

Dear Senators LODGE, Broadsword, Bock\*, and  
Senators STEVENSON, Shepherd, Pence, and  
Representatives RAYBOULD, Harwood, Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the  
Department of Environmental Quality:

58.01.01 - Rules for the Control of Air Pollution in Idaho (Docket No. 58-0101-1103)\*;

58.01.02 - Water Quality Standards (Docket No. 58-0102-1101);

58.01.02 - Water Quality Standards (Docket No. 58-0102-1102).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 08/12/2011. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 09/12/2011.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4845, or send a written request to the address or FAX  
number indicated on the memorandum enclosed.



Jeff Youtz  
Director

# Legislative Services Office Idaho State Legislature

*Serving Idaho's Citizen Legislature*

## MEMORANDUM

**TO:** Rules Review Subcommittee of the \*Senate Health & Welfare Committee, the Senate Resources & Environment Committee and the House Environment, Energy & Technology Committee

**FROM:** Principal Legislative Research Analyst - Katharine Gerrity

**DATE:** July 26, 2011

**SUBJECT:** Department of Environmental Quality

58.01.01 - Rules for the Control of Air Pollution in Idaho (Docket No. 58-0101-1103)\*

58.01.02 - Water Quality Standards (Docket No. 58-0102-1101)

58.01.02 - Water Quality Standards (Docket No. 58-0102-1102)

### **1. 58.01.01 - Rules for the Control of Air Pollution in Idaho**

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho. According to the Department, the purpose of the rulemaking is to ensure that the rules are consistent with federal regulations. The Department states that the rule updates citations to federal regulations incorporated by reference at sections 008 and 107 to include those revised as of July 1, 2011.

The Department states that the proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations. Negotiated rulemaking was not conducted due to the nature of the rule.

The proposed rule appears to be authorized by Sections 39-105 and 39-107, Idaho Code.

### **2. 58.01.02 - Water Quality Standards**

The Department of Environmental Quality submits notice of temporary and proposed rulemaking at IDAPA 58.01.02 - Water Quality Standards. According to the Department, as NPDES permits are coming up for renewal, the EPA has begun including thermal effluent limits in reissued permits. The Department states that without this rule change, thermal effluent limits in NPDES permits and costs to meet those limits will be greater than needed to protect aquatic life resources. The Department indicates that it proposes to revise the standards in two sections addressing temperature. Specifically, revisions are made to the thermal treatment requirements in subsections 401.01.c. and d. which limit the rise in water temperature due to wastewater treatment plants and site-specific criteria for water temperature in section 278 to protect salmonid spawning. The Department notes that the rule changes are not expected to lower the level of protection of aquatic life, particularly fish populations, and that those most affected include NPDES permitted dischargers and citizens that pay for municipal sewage treatment, especially residents of the Treasure Valley.

Mike Nugent Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

Don H. Berg, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

The Department states that the proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations. Negotiated rulemaking was conducted.

The proposed rule appears to be authorized by Sections 39-105, 39-107, and 39-3601 et. seq., Idaho Code.

### **3. 58.01.02 - Water Quality Standards**

The Department of Environmental Quality submits notice of proposed rulemaking at IDAPA 58.01.02 - Water Quality Standards. According to the Department, the rule is being revised to include a site-specific temperature criterion for the Snake River to protect fall spawning of chinook salmon from Hell's Canyon Dam to the Salmon River. The Department states that the site-specific criterion would be a change from the current criterion of a maximum weekly maximum temperature of 13°C from October 23rd through April 15th to a site-specific criterion of a weekly maximum temperature of 14.5°C from October 23rd through November 6th and weekly maximum temperature of 13°C from November 7th through April 15th. The Department indicates that the proposed rule change recognizes the declining thermal regime in the Snake River during the fall spawning season and that higher temperatures at the outset of the season are both protective and supportive of the fall Chinook salmon spawning and incubations occurring in the Snake River during this time. The Department also states that the current site-specific criterion between October 23rd and April 15th is not regularly met during the first 14 days of the fall spawning season and yet salmonid spawning and incubation is at the highest levels of the last two decades. The Department notes that all who fish and recreate in the Snake River, Idaho Power Company and Native American tribes may be interested in commenting on this proposed rule.

