

THE FOLLOWING IS AN UNOFFICIAL COPY OF THE WATER QUALITY STANDARDS WITH
ADDED LANGUAGE FROM THE 2011 LEGISLATIVE SESSION - HB 153

010. DEFINITIONS.

For the purpose of the rules contained in IDAPA 58.01.02, "Water Quality Standards," the following definitions apply: (4-11-06)

01. Activity. For purposes of antidegradation review, an activity that causes a discharge to a water subject to the jurisdiction of the Clean Water Act. ()

05. Assigned Criteria. Criteria associated with beneficial uses from Section 100 of these rules. ()

16. Cost-Effective and Reasonable Best Management Practices (BMPs) for Nonpoint Sources. All approved BMPs specified in Subsections 350.03 and 055.07 of these rules. BMPs for activities not specified are, in accordance with Section 350, determined on a case-by-case basis. ()

Definition of Degradation or Lower Water Quality in pending rule was stricken by the 2011 Legislature with HCR 16 and replaced in HB 153 as §39-3602(6):

"Degradation" or "lower water quality" means, for purposes of antidegradation review, a change in a pollutant that is adverse to designated or existing uses, as calculated for a new point source, and based upon monitoring or calculated information for an existing point source increasing its discharge. Such degradation shall be calculated or measured after appropriate mixing of the discharge and receiving water body.

26. Discharge. When used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. For purposes of antidegradation review, means "discharge" as used in Section 401 of the Clean Water Act. ()

35. Existing Activity or Discharge. An activity or discharge that has been previously authorized or did not previously require authorization. ()

2011 Legislature in HB 153 added the definition of General Permit as §39-3602(14):

"General Permit" means an NPDES permit issued by the U.S. environmental protection agency authorizing a category of discharges under the federal clean water act or a nationwide or regional permit issued by the U.S. army corps of engineers under the federal clean water act.

45. Highest Statutory and Regulatory Requirements for Point Sources. All applicable effluent limits required by the Clean Water Act and other permit conditions. It also includes any compliance schedules or consent orders requiring measures to achieve applicable effluent limits and other permit conditions required by the Clean Water Act. ()

49. 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. ()

2011 Legislature in HB 153 includes almost identical language describing the Integrated Report as §39-3602(15).

~~**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)~~

63. **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 unless the Director determines to the contrary based on review of available evidence. An activity or discharge that has previously taken place without need for a license or permit is not a new activity or discharge when first licensed or permitted. ()

73. **Permit or License.** 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. ()

105. Waters and Waters Of The State. All the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. (7-1-93)

2011 Legislature in HB 153 revised the statutory definition of Waters or water body as §39-3602(33):

~~"Waters or water body" means all the accumulations of surface water, natural and artificial, public and private, or parts thereof which are wholly or partially within, flow through or border upon this state~~ the navigable waters of the United States as defined in the federal clean water act. For the purposes of this chapter, water bodies shall not include municipal or industrial wastewater treatment or storage structures or private reservoirs, the operation of which has no effect on waters of the state.

(BREAK IN CONTINUITY OF SECTIONS)

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 an outstanding resource water has been designated by the legislature that water quality shall be maintained and protected from the impacts of point and nonpoint source activities. (3-20-97)()

This language reflects changes made by rule (underline) and revision of statute (red text) made by 2011 Legislature with HB 153 at §39-3603(1)(c).

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. **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. Waters Protected. All waters receive Tier I protection. Waters receiving Tier II protection will be identified using a water body by water body approach during the antidegradation review. Waters given Tier III protection are designated in law. _____ ()

02. 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 best management practices. _____ ()

Subsection 052.03 of the pending rule regarding General Permits was stricken by the 2011 Legislature with HCR 16 and replaced by language in HB 153 as §39-3603(2)(a), shown here as 052.xx.

xx. General Permits. For general permits issued on or after July 1, 2011, the Department will conduct antidegradation review, including any required Tier II analysis, at the time at which general permits are certified. For general permits that the Department determines adequately address antidegradation, review of individual applications for coverage will not be required unless it is required by the general permit. For general permits that the Department determines do not adequately address antidegradation, the Department may conclude that other conditions, such as the submittal of additional information or individual certification at the time an application is submitted for coverage under a general permit may be necessary in the general permit to provide reasonable assurance of compliance with the antidegradation policy. If supported by the permit record, the Department may also presume that discharges authorized under a general permit are insignificant or that the pollution controls required in the general permit are the least degrading alternative as specified in the department's rules _____ ()

03. 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. _____ ()

Subsection 052.05 of the pending rule regarding Identification of Tier II Waters was stricken by the 2011 Legislature with HCR 16 and replaced by language in HB 153 as §39-3603(2)(b), shown here as 052.xy.

xy. Identification of Tier II Waters. The Department will utilize a water body by water body 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 regarding the water body. The most recent federally approved Integrated Report and supporting data will be used to determine the appropriate level of protection as follows: _____ ()

a. Water bodies identified in the Integrated Report as fully supporting assessed uses will be provided Tier II protection. _____ ()

b. Water bodies identified in the Integrated Report as not assessed will be provided an appropriate level of protection on a case-by-case basis using information available at the time of a proposal for a new or reissued permit or license. _____ ()

c. Water bodies identified in the Integrated Report as not fully supporting assessed uses will receive Tier I protection, for the impaired aquatic life or recreational use, except as follows: _____ ()

i. For aquatic life uses identified as impaired for dissolved oxygen, pH, or temperature, if biological or aquatic habitat parameters show a healthy, balanced biological community is present, as described in the "Water Body Assessment Guidance" published by the Idaho Department (of Environmental Quality *added for clarity*), then the water body shall receive Tier II protection for aquatic life. _____ ()

ii. For recreational uses, if water quality data show compliance with those levels of water quality criteria listed in the department's rules (Sections 200, 210, 251, and 275 (where applicable) added for clarity), then the water body shall receive Tier II protection for recreational uses. ()

d. Special resource waters listed in the Department's rules shall be evaluated in the same fashion as all other waters.

