language that they would like to see states adopt in their WQS. In addition EPA has prepared a frequently asked questions (FAQ) document which explains in greater detail the need for fixing “inadequate” WQS language and

suggestions for how to do so

(<http://water.epa.gov/scitech/swguidance/standards/library/upload/downstream-faqs.pdf>). The idea is for states to incorporate consideration of protection of downstream waters within their jurisdiction. More importantly, EPA wants consideration to be given to downstream states' WQS during the development and adoption of designated uses and criteria from upstream states.

The issue has surfaced in the context of Idaho's efforts to update its human health criteria and how the criteria will be protective of uses in the downstream states of Oregon and Washington. The implementation of this rule becomes an issue in the NPDES (and other discharge) permitting process. Several Idaho dischargers are expected to meet the more stringent criteria of these downstream states due to their close proximity to the states borders. As Idaho assumes primacy over the NPDES program it will be important to consider downstream water quality.