

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Monday, January 26, 2015

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Bair, Vice Chairman Vick, Senators Cameron, Heider, Nuxoll, Stennett, and Buckner-Webb

**ABSENT/ EXCUSED:** Senators Siddoway and Brackett

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Bair** called the meeting to order at 1:30 p.m.

**Chairman Bair** said the first order of business would be to consider the gubernatorial appointments of Blake Fischer and Lane Clezie. They were appointed to the Idaho Fish and Game Commission to serve a term commencing July 29, 2014 and expiring June 30, 2018.

**GUB APPT:** **Senator Cameron** moved to send the gubernatorial appointment of Blake Fischer to the Idaho Fish and Game Commission to the floor with recommendation that he be confirmed by the Senate. **Senator Heider** seconded the motion. The motion carried by **voice vote**. The sponsor will be Vice Chairman Vick.

**GUB APPT:** **Senator Heider** moved to send the gubernatorial appointment of Lane Clezie to the Idaho Fish and Game Commission to the floor with recommendation that he be confirmed by the Senate. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. **Senator Nuxoll** voted no and asked to be recorded as such. The sponsor will be Senator Lacey.

**PASSED THE GAVEL:** Chairman Bair passed the gavel to Vice Chairman Vick who continued the rules hearing.

**REMARKS:** **Vice Chairman Vick** welcomed Director Curt Fransen of the Department of Environmental Quality (DEQ). **Director Fransen** introduced some of his staff which consisted of Barry Burnell, Orville Green, Doug Conde and Paula Wilson.

**Director Fransen** said he would like to put this year's rules in context with the rulemaking in the past, and what is likely in the future. Twenty-one of the 39 rulemakings in the past 5 years were negotiated. Negotiated rulemaking is now required, but DEQ made it a practice before it became a requirement.

There are three general situations where they do not use negotiated rulemaking: 1) rule changes that are used to conform legislative direction or statutory language; 2) simple housekeeping rule changes that may clarify or correct errors in the rules; and 3) incorporating federal regulation by reference in Idaho rules, and where DEQ must be as stringent as federal regulations to maintain primacy, and Idaho law prohibits DEQ from being any more stringent than federal regulations.

With regard to next year, **Director Fransen** said they expect a heavy rulemaking year for DEQ. There will be several significant rules and the following is a partial list:

1. Idaho Pollutant Discharge Elimination System (IPDES)
2. Human Health Water Quality Criteria for Toxic Pollutants (Fish Consumption)
3. Water Quality Use Attainability
4. Drinking Water Loan Duration
5. Drinking Water Coliform Standard
6. Air Quality Program Update
7. Hazardous Waste Program Update

**DOCKET NO.  
58-0102-1301**

**Water Quality Standards. Mr. Barry Burnell**, Water Quality Division Administrator, presented an overview of this rule. Rulemaking was initiated in response to the EPA's disapproval of the water quality standards provision that exempts from Tier II antidegradation review those activities or discharges determined to be insignificant. **Mr. Burnell** said that this rule describes the revisions to the Water Quality Standards as a result of passage of H 392 in 2014, and additional revisions related to water quality limited waters and total maximum daily load. This rulemaking incorporates language from last year's H 392.

This rule is here today because of legal action that was started in February, 2012, by the Greater Yellowstone Coalition (GYC). They appealed the EPA's approval of DEQ's antidegradation rule on two counts: one was on the definition of degradation and the other was the mandatory exemption from review for de minimus levels of discharge.

This section needs to be updated to ensure it is consistent with changes in the Idaho Code and other sections of the Water Quality Standards that have been adopted since the adoption of Section 055.

**DOCKET NO.  
58-0102-1401**

**Water Quality Standards. Mr. Burnell** stated that this rule updates the Mixing Zone Policy in the Water Quality Standards. The rulemaking was initiated in response to the EPA's disapproval of the water quality standards provision that exempts from Tier II antidegradation review those activities or discharges determined to be insignificant (de minimus exemption).

This docket updates and takes into account the modern tools for evaluating mixing and provides greater clarity for DEQ and the regulated community. A mixing zone is defined as "an area or volume of the receiving waste surrounding or adjacent to a point source discharge where the receiving water, as a result of the discharge, may not meet all applicable water quality criteria or standards".

