



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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OFFICE OF
WATER AND WATERSHEDS

July 28, 2010

Paula Wilson
Administrative Rules Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706

RE: Preliminary Draft Antidegradation Rule No. 7, Docket 58-0102-1001

Dear Ms Wilson:

EPA appreciates the Idaho Department of Environmental Quality's (IDEQ) effort to develop antidegradation implementation procedures and provides the attached comments and edits, presented as "mark-up" of Draft 7. We appreciate that Draft 7 reflects a number of changes intended to address certain comments provided by EPA on May 5, 2010.

EPA strongly suggests that IDEQ address the comments and edits presented here to ensure that the draft rule being prepared for public notice represents antidegradation implementation procedures that EPA could approve as consistent with the CWA and 40 CFR Part 131. Please note that EPA is still reviewing IDEQ's draft waterbody approach to Tier II implementation (052.03) and the use of "measurable" (052.05.e and elsewhere, including its proposed definition) and will provide comments as determined necessary.

We look forward to continued work with IDEQ on this issue. Please contact me if you have any questions, 206-553-2495.

Sincerely,

A handwritten signature in black ink, appearing to read "William R. Beckwith".

William R. Beckwith
Water Quality Standards Coordinator

cc: Barry Burnell, IDEQ
Don Essig, IDEQ

(by email)

enclosure

Negotiated Rule Draft No. 7 – Dated July _____, 2010

Docket No. 58-0102-1001, Antidegradation Implementation Procedures

Yellow shaded text indicates revisions made based on discussion held on July 21, 2010 and review of written comments received.

[Note: The following is largely proposed new rule language; pieces of language from the current rule are shaded in gray. Blue highlight denotes rule cross-references or placeholder text.]

051. ANTIDegradation POLICY.

01. **Maintenance of Existing Uses for All Waters (Tier I Protection).** The existing in stream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. (7-1-93)

02. **High Quality Waters (Tier II Protection).** Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the Department finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Department's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the Department shall assure water quality adequate to protect existing uses fully. Further, the Department shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and cost-effective and reasonable best management practices for nonpoint source control. In providing such assurance, the Department may enter together into an agreement with other state of Idaho or federal agencies in accordance with Sections 67-2326 through 67-2333, Idaho Code. (7-1-93)

03. **Outstanding Resource Waters (Tier III Protection).** Where high quality waters designated by the legislature constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected from the impacts of point and nonpoint source activities.

04. **Thermal Discharges.** In those cases where potential water quality impairment associated with a thermal discharge is involved, antidegradation shall be implemented consistent with Section 316 of the Clean Water Act.

05. **Restoration Projects.** Changes in water quality may be allowed by the Department without an antidegradation review where determined necessary to secure long-term water quality improvement through restoration projects designed to trend toward natural characteristics and associated uses to a water body where those characteristics and uses have been lost or diminished. Restoration projects shall implement reasonable pollution control measures.

06. **Emergency Actions.** Nothing in the antidegradation policy is intended to apply to emergency response actions taken to protect human life or property, irrespective of any temporary or permanent change in water quality.

07. **General Permits.** The Department will conduct antidegradation review, including a Tier II analysis, for general permits issued on or after July 1, 2011 at the time at which general permits are certified. The Department may conclude:

A. all activities covered under a general permit do not require individual antidegradation review;

Comment [b1]: EPA believes it is important that "where determined necessary," is properly implemented, and suggests addition of a statement to the effect: "Restoration projects shall implement reasonable pollution control measures."

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Comment [b2]: EPA suggests that this provision (051.06) be deleted, and that emergency actions and their impacts with regard to any degradation of water quality be addressed through enforcement discretion. That is a more appropriate mechanism for determining if a specific situation warrants consideration as an emergency."

Comment [b3]: EPA understands that this provision is to provide that in the course of an initial antideg review of a general permit at the time of state certification, DEQ may conclude that an antideg review will also be required at the time an applicant requests coverage. We suggest edits at 07.B to clarify this point.

or

B. other conditions in the general permits are necessary to provide reasonable assurance of compliance with the antidegradation policy, including but not limited to, conditions requiring an individual antidegradation review for certain activities upon request to be covered by a general permit.

08. **Waters subject to the Antidegradation Policy.** Idaho's antidegradation policy only applies to waters subject to the jurisdiction of the Clean Water Act.

052. IMPLEMENTATION. The antidegradation policy shall be implemented as follows.

01. List of waters protected. All waters receive Tier I protection. Waters receiving Tier II protection will be identified using a waterbody by waterbody approach during the antidegradation review. The Department will not maintain a list of Tier I or II waters. Waters given Tier III protection are designated in law.

02. Initiation of Antidegradation Review. Review of degradation potential and application of the appropriate level of protection from degradation will be triggered by an application for a new or reissued permit or license. Tier I review will be performed for all new or reissued permits or licenses.

03. Identification of Tier II Waters. The Department will utilize a waterbody by waterbody approach in determining where Tier II protection is appropriate in addition to Tier I protection. This approach shall be based on an assessment of the chemical, physical, biological, and other information within the waterbody. The most recent federally approved Integrated Report and supporting data will be used to determine the appropriate level of protection as follows:

- a. Waterbodies identified in the Integrated Report as supporting assessed uses will be provided Tier II protection.
- b. Waterbodies identified in the Integrated Report as not assessed will be provided an appropriate level of protection on a case-by-case basis using information on their quality available at the time of a proposal for a new or reissued permit.
- c. Waterbodies identified in the Integrated Report as not supporting for any use will receive protection as follows:
 - i. For aquatic life uses, if biological data show:
 - (1) Impairment, then the waterbody shall receive Tier I protection for aquatic life; or
 - (2) No impairment, then the waterbody shall receive Tier II protection for aquatic life; or
 - (3) If biological data in the Integrated Report are insufficient to determine impairment, then the waterbody will be provided an appropriate level of protection on a case-by-case basis using information on their quality available at the time of a proposal for a new or reissued permit.
 - ii. For recreational uses, if water quality data show impairment, then the waterbody shall receive Tier I protection for recreational uses.

04. Tier I Review. Existing uses and the water quality necessary to protect the existing uses must always be maintained and protected. No degradation of water quality may be allowed that would cause or contribute to violation of assigned water quality criteria or to the loss of any better water quality that may be determined necessary to maintain and protect existing uses.

Comment [b4]: EPA understands IDEQ's intent to be that Tier I is applicable in all cases, whether or not an activity would result in degradation. We believe the rule needs to be more explicit on this point and have provided edits to address this at 052.02 and 03.

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Comment [b5]: EPA is still reviewing IDEQ's draft waterbody approach to Tier II implementation (052.03) and will provide comments as determined necessary.

