

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Wednesday, January 20, 2016

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Bair, Vice Chairman Vick, Senators Siddoway, Heider, Nuxoll, Bayer, Hagedorn, Stennett and Lacey

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Bair** called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:30 p.m. and said that hearing of the Department of Environmental Quality (DEQ) rules would continue.

**PASSED THE GAVEL:** Chairman Bair passed the gavel to Vice Chairman Vick. **Vice Chairman Vick** called on Mr. Barry Burnell, Water Quality Division Administrator for DEQ, to present the rule.

**DOCKET NO. 58-0102-1201** **WATER QUALITY STANDARDS** Mr. Burnell provided a Power Point presentation relating to this rule. He stated that his presentation would include the Human Health Criteria (HHC) rule history; rulemaking schedule; fish consumption survey; policy development; and rule review.

**Mr. Burnell** said that in 2004, the Oregon DEQ submitted their rule to the Environmental Protection Agency at a consumption rate of 17.5 grams of fish per day. In April 2005, the Idaho DEQ announced rulemaking, held negotiated rulemaking meetings, and published a proposed rule. The rule shifted from 6.5 grams per day to 17.5 grams per day, the EPA's nationally recommended Fish Consumption Rate (FCR). The EPA applauded the Idaho DEQ's rulemaking. In November 2005, the board of the DEQ adopted the rule.

The Idaho Legislature approved the rule in 2006. In July 2006, the rule was submitted to the EPA. Oregon's rule was disapproved by the EPA in 2010. In 2011, the EPA approved the Oregon DEQ's revised HHC, which was based on the FCR of 175 grams per day. On May 10, 2012, the EPA disapproved the Idaho DEQ's Human Health Toxics Criteria, which was based on an FCR of 17.5 grams per day.

The DEQ started rulemaking in August 2012. They evaluated their existing data and found it to be limited in scope for Idaho residents, old and of questionable quality.

Following is the schedule for DEQ's rulemaking:

- FCR survey development – 2012-2013
- FCR survey implementation – 2014-2015
- Policy discussions – 2013-2015
- Data Analysis – August 2015
- Proposed rule – October 2015
- Board review – December 2015
- Legislative review – January 2016

DEQ's rulemaking actions included eight meetings related to the fish consumption survey design (2012-13), for which public comments were taken. The 2013 Legislature provided \$300,000 for creation and implementation of the survey. In 2014-2015, the surveys included the general population and Idaho resident anglers. The EPA sponsored a tribal members survey: FCR's - Nez Perce and Shoshone-Bannock. Heritage rates - Kootenai, Coeur d'Alene, Shoshone-Paiute, Nez Perce and Shoshone-Bannock.

The National Cancer Institute (NCI) conducted a survey of fish consumption (grams per day) and arrived at the following: (Idaho - All Fish/Tribal Group 2)

POPULATION	50%	MEAN	75%	90%	95%	99%
Idaho Total	14.2	22.0	79.7	51.1	67.7	118
Idaho Angler	15.9	26.5	36.9	64.6	86.4	146
Nez Perce	36.0	66.5	81.7	159	234	—
Shoshone-Bannock	6.5	18.6	20.0	48.9	80	—
EPA 2014	5.0	—	11.4	22.0	31.8	61.1

- 6.5 grams per day equals a 7-ounce meal once a month
- 17.5 grams per day equals a 4.3-ounce meal once a week
- 66.5 grams per day equals a 4.7-ounce meal every other day
- 175 grams per day equals a 6-ounce meal every day.

**Mr. Burnell** also stated that these fish consumption rates are based on eating fish over a 70-year time period, and would increase the risk of cancer by 1 in 100,000 people.

The time frame for HHC policy decisions/papers:

1. Fish Consumer or Non-consumers (Oct. 2013)
2. General Population or Targeted Subpopulation (Dec. 2013)
3. Probabilistic Risk Assessment or Deterministic Assessment (April 2014)
4. Market Fish or Local Fish and Relative Source Contribution (May 2014)
5. Anadromous Fish (July 2014)
6. Suppression (October 2014)
7. Risk Management and Protection of Public Health (Dec. 2014)
8. Implementation Strategies (March 2015)

The data analysis conducted in 2015 included information from NCI, deterministic calculations and the probabilistic risk assessment. With respect to risk for carcinogens, the EPA's guidance allows states to choose from a range of  $10^{-5}$  to  $10^{-6}$  for the incremental increase in cancer risk used in calculating criteria for the general population. Higher consumers are protected at  $10^{-4}$  or lower. Idaho has chosen to use an incremental increase in cancer risk level of  $10^{-5}$ . The general population is generally at a lower risk. Six hundred sixty five (665) grams per day would be at a risk level of  $10^{-4}$  and the risk can never be made the same for everyone.

The information presented in the proposed rule is necessary to protect human health and to fully satisfy the Clean Water Act (CWA) water quality standards. The consequences of the EPA's disapproval would be that the EPA must promulgate a rule for Idaho if DEQ fails to take action. The pending rule is the State's response. The Idaho Conservation League (ICL) issued a Notice of Intent to sue the EPA, and the EPA agreed to start rulemaking for Idaho late in 2016 if Idaho does not adopt a rule.

**TESTIMONY:** **Mr. Justin Hayes**, Program Director, ICL, complimented the DEQ for their questions regarding science and policy. However, he is not in favor of the rule as it is not favorable to the tribes. He anticipates that the EPA will deny the rule.

**TESTIMONY:** **Mr. Jim Werntz**, Director of the EPA's Idaho office, testified. He also indicated that the rule is not favorable to the tribes and that most states place the cancer risk at  $10^{-6}$ , whereas Idaho has placed it at  $10^{-5}$ . **Mr. Werntz** stated that selecting a higher fish consumption rate does essentially protect all Idahoans, not just the tribal people, by raising the bar of higher consumers. As a matter of policy, the EPA states their concerns and respects the process the state is in; and their decision will come later. An important part of their evaluation will be what the state brings forth as to the rationale of their decisions.

**MOTION:** **Senator Siddoway** made the motion to approve **Docket No. 58-0102-1201**. **Chairman Bair** seconded the motion. During the discussion, Senator Stennett said she would not be supporting the motion because she has a problem with the formula and is also concerned about the state's water supply and public health. The motion carried by **voice vote**. Senator Stennett asked to be recorded as voting **nay**.

**PASSED THE GAVEL:** Vice Chairman Vick returned the gavel to Chairman Bair.

**ADJOURNED:** **Chairman Bair** announced that the remaining DEQ rules would be heard on Friday, January 22. He then adjourned the meeting at 3:00 p.m.

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Senator Bair  
Chair

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Juanita Budell  
Secretary