

MINUTES

HOUSE ENVIRONMENT, ENERGY, & TECHNOLOGY COMMITTEE

DATE: Thursday, January 28, 2016

TIME: 1:30 P.M.

PLACE: Room EW41

MEMBERS: Chairman Thompson, Vice Chairman Anderst, Representatives Raybould, Hartgen (Hartgen), Vander Woude, Nielsen, Anderson, Mendive, Trujillo, Beyeler, Chaney, Nate, Scott, Smith, Rusche (Van Tassel), Jordan, Rubel (Green)

**ABSENT/
EXCUSED:** Rep. Vander Woude

GUESTS: Kevin Beaton, Stoel Rives; Barry Burnell, Idaho Department of Environmental Quality (IDEQ); Marv Lewallen, CLW/IACI; Brent Olmstead, MPIIdaho; Jane Wittmeyer, Wittmeyer and Assoc.; Paula Wilson, IDEQ; Bryon Welch, Office of Performance Evaluations; Justin Hayes, ICL; Jonathan Oppenheimer, ICL; Jess Byrne, IDEQ; Shelley Roberts, Idaho Rural Water Association; Jack Lyman, Idaho Mining Assoc.; Elizabeth Criner, NWFPA/FWAA; Amanda Watson; Marcia Jedry, IACI; Brad Hunt, O.A.R.C.; Norm Semanko, IWUA; Andy Brimer, IWUA

Chairman Thompson called the meeting to order at 1:30 p.m.

MOTION: **Rep. Smith** made a motion to approve the minutes of the January 20, 2016, meeting. **Motion carried by voice vote.**

Marv Lewallen, Vice President - Environmental, Energy, and Sustainability, Clearwater Paper, gave a presentation on Idaho Water Criteria Rulemaking, Human Health Water Quality Criteria. His goal was to provide background and context associated with Idaho DEQ's work on setting human health water quality criteria, and to provide an understandable overview of Clean Water Act processes and how risks to Idaho's citizens are assessed and considered within this complex collision of science and public policy. The Clean Water Act sets surface water quality criteria. Fish consumption rate and risk policy choices drive the water quality criteria. DEQ asked for data to meet criteria to bring water quality back into compliance. With the EPA's and Oregon's approach, many criteria would be unattainable and lead to impairment for Idaho rivers, ineffective Total Maximum Daily Loads (TMDL), and wasted resources.

DEQ surveyed the population of Idaho to assess how much Idaho fish Idahoans eat, and determined it is an average of 2.3 grams per day without salmon and steelhead. DEQ also needed to determine how much untreated surface water is consumed. DEQ assumed 2.4 liters every day from ponds, lakes, and Idaho streams per EPA requirement standards. Based on scientific data and input, DEQ selected an excess cancer risk of 1 in 100,000 (1×10^{-5}). DEQ followed national EPA requirements, and in some instances was more stringent (i.e., salmon). Cancer risks affect us all, and risk factors are important. DEQ chose a target incremental risk level of 1×10^{-5} to set criteria for carcinogens. This is lower than Oregon and EPA standards of 1×10^{-6} . The impact of adopting the 1×10^{-6} level would be that many rivers and streams would be designated as impaired, impairments would lead to a list of non-compliant water bodies, and the cost to Idaho cities, municipalities, and businesses could total tens of billions of dollars, and Idaho would still not meet Total Maximum Daily Loads. There would be almost no health improvements, which would harm public health by diverting resources that could produce real and measurable improvements. DEQ's proposed Human Health Water Quality Criteria risks are very low compared with "real" everyday risks and consistent with case law

and EPA national guidance. DEQ's approach struck an acceptable balance. Based on what is happening in other states, EPA seems likely to disapprove the current proposal. Establishing a balanced and defensible set of criteria and defending the state's choices is sound public policy.

Mr. Lewallen answered questions from the committee, saying if the standards set by DEQ are rejected by EPA, he projects there could be litigation. However, DEQ policy choice is defensible and rational. Although Idaho survey results averaged 2.4 grams of fish every day, that number does not include salmon and steelhead. DEQ selected 66.5 grams of fish a day as a reasonable amount with the salmon and steelhead added. If you project litigation, the larger number is more defensible. This is about risk policy, but we have an opportunity to make a reasonable choice about the policy for the long run. A typical carcinogen is polychlorinated biphenyl (PCP), which is no longer manufactured but is persistent, making it a good choice for the study. In Oregon, the Umatilla Tribe was encouraged to look at the perception of risk from consuming fish and to do a toxicology report on salmon.