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Comment [b6]: It is important that the antidegradation provisions provide for protection of existing uses that are not designated in Idaho's water quality standards, and provide for the possibility that the criteria in Idaho's standards may not ensure the water quality necessary to protect existing uses in all cases. Our edits are intended to ensure the rule is clear on this issue.

Common parts of 04.a and b are combined at a, and the DEQ's reference to compliance with "section 054" is retained at b. A new 04.c is included to address the process for identifying existing uses and the water quality necessary for their protection.

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a. ~~In all cases, whether a receiving water does not meet assigned criteria or a receiving water meets or surpasses assigned criteria~~, the Department shall ensure that an activity or discharge authorized by a new or reissued license or permit meets criteria adopted to protect and maintain existing beneficial uses and ~~any better water quality that may be determined necessary to maintain and protect existing beneficial uses.~~

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b. ~~If a receiving water does not meet assigned criteria, the Department shall ensure that an existing activity or discharge or new activity or discharge also complies with the provisions of section 054 of these rules.~~

Deleted: shall ensure that the activity or discharge complies with the provisions of section 054 of these rules. In making this determination, the Department shall rely upon the presumption that, if the numeric criteria established to protect specific uses are met, the existing beneficial uses they were designed to protect are protected.

c. ~~Identification of existing uses and the water quality necessary for their protection shall be based on all available water quality-related information, including any water quality-related data and information submitted during the public comment period for the permit or license.~~

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05. Evaluation of effect of an activity or discharge on water quality. The Department will evaluate the effect on water quality for each parameter of concern. The Department will determine whether an activity or discharge results in an improvement, no change, or degradation of water quality.

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a. Effect on water quality will be based on the calculated change in concentration in the receiving water as a result of a new or reissued permit or license. With respect to a discharge, this calculation will take into account appropriate mixing of the discharge at design flow with the receiving water under critical conditions for dilution. For a reissued permit or license, the calculated change will be the difference in water quality that would result from the activity or discharge as authorized in the current permit and the water quality that would result from the activity or discharge as proposed in the reissued permit or license. For a new permit, the calculated change will be the difference between the existing receiving water quality and water quality that would result from the activity or discharge as proposed in the new permit or license.

Deleted: may be allowed that would degrade ambient water quality below criteria established to protect beneficial uses.

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Comment [b7]: Deleted "permitted or licenced" because proposed new or increased activities or discharges have not been permitted or licenced yet. Section 052.02 covers the applicability to permitted or licenced activities.

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i. Current Discharge Quality. ~~For parameters of concern that are currently limited,~~ discharge quality shall be based on limits in the current permit or license. ~~For parameters of concern not currently limited, discharge quality shall be based on available discharge quality data collected within five years of application for a permit or license.~~

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ii. Proposed Quality for an Existing Discharge. ~~Future discharge quality shall be based on proposed permit limits. For parameters of concern not limited in the proposed permit or license, future discharge quality will be projected from available discharge quality data since the last permit or license was issued accounting for any changes in production, treatment or operation. For the proposed discharge of a new parameter or a proposed increased discharge of a parameter, future discharge quality will be based on information provided by the applicant or other relevant information.~~

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iii. Proposed Quality for a New Discharge. Future discharge quality shall be based on proposed permit limits. For parameters of concern not limited in the proposed permit or license, future discharge quality will be based on information provided by the applicant or other relevant information.

iv. New Permit Limits for an Existing Discharge. When new permit limits are proposed for the first time for a parameter of concern in an existing discharge, then for purposes of calculating the change in water quality, any statistical procedures used to derive the proposed new limits will be applied to current discharge quality as well, where appropriate.

v. The department may require additional information, including data from additional discharge monitoring, as necessary to evaluate the effect of an activity or discharge on water quality.

c. Receiving water quality will be the quality measured, or modeled as appropriate, immediately above the discharge for flowing waters and outside any Department authorized mixing zone for lakes and reservoirs.

d. Offsets. In determining the effect of an activity or discharge on water quality of Tier II or Tier III waters, the Department may take into account reductions in pollution from other sources that are tied to the proposed activity or discharge. These offsets in pollution must be upstream of the degradation in water quality due to the proposed activity or discharge and occur before the activity or discharge is allowed to begin. The applicant seeking a permit or license for an activity or discharge based on offsets will be held responsible for assuring offsets are achieved and maintained as a condition of their permit or license.

e. Measurable change. If a calculated change is not measurable it will be evaluated as no change.

06. Tier II Analysis. A Tier II analysis will only be conducted for activities or discharges, subject to a permit or a license, that cause degradation. The Department may allow significant degradation of surface water quality that is better than criteria only if it is determined to be necessary to accommodate important economic and social development in the area in which the waters are located. The process and standard for this determination are set forth below.

a. Other Source Controls. In allowing any degradation of high water quality, the Department must assure that there shall be achieved in the watershed the highest statutory and regulatory requirements for all new and existing point sources and cost-effective and reasonable best management practices for nonpoint source control. In providing such assurance, the Department may enter together into an agreement with other State of Idaho or federal agencies in accordance with sections 67-2326 through 67-2333, Idaho code.

b. Insignificant Discharge. The Department shall consider the discharge's magnitude of effect on the receiving stream and may determine that it is insignificant and therefore does not warrant an alternatives analysis or socio-economic justification. A determination of insignificance is subject to assurance other source controls are in place (052.06.a).

i. In no case will the Department determine insignificance when the proposed change in discharge, from conditions as of July 1, 2011, will:

a. increase ambient concentrations by more than 10%; or

b. cumulatively decrease assimilative capacity by more than 10%.

ii. The Department reserves the right to request additional information from the applicant in making a determination a proposed change in discharge is insignificant.

Comment [b8]: It may be appropriate to apply any statistical procedures, used to derive the proposed new limits, to the current discharge quality as well, if the new proposed limits are simply a result of a reasonable potential analysis in absence of any proposed new or increased discharge of parameters from the "existing discharge." In other scenarios such a practice may not be appropriate, such as where a parameter is not present in the current discharge – regardless of whether it is appropriate to apply statistics to the future discharge level.

Note: The edits made throughout section 052.05 Evaluation of effect of water quality... are with an understanding that "existing discharge" could include new or increased discharge from a facility that was previously authorized to discharge.

Comment [b9]: Added "v" to account for cases where data are not available, such as would be the case for "current discharge quality" where there is a proposal to discharge a parameter that has not been monitored.

Comment [b10]: EPA is still reviewing IDEQ's use of "measurable" (052.05.e), including its proposed definition, and will provide comments as determined necessary.

