

November 17, 2014

VIA EMAIL

Don Essig  
Idaho Department of Environmental Quality  
1410 N. Hilton  
Boise, ID 83706-1255

Re: Water Quality: Docket No. 58-0102-1201: Negotiated Rulemaking on Fish Consumption Rate, Policy Discussion on Suppression

Dear Mr. Essig:

The Idaho Power Company (“IPC”) submits the following comments to the Idaho Department of Environmental Quality (“IDEQ”) in response to the October 2, 2014 rulemaking meeting on Idaho’s fish consumption rate, in particular the presentations and discussion of concerns raised over what has been characterized as the “suppression” of fish consumption. While IPC recognizes the importance of fish consumption to the presenters and their desire to establish historical or aspirational rates of consumption, we do have a number of concerns about incorporating suppression analysis into the fish consumption rate for purposes of this rulemaking.

This rulemaking is meant to “evaluate local and regional fish consumption information to determine whether Idaho’s statewide criteria are protective of designated uses and, if the current criteria are not protective, to determine the appropriate new criteria.” Since suppression is concerned with what is not consumed rather than what is, how would the analysis of suppression inform those goals? Answering this question is critical, since calculating suppression, including its causes and effects, would entail a complex, socio-economic evaluation that does not fit easily into state or federal water quality regulatory schemes. No formal definition of what constitutes suppression was submitted (by IDEQ or the presenters), nor is there likely to be a commonly accepted one. The presenters tied consumption suppression to a diverse array of posited causes, including quantity of available fish, pollution, presence of non-native fish species, contaminants, fear of fishing license enforcement, and other concerns. Sorting through this list and arriving at a measureable level of suppression that objectively supports a fish consumption rate would likely prove to be a complex, potentially controversial exercise that may well lose sight of what establishing a fish consumption rate is intended to address: health effects from actual consumption of fish caught in Idaho waters.

Moreover, in the absence of a rigorous and complex socio-economic analysis, simply relying upon a suppression value derived from historic or aspirational consumption, and using that value in the fish consumption rate, would ignore the complexity of the issue. Any analysis of

suppression necessarily requires determining what is achievable and realistic in light of historical losses of anadromous fish runs, historical efforts to restore fish runs, and current policy regarding regional recovery efforts, along with other, possibly unrelated causes of reduced fish consumption. All of which is embedded in a complex web of history, law, economics, policy, and values. The reasons for losses of anadromous fish and recovery efforts are complex and varied, go far beyond implementation of state water quality regulations, and are better addressed under existing regional processes. Furthermore, setting a high fish consumption rate using a suppression value based on historic or aspirational consumption would not produce more fish and would unnecessarily burden the regulated community, as well as citizens who will bear the cost of regulation, with standards that are unachievable. Therefore, it is important to keep in mind what is being regulated and how such regulations will be implemented.

IPC also is concerned that if a suppression analysis does not provide information that satisfies the goal of the rulemaking, then the analysis may result in unwarranted consequences relating to current fish consumption rates. As was suggested in one presentation, suppression of fish consumption could be used as a means of increasing the level of consumption for certain populations and significantly lowering thresholds for water quality standards that would be set through a correspondingly high fish consumption rate. This is particularly concerning with respect to potential implementation issues raised by suppression.

For example, legacy sources of pollutants, such as PCBs that have been banned in new uses since 1979, are being phased out of use. Yet, PCBs persist in the environment with increasingly limited opportunities to address discharges at the source. A high fish consumption rate, similar to Oregon's, driven by a suppression value would result in extremely low water quality criteria that would be extremely difficult, if not impossible, to measure, economically prohibitive to treat, virtually impossible to comply with, and questionably beneficial. IDEQ should avoid a regulatory scheme that is unworkable, unable to achieve its goals, and unnecessarily burdens Idaho's citizens with higher utility costs and virtually no resultant health benefit.

All of this underscores the fact that regulations sometimes have unintended consequences. Ironically, as discussed by IDEQ at the October 2, 2014 meeting, using suppression to set a high fish consumption rate may actually lead to more suppression, because of increased advisories that limit consumption. It could also lead to setting criteria that is lower than what naturally occurs, similar to the standard for arsenic before IDEQ addressed that through revision of the water quality standard. IPC believes that IDEQ must fully evaluate all consequences of using a suppression value to help ensure the purpose of the rulemaking is met, in addition to being legally defensible and analytically rigorous. Neither the environment nor the public is benefited from creating unattainable and cost-prohibitive criteria.<sup>1</sup> Indeed, such criteria may have a chilling effect on creative solutions to address complex problems that are not easily tied to single sources.

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<sup>1</sup> Under the Clean Water Act "it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;" (emphasis added) 33 U.S.C. § 1251(a)(2). Unattainable criteria create challenges with implementation, and may require additional use attainability analysis, variance or site-specific criteria rulemaking at a cost to the agency, the regulated community and the consumer.

For the preceding reasons, IPC believes it is not advisable to include a suppression value in setting a fish consumption rate and opposes the use of such a value in this rulemaking. Thank you for the opportunity to submit comments on this topic, we look forward to continued productive discussions with IDEQ and other participants in the rulemaking.

Best regards,

A handwritten signature in black ink, appearing to read 'Craig A. Jones', with a long horizontal line extending to the right.

Craig A. Jones  
Environmental Program Manager