



www.idahoconservation.org

Idaho Conservation League

PO Box 844, Boise, ID 83701
208.345.6933

December 15, 2014

Paula Wilson
DEQ State Office
Attorney General's Office
1410 N. Hilton
Boise, ID 83706

Submitted via email: paula.wilson@deq.idaho.gov

Re: Docket No. 58-0102-1201- Fish Consumption Rate and Human Health Water Quality Criteria – Discussion #7: Risk Management and Protection of Human Health

Dear Ms. Wilson;

Since 1973, the Idaho Conservation League (ICL) has been Idaho's voice for clean water, clean air and wilderness—values that are the foundation for Idaho's extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. As Idaho's largest state-based conservation organization, we represent over 25,000 supporters, many of whom have a deep personal interest in protecting Idaho's water quality, fisheries and the health of Idaho residents.

The Idaho DEQ Administrative Rules on Water Quality Standards currently utilizes cancer risk level of 10^{-6} in water quality standards. See ADAPA 58.01.01.210.01 footnote #1 and also ADAPA 58.01.02.210.b.i. We do not see any reason for Idaho to deviate from this risk level. Further, we observe that many of Idaho's current water quality standards were reviewed and approved by the EPA within the context of a cancer risk level of 10^{-6} . In the event that Idaho decides to change its acceptable cancer risk level, Idaho DEQ will need to resubmit all relevant water quality criteria to the EPA for re-review. Given the numerous water quality related rulemakings that DEQ is currently undertaking, and those that DEQ has identified as future priorities pursuant to the State's most recent Triennial Review, it seems like a poor use of the State's resources to take an action that would obligate the DEQ to redo numerous water quality standards, re-submit these to the EPA and cause the EPA to need to undertake ESA consultation on each of these submittals.

DEQ's discussion paper on this topic cites an EPA document published in 2000 that states that "EPA believes that both 10^{-6} and 10^{-5} may be acceptable for the general populations and that highly exposed populations should not exceed 10^{-4} risk level.

This appears to set an 'upper' boundary and a 'lower' boundary of what the EPA might approve. DEQ is currently utilizing 10^{-6} for the general population. Since it does not appear that DEQ is considering moving the general population risk level to a more protective level – the decision that DEQ is going to make is: does it stay at 10^{-6} , or, does it accept a greater level of risk and adjust this downward to 10^{-5} . EPA also reports that highly exposed sub-populations should not be exposed to risk greater than 10^{-4} . The DEQ does not appear to be considering lessening the protection afforded to highly exposed subpopulations.

We do not believe that DEQ can set the acceptable risk level in advance of determining what percentage of the population it wants define as the 'general population' and what percent of the total population is a 'highly exposed' subgroup.

We believe that the DEQ should use the 99th percentile of the Fish Consumption Rate distribution to set this criterion. And that 99% of the general public should be protected at the 10^{-6} level. Doing so will protect the health of consumers of locally caught fish.

Consumers of large quantities of fish also need to be appropriately protected. Our experience leads us to understand that there are a significant number of individuals in Southern Idaho who catch and consume very large quantities of bass, crappie and walleye. It is likely that this group of consumers will untimely be identified in the ongoing fish consumption survey as a 'highly exposed' subpopulation. This subpopulation of largely rural, white males (and their families) who reservoir fish must be protected at an appropriate level. We believe that 1% of consumers should be protected at the risk level that statistically results from protecting 99% of the entire population at 10^{-6} .

Discussions at prior DEQ rulemaking meetings have posited that Native American groups in Idaho are likely to be identified as groups that consume large quantities of fish. We believe that this is likely to be borne out in the survey data that the Tribes are collecting. DEQ needs to ensure that Tribal members are protected from unacceptable exposure to risk via fish consumption. In determining what level to set the 'acceptable risk' level, we think that DEQ should not relegate Tribes into some 'subpopulation.' Rather, Tribes need to be treated as entire populations unto themselves. To this end, the DEQ needs to use the 99th percentile of the Fish Consumption Rate distribution within a Tribe to set this criterion and to ensure that the 99th percentile of each Tribe is protected to the 10^{-6} level. The upper 1% of fish consumers in a Tribe can be seen as a 'highly exposed' subgroup of the Tribe.

Failure to take this approach in setting the 'acceptable risk level' could result in very large portion of the Tribal Nations being under protected, raising significant

environmental justice concerns. Irrespective of what level of risk or what percentile of the FRC distribution the DEQ ultimately decides to utilize, it is important that Tribes be provided with the same level of protection as the white population. It would be totally unacceptable to protect the white population to a level of 10^{-6} and the Tribal population to 10^{-4} .

Please contact me if you have any questions at 208-345-6933 x 24 or jhayes@idahoconservation.org

Sincerely,



Justin Hayes
Program Director