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Comment [b11]: These deletions because the "size and character" in any context other than "magnitude of effect" do not effect the subsequent decision process in the current provision as drafted.

c. Alternatives analysis. Degradation will be deemed necessary only if there are no reasonable alternatives to discharging at the levels proposed. The applicant seeking authorization to degrade water quality must provide an analysis of alternatives aimed at selecting the best combination of site, structural, managerial and treatment approaches that can be reasonably implemented to avoid or minimize the degradation of water quality. To identify the least degrading alternative that is reasonable, the following principles shall be followed:

- i. Controls to avoid or minimize degradation should be considered at the earliest possible stage of project design.
- ii. Alternatives that must be evaluated where appropriate include, but are not limited to:
 - (1) Relocation of outfall or diffuser;
 - (2) Process changes/improved efficiency that reduces pollutant discharge;
 - (3) Seasonal discharge to avoid critical time periods for water quality;
 - (4) Non-discharge alternatives such as land application; and
 - (5) Offsets to the activity or discharge's effect on water quality.
- iii. The Department retains the discretion to require the applicant to examine specific alternatives or provide additional information to conduct the analysis.
- iv. In selecting the preferred alternative the applicant shall:
 - (1) Rank all technologically feasible treatment alternatives by their cost effectiveness at pollutant reduction;
 - (2) Consider the environmental costs and benefits across media and between pollutants; and
 - (3) Select the least degrading option that is reasonable.

d. Socio-economic justification. Degradation of water quality deemed necessary must also be determined by the Department to accommodate important economic or social development. Therefore, the applicant seeking authorization to degrade water quality must at a minimum identify the important economic or social development for which lowering water quality is necessary and should use the following steps to demonstrate this:

- i. Identify the affected community;
- ii. Describe the important social or economic development associated with the activity;
- iii. Identify the relevant social, economic and environmental health benefits and costs associated with the proposed degradation in water quality for the preferred alternative and the least degrading alternative if it is not preferred. Benefits and costs that must be analyzed include, but are not limited to:
 - (1) Economic benefits to the community such as changes in employment, household incomes and tax base;
 - (2) Provision of necessary services to the community;
 - (3) Potential health impacts related to the proposed activity;
 - (4) Impacts to direct and indirect uses associated with high quality water e.g., fishing, recreation, and tourism; and
 - (5) Retention of assimilative capacity for future discharges.
- iv. Factors identified in the socio-economic justification should be quantified whenever possible but for those factors that cannot be quantified a qualitative description of the impacts may be accepted; and
- v. If the department determines that more information is required, the department may require the applicant to provide further information or seek additional sources of information.

Comment [b12]: With the deletion, this provision (iv.3) is consistent 1) with EPA's position as described at 63 FR 36784, July 7, 1998, and 2) with IDEQ's language at "c", "To identify the least degrading alternative that is reasonable, the following principles shall be followed." Environmental and economic consideration could be accounted for in determining what is reasonable; however, EPA is concerned that in the context of the Tier II antidegradation review, even the most degrading alternative, if associated with important economic or social development, might be considered socially or economically justified. Thus, we deleted "or show that a more degrading alternative is environmentally or economically justified." The goal of the Tier II alternatives analysis is to identify alternatives that would eliminate, or minimize if elimination is not feasible, degradation associated with projects that would provide important economic or social development.

Deleted: or show that a more degrading alternative is environmentally or economically justified.

e. Process.

i. Analysis. The Department in cooperation with State of Idaho designated management agencies and/or federal agencies will collect information regarding the other source controls specified in section 06.a. The applicant for a new or reissued permit is responsible for providing information pertinent to determining significance/insignificance of proposed changes in water quality and completing an alternatives analysis and socio-economic justification as appropriate and submitting them to the Department for review.

ii. Departmental review. The Department shall review all pertinent information and, after intergovernmental coordination, public notice and input, make a determination as to whether there is assurance that the other source controls specified in section 06.a. shall be achieved, and whether degradation of water quality is necessary to accommodate important economic or social development.

iii. Public Involvement. The Department will satisfy the public participation provisions of Idaho's continuing planning process and to the extent possible public notice and review of antidegradation will be coordinated with existing 401 certification notices for public review.

[Note: from here on the language is largely existing language from sections 056 and 055 and subsections of 400 and 350 they refer to. Changes are indicated by ~~strikeout~~ and underline]

07. Tier III – Outstanding Resource Waters (ORW). ORWs are designated by the legislature. Subsection 052.07 describes the nomination, public notice and comment, public hearing, and board review process for directing the Department to develop legislation designating ORWs. Only the legislature may designate ORWs. Once designated by the legislature, the ORWs are listed in these rules.

a. ~~Nominations for outstanding resource water designation.~~ Any person may request, in writing to the board, that a stream segment be considered for designation as an Outstanding Resource Water. To be considered for ORW designation, nominations must be received by the board by April 1 or ten (10) days after the adjournment sine die of that year's regular session of the legislature, whichever is later, for consideration during the next regular session of the legislature. All nominations shall be addressed to:

Idaho Board of Environmental Quality
Department of Environmental Quality
Outstanding Resource Water Nomination
1410 N. Hilton
Boise, Idaho 83706-1255

The nomination shall include the following information:

- i. The name, description and location of the stream segment;
- ii. The boundaries upstream and downstream of the stream segment;
- iii. An explanation of what makes the segment a candidate for the designation;
- iv. A description of the existing water quality and any technical data upon which the description is based as can be found in the most current basin status reports;
- v. A discussion of the types of nonpoint source activities currently being conducted that may ~~lower~~ degrade water quality, together with those activities that are anticipated during the next two (2) years, as described in the most current basin status reports; and
- vi. Any additional evidence to substantiate such a designation.

b. Public notice and public comment. The board will give public notice that one (1) or more stream segments are being considered for recommendation to the legislature as outstanding resource waters. Public notice will also be given if a public hearing is being held. Public comments regarding possible designation will be accepted by the board for a period of at least forty-five (45) days. Public comments may include, but are not limited to, discussion of socio-economic considerations; fish, wildlife or recreational values; and other beneficial uses.

c. Public hearing. A public hearing(s) may be held at the board's discretion on any stream segment nominated for ORW designation. Public notice will be given if a hearing is held. The decision to hold a hearing may be based on the following criteria:

- i. One (1) or more requests contain supporting documentation and valid reasons for designation;
- ii. A stream segment is generally recognized as constituting an outstanding national resource, such as waters of national and state parks, and wildlife refuges;
- iii. A stream segment is generally recognized as waters of exceptional recreational or ecological significance;
- iv. The board shall give special consideration to holding a hearing and to recommending for designation by the legislature, waters which meet criteria found in subsection 052.07.c.ii. and 052.07.c.iii.
- v. Requests for a hearing will be given due consideration by the board. Public hearings may be held at the board's discretion.

