

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 392

BY ENVIRONMENT, ENERGY, AND TECHNOLOGY COMMITTEE

AN ACT

1 RELATING TO WATER QUALITY; AMENDING SECTION 39-3603, IDAHO CODE, TO REVISE  
2 PROVISIONS RELATING TO TIER II ANALYSIS FOR INSIGNIFICANT DEGRADA-  
3 TION, TO REVISE AND TO PROVIDE GUIDELINES FOR DETERMINATION OF WHETHER  
4 DEGRADATION IS SIGNIFICANT OR INSIGNIFICANT, TO REVISE PROVISIONS  
5 RELATING TO REQUESTS BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR  
6 ADDITIONAL INFORMATION AND TO PROVIDE THAT IF DEGRADATION IS DETERMINED  
7 TO BE INSIGNIFICANT, THEN NO FURTHER TIER II ANALYSIS FOR OTHER SOURCE  
8 CONTROLS, ALTERNATIVES ANALYSIS OR SOCIOECONOMIC JUSTIFICATION IS RE-  
9 QUIRED; AND DECLARING AN EMERGENCY.  
10

11 Be It Enacted by the Legislature of the State of Idaho:

12 SECTION 1. That Section 39-3603, Idaho Code, be, and the same is hereby  
13 amended to read as follows:

14 39-3603. ANTIDegradation POLICY AND IMPLEMENTATION. (1) Policy.

15 (a) Maintenance of existing uses for all waters -- Tier I protection.  
16 The existing instream beneficial uses of each water body and the level  
17 of water quality necessary to protect those uses shall be maintained and  
18 protected.

19 (b) High quality waters -- Tier II protection. Where the quality of wa-  
20 ters exceeds levels necessary to support propagation of fish, shellfish  
21 and wildlife and recreation in and on the water, that quality shall be  
22 maintained unless the department finds, after full satisfaction of the  
23 intergovernmental coordination and public participation provisions  
24 of this chapter, and the department's planning processes, along with  
25 appropriate planning processes of other agencies, that lowering water  
26 quality is necessary to accommodate important economic or social de-  
27 velopment in the area in which the waters are located. In allowing such  
28 reductions in water quality, the department shall assure water quality  
29 adequate to protect existing uses fully.

30 (c) Outstanding resource waters -- Tier III protection. Where an out-  
31 standing resource water has been designated by the legislature that wa-  
32 ter quality shall be maintained and protected from the impacts of point  
33 and nonpoint source activities.

34 (2) Implementation.

35 (a) General permits. For general permits issued on or after July 1,  
36 2011, the department will conduct an antidegradation review, includ-  
37 ing any required Tier II analysis, at the time at which general permits  
38 are certified. For general permits that the department determines ad-  
39 equately address antidegradation, review of individual applications  
40 for coverage will not be required unless it is required by the general  
41 permit. For general permits that the department determines do not ad-  
42 equately address antidegradation, the department may conclude that

1 other conditions, such as the submittal of additional information or  
2 individual certification at the time an application is submitted for  
3 coverage under a general permit, may be necessary in the general permit  
4 to provide reasonable assurance of compliance with the antidegradation  
5 policy. If supported by the permit record, the department may also  
6 presume that discharges authorized under a general permit are insignif-  
7 icant or that the pollution controls required in the general permit are  
8 the least degrading alternative as specified in the department's rules.

9 (b) Identification of Tier II waters. The department will utilize a wa-  
10 ter body by water body approach in determining where Tier II protection  
11 is appropriate in addition to Tier I protection. This approach shall be  
12 based on an assessment of the chemical, physical, biological and other  
13 information regarding the water body. The most recent federally ap-  
14 proved integrated report and supporting data will be used to determine  
15 the appropriate level of protection as follows:

16 (i) Water bodies identified in the integrated report as fully  
17 supporting assessed uses will be provided Tier II protection.

18 (ii) Water bodies identified in the integrated report as not as-  
19 sessed will be provided an appropriate level of protection on a  
20 case-by-case basis using information available at the time of a  
21 proposal for a new or reissued permit or license.

22 (iii) Water bodies identified in the integrated report as not  
23 fully supporting assessed uses will receive Tier I protection for  
24 the impaired aquatic life or recreational use, except as follows:

25 1. For aquatic life uses identified as impaired for dis-  
26 solved oxygen, pH or temperature, if biological or aquatic  
27 habitat parameters show a healthy, balanced biological com-  
28 munity is present, as described in the water body assessment  
29 guidance published by the department, then the water body  
30 shall receive Tier II protection for aquatic life.

31 2. For recreational uses, if water quality data show com-  
32 pliance with those levels of water quality criteria listed  
33 in the department's rules, then the water body shall receive  
34 Tier II protection for recreational uses.

35 (iv) Special resource waters listed in the department's rules  
36 shall be evaluated in the same fashion as all other waters.

37 (c) ~~Tier II analysis for insignificant activity or discharge. The~~  
38 ~~department shall consider the size and character of an activity or~~  
39 ~~discharge or the magnitude of its effect on the receiving stream and~~  
40 ~~degradation. If the department determines an activity or discharge~~  
41 ~~will cause degradation, then the department shall determine whether it~~  
42 ~~the degradation is insignificant. If an activity or discharge is deter-~~  
43 ~~mined to be insignificant, then no further Tier II analysis for other~~  
44 ~~source controls, alternatives analysis or socioeconomic justification~~  
45 ~~is required.~~

46 (i) ~~The department shall determine insignificance when the pro-~~  
47 ~~posed change in an activity or discharge, from conditions as of~~  
48 ~~July 1, 2011, will not cumulatively decrease assimilative capac-~~  
49 ~~ity by more than ten percent (10%). A cumulative decrease in assim-~~  
50 ~~ilative capacity of more than ten percent (10%), from conditions~~

1           as of July 1, 2011, shall constitute significant degradation. If  
2           the cumulative decrease in assimilative capacity from conditions  
3           as of July 1, 2011, is equal to or less than ten percent (10%),  
4           then, taking into consideration the size and character of the ac-  
5           tivity or discharge and the magnitude of its effect on the receiv-  
6           ing stream, the department may determine that the degradation is  
7           insignificant.

8           (ii) The department may request additional information from the  
9           applicant ~~in making a determination whether a proposed change in~~  
10           ~~an activity or discharge is insignificant~~ as needed to determine  
11           the significance of the degradation.

12           (iii) If degradation is determined to be insignificant, then no  
13           further Tier II analysis for other source controls, alternatives  
14           analysis or socioeconomic justification is required.

15           SECTION 2. An emergency existing therefor, which emergency is hereby  
16           declared to exist, this act shall be in full force and effect on and after its  
17           passage and approval.