

water

Idaho Water Policy Group, Inc.

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Upcoming Events

June 17: Food Producers of Idaho, Boise, Idaho Grain and Ag Center, 9 a.m.

June 21-22: IWUA Water Law Seminar, Sun Valley
To register: www.iwua.org

June 22: Reclamation and Reuse of Municipal and Industrial Wastewater, Boise, IDEQ Conference Rm B, 9:30 a.m.

June 24: Idaho Water Resource Board, Boise, Idaho Fish & Game, 8:30 a.m. Work Session; 1 p.m. Board meeting
Sno-tel Advisory Committee, Boise, NRCS, 1:30 p.m.

June 28-29: ESPA Funding, Boise IDWR Water Center,

June 29: IGWA EC Pocatello, Racine Law, 9:30 a.m.

July 13: RRGWD Board meeting, American Falls AAGWD offices

Antidegradation Negotiated Rulemaking (Boise/ IDEQ Headquarters/June 15, 2010):

The most significant change in Draft 4 of the Antidegradation Implementation Procedures (Docket No. 58-0101-1001) is the approach IDEQ will use to classify waters for protection from antidegradation. Responding to stakeholder input, the agency moved from a previously proposed pollutant by pollutant (PbP) classification to a waterbody by waterbody (WbW) classification. Per the rule, all waters will receive Tier I protection and Tier II waters will be identified using a waterbody by waterbody approach during the antidegradation review.

While no list of Tier I or Tier II waters will be maintained, any water that is not designated as Tier I will be assumed to be a Tier II water unless data can be presented that demonstrates otherwise. Waters designated as Special Resource Waters (SRW) will continue to be considered in a separate Tier III category. IDEQ was cautioned to avoid the presumption that all SRWs are high quality without appropriate documentation.

Licensing or permitting of new and existing discharges for waters classified as Tier I will require a review of their degradation potential while Tier II waters may be subject to review and analysis. IDEQ still plans to use a pollutant by pollutant approach to assess the actual effect on water quality of a discharge. The evaluation of that effect may show an improvement, no change, or degradation. Because Idaho does not have primacy on NPDES permits, IDEQ indicates that, in the majority of cases, it intends to limit its review to what EPA has identified as pollutants of concern.

The agency has repeatedly said that analysis and/or degradation alone does not preclude approving and allowing the proposed activities to go forward. That determination will depend largely on individual circumstances.

Stakeholders at this meeting spent considerable time discussing the scenarios that could arise in determining what constitutes new or increased discharges, how that definition would impact general permits, and other factors that might also impact discharges. There may be a small group of state regulated activities such as subsurface sewage systems, CAFOs and storm water that, while not covered under the Clean Water Act, would need to be addressed in terms of antidegradation implementation and will be discussed at a later time. The question was then raised as to whether this policy extended to other IDEQ permits or those of other agencies. IDEQ indicated that general permit holders will probably be most impacted by this rulemaking and its authority does not extend to other agencies, but concerns were expressed by other stakeholders that the scope of the rulemaking appears to be expanding beyond the original intent

One aspect of a Tier II analysis that was discussed is a “significance threshold”. Significance thresholds may also be referred to as “de minimis” discharges or “measurable” degradation and could be used to determine whether a Tier II analysis is required. While some states opt not to establish significance thresholds, those that do have used varied approaches. The decision on using a significance threshold has not been made for Idaho as yet; however, IDEQ did outline a process that could potentially be used that, by combining a baseline water quality criterion with an assimilative cap, might afford greater protection to the waters of the state.

In implementing this antidegradation rule in Idaho, IDEQ and the stakeholders are attempting to strike a balance that maximizes the agency’s limited resources, clearly communicates to the regulatory community how the rule applies to individual circumstances, relies on existing data, and streamlines the permitting process. The rule should be fairly simple while the complexity of the details is expanded through guidance.

IDEQ staff prepared two discussion papers for this meeting; “New or Increased Discharges” and “Defining Significance Thresholds for Water Quality Degradation”. All information related to these proceedings may be viewed on IDEQ’s website at http://www.deq.idaho.gov/rules/water/58_0102_1001_negotiated.cfm

The next meeting is scheduled for July 8, 2010 in Boise at IDEQ Headquarters from 9 a.m. to 3 p.m. Teleconferencing will be available through the regional offices. Topics for the next meeting will include: General Permits, Socio-economic Justification, Alternative Analysis, and SRWs.