



Association of Idaho Cities
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November 6, 2015

Paula Wilson
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706

filed by email to paula.wilson@deq.idaho.gov

RE: Association of Idaho Cities Comments on Idaho Fish Consumption Rate Rulemaking

Dear Ms. Wilson,

The Association of Idaho Cities (AIC) was founded in 1947 and is a nonpartisan, nonprofit corporation owned, organized, and operated by Idaho's city governments. The organization serves to advance the interests of the cities of Idaho through legislative advocacy, technical assistance, training and research. AIC is actively engaged in water quality issues through the work of our Environment Committee, chaired by Boise City Councilmember Elaine Clegg.

Idaho cities play an important role as the primary implementers of the Clean Water Act and have a significant interest in the development of the Fish Consumption Rule and the associated water quality criteria and implementation measures for toxic pollutants. AIC recognizes that water quality standards development is a non-discretionary State activity under the Clean Water Act and is pleased to participate with the Idaho Department of Environmental Quality (IDEQ), the Environmental Protection Agency (EPA), tribes, and other stakeholders to develop water quality criteria for toxics that are appropriately protective of human health and implementation tools. AIC has developed comments that are attached for consideration by the IDEQ.

AIC appreciates the opportunity to comment on proposed fish consumption rate rulemaking and associated water quality criteria for the protection of human health. AIC looks forward to working with our state and federal partners to implement the toxics criteria to protect the environment and human health. Should you have questions concerning our comments, please feel free to contact me.

Sincerely,



Seth Grigg

Executive Director

Cc: Elaine Clegg, AIC Environment Committee Chair

**Association of Idaho Cities Comments on Idaho's Proposed Fish Consumption Rate and
Human Health Criteria Rulemaking: Docket No. 58-0102-1201**

November 6, 2015

1. Fish Consumption Rate Rulemaking Robust, Science Based, and Consistent with EPA Guidance

The Association of Idaho Cities (AIC) has been a participant in all of the Idaho Fish Consumption Rate (FCR) rulemaking meetings and observes that the rulemaking process was robust, science and data based, consistent with EPA guidance, and transparent.

AIC commends the IDEQ for conducting the rulemaking in an open, inclusive, transparent, scientifically rigorous, and well documented process.

IDEQ held 19 meetings from October 2012 through August 2015 and a hearing in October 2015 concerning the rulemaking. IDEQ provided "Discussion Papers" for each key science or policy related issue important to the rulemaking process and focused on the details of conducting a statistically robust statewide fish consumption survey for at least six meetings. All discussion papers and fish survey discussion included agency and public review during or prior to the meeting on each topic, provided presentations from IDEQ, EPA, tribal, or other expert staff that were posted to the website, and provided comment opportunities during the meetings and in writing following the meetings on each of the fish tissue survey and key policy and science issues during the three year rulemaking process.

IDEQ commissioned and conducted a statistically robust fish consumption survey for the general population and high consumers of fish (sport fishers) in the State of Idaho. EPA offered fish consumption survey assistance to the five Native American tribes in the State of Idaho and two tribes completed fish consumption studies. The fish consumption rate surveys provide current and statistically robust science-based Idaho-specific fish consumption data for the general, tribal, and high fish consuming populations that were used by the state in development of the proposed rule.

IDEQ used EPA methodology¹ and new 2015 guidance reflecting the latest science information and EPA policies² for development of the 208 proposed human health criteria for 104 pollutants, including 10 new pollutants for which new information was available. Given the June 29, 2015 publication of the new EPA science and policy guidance and the IDEQ rulemaking schedule, incorporation of updated EPA science and policy for development of human health criteria by IDEQ was commendable.

¹ USEPA. 2000. *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000)*. EPA-822-B-00-004. U.S. Environmental Protection Agency, Office of Water, Office of Science and Technology, Washington, DC. Accessed November 2015. http://water.epa.gov/scitech/swguidance/standards/upload/2005_05_06_criteria_humanhealth_method_complete.pdf.