The Department states that the proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations. Negotiated rulemaking was conducted.

The proposed rule appears to be authorized by Sections 39-105, 39-107, and 39-3601 et. seq., Idaho Code.

cc: Department of Environmental Quality  
Paula J. Wilson  
Martin Bauer  
Don Essig

# IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-1103

### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates citations to the federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this proposed rulemaking will be held as follows:

**Wednesday, September 7, 2011, 3:30 p.m.**

**Department of Environmental Quality  
Conference Room B  
1410 N. Hilton, Boise, Idaho.**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

**DESCRIPTIVE SUMMARY:** This rulemaking is necessary to ensure that the Rules for the Control of Air Pollution in Idaho are consistent with federal regulations. This proposed rule updates citations to federal regulations incorporated by reference at Sections 008 and 107 to include those revised as of July 1, 2011.

Members of the regulated community who may be subject to Idaho's air quality rules, special interest groups, public officials, and members of the public who have an interest in the regulation of air emissions from sources in Idaho may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2011 for adoption as a pending rule. The rule is expected to be final and effective upon adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

DEQ will submit the final rule to the United States Environmental Protection Agency to be included in the State Implementation Plan as required by Section 110 of the Clean Air Act.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary:

Incorporation by reference is necessary to ensure that the state rules are consistent with federal regulations. Information for obtaining a copy of the federal regulations is included in the rule.

**NEGOTIATED RULEMAKING:** Due to the nature of this rulemaking, negotiations were not held.

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Martin Bauer at [martin.bauer@deq.idaho.gov](mailto:martin.bauer@deq.idaho.gov) or (208) 373-0440.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 7, 2011.

DATED this 8th day of July, 2011.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 58-0101-1103**

**008. DEFINITIONS FOR THE PURPOSES OF SECTIONS 300 THROUGH 386.**

- 01. Affected States.** All States: (5-1-94)
- a.** Whose air quality may be affected by the emissions of the Tier I source and that are contiguous to Idaho; or (5-1-94)
- b.** That are within fifty (50) miles of the Tier I source. (5-1-94)
- 02. Allowance.** An authorization allocated to a Phase II source by the EPA to emit during or after a specified calendar year, one (1) ton of sulfur dioxide. (5-1-94)
- 03. Applicable Requirement.** All of the following if approved or promulgated by EPA as they apply to emissions units in a Tier I source (including requirements that have been promulgated through rulemaking at the time of permit issuance but which have future-effective compliance dates): (5-1-94)
- a.** Any standard or other requirement provided for in the applicable state implementation plan, including any revisions to that plan that are specified in 40 CFR Parts 52.670 through 52.690. (5-1-94)
- b.** Any term or condition of any permits to construct issued by the Department pursuant to Sections 200 through 223 or by EPA pursuant to 42 U.S.C. Sections 7401 through 7515; provided that terms or conditions relevant only to toxic air pollutants are not applicable requirements. (4-5-00)
- c.** Any standard or other requirement under 42 U.S.C. Section 7411 including 40 CFR Part 60; (5-1-94)
- d.** Any standard or other requirement under 42 U.S.C. Section 7412 including 40 CFR Part 61 and 40 CFR Part 63; (5-1-94)
- e.** Any standard or other requirement of the acid rain program under 42 U.S.C. Sections 7651 through 7651o; (5-1-94)
- f.** Any requirements established pursuant to 42 U.S.C. Section 7414(a)(3), 42 U.S.C. Section

7661c(b) or Sections 120 through 128 of these rules; (3-23-98)