d. Board review. The board shall review the stream segments nominated for ORW designation and based on the hearing or other written record, determine the segments to recommend as ORWs to the legislature. The board shall submit a report for each stream segment it recommends for ORW designation. The report shall contain the information specified in **subsection 052.07.a.** and information from the hearing record or other written record concerning the impacts the designation would have on socio-economic conditions; fish, wildlife and recreational values; and other beneficial uses. The department shall then prepare legislation for each segment that will be recommended to the legislature as an ORW. The legislation shall provide for the listing of designated segments in these regulations without the need for formal rule-making procedures, pursuant to sections 67-5200, et seq., Idaho code.

e. Designated waters. Those stream segments designated by the legislature as ORWs are listed in sections 110 through 160.

f. Restriction of nonpoint source activities on ~~outstanding resource waters~~ ORWs. Nonpoint source activities on ORWs shall be restricted as follows:

i. The water quality of ORWs shall be maintained and protected. After the legislature has designated a stream segment as an outstanding resource water, no person shall conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of that ORW, except for conducting short term or temporary nonpoint source activities which do not alter the essential character or special uses of a segment, allocation of water rights, or operation of water diversions or impoundments. Stream segments not designated as ORWs that discharge directly into an ORW shall not be subject to the same restrictions as an ORW, nor shall the ORW mixing zone be subject to the same restrictions as an ORW. A person may conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of a tributary or stream segment, which discharges directly into an ORW or an ORW mixing zone, provided that the water quality of that ORW below the mixing zone shall not be lowered.

ii. After the legislature has designated a stream segment as an outstanding resource water as outlined in **subsection 052.07.e.**, existing nonpoint source activities may continue and shall be conducted in a manner that maintains and protects the current water quality of an ORW. The provisions of this section shall not affect short term or temporary activities that do not alter the essential character or special uses of a segment, allocation of water rights, or operations of water diversions or impoundments, provided that such activities shall be conducted in conformance with applicable laws and regulations.

g. Restriction of point source discharges to ORWs and their tributaries. New or increased point source discharges to ORWs may be allowed only if they are offset by reductions in other discharges per subsection 052.05.d that will ensure that the water quality of the ORW is maintained and protected.

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Comment [b13]: This addition is to ensure consistency with the federal provision at 40 CFR 131.12(a)(3) stating the need to maintain and protect water quality for ORWs. Another option would be to include a statement that offsets for ORWs must be "1:1" at a minimum.

08. Special Resource Waters (SRW).

a. Designations. Waters of the state may be designated as SRWs. Designation as a ~~special resource water~~ SRW recognizes at least one (1) of the following characteristics:

- i. The water is of outstanding high quality, exceeding both criteria for primary contact recreation and cold water aquatic life;
- ii. The water is of unique ecological significance;
- iii. The water possesses outstanding recreational or aesthetic qualities;
- iv. Intensive protection of the quality of the water is in paramount interest of the people of Idaho;
- v. The water is a part of the national wild and scenic river system, is within a state or national park or wildlife refuge and is of prime or major importance to that park or refuge; or

vi. Intensive protection of the quality of the water is necessary to maintain an existing, but jeopardized beneficial use.

b. Designated waters. Those waters of the state ~~determined to be special resource waters~~ designated as SRWs are listed in sections 110 through 160.

c. Restrictions of point source discharges to ~~special resource waters~~ SRWs and their tributaries. Point source discharges to ~~special resource waters~~ SRWs and their tributaries shall be restricted as follows:

i. No new point source can discharge pollutants, and no existing point source can increase its discharge of pollutants above the design capacity of its existing wastewater treatment facility, to any water designated as a SRW or to a tributary of, or to the upstream segment of a ~~special resource water~~ SRW; if pollutants significant to the designated beneficial uses can or will ~~result in a reduction of the~~ **degrade cause degradation of** ambient water quality of the receiving SRW ~~special resource water as measured immediately below the applicable mixing zone.~~

ii. Except that new point sources can discharge, and existing point sources can increase its discharge above the design capacity of its existing wastewater treatment facility, resulting in increases in water temperatures and fluoride concentrations up to levels needed to protect designated beneficial uses in the Boise river between the bridge at Broadway avenue and river mile 50 (through Veteran's State Park).

Proposed New Definitions:

Assigned Criteria. In order to conduct an antidegradation review it must be known what criteria are assigned to protect the waterbody which would receive the proposed discharge. Assigned criteria are those associated with the designated, presumed, and any existing uses from section 100 of these rules.

Cost-effective and reasonable best management practices (BMPs) for nonpoint sources. Means all approved BMPs specified in subsection 350.03 and 054.07 of these rules. BMPs for activities not specified are, in accordance with section 350, determined on a case-by-case basis.

Degradation or Lower Water Quality. For purposes on antidegradation review, degradation or lower water quality means an increase either in concentration or load of a pollutant that is measurable and adverse to beneficial uses that may be made of the water, as calculated upon appropriate mixing of the discharge and receiving water under critical conditions for dilution. “Adverse to beneficial uses” simply means that the quality of water is worsening.

Existing Activity or Discharge. An activity or discharge that has been previously authorized.

Highest statutory and regulatory requirements for point sources. Means all applicable effluent limits per CWA sections 301 and 302, and other permit conditions. It also means any schedule of compliance or consent order.

Impairment. For the purpose of determining the appropriate level of antidegradation protection, impairment means for aquatic life uses that two or more major biological groups such as fish, macroinvertebrates, or algae have been modified by human activities significantly beyond the natural range of the reference streams or conditions approved by the Director in consultation with the appropriate basin advisory group; and for recreational uses, compliance with those levels of water quality criteria listed in sections 200, 210, 251, and 275 (if applicable). The Department shall utilize the current version of the “Water Body Assessment Guidance,” as published by the Idaho Department of Environmental Quality, as a guide to assist in making impairment decisions.

Integrated Report. Refers to the consolidated listing and reporting of the state’s water quality status pursuant to Sections 303(d), 305(b), and 314 of the Clean Water Act.

Measurable. Refers to the practical ability to detect change in water quality taking into account limitations in analytical technique and sampling variability. Because analytical techniques change and repeated sampling and application of statistics can enable detection of progressively smaller changes, the Department will generally consider measurable changes to be those that can be determined with 95% confidence based on detection limits and precision of standard methods of analysis. Because the Department recognizes that in some cases smaller changes may be significant to human health or aquatic life protection, the Department will in those cases consider calculated changes to be measurable.

New Activity or Discharge. An activity or discharge that has not been previously authorized. Existing activities or discharges not currently permitted or licensed will be presumed to be new discharges unless the Director determines to the contrary based on review of available evidence.

Permit or license. Means a permit or license for an activity that is subject to certification by the state under Section 401 of the Clean Water Act, including, for example, NPDES permits, dredge and fill permits, and FERC licenses.

Comment [b14]: Added a statement to clarify IDEQ’s interpretation of “adverse.”

EPA is still reviewing IDEQ’s use of “measurable” (052.05.e), including its proposed definition, and will provide comments as determined necessary.