When asked if tribes supported it, **Barry Burnell** said the tribe would like higher numbers, but he has not had specific dialog with them. There are 104 different toxic man-made pollutants; there are also naturally occurring metals such as selenium, nickel, copper, and zinc. The naturally occurring pollutants are allowed. Regarding the untreated surface water consumed as drinking water, it is part of the EPA health study done for the nation. DEQ assumed 2.4 liters of water per day as an EPA requirement. This is very good for the state of Idaho. All surface water sources of drinking water are treated. Based on all projections DEQ recommends choosing a policy that is 1×10^{-5} .

**DOCKET NO.
58-0102-1501:**

Barry Burnell, Water Quality Division Administrator for the DEQ, presented **Docket No. 58-0102-1501** to the committee. The intent of the rule is to provide a regulatory structure for conducting Water Quality Standards Use Attainability Assessments (UAAs). The language used in this rule comes from the federal Clean Water Act (40 CFR 131.10) and Idaho Code 39-3604. The rule provides DEQ with a basis to develop a guidance document to assist in the development of UAAs. Mr. Burnell said the rule is in response to the performance evaluation audit of DEQ water quality. Costs are dependent upon the water body for which a designated use change is being sought and the associated data collection and analysis needed. UAA costs are expected to be the stakeholders' responsibility. Agency staff time will be used to assist stakeholders through the UAA process and the associated rulemaking adoption activity. Designations are made by water body unit unless designated otherwise. Designations may include uses that are not an existing use, but are attainable. Listed are the factors the department will consider.

Subsection 102.02 is added. This section is the heart of the Use Attainability Analysis requirements. Anytime a fishable or swimmable beneficial use is revised or removed from a water body, then a UAA must be completed. The elements that may be used to justify a use change are listed. Last, a Definition of Use Attainability Analysis is added. DEQ recommends the committee approve **Docket No. 58-0102-1501**.

Barry Burnell answered questions from the committee, saying the changes in Rule 301.b and 306 of the Federal Clean Water Act are used in permitting federal point source discharges; this is for changing the program from EPA to DEQ control. The human health criteria for pollutants is a rule that updates 104 pollutants and prepares 208 criteria for consideration; today, we have 6 facilities permitted under a general groundwater remediation permit and 27 facilities being monitored. Clearwater Paper has a permit that allows contaminants which are subject to this rule. Some permits are more, some are less stringent. The economic impact is hard to project. DEQ is seeking primacy to run discharge limits instead of EPA. Measurements are taken after treatment and before discharge.

MOTION: Rep. Anderst made a motion to approve **Docket No. 58-0102-1501**. **Motion carried by voice vote.** Rep. Scott, Nate, and Nielson requested to be recorded as voting **NAY**.

DOCKET NO. 58-0111-1501: Barry Burnell presented **Docket No. 58-0111-1501** to the committee. This rulemaking was initiated to revise the Ground Water Quality Rule (IDAPA 58.01.11) as directed by the 2015 Legislature under **197** which amended Idaho Code. **197** clarified that degradation of ground water caused by mining activities is allowed within a point of compliance as long as the mine operator implements Best Management Practices. The rule revised sections 150, 301, 400, and 401 to accomplish this direction. Section 401 has language that requires activities to be managed in a manner which maintains or improves existing ground water quality. However, Section 401 was developed to allow for degradation to occur in mining areas and to establish points of compliance for mining activities. To clarify that within points of compliance, ground water may be degraded the exception language was added: "Except when a point of compliance is set pursuant to Section 401." This language is added for all three Aquifer categories.

Barry Burnell answered questions from the committee, saying there was no resistance to the rule. Three comments were received, but no changes were made. Pollutants from mining can be discharged by using tailing ponds. This is Idaho Code that is unique to Idaho. There is no federal equivalent.

MOTION: Rep. Beyeler made a motion to approve **Docket No. 58-0111-1501**. **Motion carried by voice vote.**

DOCKET NO. 58-0108-1501: Barry Burnell presented **Docket No. 58-0108-1501** to the committee. This rulemaking adopts into state rules the federal Drinking Water Revised Total Coliform Rule (RTCR). The Revised Total Coliform Rule updates the 1989 Total Coliform Rule. This rulemaking is necessary for DEQ to maintain primacy in implementing the drinking water program. If this rule is not adopted, EPA will be implementing this rule in Idaho, and reduced monitoring costs will not be realized by owners of public water systems. Statewide cost estimates using EPA's models based on 1,958 public water systems show there will be costs for the first year of implementation, but in subsequent years costs will be offset through reduced monitoring frequency, leading to savings.

Systems with bacterial contamination will need to conduct Level 1 and possibly Level 2 system assessments. The intent of the rule is to provide increased public health protection by reducing the pathways that pathogens can enter into drinking water systems. This would be done by implementing a find-and-fix approach to bacterial contamination, providing incentives in the form of reduced bacteria monitoring for improved system operations. It adds *E.coli* as the bacteria maximum contaminant level (MCL), and shifts total coliform to be an indicator organism for a system assessment, and it requires start-up procedures for seasonal systems. Level 2 Assessments have reduced the total coliform monitoring from monthly to quarterly, but it has the same conditions.