**g.** Any standard or other requirement governing solid waste incineration, under 42 U.S.C. Section 7429; (5-1-94)

**h.** Any standard or other requirement for consumer and commercial products and tank vessels, under 42 U.S.C. Sections 7511b(e) and (f); and (5-1-94)

**i.** Any standard or other requirement under 42 U.S.C. Sections 7671 through 7671q including 40 CFR Part 82. (5-1-94)

**j.** Any ambient air quality standard or increment or visibility requirement provided in 42 U.S.C. Sections 7470 through 7492, but only as applied to temporary sources receiving Tier I operating permits under Section 324. (5-1-94)

**04. Designated Representative.** A responsible person or official authorized by the owner or operator of a Phase II unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a Phase II unit, and the submission of and compliance with permits, permit applications, and compliance plans for the Phase II unit. (5-1-94)

**05. Draft Permit.** The version of a Tier I operating permit that is made available by the Department for public participation and affected State review. (5-1-94)

**06. Emergency.** For the purposes of Section 332, an emergency is any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation and that causes the Tier I source to exceed a technology-based emission limitation under the Tier I operating permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. (4-5-00)

**07. Final Permit.** The version of a Tier I permit issued by the Department that has completed all review procedures required in Sections 364 and 366. (5-1-94)

**08. General Permit.** A Tier I permit issued pursuant to Section 335. (3-23-98)

**09. Insignificant Activity.** Those activities that qualify as insignificant in accordance with Section 317. (3-23-98)

**10. Major Facility.** A facility (as defined in Section 006) is major if the facility meets any of the following criteria: (3-23-98)

**a.** For hazardous air pollutants: (3-23-98)

**i.** The facility emits or has the potential to emit ten (10) tons per year (tpy) or more of any hazardous air pollutant, other than radionuclides, which has been listed pursuant to 42 U.S.C. Section 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

**ii.** The facility emits or has the potential to emit twenty-five (25) tpy or more of any combination of any hazardous air pollutants, other than radionuclides, which have been listed pursuant to 42 U.S.C. 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

**b.** For non-attainment areas: (3-23-98)

i. The facility is located in a “serious” particulate matter (PM-10) nonattainment area and the facility has the potential to emit seventy (70) tpy or more of PM-10. (5-1-94)

ii. The facility is located in a “serious” carbon monoxide nonattainment area in which stationary sources are significant contributors to carbon monoxide levels and the facility has the potential to emit fifty (50) tpy or more of carbon monoxide. (5-1-94)

iii. The facility is located in an ozone transport region established pursuant to 42 U.S.C. Section 7511c and the facility has the potential to emit fifty (50) tpy or more of volatile organic compounds. (5-1-94)

iv. The facility is located in an ozone nonattainment area and, depending upon the classification of the nonattainment area, the facility has the potential to emit the following amounts of volatile organic compounds or oxides of nitrogen; provided that oxides of nitrogen shall not be included if the facility has been identified in accordance with 42 U.S.C. Section 7411a(f)(1) or (2) if the area is “marginal” or “moderate,” one hundred (100) tpy or more, if the area is “serious,” fifty (50) tpy or more, if the area is “severe,” twenty-five (25) tpy or more, and if the area is “extreme,” ten (10) tpy or more. (3-23-98)

c. The facility emits or has the potential to emit one hundred (100) tons per year or more of any regulated air pollutant. The fugitive emissions shall not be considered in determining whether the facility is major unless the facility belongs to one (1) of the following categories: (4-11-06)

i. Designated facilities. (3-23-98)

ii. All other source categories regulated by 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63, but only with respect to those air pollutants that have been regulated for that category and only if determined by rule by the Administrator of EPA pursuant to Section 302(j) of the Clean Air Act. (4-5-00)

**11. Part 70.** Unless specified otherwise in this chapter, all definitions adopted under 40 CFR Part 70, revised as of July 1, 2010<sup>1</sup>, are hereby incorporated by reference. (~~4-7-11~~)(      )

