



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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Governor Brad Little
Director John H. Tippetts

April 15, 2019

Mr. Dan Opalski
Office of Water and Watersheds, Region 10
U.S. Environmental Protection Agency
1200 6th Ave., Suite 155
Mail Stop: OWW-192
Seattle, WA 98101

Re: Submission of revisions to Water Quality Standards for approval: Idaho Rule Docket 58-0102-1803.

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. Currently, Idaho's point source treatment requirements limit point sources of heat to raising receiving water temperatures by no more than 0.3°C when the receiving water is naturally warmer than numeric criteria. If the temperature of a stream is above the numeric temperature criteria and the temperature exceedance is not due to, or cannot be tied to, natural conditions, the 0.3°C allowance in the current rule is not applicable.

Heat is a non-conservative pollutant, meaning heat added to a stream not only accumulates but also dissipates. Furthermore, sources of heat can be relatively small. This rulemaking proposes modifying the rules for NPDES/IPDES regulated human sources of heat loading to allow no more than a *de minimis* 0.3°C increase in receiving water temperatures. This revision allows up to a 0.3°C increase to waters that are exceeding the numeric temperature criteria upstream of the discharge for the designated aquatic life use.

DEQ accomplished this by adding the words "above the natural background conditions" to Subsection 401.01.c. to clarify and strengthen the existing rule. Subsection 401.01.d was added to differentiate between human and natural background conditions contributing to a receiving water exceeding designated aquatic life use temperature criteria.

On July 25, 2018, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the July 4, 2018, issue of the Idaho Administrative Bulletin, and a negotiated rulemaking meeting was held on July 20, 2018. Members of the public participated in the negotiated rulemaking process by attending the meetings and by submitting written comments. At the conclusion of the negotiated rulemaking process, DEQ formatted the final draft for publication as a proposed rule. The proposed rule was published in the September 5, 2018, issue of the Idaho Administrative Bulletin, followed by a formal 30-day comment period.

The rule was presented to the Idaho Board of Environmental Quality (Board) on November 14, 2018, and adopted as a pending rule.

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The pending rule was noticed in the December 5, 2018, issue of the Idaho Administrative Bulletin and finalized by the 2019 Idaho Legislature, becoming effective under Idaho Law on April 11, 2019.

DEQ has an online record of the rulemaking process that includes all the rule drafts and comments received, presentations given, and materials distributed, which can be accessed at: www.deq.idaho.gov/58-0102-1803. 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 approval;
- 2) July 4, 2018 Notice of Negotiated Rulemaking;
- 3) September 5, 2018 Notice of Proposed Rule announcing opening of 30-day public comment period on proposed rule;
- 4) Summary of negotiated rulemaking prepared for the Board, including the summary of public comment and DEQ's response;
- 5) November 2018 Board Meeting Minutes (available at www.deq.idaho.gov/58-0102-1803 on May 22, 2019);
- 6) December 5, 2018 Notice of Pending Rule announcing adoption by the Board;
- 7) May 1, 2019 Omnibus Rulemaking Notice of Final Legislative Action (available at www.deq.idaho.gov/58-0102-1803 on May 1, 2019); and
- 8) An Attorney General's certification that the rules were adopted according to state law.

In addition, electronic copies of the above materials have been burned onto CD for your convenience. 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 Administrator

BR:JP:BNB:tg

c: Jason Pappani, Surface Water Program Manager
Lisa Macchico, EPA Region 10