



Idaho Statutes

TITLE 39 HEALTH AND SAFETY

CHAPTER 1 ENVIRONMENTAL QUALITY -- HEALTH

39-175A. LEGISLATIVE FINDINGS AND PURPOSES. (1) The legislature finds:

- (a) That navigable waters within the state are one of the state's most valuable natural resources;
- (b) That it is in the public interest to promote effective and efficient regulation of the discharge of pollutants into navigable waters, and that the state should control such permitting decisions as authorized under the federal clean water act;
- (c) That the clean water act allows a state to develop and implement, with approval from the United States environmental protection agency, a national pollutant discharge elimination system (NPDES) program to be administered by the state;
- (d) That the clean water act, as amended, and regulations adopted pursuant thereto, establishes complex and detailed provisions for regulation of those who discharge pollutants into navigable waters;
- (e) That a state program to implement permitting decisions as authorized in the clean water act, and regulations adopted pursuant thereto, may enable the state to issue flexible permits consistent with the clean water act and avoid the existence of duplicative, overlapping or conflicting state and federal regulatory and enforcement processes;
- (f) That a state program must be run with a minimum of federal interference in permitting, inspection and enforcement activities and that all state permitting actions under the approved state program are to be state actions and are not subject to consultation under the endangered species act or analysis under the provisions of the national environmental policy act. There should be no conditions of approval of the state program that have the effect of undermining or circumventing these principles;
- (g) That the decision to accept delegation of authority from the environmental protection agency to operate an NPDES program has significant public policy implications that should be made by the legislature.

(2) Therefore, it is the intent of the legislature to establish requirements that must be satisfied prior to legislative approval of a permitting program that complies with the clean water act and incorporates flexible permitting procedures and rules to be promulgated by the board.

History:

[39-175A, added 2005, ch. 57, sec. 1, p. 211; am. 2014, ch. 40, sec. 3, p. 96.]

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39-175B. RELATIONSHIP BETWEEN STATE AND FEDERAL LAW. The legislature cannot conveniently or advantageously set forth in this chapter all the requirements of all of the regulations which have been or will be established under the clean water act. However, any state permitting program must avoid the existence of duplicative, overlapping or conflicting state and federal regulatory systems. Further, the board may promulgate rules to implement a state permitting program but such rules shall not impose conditions or requirements more stringent or broader in scope than the clean water act and regulations adopted pursuant thereto. Further, the department will not require NPDES permits for activities and sources not required to have permits by the United States environmental protection agency.

History:

[39-175B, added 2005, ch. 57, sec. 1, p. 212.]

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39-175C. APPROVAL OF STATE NPDES PROGRAM. (1) The department is authorized to pursue approval of an NPDES program consistent with the requirements of this section. The department shall submit a complete application consistent with the requirements of the clean water act and 40 CFR 123 to the environmental protection agency to obtain approval for a state NPDES program by September 1, 2016.

(2) The board is authorized to proceed with negotiated rulemaking and all other actions that may eventually be necessary to obtain approval of a state NPDES program by the United States environmental protection agency including rules authorizing the collection of reasonable fees for processing and implementing an NPDES permit program. Such fees shall not be assessed or collected until the state obtains an approved NPDES program consistent with the requirements of this section.

(3) Any memorandum of agreement executed by the director to obtain approval to operate a state NPDES program shall not be binding on the state of Idaho unless authorized by enactment of a statute. Any memorandum of agreement not authorized in the above manner shall be of no force and effect.

(4) Implementation of a state NPDES program shall not occur prior to statutory enactment of implementing legislation and authorization of a memorandum of agreement as specified in subsection (3) of this section.

(5) The director, as appropriate, shall establish agreements with other state agencies with expertise to administer the NPDES program.

(6) No provision of this chapter shall be interpreted as to supersede, abrogate, injure or create rights to divert or store water and apply water to beneficial uses established under section 3, article XV, of the constitution of the state of Idaho, and [title 42](#), Idaho Code.

(7) Nothing in this section is intended to supersede any existing agreements between federal, state or local agencies regarding authority over inspections, enforcement or other obligations under the clean water act.

History:

[39-175C, added 2005, ch. 57, sec. 1, p. 212; am. 2014, ch. 40, sec. 4, p. 96.]

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