² Final Updated Ambient Water Quality Criteria for the Protection of Human Health. EPA, June 29, 2015 Federal Register, Accessed November 2015, <http://water.epa.gov/scitech/swguidance/standards/criteria/current/hhfinal.cfm>

AIC believes the updated human health criteria contained in the proposed FCR rule reflect the current fish consumption rates for Idaho and tribal populations, updated EPA science, EPA guidance recommendations, and deliberate and reasoned state policy and risk management choices necessary to protect human health and fully satisfy Clean Water Act (CWA) water quality standards development obligations.

2. State Selection of Major Science and Policy Choices

AIC believes that the state has provided an open and transparent process for identification of key science and policy choices, public and agency input, and state selection and rationale for selection of each major science and policy choice necessary to develop human health criteria that are protective of human health as required by the Act.

The proposed state science updates, risk management, and policy decision as a package are consistent with the EPA methods and guidance for derivation of human health criteria and new updated EPA science and policy. While individual science or policy choices may cause individual stakeholders participating in the rulemaking concern for being over or under protective, the proposed policy choices in aggregate, are clearly well within and consistent with EPA science, guidance, state's policy choices and therefore fully comply with CWA obligations for state development of human health water quality standards.

IDEQ identifies twelve major science and policy decisions that together, were used to develop the proposed human health criteria. Key science and policy options, choices, associated EPA guidance are listed in the table 1 below.

Table 1: Key Science and Policy Options, Decisions, and Rationale

Science or Policy Choice	State of Idaho Science or Policy Decision	EPA Guidance	Comment
Criteria for Idaho Fish Consumers or Consumers and Non-Consumers	Fish Consumers only	2000 EPA Guidance ³	Provides protection to the fish consuming populations of the state.
Target Population	More stringent of: - General Population at 95% fish consumption - Idaho Anglers and Idaho Tribes at mean consumption	2000 EPA Guidance ⁴	Tribal exposure was more stringent for all “Fish Only” criteria and 42 “Fish and Water” criteria. The General Population exposure was more stringent for 62 of 104 “Fish and Water” criteria.
Criteria Method (Deterministic or Probabilistic Risk Assessment)	Probabilistic Risk Assessment	Risk Assessment Forum White Paper: Probabilistic Risk Assessment Methods and Case Studies, EPA , 2014 ⁵	PRA is a scientifically advanced method that better defines actual risks for various populations.
Fish Included	Idaho Fish, Marine Fish Excluded	2000 EPA Guidance ⁶ 2015 EPA Recommended Human Health Criteria ⁷	Most marine fish excluded per EPA guidance and practice in 2015 recommended human criteria.
Risk Level	10 ⁻⁶ cancer risk and hazard quotient of one for non-carcinogens for all populations Idaho has had 10 ⁻⁶ risk level for human health criteria since it adopted human health criteria in 1992.	2000 EPA Guidance ⁸ EPA allows states to choose 10 ⁻⁵ to ⁻⁷ provided highly exposed populations protected at 10 ⁻⁴	Equal cancer and non-cancer protection level for criteria and populations. Addresses environmental justice and tribal treaty rights concerns.
Fish Consumption	General population (95%): 11.2 g/d Nez Perce (mean): 16.1 g/d Shoshone-Bannock (mean): 5.6 g/d Idaho anglers: 4.5 g/d	2000 EPA Guidance ⁹ 2015 EPA Recommended Human Health Criteria ¹⁰ Exclude Marine Fish	Fish consumption values used per EPA guidance (e.g. marine fish excluded).
Updated EPA Science for Relative Source Contribution, Bioaccumulation Factors, Body Weight, Drinking Water Intake, Toxicity	Idaho Criteria incorporated EPA recommendations for Relative Source Contribution, Bioaccumulation Factors, Body Weight, Drinking Water Intake, Toxicity Values	2015 EPA Recommended Human Health Criteria ¹¹	Idaho Criteria include updated science recommended by EPA

³ USEPA. 2000. *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000)*. EPA-822-B-00-004. U.S. Environmental Protection Agency, Office of Water, Office of Science and Technology, Washington, DC. Accessed November 2015.