**(BREAK IN CONTINUITY OF SECTIONS)**

**107. INCORPORATIONS BY REFERENCE.**

**01. General.** Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “documents” includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-1-94)

**02. Availability of Referenced Material.** Copies of the documents incorporated by reference into these rules are available at the following locations: (5-1-94)

a. All federal publications: [U.S. Government Printing Office](#); and (4-7-11)

b. All documents herein incorporated by reference: (7-1-97)

i. Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373-0502. (7-1-97)

ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)

**03. Documents Incorporated by Reference.** The following documents are incorporated by reference

into these rules:

(5-1-94)

**a.** Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR Part 51 revised as of July 1, 2010<sup>1</sup>. The following portions of 40 CFR Part 51 are expressly excluded from any incorporation by reference into these rules: (4-7-11)( )

**i.** All sections included in 40 CFR Part 51, Subpart P, Protection of Visibility, except that 40 CFR 51.301, 51.304(a), 51.307, and 51.308 are incorporated by reference into these rules; and (3-30-07)

**ii.** Appendix Y to Part 51, Guidelines for BART Determinations Under the Regional Haze Rule. (3-30-07)

**b.** National Primary and Secondary Ambient Air Quality Standards, 40 CFR Part 50, revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**c.** Approval and Promulgation of Implementation Plans, 40 CFR Part 52 revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**d.** Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR Part 53, revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**e.** Ambient Air Quality Surveillance, 40 CFR Part 58, revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**f.** Standards of Performance for New Stationary Sources, 40 CFR Part 60, revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**g.** National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**h.** National Emission Standards for Hazardous Air Pollutants for Source Categories, 40 CFR Part 63, revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**i.** Compliance Assurance Monitoring, 40 CFR Part 64, revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**j.** Permits, 40 CFR Part 72, revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**k.** Sulfur Dioxide Allowance System, 40 CFR Part 73, revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**l.** Protection of Stratospheric Ozone, 40 CFR Part 82, revised as of July 1, 2010<sup>1</sup>. (4-7-11)( )

**m.** Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). (3-19-99)

**n.** Determining Conformity of Federal Actions to State or Federal Implementation Plans: Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, 40 CFR Part 93, Subpart A, Sections 93.100 through 93.129, revised as of July 1, 2010<sup>1</sup>, except that Sections 93.102(c), 93.104(d), 93.104(e)(2), 93.105, 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1), and 93.124(b) are expressly omitted from the incorporation by reference. (4-7-11)( )

**o.** The final rule for Primary National Ambient Air Quality Standards for Sulfur Dioxide, 75 Fed. Reg. 35,520 through 35,603 (June 22, 2010) to be codified at 40 CFR Part 50 (National Primary and Secondary Ambient Air Quality Standards), 40 CFR Part 53 (Ambient Air Monitoring Reference and Equivalent Methods), and 40 CFR Part 58 (Ambient Air Quality Surveillance). This final rule is effective on August 23, 2010. (4-7-11)

**p.** The final rule for Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 75 Fed. Reg. 31,514 through 31,608 (June 3, 2010) to be codified at 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans), 40 CRF Part 52 (Approval and Promulgation of



Implementation Plans), and 40 CFR Part 70 (State Operating Permit Programs). This final rule is effective on August 2, 2010. (4-7-11)

**q.** The final rule for Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC), 75 Fed. Reg. 64,864 through 64,907 (October 20, 2010) to be codified at 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) and 40 CFR Part 52 (Approval and Promulgation of Implementation Plans). This final rule is effective on December 20, 2010. (4-26-11)T

# IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.02 - WATER QUALITY STANDARDS

### DOCKET NO. 58-0102-1101

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The temporary rule is effective June 30, 2011.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226(1), Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality is commencing proposed rulemaking. This rulemaking action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before August 19, 2011. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** As NPDES permits are coming up for renewal, the U.S. Environmental Protection Agency (EPA) has begun including thermal effluent limits in reissued permits. The City of Boise NPDES permit renewal is expected to be released as a draft in the summer of 2011 and will be based on current water quality standards unless they are revised promptly. Without this rule change, thermal effluent limits in NPDES permits and costs to meet those limits will be greater than needed to protect aquatic life resources.

