



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

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WATER  
DIVISION

June 22, 2020

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

RE: EPA's Comments on Idaho's Docket No. 58-0102-2001 Preliminary Draft Negotiated Rule (Draft No. 1) – Bacteria Recreation Criteria and Variances

Dear Ms. Wilson:

Thank you for the opportunity to provide comments to the Idaho Department of Environmental Quality on its water quality standards and implementation requirements for bacteria recreation criteria and variances (Docket No. 58-0102-2001). EPA appreciates the DEQ's efforts to address the stakeholders' concerns with the 2019 rule associated with Docket No. 58-0102-1802 through this negotiated rulemaking before formally submitting the rules to EPA for review and action under the Clean Water Act section 303(c).

EPA has reviewed the Preliminary Draft Negotiated Rule documents (Draft No. 1) and offers the following comments for your consideration. Some of these comments reiterate previous comments EPA provided on May 15, 2020 regarding Idaho's water quality standards/implementation for bacteria<sup>1</sup> and for Idaho's proposed rule to revise the recreational use criteria (Docket No. 58-0102-1802).<sup>2</sup>

**Bacteria Criteria – IDAPA 58.01.02.100 and 251**

**Primary Contact Recreation Clarification**

The 2019 rule clarifies that the designated use for primary contact recreation includes all activities associated with secondary contact recreation. For the reasons discussed in our May 15, 2020 comment letter, EPA supports the rule revision to clarify activities associated with primary contact recreation.

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<sup>1</sup> Letter to Michelle Dale, Water Quality Standards Coordinator, Idaho Department of Environmental Quality, from Cyndi Grafe, Water Quality Standards Coordinator, USEPA Region 10. The EPA's Comments on Idaho's Water Quality Standards/Implementation – Bacteria, Docket No. 58-0102-2001. May 15, 2020. pp. 4

<sup>2</sup> Letter to Jason Pappani, Water Quality Standards Coordinator, Idaho Department of Environmental Quality, from Cyndi Grafe, Water Quality Standards Coordinator, USEPA Region 10. EPA's Comments on Idaho's Proposed Rule – Revision of Recreational Use Criteria and New Aquatic Life Criteria for Acrolein, Carbaryl, and Diazinon, Docket No. 58-0102-1802. October 4, 2018. pp. 3

## **Toxics Criteria Addition**

IDAPA 58.01.08.251.01 states that “Waters designated for recreation must meet the Fish Only water quality criteria set forth in subsection 210.01.b.” This provision adds clarification by cross-referencing subsection 210.01.b which states that the criteria protect human health and the Fish Only criteria apply to waters designated for primary or secondary contact recreation use. EPA supports this cross-reference to clarify the appropriate application of toxics criteria to protect human health in waters designated for recreation.

## **Fecal Indicators - Enterococci Criteria Addition**

The 2019 rule and the 2020 rule revision (Draft No. 1) add enterococci criteria consistent with EPA’s 2012 national recommended CWA section 304(a) criteria.<sup>3</sup> For the reasons discussed in our May 15, 2020 comments, EPA supports the transition approach with two fecal indicators in the rule revision.

## **Geometric Mean and Statistical Threshold Value Criteria and Implementation**

### **A. Independently Applicable**

In the 2019 rule, DEQ added “*or*” to the proposed rule language at IDAPA 58.01.08.251.02.a.i and b.i. In its letters dated October 4, 2018 and May 15, 2020, EPA stated its interpretation of the proposed rule language to mean that for each fecal indicator there are two components, geometric mean and statistical threshold value (STV), and that each are independently applicable. This interpretation of the rule language is consistent with EPA’s criteria recommendations and EPA requests DEQ confirm this interpretation.

The proposed language at IDAPA 58.01.08.251.02.c states that “For each indicator, compliance with the geometric mean criterion supersedes the STV criterion when applied to the same data set over the same time period provided minimum sampling requirements described in subsections 251.02.a.i or 251.03.b.i are met.” IDAPA 58.01.08.251.02.c is not consistent with EPA’s criteria recommendation which states that the criteria magnitude should be expressed as a geometric value corresponding to the 50th percentile and a STV corresponding to the 90th percentile of the same water quality distribution, and thus associated with the same level of public health protection. EPA’s criteria recommendations are for both a geometric mean and STV (rather than just a geometric mean or just an STV) because used together these criteria indicate whether the water quality is protective of the designated use of primary contact recreation. Using the geometric mean alone may not adequately protect against spikes in bacteria loads because the geometric mean alone is not sensitive to them. The STV, used in conjunction with the geometric mean, can help ensure that bacteria densities in recreational waters correspond to a water quality level protective of the designated use of primary contact recreation by constraining the number of high water quality values.<sup>4</sup>

As written, IDAPA 58.01.08.251.02.c would result in using the geometric mean to supersede the STV and therefore, would not be consistently protective of the designated use. EPA recommends DEQ delete IDAPA 58.01.08.251.02.c.

