

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 42

BY ENVIRONMENT, ENERGY, AND TECHNOLOGY COMMITTEE

AN ACT

RELATING TO WATER QUALITY; AMENDING SECTION 39-3602, IDAHO CODE, TO DEFINE A TERM AND TO REMOVE A DEFINITION; AMENDING SECTION 39-3623, IDAHO CODE, TO PROVIDE FOR THE APPROVAL OF CERTAIN RULES RELATING TO OUTSTANDING RESOURCE WATERS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-3602, Idaho Code, be, and the same is hereby amended to read as follows:

39-3602. DEFINITIONS. Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

(1) "Applicable water quality standard" means those water quality standards identified in the rules of the department.

(2) "Attainable" beneficial uses means uses that can be achieved by the implementation of required effluent limits for point sources and cost-effective and reasonable best management practices for nonpoint sources.

(3) "Best management practice" means practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.

(4) "Board" means the board of environmental quality.

(5) "Control strategies" means cost-effective actions in TMDL implementation plans to control the discharge of pollutants that can reasonably be taken to improve the water quality within the physical, operational, economic and other constraints that affect individual enterprises and communities.

(6) "Degradation" or "lower water quality" means, for purposes of antidegradation review, a change in a pollutant that is adverse to designated or existing uses, as calculated upon appropriate mixing of the discharge and receiving water.

(7) "Department" means the department of environmental quality.

(78) "Designated agency" means the department of lands for timber harvest activities, for oil and gas exploration and development and for mining activities; the soil and water conservation commission for grazing activities and for agricultural activities; the transportation department for public road construction; the department of agriculture for aquaculture; and the department of environmental quality for all other activities.

(89) "Designated use or designated beneficial use" means those uses assigned to waters as identified in the rules of the department whether or not the uses are being attained. The department may adopt subcategories of a use.

1 (910) "Director" means the director of the department of environmental
2 quality, or his or her designee.

3 (101) "Discharge" means any spilling, leaking, emitting, escaping,
4 leaching, or disposing of a pollutant into the waters of the state. For the
5 purposes of this chapter, discharge shall not include surface water runoff
6 from nonpoint sources or natural soil disturbing events.

7 (112) "Existing use" means those surface water uses actually attained
8 on or after November 28, 1975, whether or not they are designated uses. Ex-
9 isting uses may form the basis for subcategories of designated uses.

10 (123) "Full protection, full support, or full maintenance of designated
11 beneficial uses of water" means compliance with those levels of water qual-
12 ity criteria listed in the appropriate rules of the department, or where
13 there is no applicable numerical criteria, compliance with the reference
14 streams or conditions approved by the director in consultation with the ap-
15 propriate basin advisory group.

16 ~~(13) "Lower water quality" means a measurable adverse change in a chem-~~
17 ~~ical, physical, or biological parameter of water relevant to a designated~~
18 ~~beneficial use, and which can be expressed numerically. Measurable adverse~~
19 ~~change is determined by a statistically significant difference between sam-~~
20 ~~ple means using standard methods for analysis and statistical interpreta-~~
21 ~~tion appropriate to the parameter. Statistical significance is defined as~~
22 ~~the ninety-five percent (95%) confidence limit when significance is not oth-~~
23 ~~erwise defined for the parameter in standard methods or practices.~~

24 (14) "National pollutant discharge elimination system (NPDES)" means
25 the point source permitting program established pursuant to section 402 of
26 the federal clean water act.

27 (15) "New nonpoint source activity" means a new nonpoint source ac-
28 tivity or a substantially modified existing nonpoint source activity on or
29 adversely affecting an outstanding resource water which includes, but is
30 not limited to, new silvicultural activities, new mining activities and
31 substantial modifications to an existing mining permit or approved plan, new
32 recreational activities and substantial modifications to existing recre-
33 ational activities, new residential or commercial development that includes
34 soil disturbing activities, new grazing activities and substantial modifi-
35 cations to existing grazing activities, except that reissuance of existing
36 grazing permits, or grazing activities and practices authorized under an
37 existing permit, is not considered a new activity. It does not include nat-
38 urally occurring events such as floods, landslides, and wildfire including
39 prescribed natural fire.

40 (16) "Nonpoint source activities" includes grazing, crop production,
41 silviculture, log storage or rafting, construction, mining, recreation,
42 septic systems, runoff from storms and other weather related events and
43 other activities not subject to regulation under the federal national pol-
44 lutant discharge elimination system. Nonpoint source activities on waters
45 designated as outstanding resource waters do not include issuance of water
46 rights permits or licenses, allocation of water rights, operation of diver-
47 sions, or impoundments.

48 (17) "Nonpoint source runoff" means water which may carry pollutants
49 from nonpoint source activities into the waters of the state.

(18) "Outstanding resource water" means a high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been so designated by the legislature. It constitutes an outstanding national or state resource that requires protection from point source and nonpoint source activities that may lower water quality.

(19) "Person" means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties.

