

October 11, 2012

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

Dear Ms. Wilson:

The Idaho Association of Commerce & Industry (IACI) is the leading trade association of Idaho businesses and represents nearly three hundred companies engaged in diverse commercial and industrial enterprises throughout the state. We appreciate the information and process that the Idaho Department of Environmental Quality (the “Department”) has commenced to review the fish consumption rate in Idaho’s Water Quality Standards. IACI submits the following comments on this rulemaking:

1. Technical “Foundation” for Rulemaking

IACI has long been a proponent of regulations and permits that are legally and scientifically defensible, and advocates that data and assumptions utilized to establish regulations are factually accurate, incorporate risk-based criteria and include the best available, peer-reviewed science. We have reviewed the summary of fish consumption rate studies that have been conducted regionally and nationally. We will provide more detailed comments by November 7 as requested by the Department, but in general, several of these studies may help inform fish consumption rates in Idaho, at least for certain sub-populations of Idaho residents. However, these studies are not adequate even for this purpose and do not examine fish consumption habits more broadly for Idaho residents who fish Idaho’s waters. Therefore, IACI supports the Department conducting an Idaho-specific fish consumption study.

We note that fish consumption surveys may take different forms (e.g., telephone surveys, food diaries, interviews, creel surveys), with different design features and corresponding advantages and limitations (including the potential for bias, error and variability). We urge the Department to carefully evaluate its options and select a design that is best tailored to the state’s needs and policies underlying its water quality standards programs. We would welcome the opportunity to participate in the design process, and to bring technical resources to bear, as needed, to facilitate a defensible, reasonable, and implementable outcome.

At a minimum, the Department’s study needs to incorporate the following features:

- Identification and location of high fish-consuming sub-populations.
- Development of a protocol that will deliver reliable data concerning the sources of fish and amounts consumed by high fish-consuming sub-populations.
- Development of reliable data for the general population as well as for high fish-consuming populations.
- Gathering data that enables the extrapolation of long-term fish consumption behavior, including how fish consumption behavior varies over time for individuals.
- The source of fish (caught, purchased, etc.) with particular attention to the location of any caught fish (drainage, instate or out-of-state waters, etc.).

- The type of fish, including whether the fish are anadromous or solely fresh-water.
- Fish preparation method.
- Part(s) of the fish that are consumed.
- Gathering data from each major drainage in the state to determine if there are regional differences in consumption rates.

2. Policy Considerations

There are several aspects of this rulemaking that need further discussion before initiating the fish consumption study:

- Potential risks to sub-populations vs. the general population.
- How to incorporate the life history of anadromous fish in relation to resident freshwater fish when setting consumption rate(s).
- The acceptable level of risk.
- Appropriate exposure factors and other assumptions used to derive human health standards so as to set standards that are protective and reasonable.

We respectfully submit that the threshold question in this proceeding is as follows: what are the state's health protection goals for its human health water quality criteria? The answer to this question will inform and drive the various elements of the criteria equation, including the fish consumption rate. It is imperative that the Department's answer is technically sound and reasonable in order to avoid the risk of "compounded conservatism" (i.e., where overly conservative assumptions are used in multiple elements of the criteria equation, thereby making the eventual result exponentially more stringent).

3. Implementation

Finally, as the Department revises the human health water quality criteria, it is very important to adopt implementation methods concurrently. IACI strongly believes that the development of implementation "tools" must be an integral part of this rulemaking. During the October 4, 2012 meeting, EPA presented information that indicated higher fish consumption rates would not result in significant new wastewater discharge limitations. However, the EPA analysis was only for a very limited set of dischargers. As additional data characterizing discharges becomes available, it may become very problematic to meet new, very low concentration wastewater discharge limits. Implementation tools could range from technological and economical feasibilities, Best Management Practices (BMPs) and minimization plans to site-specific risk evaluations. Also, the interaction of new criteria with the TMDL, anti-degradation and other aspects of the CWA will need to be reviewed and adjustments made in such programs as needed.

We look forward to working with the Department on this rulemaking.

Sincerely,



Alex LaBeau
President

cc: Alan Prouty, Chair, IACI Environment Committee