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<sup>3</sup> Recreational Water Quality Criteria. 2012. USEPA Office of Water 820-F-12-058. pp. 63. Available at: <https://www.epa.gov/sites/production/files/2015-10/documents/rwqc2012.pdf>.

<sup>4</sup> RWQC, p. 39

## **B. Duration and Same Data Distribution**

EPA's criteria recommendations state that the criteria magnitude should be expressed as a geometric mean and a STV that are both part of the same distribution of water quality data. EPA interprets the 2019 rule and the proposed rule revisions to mean that the STV and geometric mean for each 30-day period are calculated from the same data distribution. EPA requests that DEQ confirm this interpretation.

EPA's criteria recommendations also state that 30 days is considered to be an optimal duration period to capture both short-term and long-term variability of exposure conditions to protect recreational uses. Adoption of EPA's recommended criteria with a 30-day duration period, combined with frequent monitoring (e.g., more than once a month), provides the best means of providing protection and ensuring that assessment results accurately reflect attainment status. However, up to 90 days is considered an acceptable duration period. EPA analysis has shown that a geometric mean not to exceed 90 days, in combination with the protective criteria magnitudes, is protective of a primary contact recreation use and consistent with EPA's criteria recommendations data and analysis.<sup>5</sup> Regardless of which duration period DEQ uses, EPA's criteria recommendations state that the STV and geometric mean should be calculated from the same data distribution and duration period.

### **Sample Size and Geometric Mean**

The language regarding the Geometric Mean Criterion for E. coli and enterococci (IDAPA 58.01.08.251.02.a.i and b.i) states, "based on a minimum of five (5) samples taken every three (3) to seven (7) days over a thirty (30) day period." As discussed in its May 15, 2020 comments, EPA plans not to take action on the language under section 303(c) of the Clean Water Act as it does not meet EPA's test for what constitutes a new or revised water quality standard.<sup>6</sup>

### **Specific Variances – IDAPA 58.01.02.260**

As stated in our previous comment letter of May 15, 2020, EPA supports DEQ's proposal to delete the rule language at IDAPA 58.01.08.260.02 related to specific variances that EPA had disapproved on May 7, 2010. The preliminary draft rule now includes new revisions to subsection 260, including renumbering since the current subsection 260.02 is proposed for deletion. EPA does not have specific concerns with the proposed minor wording changes and renumbering within subsection 260. However, there are parts of DEQ's variance regulations that are not consistent with the water quality standards variance regulations at 40 CFR 131.14

As DEQ is aware, in August 2015, EPA published a final rule updating the federal water quality standards regulation to establish the variance requirements at 40 CFR 131.14.<sup>7</sup> Since the most recent revisions to Idaho's variance policy occurred in 2002 and were approved by EPA in 2006, EPA

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<sup>5</sup> Communication from EPA's Standards and Health Protection Division to the Water Quality Standards Coordinators: *Narrative Justification for Longer Duration Period for Recreational Water Quality Criteria*. (Oct. 30, 2015).

<sup>6</sup> *What is a New or Revised Water Quality Standard under 303(c)(3)? Frequently Asked Questions*, EPA No. 820F12017 (Oct. 2012). Available at <https://www.epa.gov/sites/production/files/2014-11/documents/cwa303faq.pdf>

<sup>7</sup> USEPA. August 21, 2015. *Water Quality Standards Regulatory Revisions; Final Rule (40 CFR Part 131)*. Federal Register Vol. 80, No. 162. 51019-51050. <https://www.gpo.gov/fdsys/pkg/FR-2015-08-21/html/2015-19821.htm>.

recommends DEQ consider updating the state's current variance regulations to incorporate the elements of the federal variance regulations that are not in DEQ's current variance regulations, as appropriate.<sup>8</sup> For example, DEQ's regulations do not include: 1) the additional justification factor related to restoration, found at 40 CFR 131.14(b)(2)(i)(A)(2); 2) the requirements related to the highest attainable condition of the water body or waterbody segment applicable throughout the term of the variance; and 3) a requirement that the variance term only be as long as necessary to achieve the highest attainable condition per 40 CFR 131.14(b)(1)(iv). Regardless of whether Idaho adopts these changes, any water quality standards variances issued by DEQ must comply with the federal variance requirements at 40 CFR 131.14.

EPA appreciates and supports the DEQ's ongoing efforts to update Idaho's water quality standards to ensure ongoing protection to aquatic life and public health. If you have any questions or would like to discuss these comments further, please contact me at (208) 378-5771.

Sincerely,



Cyndi Grafe  
Water Quality Standards Coordinator

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<sup>8</sup> As an example, the State of Alaska recently incorporated 40 CFR 131.14 by reference and submitted those revisions to EPA on February 19, 2020 for review and action under the CWA. EPA approved the revisions on March 23, 2020.