Comment [b15]: EPA is still reviewing IDEQ’s use of “measurable” (052.05.e), including its proposed definition, and will provide comments as determined necessary.

Comment [b16]: Notwithstanding that EPA is still reviewing “measurable,” this is an important addition consistent with our 5/5/10 comments.

[Note: The following are excerpts of existing rule language showing deletions and additions.]

010. DEFINITIONS.

For the purpose of the rules contained in IDAPA 58.01.02, "Water Quality Standards," the following definitions apply

~~49. **Lower Water Quality.** A measurable and adverse anthropogenic change in a chemical, physical, or biological parameter of water relevant to a beneficial use, and which can be expressed numerically. Measurable change may be determined by a statistically significant difference using standard methods for analysis and statistical interpretation appropriate to the parameter. Statistical significance is defined as the ninety-five percent (95%) confidence limit when significance is not otherwise defined for the parameter in standard methods or practices.~~

(3-30-07)

64. Outstanding Resource Water (ORW). 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 designated by the legislature and subsequently listed in this chapter. ORW constitutes an outstanding national or state resource that requires protection from point and nonpoint source activities that may lower degrade water quality.

(3-20-97)

... Break in sequence

051. ANTIDegradation Policy.

~~01. **Maintenance of Existing Uses for All Waters.** The existing in stream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.~~

(7-1-93)

~~02. **High Quality Waters.** Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the Department finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Department's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the Department shall assure water quality adequate to protect existing uses fully. Further, the Department shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and cost-effective and reasonable best management practices for nonpoint source control. In providing such assurance, the Department may enter together into an agreement with other state of Idaho or federal agencies in accordance with Sections 67-2326 through 67-2333, Idaho Code.~~

(7-1-93)

~~03. **Outstanding Resource Waters.** Where high quality waters constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected from the impacts of point and nonpoint source activities.~~

(7-1-93)

053. PUBLIC PARTICIPATION.

In providing general coordination of water quality programs within each basin, in carrying out the duties of the Basin Advisory Groups as assigned, and in carrying out the provisions of Sections 39-3601, et seq., Idaho Code, the Director and the Basin Advisory Groups shall employ all means of public involvement deemed necessary, including the public involvement required under Section 67-2340 through Section 67-2347, Idaho Code, Section 051 of this rule 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.

(3-20-97)

054. BENEFICIAL USE SUPPORT STATUS.

In determining whether a water body fully supports designated and existing beneficial uses, the Department shall determine whether all of the applicable water quality standards are being achieved, including any criteria developed pursuant to these rules, and whether a healthy, balanced biological community is present. The Department shall utilize biological and aquatic habitat parameters listed below and in the current version of the “Water Body Assessment Guidance,” as published by the Idaho Department of Environmental Quality, as a guide to assist in the assessment of beneficial use status. Revisions to this guidance will be made after notice and an opportunity for public comment. These parameters are not to be considered or treated as individual water quality criteria or otherwise interpreted or applied as water quality standards. The Department shall employ a weight of evidence approach in evaluating a combination of water quality data types (including, but not limited to, aquatic habitat and biological parameters), when such a combination of data are available, in making its final use support determination. (3-30-07)

01. Aquatic Habitat Parameters. These parameters may include, but are not limited to, stream width, stream depth, stream shade, measurements of sediment impacts, bank stability, water flows, and other physical characteristics of the stream that affect habitat for fish, macroinvertebrates or other aquatic life.(3-30-07)

02. Biological Parameters. These parameters may include, but are not limited to, evaluation of aquatic macroinvertebrates including Ephemeroptera, Plecoptera and Trichoptera (EPT), Hilsenhoff Biotic Index, measures of functional feeding groups, and the variety and number of fish or other aquatic life to determine biological community diversity and functionality. (3-20-97)

03. Use of Data Regarding pH, Turbidity, Dissolved Oxygen, and Temperature. In making use support determinations, the Department may give less weight to departures from criteria in Section 250 for pH, turbidity, dissolved oxygen, and temperature that are infrequent, brief, and small if aquatic habitat and biological data indicate to the assessor that aquatic life beneficial uses are otherwise supported. Unless otherwise determined by the Department, “infrequent” means less than ten percent (10%) of valid, applicable, representative measurements when continuous data are available; “brief” means two (2) hours or less; and “small” means conditions that avoid acute effects. Subsection **054.03** only applies to use of this data for determination of beneficial use support status. Subsection **054.03** does not apply to or affect the application of criteria for any other regulatory purpose including, but not limited to, determining whether a particular discharge or activity violates water quality standards. (3-30-07)

04. Natural Conditions. There is no impairment of beneficial uses or violation of water quality standards where natural background conditions exceed any applicable water quality criteria as determined by the Department, and such natural background conditions shall not, alone, be the basis for placing a water body on the list of water quality limited water bodies described in Section **055**. (3-15-02)

05. Rigor, Quality and Relevance of Data. In making any use support determination, the Department shall consider the scientific rigor associated with the collection of samples or data (e.g., the scientific methods used to collect samples or data); the quality of measurements and/or analysis of the samples (e.g., methodology, instrumentation, accuracy, precision, and limits of detection where applicable); and the relevance of the data (e.g., the relationship to a water quality standard, beneficial use or cause of impairment, and how representative the samples or data are of the water body in question). (3-30-07)

055. WATER QUALITY LIMITED WATERS AND TMDLS.

01. After Determining That Water Body Does Not Support Use. After determining that a water body does not fully support designated or existing beneficial uses in accordance with Section **054**, the Department, in consultation with the applicable basin and watershed advisory groups, shall evaluate whether the application of required pollution controls to sources of pollution affecting the impaired water body would restore the water body to full support status. This evaluation may include the following: (3-20-97)

a. Identification of significant sources of pollution affecting the water body by past and present activities; (3-20-97)

b. Determination of whether the application of required or cost-effective interim pollution control

strategies to the identified sources of pollution would restore the water body to full support status within a reasonable period of time; (3-20-97)

c. Consultation with appropriate basin and watershed advisory groups, designated agencies and landowners to determine the feasibility of, and assurance that required or cost-effective interim pollution control strategies can be effectively applied to the sources of pollution to achieve full support status within a reasonable period of time; (3-20-97)

d. If pollution control strategies are applied as set forth in this Section, the Department shall subsequently monitor the water body to determine whether application of such pollution controls were successful in restoring the water body to full support status. (3-20-97)