Two parts of Idaho's water quality standards are likely to drive inordinate thermal treatment costs:

1. Excessive limits on water temperature rise in Subsections 401.01.c. and d. (aka thermal treatment requirements); and
2. Outdated numeric criteria to protect salmonid spawning.

DEQ proposes to revise the Water Quality Standards, IDAPA 58.01.02, in two sections addressing temperature: 1) the thermal treatment requirements in Subsections 401.01.c. and d. which limit the rise in water temperature due to wastewater treatment plants, and 2) site-specific criteria for water temperature in Section 278 to protect salmonid spawning.

The origin of Idaho's thermal treatment requirements is unknown but is thought to be based on avoiding 'thermal shock' to fish and providing a level of protection that is largely redundant of and far in excess of that provided by ambient criteria. While 'thermal shock' can be an issue for fish, it is thought to occur when fish encounter abrupt temperature changes of 5-6°C or more, not 1-2°C. DEQ proposes to remove Subsections 401.01.c. and d. and rely on the retained language in Subsections 401.01.a. and b. to provide a more flexible means to address possible thermal shock on a case-by-case basis and to provide full protection from adverse effects of heated effluent in addition to protection provided to aquatic life by ambient temperature criteria in Section 250.

Idaho's current salmonid spawning criteria are based on recommendations from EPA made in the mid 1970s. EPA updated its recommendation regionally in 2003. While DEQ would like to adopt this recommendation statewide, questions about time periods in which the criterion would apply in various waterbodies across the state has lead DEQ at this time to scale back to a site-specific proposal. DEQ proposes to adopt EPA's recommended criterion of 13°C as a maximum seven-day average of daily maximums as a site-specific criterion to protect salmonid spawning and incubation in the three waterbodies within the Lower Boise watershed (HUC 17050114) currently designated for salmonid spawning. The proposal specifies the time period for which the criterion applies to each waterbody and the species which are protected.

Although the rule is not expected to lower the level of protection of aquatic life, particularly fish populations, all Idahoans that recreate in, fish from or otherwise enjoy the quality of Idaho's surface waters may be interested in commenting on this proposed rule. Those most affected include NPDES permitted dischargers and citizens that pay for municipal sewage treatment, especially residents of the Treasure Valley. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in November 2011 for adoption as a pending rule. The pending rule is expected to become final and effective upon adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule confers a benefit. Adoption of a temporary rule would reduce thermal treatment costs for pending NPDES permit renewals.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not applicable.

**NEGOTIATED RULEMAKING:** The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23.810-815. On May 4, 2011, the Notice of Negotiated Rulemaking was published in the [Idaho Administrative Bulletin, Vol. 11-5, pages 99 through 100](#), and a preliminary draft rule was made available for public review. A meeting was held on May 25, 2011. Several members of the public participated in this negotiated rulemaking process by attending the meeting and by submitting written comments. A record of the negotiated rule drafts, written comments received, and documents distributed during the negotiated rulemaking process is available at <http://www.deq.idaho.gov/58-0102-1101-temporary-proposed>.

**IDAHO CODE § 39-107D STATEMENT:** The standards included in this proposed rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the temporary and proposed rule, contact Don Essig at [don.essig@deq.idaho.gov](mailto:don.essig@deq.idaho.gov), (208)373-0119.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 2, 2011.

