



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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C.L. "Butch" Otter, Governor
John H. Tippets, Director

August 24, 2018

Dan Opalski, Director
Office of Water and Watersheds,
U.S. EPA Region 10
1200 Sixth Ave
Mail Code: RA
Seattle, WA 98101

Re: Submission of revised water quality standards for approval: Aquatic life criteria for selenium, Idaho rule docket 58-0102-1701.

Dear Mr. Opalski:

Consistent with the Clean Water Act §303(c) and 40 CFR 131.20, revisions to Idaho's water quality standards (WQS) are hereby submitted for EPA approval. Rulemaking was initiated to update selenium criteria due the most recent 304(a) recommended criterion and pursue five site-specific aquatic life criteria for selenium.

Idaho rule docket 58-0102-1701 was initiated in response to the National Oceanic and Atmospheric Administration's (NOAA) Biological Opinion (BiOp) on Idaho's numeric criteria for toxic substances to support aquatic life. The NOAA BiOp identified adoption of EPA's 2016 304(a) selenium recommendation as a Reasonable and Prudent Alternative.

The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220 and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the April 2017 issue of the Idaho Administrative Bulletin, and a preliminary draft rule was made available for public review. Meetings were held on April 27, June 13, and July 25, 2017. Key information was posted on the DEQ rulemaking web page and distributed to the public. Members of the public participated in the negotiated rulemaking process by attending the meetings and submitting written comments. A total of four drafts of the rule were prepared. Each draft had a public comment period in addition to the meeting negotiations. The fourth draft was published as the proposed rule in the September 5, 2017 Administrative Bulletin followed by a formal 30-day public comment period.

The rule was presented to the Idaho Board of Environmental Quality on November 16, 2017 and adopted as a pending rule without further change. The pending rule was noticed in the December 2015 Idaho Administrative Bulletin and finalized by the 2018 Idaho Legislature, effective under Idaho law on March 28, 2018.

DEQ has an online record of the rulemaking process that includes all the rule drafts and comments received, presentations given and material distributed, which can all be accessed at: <http://www.deq.idaho.gov/laws-rules-etc/deq-rulemakings/docket-no-58-0102-1701/>.

In addition to the documents itemized below, all materials that are posted at this URL are hereby incorporated by reference in this submittal.

The rule submittal package includes:

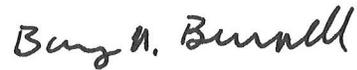
- 1) This cover letter, briefly describing the rulemaking, its justification, and the contents of the package supporting the rule being submitted for your approval, *((file: 1) 58-0102-1701 EPA Submittal Letter.pdf)*;
- 2) April 5, 2017 Notice of Negotiated Rulemaking, *((file: 2) 58-0102-1701 Notice of Negotiated Rulemaking_4.5.2017.pdf)*;
- 3) September 9, 2017 Notice of Proposed Rule announcing opening of 30-day public comment period on proposed rule, *((file: 3) 58-0102-1701 Notice of Proposed Rule_09.09.2017.pdf)*;
- 4) Summary of negotiated rulemaking prepared for DEQ's Board, *((file: 4) 58-0102-1701 Summary of Negotiated Rulemaking .pdf)*;
- 5) Summary of public comment and DEQ's response, *((file: 5) 58-0102-1701 Public Comment Summary_1117.pdf)*;
- 6) December 2, 2017 Notice of Pending Rule -Announcing adoption by the DEQ Board, *((file: 6) 58- 0102-1701 Notice of Pending Rule_12.02.2017.pdf)*;
- 7) Notice of final rules from May 2, 2018 Administrative Bulletin, docket 58-0102-1701 is highlighted on page 8, *((file: 7) 58-0102-1701 Notice of Final Rules_05.02.2018.pdf)*;
- 8) A copy of the Attorney General's certification that the rules were adopted according to state law, *((file: 8) 58- 0102-1701 Attorney General Certification Letter.pdf)*;
- 9) A supplemental justification for the statewide rule and five site-specific criteria, *((file: 9) 58- 0102-1701 Supplemental Justification.pdf)*;
- 10) A technical justification for site-specific selenium criteria for aquatic life in the Upper Blackfoot River and Georgetown Watersheds, *((file: 10) 58- 0102-1701 Nu-West Proposal_Site Specific Selenium Criteria_11.2017.pdf)*;
- 11) A technical justification for site-specific selenium criteria for aquatic life in Hoopes Spring, Sage Creek, and Crow Creek near the Smoky Canyon Mine, *((file: 11) 58- 0102-1701 JR Simplot Proposal_Site Specific Selenium Criteria_11.2017.pdf)*;
- 12) A technical justification for a site-specific selenium criterion for aquatic life in portions of Idaho, *((file: 12) 58- 0102-1701 Justification for Portions of Idaho_Site Specific Selenium Criterion_11.2017.pdf)*

Electronic copies of the above materials burned onto CD for your convenience.

Revised Water Quality Standards for Approval: Aquatic Life Criteria for Selenium, Idaho Rule
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If you have any questions on this rulemaking and the enclosed supporting materials, please contact Jason Pappani at (208) 373-0515 or Jason.Pappani@deq.idaho.gov.

Sincerely,



Barry N. Burnell
Water Quality Division

JP:BNB:tg

Administrator Enclosures

c: Lisa Macchio, EPA (with enclosures)
Jason Pappani, DEQ (w/o enclosures)
Don Essig, DEQ (w/o enclosures)
Mark Cecchini-Beaver (w/o enclosures)