04. Evaluation of Effect of an Activity or Discharge on Water Quality. The Department will evaluate the effect on water quality for each pollutant. The Department will determine whether an activity or discharge results in an improvement, no change, or degradation of water quality. ()

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 dilution using appropriate mixing of the receiving water under critical conditions coupled with the design flow of the discharge. 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 or license and the water quality that would result from the activity or discharge as proposed in the reissued permit or license. For a new permit or license, 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. ()

i. Current Discharge Quality. For pollutants that are currently limited, current discharge quality shall be based on limits in the current permit or license. For pollutants not currently limited, current discharge quality shall be based on available discharge quality data collected within five years of the application for a permit or license or other relevant information. ()

ii. Proposed Quality for an Existing Discharge. Future discharge quality shall be based on proposed permit limits. For pollutants not limited in the proposed permit or license, future discharge quality will be estimated 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 pollutant or a proposed increased discharge of a pollutant, future discharge quality will be estimated based on information provided by the applicant or other relevant information. ()

iii. New Permit Limits for an Existing Discharge. When new permit limits are proposed for the first time for a pollutant 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 past discharge quality as well, where appropriate. ()

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

b. 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. ()

c. 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. ()

05. Tier I Review. Tier I review will be performed for all new or reissued permits or licenses. Existing uses and the water quality necessary to protect the existing uses must always be maintained and protected. No degradation or lowering of water quality may be allowed that would cause or contribute to violation of water quality criteria as calculated after authorized mixing of the discharge with the receiving water. Identification of

existing uses and the water quality necessary for their protection will be based on all available information, including any water quality related data and information submitted during the public comment period for the permit or license. ()

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 assigned criteria only if it is determined to be necessary to accommodate important economic or social development in the area in which the waters are located. The process and standard for this determination are set forth below. ()

Subsection 052.08.a of the pending rule regarding Identification of Tier II Waters was stricken by the 2011 Legislature with HCR 16 and replaced by language in HB 153 as §39-3603(2)(c), shown here as 052.06.x.

x. Tier II analysis for insignificant Activity or Discharge. The Department shall consider the size and character of an activity or discharge or the magnitude of its effect on the receiving stream and shall determine whether it is insignificant. If an activity or discharge is determined to be insignificant, then no further Tier II analysis, for other source controls, alternatives analysis or socioeconomic justification is required. ()

i. The Department shall determine insignificance when the proposed change in an activity or discharge, from conditions as of July 1, 2011 will not cumulatively decrease assimilative capacity by more than ten percent (10%). ()

ii. The Department may request additional information from the applicant in making a determination whether a proposed change in an activity or discharge is insignificant. ()

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 all nonpoint source controls. 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. 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 high 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, as appropriate, are: ()

(1) Relocation or configuration 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) Evaluate economic impacts (total cost effectiveness, incremental cost effectiveness) of all technologically feasible alternatives;

(2) Rank all technologically feasible treatment alternatives by their cost effectiveness at pollutant reduction; ()

(3) Consider the environmental costs and benefits across media and between pollutants; and ()

(4) Select the least degrading option or show that a more degrading alternative is justified based on Subsections 052.08.c.iv.(1), 052.08.c.iv.(2), or 052.08.c.iv.(3) above. ()

c. Socioeconomic 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 which can include cleanup/restoration of a closed facility: ()

iii. Identify the relevant social, economic and environmental health benefits and costs associated with the proposed degradation in water quality for the preferred alternative. 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 activities or discharges. ()

iv. Factors identified in the socioeconomic justification should be quantified whenever possible but for those factors that cannot be quantified a qualitative description of the impacts may be accepted: an ()

v. If the Department determines that more information is required, then the Department may require the applicant to provide further information or seek additional sources of information. ()

d. 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 Subsection 052.08.b. The applicant for a new or reissued permit or license is responsible for providing information pertinent to determining significance/insignificance of proposed changes in water quality and completing an alternatives analysis and socioeconomic 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 Subsection 052.08.b. 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. Public notice and review of antidegradation will be coordinated with existing 401 certification notices for public review. ()

07. Tier III - Outstanding Resource Waters (ORWs). ORWs are designated by the legislature. Subsection 052.09 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. ()

The language highlighted in grey below was not substantively changed from that previously in rule as section 055. There are formatting changes, such as in numbering, subsection cross-references and use of acronyms.

a. Nominations. 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 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 socioeconomic 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 Subsections 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 socioeconomic 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 rules without the need for formal rulemaking procedures, pursuant to Sections 67-5201, 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 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. The water quality of ORWs shall be maintained and protected. Point source discharges that may cause degradation to ORWs may be allowed only if they are offset by reductions in other discharges per Subsection 052.04.c. ()

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 05~~34~~.03 only applies to use of this data for determination of beneficial use support status. Subsection 05~~34~~.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 05~~45~~. (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 05~~34~~, 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 0545.01, 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 0545.02 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)~~

(BREAK IN CONTINUITY OF SECTION

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 a 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, 210, 250, 251, 252, and 253, 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 39-108, 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 and Standards"; (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, Surface Mining, and Closure of Cyanidation Facilities," 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)~~