02. Water Bodies Not Fully Supporting Beneficial Uses. After following the process identified in Subsection **055.01**, water bodies not fully supporting designated or existing beneficial uses and not meeting applicable water quality standards despite the application of required pollution controls shall be identified by the Department as water quality limited water bodies, and shall require the development of TMDLs or other equivalent processes, as described under Section 303(d)(1) of the Clean Water Act. A list of water quality limited water bodies shall be published periodically by the Department in accordance with Section 303(d) of the Clean Water Act and be subject to public review prior to submission to EPA for approval. Informational TMDLs may be developed for water bodies fully supporting beneficial uses as described under Section 303(d)(3) of the Clean Water Act, however, they will not be subject to the provisions of this Section.(3-20-97)

03. Priority of TMDL Development. The priority of TMDL development for water quality limited water bodies identified in Subsection **055.02** shall be determined by the Director in consultation with the Basin Advisory Groups as described in Sections 39-3601, et seq., Idaho Code, depending upon the severity of pollution and the uses of the water body, including those of unique ecological significance. Water bodies identified as a high priority through this process will be the first to be targeted for development of a TMDL or equivalent process. (3-20-97)

04. High Priority Provisions. Until a TMDL or equivalent process is completed for a high priority water quality limited water body, new or increased discharge of pollutants which have caused the water quality limited listing may be allowed if interim changes, such as pollutant trading, or some other approach for the pollutant(s) of concern are implemented and the total load remains constant or decreases within the watershed. Interim changes shall maximize the use of cost effective measures to cap or decrease controllable human-caused discharges from point and nonpoint sources. Once the TMDL or equivalent process is completed, any new or increased discharge of causative pollutants will be allowed only if consistent with the approved TMDL. Nothing in this section shall be interpreted as requiring best management practices for agricultural operations which are not adopted on a voluntary basis. (3-20-97)

05. Medium and Low Priority Provisions. Until TMDLs or equivalent processes are developed for water quality limited water bodies identified as medium or low priority, the Department shall require interim changes in permitted discharges from point sources and best management practices for nonpoint sources deemed necessary to prohibit further impairment of the designated or existing beneficial uses. Nothing in this section shall be interpreted as requiring best management practices for agricultural operations which are not adopted on a voluntary basis. (3-20-97)

a. In determining the necessity for interim changes to existing activities and limitations upon proposed activities, the Department, in consultation with basin and watershed advisory groups, shall evaluate the water quality impacts caused by past regulated and unregulated activities in the affected watershed. (3-20-97)

b. Consideration of interim changes shall maximize the use of cost-effective and timely measures to ensure no further impairment of designated or existing uses. (3-20-97)

06. Pollutant Trading. Development of TMDLs or equivalent processes or interim changes under these rules may include pollutant trading with the goal of restoring water quality limited water bodies to compliance with water quality standards. (3-20-97)

07. Idaho Agriculture Pollution Abatement Plan. Use of best management practices by agricultural activities is strongly encouraged in high, medium and low priority watersheds. The Idaho Agriculture Pollution Abatement Plan is the source for best management practices for the control of nonpoint sources of pollution for agriculture. (3-20-97)

~~**055. OUTSTANDING RESOURCE WATERS (ORW).**~~

~~**01. Nominations for Outstanding Resource Water Designation.** Any person may request, in writing to the Board, that a stream segment be considered for designation as an outstanding resource water. To be considered for ORW designation, nominations must be received by the Board by April 1 or ten (10) days after the adjournment sine die of that year's regular session of the legislature, whichever is later, for consideration during the next regular session of the legislature. All nominations shall be addressed to:~~

~~Idaho Board of Environmental Quality
Department of Environmental Quality
Outstanding Resource Water Nomination
1410 N. Hilton
Boise, Idaho 83706-1255~~

~~The nomination shall include the following information: (3-23-98)~~

- ~~a. The name, description and location of the stream segment; (7-1-93)~~
- ~~b. The boundaries upstream and downstream of the stream segment; (7-1-93)~~
- ~~c. An explanation of what makes the segment a candidate for the designation; (7-1-93)~~
- ~~d. A description of the existing water quality and any technical data upon which the description is based as can be found in the most current basin status reports; (7-1-93)~~
- ~~e. A discussion of the types of nonpoint source activities currently being conducted that may lower water quality, together with those activities that are anticipated during the next two (2) years, as described in the most current basin status reports; and (7-1-93)~~
- ~~f. Any additional evidence to substantiate such a designation. (7-1-93)~~

~~**02. Public Notice and Public Comment.** The Board will give public notice that one (1) or more stream segments are being considered for recommendation to the legislature as outstanding resource waters. Public notice will also be given if a public hearing is being held. Public comments regarding possible designation will be accepted by the Board for a period of at least forty-five (45) days. Public comments may include, but are not limited to, discussion of socio-economic considerations; fish, wildlife or recreational values; and other beneficial uses. (7-1-93)~~

~~**03. Public Hearing.** A public hearing(s) may be held at the Board's discretion on any stream segment nominated for ORW designation. Public notice will be given if a hearing is held. The decision to hold a hearing may be based on the following criteria: (7-1-93)~~

- ~~a. One (1) or more requests contain supporting documentation and valid reasons for designation; (7-1-93)~~
- ~~b. A stream segment is generally recognized as constituting an outstanding national resource, such as waters of national and state parks, and wildlife refuges; (7-1-93)~~
- ~~c. A stream segment is generally recognized as waters of exceptional recreational or ecological significance; (7-1-93)~~
- ~~d. The Board shall give special consideration to holding a hearing and to recommending for~~

designation by the legislature, waters which meet criteria found in Subsection 055.03.b. and 055.03.c.;(3-20-97)

~~e. — Requests for a hearing will be given due consideration by the Board. Public hearings may be held at the Board's discretion. (7-1-93)~~

~~04. — **Board Review.** The Board shall review the stream segments nominated for ORW designation and based on the hearing or other written record, determine the segments to recommend as ORWs to the legislature. The Board shall submit a report for each stream segment it recommends for ORW designation. The report shall contain the information specified in Subsection 055.01 and information from the hearing record or other written record concerning the impacts the designation would have on socio-economic conditions; fish, wildlife and recreational values; and other beneficial uses. The Department shall then prepare legislation for each segment that will be recommended to the legislature as an ORW. The legislation shall provide for the listing of designated segments in these regulations without the need for formal rule-making procedures, pursuant to Sections 67-5200, et seq., Idaho Code. (3-20-97)~~

~~05. — **Designated Waters.** Those stream segments designated by the legislature as ORWs are listed in Sections 110 through 160. (7-1-93)~~

~~06. — **Restriction of Nonpoint Source Activities on Outstanding Resource Waters.** Nonpoint source activities on ORWs shall be restricted as specified in Subsection 350.04. (7-1-93)~~

056. — SPECIAL RESOURCE WATERS:

~~01. — **Designations.** Waters of the state may be designated as special resource waters. Designation as a special resource water recognizes at least one (1) of the following characteristics: (7-1-93)~~