⁴ Ibid

⁵ USEPA, 2014, Risk Assessment Forum White Paper: Probabilistic Risk Assessment Methods and Case Studies, EPA , 2014 <http://www2.epa.gov/sites/production/files/2014-12/documents/raf-pra-white-paper-final.pdf> Accessed November 2015

⁶ USEPA. 2000. *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000)*. EPA-822-B-00-004. U.S. Environmental Protection Agency, Office of Water, Office of Science and Technology, Washington, DC. Accessed October 2015. http://water.epa.gov/scitech/swguidance/standards/upload/2005_05_06_criteria_humanhealth_method_complete.pdf.

⁷ USEPA. 2015. *Human Health Ambient Water Quality Criteria: 2015 Update*. EPA-820-F-15-001. U.S. Environmental Protection Agency, Office of Water. <http://water.epa.gov/scitech/swguidance/standards/criteria/current/loader.cfm?csModule=security/getfile&PageID=717763> Accessed November 2015.

⁸ USEPA. 2000. *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000)*. EPA-822-B-00-004. U.S. Environmental Protection Agency, Office of Water, Office of Science and Technology, Washington, DC. Accessed October 2015. http://water.epa.gov/scitech/swguidance/standards/upload/2005_05_06_criteria_humanhealth_method_complete.pdf.

⁹ Ibid

¹⁰ USEPA. 2015. *Human Health Ambient Water Quality Criteria: 2015 Update*. EPA-820-F-15-001. U.S. Environmental Protection Agency, Office of Water. <http://water.epa.gov/scitech/swguidance/standards/criteria/current/loader.cfm?csModule=security/getfile&PageID=717763> Accessed November 2015.

¹¹ Ibid

3. Protection of Downstream Waters

Protection of downstream waters as required at 40 CFR 131.10(b) is an important consideration in designation of uses and associated water quality criteria. In 2015, EPA adopted revisions of the Water Quality Standards Rule¹² that include clarification of six water quality standards items, including protection of downstream waters. EPA guidance on the six water quality rule elements included discussion of acceptable downstream water quality protection options to states, including narrative of numeric approaches.¹³

The proposed Idaho water quality criteria include a narrative for protection of downstream waters at 58.01.02.070.08, which appears to be an acceptable approach under the new water quality standards rule.

AIC supports the dual approach proposed by EPA for states to comply with the downstream waters protection element of the rule and Idaho's proposed narrative approach, which is consistent with EPA guidance to states for satisfaction of this water quality standards element.

4. Mixing Zones

The proposed rule includes provisions for mixing zones at section 210.03. Mixing zones are an important component for the implementation of the human health water quality criteria. For some pollutants, significant reductions of the pollutant concentration occur due to natural treatment mechanism. Use of a mixing zone for these pollutants provides an important implementation element necessary to appropriately account for pollutant behavior in the environment.

AIC supports the inclusion of the mixing zone language at section 210.03 of the proposed rule.

5. Intake Credits

The proposed rule includes provision for intake credits at section 400.06. Intake credits are an important component of the implementation of the human health water quality criteria. For some pollutants, intake credits will be a very important element of implementation because the source waters contain pollutants at elevated levels (e.g. background pollutant levels not the result of anthropogenic activities). AIC recognizes that Intake Credits will likely be used infrequently; however, in the circumstances where background is elevated, intake credits are an important tool.

AIC supports the inclusion intake credit language at section 400.06 of the proposed rule.

¹² USEPA, 2015, Final Revisions to Update the National Water Quality Standards Regulation, 40CFR131 <http://www2.epa.gov/wqs-tech/final-rulemaking-update-national-water-quality-standards-regulation>

¹³ USEPA, 2014, Protection of Downstream Waters in Water Quality Standards: Frequently Asked Questions, EPA-820-F-14-001, 12 p., EPA Office of Water. <http://water.epa.gov/scitech/swguidance/standards/library/upload/downstream-faqs.pdf>