

TITLE 39
HEALTH AND SAFETY
CHAPTER 36
WATER QUALITY

39-3601. DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE INTENT. The legislature, recognizing that surface water is one of the state's most valuable natural resources, has approved the adoption of water quality standards and authorized the director of the department of environmental quality in accordance with the provisions of this chapter, to implement these standards. In order to maintain and achieve existing and designated beneficial uses and to conform to the expressed intent of congress to control pollution of navigable waters of the United States, the legislature declares that it is the purpose of this chapter to enhance and preserve the quality and value of the navigable waters of the United States within the state of Idaho, and to define the responsibilities of public agencies in the control, and monitoring of water pollution, and, through implementation of this chapter, enhance the state's economic well-being. In consequence of the benefits resulting to the public health, welfare and economy, it is hereby declared to be the policy of the state of Idaho to protect this natural resource by monitoring and controlling water pollution; to support and aid technical and planning research leading to the control of water pollution, and to provide financial and technical assistance to municipalities, soil conservation districts and other agencies in the control of water pollution. The director, in cooperation with such other agencies as may be appropriate, shall administer this chapter. It is the intent of the legislature that the state of Idaho fully meet the goals and requirements of the federal clean water act and that the rules promulgated under this chapter not impose requirements beyond those of the federal clean water act.

History:

[39-3601, added 1995, ch. 352, sec. 1, p. 1166; am. 2001, ch. 103, sec. 30, p. 274; am. 2011, ch. 116, sec. 1, p. 320.]

39-3611. DEVELOPMENT AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOAD OR EQUIVALENT PROCESSES. (1) For water bodies described in section 39-3609, Idaho Code, the director shall, in accordance with the priorities set forth in section 39-3610, Idaho Code, and in accordance with sections 39-3614 through 39-3616, Idaho Code, and as required by the federal clean water act, prepare a subbasin assessment and develop a total maximum daily load to allocate pollutant loads to point source and nonpoint sources that discharge pollutants to the water body.

(2) Upon the completion of a total maximum daily load, the director shall publish notice of the final decision on the TMDL in the Idaho administrative bulletin and provide written notice to members of the applicable watershed advisory group. The director's final decision shall be based upon a record that provides the basis for the total maximum daily load. The rulemaking provisions in sections 67-5220 through 67-5231, Idaho Code, shall not apply to TMDLs. The director's final decision regarding a TMDL may be appealed to the board of environmental quality in accordance with section 39-107(5), Idaho Code, and the rules governing such appeals. The time for appeal to the board shall commence upon publication in the administrative bulletin. The board's final decision is subject to judicial review under section 39-107(6), Idaho Code. The provisions of this subsection shall apply to all total maximum daily loads developed by the director after January 1, 1995. Provided however, that the rulemaking provisions in sections 67-5220 through 67-5231, Idaho Code, shall apply to TMDLs for metals in the Coeur d'Alene River Basin, upstream from the head of the Spokane River. Provided further, that nothing herein shall modify the requirement that water quality standards be promulgated as rules of the department pursuant to title 67, chapter 52, Idaho Code.

(3) For water bodies where an applicable water quality standard has not been attained due to impacts that occurred prior to 1972, no further restrictions under a total maximum daily load process shall be placed on a point source discharge unless the point source contribution of a pollutant exceeds twenty-five percent (25%) of the total load for that pollutant. Existing uses shall be maintained on all such water bodies.

(4) Subbasin assessments and total maximum daily load processes developed pursuant to this section shall include, but not be limited to:

- (a) Identification of pollutant(s) impacting the water body;
- (b) An inventory of all point and nonpoint sources of the identified pollutant(s), if practical, or an analysis of the land types, land uses and geographical features within the watershed that may be contributing identified pollutants to the water body;
- (c) An analysis of why current control strategies are not effective in assuring full support of designated beneficial uses;
- (d) A plan to monitor and evaluate progress toward meeting water quality standards;
- (e) Pollution control strategies for both point sources and nonpoint sources;

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(f) Identification of the period of time necessary to achieve full support of designated beneficial uses through implementation of pollution control strategies, which takes into account any expected changes to applicable water quality standards; and

(g) An adequate margin of safety to account for uncertainty.

(5) Point source discharges for which a national pollutant discharge elimination system permit is approved after January 1, 1995, shall be deemed to have met the requirements of this section.