~~a. — The water is of outstanding high quality, exceeding both criteria for primary contact recreation and cold water aquatic life; (4-5-00)~~

~~b. — The water is of unique ecological significance; (7-1-93)~~

~~c. — The water possesses outstanding recreational or aesthetic qualities; (7-1-93)~~

~~d. — Intensive protection of the quality of the water is in paramount interest of the people of Idaho; (7-1-93)~~

~~e. — The water is a part of the National Wild and Scenic River System, is within a State or National Park or wildlife refuge and is of prime or major importance to that park or refuge; or (4-5-00)~~

~~f. — Intensive protection of the quality of the water is necessary to maintain an existing, but jeopardized beneficial use. (4-5-00)~~

~~02. — **Designated Waters.** Those waters of the state determined to be special resource waters are listed in Sections 110 through 160. (4-5-00)~~

~~03. — **Restrictions of Point Source Discharges to Special Resource Waters and Their Tributaries.** Point source discharges to special resource waters and their tributaries shall be restricted as specified in Subsection 400.01.b. (7-1-93)~~

056. -- 059. (RESERVED).

... Break in sequence

350. RULES GOVERNING NONPOINT SOURCE ACTIVITIES.

01. Implementation Policy. (7-1-93)

a. Nonpoint sources are the result of activities essential to the economic and social welfare of the state. The real extent of most nonpoint source activities prevents the practical application of conventional wastewater treatment technologies. Nonpoint source pollution management, including best management practices, is a process for protecting the designated beneficial uses and ambient water quality. Best management practices should be designed, implemented and maintained to provide full protection or maintenance of beneficial uses. Violations of water quality standards which occur in spite of implementation of best management practices will not be subject to enforcement action. However, if subsequent water quality monitoring and surveillance by the Department, based on the criteria listed in Sections 200, 250, 251, 252, 253, and 254, indicate water quality standards are not met due to nonpoint source impacts, even with the use of current best management practices, the practices will be evaluated and modified as necessary by the appropriate agencies in accordance with the provisions of the Administrative Procedure Act. If necessary, injunctive or other judicial relief may be initiated against the operator of a nonpoint source activity in accordance with the Director's authorities provided in Section 39108, Idaho Code. In certain cases, revision of the water quality standards may be appropriate. (4-5-00)

b. As provided in Subsections 350.01.a. and 350.02.a. for nonpoint source activities, failure to meet general or specific water quality criteria, or failure to fully protect a beneficial use, shall not be considered a violation of the water quality standards for the purpose of enforcement. Instead, water quality monitoring and surveillance of nonpoint source activities will be used to evaluate the effectiveness of best management practices in protecting beneficial uses as stated in Subsections 350.01.a. and 350.02.b. (12-31-91)

02. Limitation to Nonpoint Source Restrictions. Nonpoint source activities will be subject to the following: (7-1-93)

a. Except as provided in Subsections 350.02.b. and 350.02.c., so long as a nonpoint source activity is being conducted in accordance with applicable rules, regulations and best management practices as referenced in Subsection 350.03, or in the absence of referenced applicable best management practices, conducted in a manner that demonstrates a knowledgeable and reasonable effort to minimize resulting adverse water quality impacts, the activity will not be subject to conditions or legal actions based on Subsections 400.01.b. or 080.01. In all cases, if it is determined by the Director that imminent and substantial danger to the public health or environment is occurring, or may occur as a result of a nonpoint source by itself or in combination with other point or nonpoint source activities, then the Director may seek immediate injunctive relief to stop or prevent that danger as provided in Section 39-108, Idaho Code. (7-1-93)

b. If the Director determines through water quality monitoring and surveillance that water quality criteria are not being met, or that beneficial uses are being impaired as a result of a nonpoint source activity by itself or in combination with other point and nonpoint source activities then: (3-3-87)

i. For an activity occurring in a manner not in accordance with approved best management practices, or in a manner which does not demonstrate a knowledgeable and reasonable effort to minimize resulting adverse water quality impacts, the Director may with appropriate inter-Departmental coordination. (3-3-87)

(1) Prepare a compliance schedule as provided in Section 39-116, Idaho Code; and/or (2-2-83)

(2) Institute administrative or civil proceedings including injunctive relief under Section 39-108, Idaho Code. (3-3-87)

ii. For activities conducted in compliance with approved best management practices, or conducted in a manner which demonstrates knowledgeable and reasonable effort to minimize resulting adverse water quality impacts, the Director may, with appropriate inter-Departmental coordination. (3-3-87)

(1) For those activities with approved best management practices as listed in Subsection 350.03 formally request that the responsible agency conduct a timely evaluation and modification of the practices to

insure full protection of beneficial uses. (12-31-91)

(2) For all other nonpoint source activities which do not have approved best management practices as listed in Subsection 350.03, develop and recommend to the operator control measures necessary to fully protect the beneficial uses. Such control measures may be implemented on a voluntary basis, or where necessary, through appropriate administrative or civil proceedings. (12-31-91)

(3) If, in a reasonable and timely manner the approved best management practices are not evaluated or modified by the responsible agency, or if the appropriate control measures are not implemented by the operator, then the Director may seek injunctive relief to prevent or stop imminent and substantial danger to the public health or environment as provided in Section 39-108, Idaho Code. (3-3-87)

c. The Director may review for compliance project plans for proposed nonpoint source activities, based on whether or not the proposed activity will fully maintain or protect beneficial uses as listed in Sections 200, 250, 251, 252, and 253. In the absence of relevant criteria in those Sections, the review for compliance will be based on whether or not the proposed activity: (4-5-00)

i. Will comply with approved or specialized best management practices; and (3-3-87)

ii. Provides a monitoring plan which, when implemented, will provide information to the Director adequate to determine the effectiveness of the approved or specialized best management practices in protecting the beneficial uses of water; and (3-3-87)

iii. Provides a process for modifying the approved or site-specific best management practices in order to protect beneficial uses of water. (3-3-87)

d. For projects determined not to comply with those requirements, the plan may be revised and resubmitted for additional review by the Department. Any person aggrieved by a final determination of the Director may, within thirty (30) days, file a written request for a hearing before the Board in accordance with the Idaho Administrative Procedures Act. In all cases, implementation of projects detailed in a plan shall be conducted in a manner which will not result in imminent and substantial danger to the public health or environment. (3-3-87)

