



energov

1109 W. Main, Suite 300
P.O. Box 2624
Boise, ID 83701-2624
Phone: 208 381-0294
Fax: 208 381-5272
Email: l_tominaga@hotmail.com
btominaga@hotmail.com

Visit our webpage:

www.idahowaterpolicygroup.org

Next meeting:

July 21
9 a.m. to 3 p.m.
IDEQ Boise
headquarters.

Teleconferencing is available through IDEQ's regional offices in Pocatello and Coeur d'Alene. Discussion papers, drafts of the rule, public comment and other related information is available on the web at

http://www.deq.state.id.us/rules/water/58_0102_1001_negotiated.cfm

Antidegradation Negotiated Rulemaking IDEQ/Boise July 8, 2010: Idaho

Department of Environmental Quality (IDEQ) is pushing forward to keep this negotiated rulemaking on track for review in the 2011 legislative session. In the July 8th meeting, staff and stakeholders reviewed a fifth draft and discussed Tier I review and Tier II analysis.

A key component of that discussion is how Tier I and Tier II waters will be identified. IDEQ has moved from its original proposal to use a parameter by parameter and adopted the waterbody by waterbody approach preferred by the stakeholders to distinguish between a Tier I and Tier II classification. However, it has yet to determine how to implement that assessment.

Staff proposed using the most recent finalized version of the 305(B) and 303(d) Integrated Report to determine the current status and condition of the state's waters. IDEQ believes that using that data set would result in a dynamic list to reflect changing conditions, up, down or status quo.

Water quality assessment will be site specific, not all encompassing for each waterbody, to better reflect actual conditions. Those waters for which no data is available would be presumed to be Tier II unless the discharger could gather and present information to demonstrate otherwise.

Stakeholders are uneasy with the presumption, questioning the idea that 60 to 70 per cent of the waterbodies in the state would be presumed to be impaired without documentation and noting that an estimated two-thirds of the state's NPDES permits are held by small municipalities or political subdivision (i.e. highway districts) of such municipalities. There were further questions as to what technical data might be required as well as whether the dischargers would the money, time or expertise to develop it.

A more practical approach, from the stakeholder's perspective, would be to designate Tier I or Tier II waters on a case by case basis. Where data is not available, the agency could use its best professional judgment make that designation. Stakeholders also asked about how data from other state or federal agencies could be used in this designation and how the process would play out in watersheds.

IDEQ said the automatic default to a Tier II designation would expedite the permit process. And, as for the data, IDEQ said it does not intend to adopt an "A" to "Z" approach, but plans to limit the parameters of concern to those already identified by EPA who retains primacy for water quality in Idaho.

IDEQ reaffirmed its commitment to developing a rule and a process that is clear, flexible, easy to follow and implement, and addresses EPA's expectations and concerns. To maximize flexibility and stakeholder options, IDEQ wants a simple, straightforward rule that will be fleshed out with more detailed guidance. Clarity and flexibility are key to avoiding lawsuits and delays that are not in the best interest of the discharger or the state.

To that end, there was considerable discussion at this meeting around the definitions that will be incorporated in this rule, and, at least in part, determine how clear and flexible that rule and process is, definitions as to what constitutes a discharge, new or existing uses, measureable versus insignificant, feasible or reasonable in terms of technology and economics, and necessary with respect to alternative analysis.

The word "necessary" is key to allowing lower water quality to meet economic or social development. As part of the Alternative Analysis discussion, IDEQ presented a white paper entitled "Tier II Alternatives Analysis. The paper outlines the core principles of Alternatives Analysis: early consideration of minimizing degradation; consider a full range of alternatives; leave cost balancing to later; be aware of cross-pollutant and cross-media tradeoffs. At the heart of the discussion is whether or not "other less degrading options" exist. That paper is available on the web along with other related information.

The issue of definitions will continue at the next meeting, focusing on "measurable" along with the definition of a permit and license and whether or not IDEQ's authority extends to other state agency permits and activities and other state agencies, and the process the agency will employ. The implications to general permit holders will be explored along with socio-economic justification and Special Resource Waters (SRWs). The SRW discussion is expected to have significant ramifications to small municipalities.