DATED this 30th day of June, 2011.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton/Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 58-0102-1101**

278. LOWER BOISE RIVER SUBBASIN, HUC 17050114 SUBSECTION ~~15~~40.12.

01. **Boise River, SW-1 and SW-5 -- Salmonid Spawning and Dissolved Oxygen.** The waters of the Boise River from Veterans State Park to its mouth will have dissolved oxygen concentrations of six (6) mg/l or seventy-five percent (75%) of saturation, whichever is greater, during the spawning period of salmonid fishes inhabiting those waters. (3-15-02)

02. **Indian Creek, SW-3b, Mason Creek, SW-6, and Sand Hollow Creek, SW-17 -- Modified Aquatic Life Use.** All numeric criteria applicable to the seasonal cold water aquatic life use apply with the exception of dissolved oxygen. Dissolved oxygen concentrations are to exceed four (4) mg/l at all times. (3-15-02)

03. **Fifteenmile Creek, SW-7; Tenmile Creek, SW-8, and Five Mile Creek, SW-10 -- Modified Aquatic Life Use.** All numeric criteria applicable to the seasonal cold water aquatic life use apply. (3-15-02)

04. **Boise River, SW-5 and SW-11a -- Copper and Lead Aquatic Life Criteria.** The water-effect ratio (WER) values used in the equations in Subsection 210.02 for calculating copper and lead CMC and CCC values shall be two and five hundred seventy-eight thousandths (2.578) for dissolved copper and two and forty-nine thousandths (2.049) for lead. These site-specific criteria shall apply to the Boise River from the Lander St. wastewater outfall to where the channels of the Boise River become fully mixed downstream of Eagle Island. (5-3-03)

05. **Indian Creek, SW-3a -- Site-Specific Criteria for Water Temperature.** A maximum weekly maximum temperature of thirteen degrees C (13°C) to protect brown trout and rainbow trout spawning and incubation applies from October 15 through June 30. (6-30-11)T

06. **Boise River, SW-5 and SW-11a -- Site-Specific Criteria for Water Temperature.** A maximum weekly maximum temperature of thirteen degrees C (13°C) to protect brown trout, mountain whitefish, and rainbow trout spawning and incubation applies from November 1 through May 30. (6-30-11)T

07. **Point Source Thermal Treatment Requirement.** With regard to the limitations set forth in Section 401 relating to point source wastewater discharges, only the limitations of Subsections 401.01.a. and 401.01.b. and the temperature limitation relating to natural background conditions shall apply to discharges to any water body within the Lower Boise River Subbasin. (6-30-11)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**401. POINT SOURCE WASTEWATER TREATMENT REQUIREMENTS.**

Unless more stringent limitations are necessary to meet the applicable requirements of Sections 200 through 300, or unless specific exemptions are made pursuant to Subsection 080.02, wastewaters discharged into surface waters of the state must have the following characteristics: (4-11-06)

01. **Temperature.** The wastewater must not affect the receiving water outside the mixing zone so that: (7-1-93)
- a. The temperature of the receiving water or of downstream waters will interfere with designated beneficial uses. (7-1-93)
  - b. Daily and seasonal temperature cycles characteristic of the water body are not maintained. (7-1-93)
  - ~~c. If the water is designated for warm water aquatic life, the induced variation is more than plus two (+2) degrees C. (3-15-02)~~
  - ~~d. If the water is designated for cold water aquatic life, seasonal cold water aquatic life, or salmonid~~

~~spawning, the induced variation is more than plus one (+1) degree C. (3-15-02)~~

~~ec.~~ If temperature criteria for the designated aquatic life use are exceeded in the receiving waters upstream of the discharge due to natural background conditions, then ~~Subsections 401.01.c. and 401.01.d. do not apply and instead~~ wastewater must not raise the receiving water temperatures by more than three tenths (0.3) degrees C. ~~(4-11-06)~~ **(6-30-11)T**

**02. Turbidity.** The wastewater must not increase the turbidity of the receiving water outside the mixing zone by: (7-1-93)