03. Approved Best Management Practices. The following are approved best management practices for the purpose of Subsection 350.02: (12-31-91)

a. "Rules Pertaining to the Idaho Forest Practices Act." IDAPA 20.02.01, as adopted by Board of Land Commissioners; (12-31-91)

b. Idaho Department of Environmental Quality Rules, IDAPA 58.01.06, "Solid Waste Management Rules"; (7-1-93)

c. Idaho Department of Environmental Quality Rules, IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules"; (7-1-93)

d. "Stream Channel Alteration Rules," IDAPA 37.03.07, as adopted by the Board of Water Resources; (7-1-93)

e. For the Spokane Valley Rathdrum Prairie Aquifer, "Rathdrum Prairie Sewage Disposal Regulations," as adopted by the Panhandle District Health Department Board of Health and approved by the Idaho Board of Environmental Quality; (7-1-93)

f. "Rules Governing Exploration and Surface Mining in Idaho," IDAPA 20.03.02, as adopted by the Board of Land Commissioners; and (7-1-93)

g. "Dredge and Placer Mining Operations in Idaho," IDAPA 20.03.01, as adopted by the Board of Land Commissioners. (7-1-93)

h. "Rules Governing Dairy Waste," IDAPA 02.04.14, as adopted by the Department of Agriculture. (3-20-97)

~~04. Restriction of Nonpoint Source Activities on Outstanding Resource Waters. (12-31-91)~~

~~a. The water quality of ORWs shall be maintained and protected. After the legislature has designated a stream segment as an outstanding resource water, no person shall conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of that ORW, except for conducting short term or temporary nonpoint source activities which do not alter the essential character or special uses of a segment, allocation of water rights, or operation of water diversions or impoundments. Stream segments not designated as ORWs that discharge directly into an ORW shall not be subject to the same restrictions as an ORW, nor shall the ORW mixing zone be subject to the same restrictions as an ORW. A person may conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of a tributary or stream segment, which discharges directly into an ORW or an ORW mixing zone, provided that the water quality of that ORW below the mixing zone shall not be lowered. (12-31-91)~~

~~b. After the legislature has designated a stream segment as an outstanding resource water as outlined in Subsection 055.05, existing nonpoint source activities may continue and shall be conducted in a manner that maintains and protects the current water quality of an ORW. The provisions of this section shall not affect short term or temporary activities that do not alter the essential character or special uses of a segment, allocation of water rights, or operations of water diversions or impoundments, provided that such activities shall be conducted in conformance with applicable laws and regulations. (3-20-97)~~

351. -- 399. (RESERVED).

... Break in sequence

400. RULES GOVERNING POINT SOURCE DISCHARGES.

01. Implementation Policy. (7-1-93)

a. As provided for in Subsection 080.01, and Sections 200, 210, 250, 251, 252, 253, 275, and 400 for point source discharges, failure to meet general or specific water quality criteria is a violation of the water quality standards (4-5-00)

~~b. Except as noted in Section 400, no new point source can discharge pollutants, and no existing point source can increase its discharge of pollutants above the design capacity of its existing wastewater treatment facility, to any water designated as a special resource water or to a tributary of, or to the upstream segment of a special resource water: if pollutants significant to the designated beneficial uses can or will result in a reduction of the ambient water quality of the receiving special resource water as measured immediately below the applicable mixing zone. (8-24-94)~~

c. No unauthorized discharge from a point source shall occur to waters of the state. (4-11-06)

02. Limitations to Point Source Restrictions. (7-1-93)

a. So long as a point source discharge or wastewater treatment facility is regulated by the terms and conditions of an authorization pursuant to Subsection 080.02, a Board order, decree or compliance schedule, or a valid NPDES permit issued by the EPA, the discharge or facility will not be subject to additional restrictions or conditions based on Subsections 080.01, **or 052.08.c.i** and Sections 200, 210, 250, 251, 252, and 253. (4-11-06)

~~b. The restrictions set forth in Subsection 400.01.b. are modified as follows: New point sources can~~

~~discharge, and existing point sources can increase its discharge above the design capacity of its existing wastewater treatment facility, resulting in increases in water temperatures and fluoride concentrations up to levels needed to protect designated beneficial uses in the Boise River between the bridge at Broadway Avenue and River Mile 50 (through Veteran's State Park).~~ (4-5-00)

03. Compliance Schedules for Water Quality-Based Effluent Limitations. Discharge permits for point sources may incorporate compliance schedules which allow a discharger to phase in, over time, compliance with water quality-based effluent limitations when new limitations are in the permit for the first time. (3-15-02)

04. Wetlands Used for Wastewater Treatment. (8-24-94)

a. Waters contained within wetlands intentionally created from non-wetland sites for the purpose of wastewater or stormwater treatment, and operated in compliance with NPDES permit conditions, shall not be subject to the application of general water quality-based or site-specific criteria and standards. (8-24-94)

b. Waters contained within wetlands intentionally created from non-wetland sites for the purpose of treatment of nonpoint sources of pollution, and operated in compliance with best management practices, shall not be subject to the application of general water quality-based or site specific criteria and standards.(8-24-94)

c. Discharges from treatment systems described in Sections 400.04.a. and 400.04.b. to waters of the state are subject to all applicable rules and requirements governing such discharges. (8-24-94)

05. Flow Tiered NPDES Permit Limitations. Discharge permits for point sources discharging to waters exhibiting unidirectional flow may incorporate tiered limitations for conventional and toxic constituents at the discretion of the department. (8-24-94)

401. POINT SOURCE WASTEWATER TREATMENT REQUIREMENTS.

Unless more stringent limitations are necessary to meet the applicable requirements of Sections 200 through 300, or unless specific exemptions are made pursuant to Subsection 080.02, wastewaters discharged into surface waters of the state must have the following characteristics: (4-11-06)

01. Temperature. The wastewater must not affect the receiving water outside the mixing zone so that: (7-1-93)

a. The temperature of the receiving water or of downstream waters will interfere with designated beneficial uses. (7-1-93)

b. Daily and seasonal temperature cycles characteristic of the water body are not maintained. (7-1-93)

c. If the water is designated for warm water aquatic life, the induced variation is more than plus two (+2) degrees C. (3-15-02)

d. If the water is designated for cold water aquatic life, seasonal cold water aquatic life, or salmonid spawning, the induced variation is more than plus one (+1) degree C. (3-15-02)

e. If temperature criteria for the designated aquatic life use are exceeded in the receiving waters upstream of the discharge due to natural background conditions, then Subsections 401.01.c. and 401.01.d. do not apply and instead wastewater must not raise the receiving water temperatures by more than three tenths (0.3) degrees C. (4-11-06)

02. Turbidity. The wastewater must not increase the turbidity of the receiving water outside the mixing zone by: (7-1-93)

a. More than five (5) NTU (Nephelometric Turbidity Units) over background turbidity, when background turbidity is fifty (50) NTU or less; or (7-1-93)

b. More than ten percent (10%) increase in turbidity when background turbidity is more than fifty (50) NTU, not to exceed a maximum increase of twenty-five (25) NTU. (7-1-93)

03. **Total Chlorine Residual.** The wastewater must not affect the receiving water outside the mixing zone so that its total chlorine residual concentration exceeds eleven one-thousandths (0.011) mg/l.