IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1201

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality, Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Sections 39-105, 39-107, and 39-3601 *et seq.*, Idaho Code.

METHOD OF PARTICIPATION: Those interested in participating in the negotiated rulemaking process are encouraged to attend the meeting at one of the following locations. The meeting locations will be connected by telephone and web conferencing. For those who cannot participate by attending the meeting, information for submitting written comments is provided at the end of this notice.

MEETING SCHEDULE: The negotiated rulemaking meeting will be held as follows. Additional meetings may be scheduled if necessary. For information regarding individual participation by telephone and web conferencing or scheduling of additional meetings, contact the undersigned. Individual requests to participate by telephone and web conferencing must be made by October 1, 2012.

Thursday, October 4, 2012, 9 a.m. to 12:30 p.m. Mountain Time	
Department of Environmental Quality Conference Rooms A & B 1410 N. Hilton, Boise, Idaho	**Department of Environmental Quality 444 Hospital Way #300 Pocatello, Idaho**
Department of Environmental Quality 2110 Ironwood Parkway, Coeur d'Alene, Idaho	**Department of Environmental Quality 1118 F Street Lewiston, Idaho**

PRELIMINARY DRAFT: DEQ did not draft a preliminary draft rule for public review prior to the first meeting. The first meeting has been scheduled for the purpose of presenting literature review findings, discussing criteria updates, gathering information, and setting a path forward. The website for this rule docket is located at www.deq.idaho.gov/58-0102-1201.

PRELIMINARY DRAFT: On May 10, 2012, the United States Environmental Protection Agency (EPA) disapproved the July 7, 2006 Idaho DEQ water quality standard rule submittal. The disapproval affects 167 of Idaho's revised human health criteria for 88 toxic pollutants. DEQ's proposed rule changed the fish consumption basis for determining the toxic standard from 6.5 g/day to 17.5 g/day (which was EPA's nationally recommended fish consumption rate). EPA disapproved the proposed criteria because EPA believes that the derivation of the criteria does not protect Idaho's designated uses. EPA was unable to ensure that the 17.5 g/day fish consumption rate was consistent with 40 CFR 131.11(a). EPA identified several sources of information on local and regional fish consumption, which they claim that Idaho did not consider before using the national default fish consumption rate. According to EPA, the information that EPA reviewed suggests that fish consumption among some Idaho population groups is greater than 17.5 g/day.

This rulemaking will evaluate local and regional fish consumption information to determine whether Idaho's statewide criteria are protective of designated uses and, if the current criteria are not protective, to determine appropriate new criteria. The rulemaking will derive the human health criteria for acrolein and phenol using updated reference dose values. This rulemaking will also set a human health criterion for copper based on drinking water standards.

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The text of the rule will be drafted by DEQ in conjunction with a negotiating committee made up of persons having an interest in the development of this rule. Idahoans that recreate in, drink from, or fish Idaho's surface waters and all who discharge pollutants to those same waters may be interested in participating in this rulemaking. Upon conclusion of negotiations, DEQ intends to publish a proposed rule for public comment.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: assistance on questions concerning this rulemaking, contact Don Essig at don.essig@deq.idaho.gov, (208)373-0119.

For those who cannot participate by attending the scheduled meeting, written comments may be submitted by mail, fax or e-mail at the address below. Written comments regarding the initiation of this rule docket must be received by October 11, 2012. For information regarding submission of written comments on subsequent drafts of the negotiated rule, to receive copies of submitted written comments, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 8th day of August, 2012.

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