**Mr. Burnell** presented slides that showed: 1) a dye study in a stream that mixes and disperses to show what takes place in a mixing zone; 2) an example of a mixing zone for aquatic life in rivers and streams; and 3) the mass balance calculation and the computer tools that are used help to determine the mixing zones.

**Mr. Burnell** said that DEQ's current Mixing Zone Policy was adopted over 20 years ago and contains language that is outdated and/or is no longer relevant. This rule will provide greater clarity and correct inconsistencies.

**TESTIMONY:** **Mr. Jack Lyman**, Executive Director, Idaho Mining Association, testified in support of this rule. A copy of his testimony has been inserted into the minutes.

Vice Chairmen Vick , Chairman Bair and Committee Members: A significant issue of the early 1990's for the resource community was the state's antidegradation policy, specifically the designation of outstanding resource waters. In 1991, four bills were introduced to designate the Middle Fork of the Salmon River and some of its tributaries as outstanding resource waters. None of the bills was granted a hearing.

In 1992, the Idaho Mining Association proposed S 1394 to designate the Middle Fork of the Salmon River as an outstanding resource water. That bill was approved by this Committee on a voice vote. S 1394 was approved by the Senate. The bill was amended in the body across the rotunda and passed. The bill was returned to the Senate on the last day of that session and failed by one vote to attain the two-thirds necessary to place it at the bottom of the third reading calendar. No other outstanding resource water designation bill has ever been approved by either body since.

I provide this history to give you some background on the particular sensitivity some of us had about outstanding resource waters at that time. This was one of the most contentious issues between the environmental community and the agricultural, timber and mining industries.

In 1995, just three years later, a new chapter was added to Title 39. S 1284 added chapter 36 to deal with the state's antidegradation policy. That bill also included a provision that any changes to rules governing outstanding resource waters would require statutory adoption before becoming effective. Despite the legislature's ability to reject agency rules, those of us engaged on this issue at that time felt we needed the additional protection that a statutory approval process would provide. That provision - 39-3623 - originally approved rules that had been previously approved in 1990. The section was amended in 2010 to include new rules the department had proposed when the state once again revamped its antidegradation policy. That section will now need to be amended once again to adopt this rule docket.

When we engaged in the negotiated rulemaking for Docket No. 58-0102-1401, we were concerned about the potential costs of these new provisions. Our efforts to get the department to change the rule were unsuccessful and the final proposed rule did not address them. I approached many of you to express those concerns. We also contacted the department once more to see if our concerns could be resolved. Eventually we were able to resolve them by negotiating a grandfather clause for the rule.

As you may recall, you amended the Administrative Procedures Act last year to remove the provision that allowed you to "amend or modify" a rule by concurrent resolution. That means the only way you can amend or modify a rule is to enact a statute to do so. Fortunately, this rule requires statutory enactment in any event so the grandfather clause will be included in the bill that needs to pass to approve this rule.

I want to express my appreciation to Director Fransen for his willingness to work with us to understand and address our concerns. We urge the Committee to approve this rule. We will work with the department to assure you later pass the bill necessary to approve this rule by statute.

That concluded Mr. Lyman's testimony.

**DOCKET NO.  
58-0110-1401**

**Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, as Amended.** Mr. Orville Green, Waste Management & Remediation Division Administrator, DEQ, presented this rule. He said S 1260, enacted in 2014, revised the definition of restricted hazardous waste in Idaho Code § 49-4403(17) of the Hazardous Waste Management Act (HWMA). Mr. Green stated that this action was necessary to clarify and harmonize the regulatory ruling with the statutory language of S 1260.

The proposed clarification is designed to harmonize the Idaho Code with existing federal statutes and regulation while providing a more concise definition of "restricted hazardous waste." The clarification would also allow several federal agencies to utilize the Grand View facility and would add approximately \$100,000 per fiscal year to the General Fund.

There were no questions from the Committee to Mr. Green, and no one had signed up to testify regarding this rule.

**PASSED THE  
GAVEL:**

Vice Chairman Vick passed the gavel to Chairman Bair.

**ADJOURNED:**

With no further business before the Committee, **Chairman Bair** adjourned the meeting at 2:40 p.m.

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Senator Bair  
Chair

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Juanita Budell  
Secretary