(6) No instream target for a pollutant shall be set as part of a TMDL process unless the data and analysis in the subbasin assessment demonstrate that the pollutant is causing or contributing to a violation of a water quality standard in the stream for which the TMDL is being developed. If a pollutant load is allocated to a tributary inflow as part of a downstream TMDL, the director shall develop a plan to meet such allocation in consultation with the tributary watershed advisory group as provided in subsection (8) of this section.

(7) The director shall review and reevaluate each TMDL, supporting subbasin assessment, implementation plan(s) and all available data periodically at intervals of no greater than five (5) years. Such reviews shall include the assessments required by section 39-3607, Idaho Code, and an evaluation of the water quality criteria, instream targets, pollutant allocations, assumptions and analyses upon which the TMDL and subbasin assessment were based. If the members of the watershed advisory group, with the concurrence of the basin advisory group, advise the director that the water quality standards, the subbasin assessment, or the implementation plan(s) are not attainable or are inappropriate based upon supporting data, the director shall initiate the process or processes to determine whether to make recommended modifications. The director shall report to the legislature annually the results of such reviews.

(8) Each TMDL and any supporting subbasin assessment shall be developed and periodically reviewed and modified in consultation with the watershed advisory group for the watershed in which the water bodies are located. Consultation shall include, but not be limited to:

(a) Upon request, providing the watershed advisory group with all available information in the possession of the department concerning applicable water quality standards, water quality data, monitoring, assessments, reports, procedures and schedules for developing and submitting the TMDL and any supporting subbasin assessment to the United States environmental protection agency;

(b) Utilizing the knowledge, expertise, experience and information of the watershed advisory group in assessing the status, attainability or appropriateness of water quality standards, and in developing a TMDL and any supporting subbasin assessment; and

(c) Providing the watershed advisory group with an adequate opportunity to participate in drafting the documents for the TMDL

and any supporting subbasin assessment and to suggest changes to the documents.

(9) No TMDL shall be published for public comment or submitted for approval to the United States environmental protection agency until consultation, as herein provided, has occurred. If, after consultation, the watershed advisory group disagrees with the TMDL or any supporting subbasin assessment, or has determined that applicable water quality standards should be reevaluated or revised, such position and the basis therefor shall be documented in the public notice of availability to the TMDL and any supporting subbasin assessment for review, and in any submission of the same to the United States environmental protection agency. The director shall respond to the points raised by the watershed advisory group and shall document the response in the final decision.

(10) Nothing in this section shall be interpreted as requiring best management practices for agricultural nonpoint source activities which are not adopted on a voluntary basis, nor shall this section be interpreted to relieve any person from the responsibility to comply with the Idaho forest practices act.

History:

[39-3611, added 1995, ch. 352, sec. 1, p. 1173; am. 1997, ch. 279, sec. 6, p. 834; am. 2003, ch. 351, sec. 1, p. 938; am. 2005, ch. 334, sec. 2, p. 1049.]

39-3613. CREATION OF BASIN ADVISORY GROUPS. The director, in consultation with the designated agencies, shall name, for each of the state's major river basins, no less than one (1) basin advisory group which shall generally advise the director on water quality objectives for each basin and work in a cooperative manner with the director to achieve these objectives. Each such group shall establish by majority vote, operating procedures to guide the work of the group. Members shall be compensated pursuant to section 59-509(c), Idaho Code. The membership of each basin advisory group shall be representative of the industries and interests directly affected by the implementation of water quality programs within the basin and each member of the group shall either reside within the basin or represent persons with a real property interest within the basin. Recognized groups representing those industries or interests in the basin may nominate members of the group to the director. Each basin advisory group named by the director shall reflect a balanced representation of the interests in the basin and shall, where appropriate, include a representative from each of the following: agriculture, mining, nonmunicipal point source discharge permittees, forest products, local government, livestock, Indian tribes (for areas within reservation boundaries), water-based recreation, and environmental interests. In addition, the director shall name one (1) person to represent the public at large who may reside outside the basin. Members named to the basin advisory groups shall, in the opinion of the director, have demonstrated interest or expertise which will be of benefit to the work of the basin advisory group. The director may also name as may be needed those who have expertise necessary to assist in the work of the basin advisory group who shall serve as technical nonvoting advisers to the basin advisory group.

