

MINUTES

HOUSE ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DATE: Monday, January 22, 2018

TIME: 1:30 P.M.

PLACE: Room EW41

MEMBERS: Chairman Raybould, Vice Chairman Thompson, Representatives Hartgen, Vander Woude, Anderson, Anderst, Mendive, Chaney, Nate, Cheatham, Horman, Malek, Moon, Scott, Ehardt, Smith, Jordan (Wolf), Rubel

**ABSENT/
EXCUSED:** Representative(s) Rubel

GUESTS: John Tippetts, Department Environmental Quality (DEQ); Mark Cecchini-Beaver, Office of the Attorney General/DEQ; Barry Burnell, DEQ; Elizabeth Criner, Simplot; Brad Hunt, O.A.R.C.; Paula Wilson, DEQ; Ben Davenport, Idaho Mining Association

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

DOCKET NO. 58-0102-1702: **Barry Burnell**, Administrator, Water Quality Division, DEQ, stated under the Alaska Rule, (40 CFR 131.21), water quality standards adopted and submitted to the EPA are not effective for the Clean Water Act (CWA) until the Environmental Protection Agency (EPA) approves them. **Docket No. 58-0102-1702** adds a new rule section and retains the existing rule effective for CWA purposes until the EPA approves the rule revisions. The new rule section has been initiated for administrative purposes, including streamlining and reorganizing the Criteria for Toxic Substances table in Subsection 210.01. The table is being split into two tables, one containing criteria for the protection of aquatic life and one for the protection of human health. Housekeeping revisions include deleting obsolete language, definitions and redundancy. Since the revisions are administrative, there are no contentious issues, no criteria change is proposed and no stringency elements to consider. Public comments received during rulemaking were that DEQ should undertake a rulemaking for arsenic standards. **Docket No. 58-0102-1702** regulates activity regulated by the federal government and is not broader nor more stringent in scope than the federal regulations.

Chairman Raybould turned the gavel over to **Vice Chair Thompson** for administrative rules review.

In response to committee questions, **Mr. Burnell** informed the committee that the EPA is not actively developing research to change the arsenic standard which would be a necessary basis for a rule change. He further responded that cities belonging to the Association of Idaho Cities are kept well informed of rule changes affecting the CWA.

MOTION: **Rep. Anderst** made a motion to approve **Docket No. 58-0102-1702**. **Motion carried by voice vote.**

**DOCKET NO.
58-0102-1502:**

Barry Burnell stated **Docket No. 58-0102-1502** replaces DEQ's hardness dependent copper criteria with the more detailed, modeled approach in the EPA's 2007 CWA section 304(a) copper criteria identified in the National Oceanic and Atmospheric Administration's (NOAA) May 7 2014 biological opinion (BiOP). [\[NOAA BiOP\]](#) The NOAA BiOP determined current copper criteria does not always protect threatened and endangered aquatic life and could result in adverse modification of critical habitat, and they supported the EPA's recommended usage of the Biotic Ligand Model (BLM) to calculate Instantaneous Water Quality Criteria (IWQC). Mr. Burnell provided background information on the toxicity of copper to aquatic life and the effect of hardness on metal toxicity. NOAA called for state adoption and EPA approval of their recommended criteria by May 2017. Mr. Burnell advised DEQ initiated the rulemaking process in 2015, conducting rulemaking and guidance negotiation meetings during 2016 and 2017 and took over 200 water quality samples across the state to monitor copper water quality until they adopted the copper criterion based on the BLM in 2018 that allowed DEQ to use the most current science to ensure criteria are protective of beneficial uses. The pending rule includes current criteria and the revised copper criteria, which will not be effective for CWA purposes until the EPA issues written notification they have approved the adopted revisions. Mr. Burnell explained the variables used and chemical properties of water the BLM uses to calculate the copper IWQC. Mr. Burnell discussed costs connected to BLM-based criteria dependent upon the dissolved organic carbon (DOC) content of wastewater and receiving water, with facilities discharging into waters with a high DOC having the likelihood of receiving copper limits in permits that are higher than their current permit. Currently there are 20 Idaho facilities with a copper limit permit, including 10 cities and 8 mines. **Docket No. 58-0102-1502** regulates activity regulated by the federal government and is not broader nor more stringent in scope than the federal regulations.