**a.** More than five (5) NTU (Nephelometric Turbidity Units) over background turbidity, when background turbidity is fifty (50) NTU or less; or (7-1-93)

**b.** More than ten percent (10%) increase in turbidity when background turbidity is more than fifty (50) NTU, not to exceed a maximum increase of twenty-five (25) NTU. (7-1-93)

**03. Total Chlorine Residual.** The wastewater must not affect the receiving water outside the mixing zone so that its total chlorine residual concentration exceeds eleven one-thousandths (0.011) mg/l. (1-1-89)

# IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.02 - WATER QUALITY STANDARDS

### DOCKET NO. 58-0102-1102

#### NOTICE OF RULEMAKING - PROPOSED RULEMAKING

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before August 19, 2011. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** DEQ proposes to revise its Water Quality Standards, IDAPA 58.01.02, to include a site-specific temperature criterion for the Snake River to protect fall spawning of Chinook salmon from Hell's Canyon Dam to the Salmon River. This site-specific criterion would be a change from the current criterion of a maximum weekly maximum of 13°C from October 23rd through April 15th to a site-specific criterion of a weekly maximum temperature (WMT) of 14.5°C from Oct 23rd through November 6th and a WMT of 13°C from November 7th through April 15th. The first date a WMT can be calculated is October 29th. The proposed rule change recognizes the declining thermal regime in the Snake River during the fall spawning season and that higher temperatures at the outset of the spawning season are both protective and supportive of the fall Chinook salmon spawning and incubation occurring in the Snake River during this time. This proposed rule change recognizes that a need to change the site-specific temperature criterion in the Snake River between the Hell's Canyon Dam and the confluence with the Salmon River exists. The current site-specific criterion of 13°C between October 23rd and April 15th is not regularly met during the first 14 days of the fall spawning season and yet salmonid spawning and incubation is at the highest levels of the last two decades. The proposed rule changes the temperature criteria to 14.5°C for the first 14 days of the spawning period and then reduced to 13°C for the balance of the fall and early spring.

All who fish and recreate in the Snake River, Idaho Power Company who operates the Hell's Canyon Dam, and Native American tribes may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality at the November 2011 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon the adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not applicable.

**NEGOTIATED RULEMAKING:** The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23.810-815. On June 1, 2011, the Notice of Negotiated Rulemaking was published in the [Idaho Administrative Bulletin, Vol. 11-6, pages 77 through 78](#), and a preliminary draft rule was made available for public review. A meeting was held on June 21, 2011. Several members of the public participated in this negotiated rulemaking process by attending the meeting and by submitting written comments. A record of the negotiated rule drafts, written comments received, and documents distributed during the negotiated rulemaking process is available at <http://www.deq.idaho.gov/58-0102-1102-proposed>.

**IDAHO CODE SECTION 39-107D STATEMENT:** The standards included in this proposed rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

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

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 2, 2011.

DATED this 8h day of July, 2011.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 58-0102-1102**

**286. SNAKE RIVER, SUBSECTION 130.01, HUC 17060101, UNIT S1, S2, AND S3; SITE-SPECIFIC CRITERIA FOR WATER TEMPERATURE.**

~~A maximum weekly maximum temperature of thirteen degrees C (13C) to protect fall chinook spawning and incubation applies from October 23rd through April 15th in the Snake River from Hell's Canyon Dam to the Salmon River. Weekly maximum temperatures (WMT) are regulated to protect fall chinook spawning and incubation in the Snake River from Hell's Canyon Dam to the confluence with the Salmon River from October 23 through April 15. Because the WMT is a lagged seven (7) day average, the first WMT is not applicable until the seventh day of this time period, or October 29. A WMT is calculated for each day after October 29 based upon the daily maximum temperature for that day and the prior six (6) days. From October 29 through November 6, the WMT must not exceed fourteen point five degrees C (14.5°C). From November 7 through April 15, the WMT must not exceed thirteen degrees C (13°C).~~ (4-6-05)( )