History:

[39-3613, added 1995, ch. 352, sec. 1, p. 1174; am. 1997, ch. 214, sec. 1, p. 634; am. 2001, ch. 103, sec. 32, p. 277; am. 2001, ch. 371, sec. 1, p. 1296; am. 2007, ch. 90, sec. 21, p. 258.]

39-3614. DUTIES OF THE BASIN ADVISORY GROUP. Each basin advisory group shall meet as necessary to conduct the group's business and to provide general coordination of the water quality programs of all public agencies pertinent to each basin. Duties of the basin advisory groups shall include, but not be limited to, providing advice to the director for:

- (1) Determining priorities for monitoring;
- (2) Revisions in the beneficial uses designated for each stream and the status and attainability of designated or existing beneficial uses for the water bodies within the basin;
- (3) Assigning water bodies to the categories described in section 39-3609, Idaho Code;
- (4) Reviewing the development and implementation of total maximum daily load processes as described in section 39-3611, Idaho Code;
- (5) Suggesting members of the watershed advisory groups described in section 39-3615, Idaho Code; and
- (6) Establishing priorities for water quality programs within the basin based on the economic resources available to implement such programs.

In carrying out the provisions of this chapter, the director and the basin advisory groups shall employ all means of public involvement deemed necessary, including the public involvement required by section 39-3603, Idaho Code, or required in chapter 52, title 67, Idaho Code, and shall cooperate fully with the public involvement or planning processes of other appropriate public agencies.

History:

[39-3614, added 1995, ch. 352, sec. 1, p. 1174.]

39-3615. CREATION OF WATERSHED ADVISORY GROUPS. Basin advisory groups shall identify representatives of the industries and other interests affected by the management of water quality within a watershed who are prospective members of an advisory group for the watershed and shall advise the director of their findings. The director, upon the advice of the appropriate basin advisory group, shall name watershed advisory groups which will generally advise the department on the appropriateness, attainability and status of existing and designated beneficial uses and water quality criteria within the watershed, and on the development and implementation of TMDLs and other state water quality plans, including those specific actions needed to control point and nonpoint sources of pollution within the watersheds of those water bodies where designated beneficial uses are not fully supported. Each watershed advisory group shall be formed early enough to complete consultation, as provided in section 39-3611(8), Idaho Code, prior to the date the TMDL and any supporting subbasin assessment is scheduled to be submitted to the United States environmental protection agency for approval.

If the members of the watershed advisory group, with the concurrence of the basin advisory group, advise the director that applicable water quality standards within the watershed are not attainable or are inappropriate based upon supporting data, the director shall initiate the process or processes to assess such standards and to change or remove the standards that are shown by the assessment to be unattainable or inappropriate, consistent with this chapter.

Members of each watershed advisory group shall be representative of the industries and interests affected by the management of that watershed and shall, where appropriate, include a representative from each of the following: agriculture, mining, point source dischargers, forest products, local government, livestock, Indian tribes (for areas within reservation boundaries), water-based recreation, environmental interests and the land managing or regulatory agencies with an interest in the management of that watershed and the quality of the water bodies within it.

Members of each watershed advisory group shall serve and shall not be reimbursed for their expenses during their term of service.

History:

[39-3615, added 1995, ch. 352, sec. 1, p. 1175; am. 1997, ch. 279, sec. 7, p. 835; am. 2005, ch. 334, sec. 3, p. 1051.]

39-3616. DUTIES OF EACH WATERSHED ADVISORY GROUP. Each watershed advisory group shall generally be responsible for recommending those specific actions needed to control point and nonpoint sources of pollution within the watershed so that, within reasonable periods of time, designated beneficial uses are fully supported and other state water quality plans are achieved. Watershed advisory groups shall, as described in this chapter, consult with the director and participate in the development of each TMDL and any supporting subbasin assessment for water bodies within the watershed, and shall develop and recommend actions needed to effectively control sources of pollution. In carrying out the provisions of this section, the director and the watershed advisory groups shall employ all means of public involvement deemed necessary or required in chapter 52, title 67, Idaho Code, and shall cooperate fully with the public involvement or planning processes of other appropriate public agencies.

History:

[39-3616, added 1995, ch. 352, sec. 1, p. 1175; am. 1997, ch. 279, sec. 8, p. 835; am. 2005, ch. 334, sec. 4, p. 1052.]