Mr. Burnell told the committee in response to questioning that of the 10 cities with a copper limit permit, Post Falls and Sandpoint are located in North Idaho and that copper can come from discharge and be in the base minerals present in the watershed.

MOTION:

Rep. Horman made a motion to approve **Docket No. 58-0102-1502**. **Motion carried by voice vote.**

**DOCKET NO.
58-0102-1701:**

Barry Burnell explained **Docket No. 58-0102-1701** updates DEQ's selenium aquatic life criteria utilizing the EPA's 2016 CWA section 304(a) recommended selenium criteria based on fish-tissue concentrations identified in the NOAA May 7 2014 BiOP. NOAA called for state adoption and EPA approval of this criteria by May 2018. Selenium bioaccumulates, and existing selenium criteria is derived from water column concentrations which does not take into account the effects of selenium bioaccumulations. Selenium is accumulated primarily through the diets of aquatic organisms rather than directly through water. Fish tissue concentration, in conjunction with site-specific bioaccumulation factors can be used to determine the allowable concentration of selenium in ambient water. Adoption of a selenium aquatic-life fish-tissue based criterion will enable DEQ to use the most current science to ensure the criteria neither burdens dischargers nor increases risk to aquatic life. Mr. Burnell explained the pending four-part statewide selenium criterion and the site-specific criteria based on fish assemblages for five DEQ proposed portions of Idaho: Upper Blackfoot River; Georgetown Creek; Sage Creek; Crow Creek; and portions of Idaho waters without sturgeon or anadromous fish. The EPA urged DEQ to include sturgeon waters in the Snake River up to Idaho Falls. The American Falls reach is a sport fishery reach not managed by Idaho Fish and Game as a reproducing population of sturgeon. The DEQ intends to develop implementation guidance. **Docket No. 58-0102-1701** regulates activity regulated

by the federal government and is not broader nor more stringent in scope than the federal regulations.

In response to committee questions, **Mr. Burnell** informed the committee that it is to Idaho's advantage to promulgate the rules rather than the EPA because it gives Idahoans the flexibility to add five site-specific criteria to accommodate reproductive populations in specific rivers, to allow the drainage for those rivers to be protected, and to add site-specific areas if necessary.

MOTION: **Rep. Anderst** made a motion to approve **Docket No. 58-0102-1701**. **Motion carried by voice vote.**

DOCKET NO. 58-0125-1701: **Barry Burnell** said the purpose of **Docket No. 58-0125-1701** is to ensure that rules regulating the Idaho Pollutant Discharge Elimination System Program (IPDES) remain consistent with federal regulation that were updated July 1, 2017, the Code of Federal Regulation effective date. The EPA's rule on electronic reporting requires the IPDES electronic reporting requirements for the state and for facilities permitted under the program to be updated. In response to a US Court of Appeals for the Ninth Circuit remand, the EPA's small Municipal Separate Storm Sewer System rule became effective which allows the state to select an approach for permitting discharges and establishing the method for permittees to meet standards established by the CWA. Federal regulation changes also included updates to effluent limitation guidelines for steam electric generating point sources, oil and gas point sources, and approved test methods for analysis of parameters in effluent discharges. **Docket No. 58-0125-1701** regulates activity regulated by the federal government and is not broader nor more stringent in scope than the federal regulations.

MOTION: **Rep. Anderst** made a motion to approve **Docket No. 58-0125-1701**. **Motion carried by voice vote.** **Reps. Nate** and **Scott** requested to be recorded as voting **NAY**.

Vice Chairman Thompson turned the gavel over to **Chairman Raybould**

ADJOURN: There being no further business to come before the committee, the meeting adjourned at 2:46 p.m.

Representative Thompson
Chair

Lorrie Byerly
Secretary