(20) "Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be, discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition.

(21) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged or released to water in excessive quantities cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities.

(22) "Reference stream or condition" means one (1) of the following:

(a) The minimum biological, physical and chemical conditions necessary to fully support the designated beneficial uses; or

(b) A water body representing natural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin; or

(c) A water body representing minimum conditions necessary to fully support the designated beneficial uses.

In highly mineralized areas or in the absence of such reference streams or water bodies, the director, in consultation with the basin advisory group and the technical advisers to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported.

(23) "Short-term or temporary activity" means an activity which is limited in scope and is expected to have only minimal impact on water quality as determined by the director. Short-term or temporary activities include, but are not limited to, maintenance of existing structures, limited road and trail reconstruction, soil stabilization measures, and habitat enhancement structures.

(24) "Silviculture" means those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees

1 to be either planted or allowed to regenerate through natural means, road
2 construction and road maintenance, drainage of surface water which inhibits
3 tree growth or logging operations, fertilization, application of herbicides
4 or pesticides, all logging operations, and all forest management techniques
5 employed to enhance the growth of stands of trees or timber.

6 (25) "Soil and water conservation commission" means an agency of state
7 government as created in section 22-2718, Idaho Code.

8 (26) "Soil conservation district" means an entity of state government
9 as defined in section 22-2717, Idaho Code.

10 (27) "State" means the state of Idaho.

11 (28) "State water quality management plan" means the state management
12 plan developed and updated by the department in accordance with sections
13 205, 208, and 303 of the federal clean water act.

14 (29) "Subbasin assessment" means a document that describes a watershed
15 or watersheds for which a total maximum daily load is proposed, the water
16 quality concerns, the status and attainability of designated uses and wa-
17 ter quality criteria for individual water bodies, the nature and location of
18 pollutant sources, past and ongoing pollutant control activities, and such
19 other information that the director with the advice of the local watershed
20 advisory group determines is pertinent to the analysis of water quality and
21 the development and implementation of a total maximum daily load.

22 (30) "Total maximum daily load (TMDL)" means a plan for a water body
23 not fully supporting designated beneficial uses and includes the sum of the
24 individual wasteload allocations for point sources, load allocations for
25 nonpoint sources, and natural background levels of the pollutant impacting
26 the water body. Pollutant allocations established through TMDLs shall be at
27 a level necessary to implement the applicable water quality standards for
28 the identified pollutants with seasonal variations and a margin of safety to
29 account for uncertainty concerning the relationship between the pollutant
30 loading and water quality standards.

31 (31) "Waters or water body" means all the accumulations of surface wa-
32 ter, natural and artificial, public and private, or parts thereof which are
33 wholly or partially within, flow through or border upon this state. For the
34 purposes of this chapter, water bodies shall not include municipal or indus-
35 trial wastewater treatment or storage structures or private reservoirs, the
36 operation of which has no effect on waters of the state.

37 (32) "Water pollution" is such alteration of the thermal, chemical, bi-
38 ological or radioactive properties of any waters of the state, or such dis-
39 charge or release of any contaminant into the waters of the state as will or
40 is likely to create a nuisance or render such waters harmful or detrimen-
41 tal or injurious to public health, safety or welfare or to domestic, com-
42 mercial, industrial, recreational, aesthetic or other legitimate uses or to
43 livestock, wild animals, birds, fish or other aquatic life.

44 (33) "Water quality standards" are the designated uses of a water body
45 and water quality criteria necessary to support those uses, and an an-
46 tidegradation policy.

47 (34) "Watersheds" means the land area from which water flows into a
48 stream or other body of water which drains the area. For the purposes of this
49 chapter, the area of watersheds shall be recommended by the basin advisory
50 group described in section 39-3613, Idaho Code.

1 SECTION 2. That Section 39-3623, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 39-3623. EFFECT OF RULES. Every rule promulgated within the authority
4 conferred in sections 39-3617 through 39-3622, Idaho Code, shall be of tem-
5 porary effect and shall become permanent only by enactment of statute at the
6 first regular session following adoption of the rule. Rules not approved in
7 the above manner shall be rejected, null, void and of no force and effect on
8 July 1, following submission of the rules to the legislature.

9 (1) The rules promulgated within the authority conferred in this act
10 and adopted by the board of health and welfare on January 31, 1990, and con-
11 tained in IDAPA 16.01.2003,31 and 16.01.2003,32 and 16.01.2053,01 through
12 16.01.2053,07, are hereby approved by the legislature.

13 (2) The rules relating to outstanding resource waters promulgated
14 within the authority conferred in this chapter and adopted by the board
15 of environmental quality on November 9, 2010, and contained in IDAPA
16 58.01.02.010.71, 58.01.02.010.72, 58.01.02.051.03 and 58.01.02.052.09 are
17 hereby approved by the legislature.

18 SECTION 3. An emergency existing therefor, which emergency is hereby
19 declared to exist, this act shall be in full force and effect on and after its
20 passage and approval.