The goal is to protect public health. *E.coli* is the new bacteria standard; the rule is to make sure owners of public water systems find and fix contamination. Level 1 Assessments are triggered by positive total coliform sample results or failure to take all repeat samples following a routine total coliform positive sample. A Level 1 Assessment is done when there have been problems and coliform is detected in the drinking water. It can be conducted by the owner or operator of a system and is a brief review of the system's operations and conditions.

Level 2 Assessments are triggered by a positive *E. coli* sample result or two Level 1 Assessments in a rolling 12 month period. Level 2 assessments require a more detailed review of the system's operations and conditions and include acute remediation such as boil orders or substitute water sources, followed by testing for safety. Four rule sections address the Revised Total Coliform rule; different monitoring systems apply for different populations.

There are two triggers for the Level 2 Assessments: one is a positive test for *E. coli*, which is an acute contaminant. Also, a second Level 1 trigger in the last 12 months indicates that the problem has not been corrected, so a more in-depth evaluation is needed. Flushing for disinfection allows operators to use flushing as an effective means to remove potential pathogens from systems; this is followed by testing to verify effectiveness. The last section contains seasonal startup procedures for systems that are only active for part of the year, including disinfecting lines, testing, and monitoring.

Barry Burnell answered questions from the committee, saying EPA was part of the rulemaking, so there should be no problem with the state maintaining primacy. Changes to the CFR are more stringent and would require additional monitoring. There is a reduced monitoring requirement if the total coliform remains low, which saves money. If water pressure drops below 20 pounds, the system may have depressurized, and bacteria may have entered the system. This is a chronic problem in public water systems, which is solved by adding backup power to prevent depressurization. If there are any changes in the CFR, it would have to come back to this committee for approval.

MOTION: **Rep. Chaney** made a motion to approve **Docket No. 58-0108-1501**. **Motion carried by voice vote.** **Rep. Scott and Nate** requested to be recorded as voting **NAY**.

DOCKET NO. 58-0104-1501: **Barry Burnell** presented **Docket No. 58-0104-1501** to the committee. This rulemaking has been initiated in order to comply with revisions to the State Revolving Fund portion of the Clean Water Act, passed by Congress on May 20, 2014. This rulemaking is necessary for DEQ to maintain primacy in implementing the drinking water program. If this rule is not adopted, EPA will be implementing this rule in Idaho. The Water Resource and Recovery Development Act revisions require that facility plans include a justification that the selected alternative maximizes the potential for efficient water use, reuse, recapture and conservation, and energy conservation. Current rules only require that the selected alternative be cost effective and environmentally sound. This rule adds a new section (4), to require assessment of the cost and effectiveness, to the maximum extent practicable, of efficient water use, reuse, recapture and conservation, and energy conservation, with cost including construction, operation, maintenance, and replacement.

MOTION: **Rep. Trujillo** made a motion to approve **Docket No. 58-0104-1501**. **Motion carried by voice vote.** **Rep. Scott** requested to be recorded as voting **NAY**.

DOCKET NO. 58-0112-1501: **Barry Burnell** presented **Docket No. 58-0112-1501** to the committee. This rulemaking has been initiated in order to comply with revisions to the State Revolving Fund portion of the Clean Water Act, passed by Congress on May 20, 2014. The Water Resource and Recovery Development Act revisions require that State loan rules must also include unemployment and population into its Disadvantaged Loan criteria. The EPA may withhold grant monies if this rule is not approved. It creates two tiers of median household income impact. If the impact of paying for the loan on rate payers exceeds 2% of median household income then the community will qualify as disadvantaged. If the impact on rate payers is between 1.5% and 2%, then the community must also have a decreasing population base and unemployment that exceeds the state average.

MOTION: **Rep. Smith** made a motion to approve **Docket No. 58-0112-1501**.
Barry Burnell answered questions from the committee, saying the applicants for loans are typically municipalities, subdivisions, sewer districts, or communities. Their designation as disadvantaged is based on unemployment rates and decrease in population. Raising the rate from 1.5% to 2% would raise the cost to a higher monthly payment, so there might be fewer communities that would be able to qualify for the loans. However, the intended use plans are based on economics, so if the rate is greater than 2% they should qualify no matter what.

VOTE ON MOTION: **Motion carried by voice vote. Rep. Scott** requested to be recorded as voting **NAY**.

ADJOURN: There being no further business to come before the committee, the meeting adjourned at 3:34 p.m.

Representative Thompson
Chair

Diana Seba
Secretary