

IN THE SENATE

SENATE BILL NO. 1218

BY AGRICULTURAL AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ENVIRONMENTAL QUALITY; AMENDING SECTION 25-4011, IDAHO CODE, TO
2 REVISE FACTORS TO BE CONSIDERED WHEN THE DIRECTOR OF THE IDAHO STATE DE-
3 PARTMENT OF AGRICULTURE IS DECIDING WHETHER TO DESIGNATE A POULTRY ANI-
4 MAL FEEDING OPERATION; AMENDING SECTION 25-4012, IDAHO CODE, TO PROVIDE
5 THAT SPECIFIED LAW SHALL NOT AFFECT THE AUTHORITY OF THE DEPARTMENT OF
6 ENVIRONMENTAL QUALITY TO ADMINISTER AND ENFORCE AN IDAHO NPDES PROGRAM
7 FOR POULTRY OPERATIONS AND DOES NOT ALTER THE REQUIREMENTS, LIABILITIES
8 AND AUTHORITIES WITH RESPECT TO OR ESTABLISHED BY AN IDAHO NPDES PRO-
9 GRAM, TO PROVIDE THAT THE DIRECTORS OF THE DEPARTMENT OF ENVIRONMENTAL
10 QUALITY AND THE IDAHO STATE DEPARTMENT OF AGRICULTURE ARE AUTHORIZED TO
11 ESTABLISH CERTAIN AGREEMENTS, TO AUTHORIZE THE DIRECTOR OF THE IDAHO
12 STATE DEPARTMENT OF AGRICULTURE TO EXERCISE CERTAIN OTHER AUTHORITIES
13 DELEGATED BY THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY
14 AND TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL
15 QUALITY SHALL CONSULT WITH THE DIRECTOR OF THE IDAHO STATE DEPARTMENT
16 OF AGRICULTURE BEFORE CERTIFYING DISCHARGES FROM POULTRY OPERATIONS;
17 AMENDING CHAPTER 40, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW
18 SECTION 25-4015, IDAHO CODE, TO DECLARE POLICY AND STATE LEGISLATIVE
19 INTENT; AMENDING SECTION 39-175B, IDAHO CODE, TO PROVIDE THAT THE DE-
20 PARTMENT OF ENVIRONMENTAL QUALITY SHALL NOT REQUIRE CERTAIN PERMITS FOR
21 ACTIVITIES AND SOURCES NOT REQUIRED TO HAVE PERMITS BY THE UNITED STATES
22 ENVIRONMENTAL PROTECTION AGENCY; AMENDING SECTION 39-175C, IDAHO CODE,
23 TO PROVIDE FOR THE IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM PRO-
24 GRAM, TO LIMIT AUTHORITY REGARDING THE ISSUANCE OF PERMITS, TO CLARIFY
25 AN EXCLUSION, TO REVISE RULEMAKING PROVISIONS, AND TO REVISE PROVISIONS
26 REGARDING MEMORANDUMS OF AGREEMENT TO MAINTAIN APPROVAL TO OPERATE AN
27 IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM; AMENDING CHAPTER
28 1, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-175F, IDAHO
29 CODE, TO PROVIDE FOR THE IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM
30 PROGRAM FUND; AND DECLARING AN EMERGENCY.
31

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

33 SECTION 1. That Section 25-4011, Idaho Code, be, and the same is hereby
34 amended to read as follows:

35 25-4011. DESIGNATION. (1) The director may, on a case by case basis,
36 designate a poultry AFO as a medium poultry CAFO if it is determined that
37 the AFO is a significant contributor of pollutants to waters of the state.
38 The designated medium poultry CAFO will be required to follow all permit re-
39 quirements for a medium poultry CAFO.

40 (2) The designation shall be provided to the operator of the poultry AFO
41 in writing, setting forth the basis for the director's decision.

1 (3) The director shall consider the following factors when deciding
2 whether to designate a poultry AFO:

3 (a) Size of the poultry AFO and the amount of manure, process wastewater
4 and runoff reaching waters of the state;

5 (b) Location of the poultry AFO relative to waters of the state;

6 (c) Means of conveyance of manure, process wastewater and runoff into
7 waters of the state;

8 (d) Slope, vegetation, precipitation and other factors affecting the
9 likelihood or frequency of discharge of manure, process wastewater or
10 runoff into waters of the state; and

11 ~~(e) Unauthorized discharges into waters of the state through a man-made
12 ditch, flushing system or other similar man-made device;~~

13 ~~(f) Unauthorized discharges directly into waters of the state that
14 originate outside of and pass over, across or through the facility or
15 otherwise come into direct contact with the animals confined in the AFO;
16 and~~

17 ~~(g) Repeated instances of noncompliance.~~

18 (4) Upon request by the operator, the director shall redesignate a fa-
19 cility previously designated under subsection (1) of this section if the fa-
20 cility is no longer a significant contributor of pollution to waters of the
21 state. Such redesignation shall be provided to the operator in writing and
22 any fees or assessments paid by the operation due to the designation will not
23 be refundable to the operation.

24 SECTION 2. That Section 25-4012, Idaho Code, be, and the same is hereby
25 amended to read as follows:

26 25-4012. AUTHORITY TO PROMULGATE RULES. (1) The legislature finds
27 that poultry AFOs require adequate control through state regulatory mecha-
28 nisms in order to prevent such operations from posing a threat to the state's
29 water resources. The Idaho state department of agriculture is in the best
30 position to administer and implement rules to provide an adequate regulatory
31 framework for poultry feeding operations.

32 (2) The director is authorized to modify the department's administra-
33 tive rules and to make new rules for permitting and regulating poultry AFOs.
34 Such regulations may include, but are not limited to, the information re-
35 quired on a permit application and the conditions for the issuance and main-
36 tenance of a permit, as the director deems necessary.

37 (3) Nothing in this chapter prohibits the board of county commissioners
38 of any county from adopting regulations that are more stringent than those
39 adopted by the state.

40 (4) Nothing in this chapter shall affect the authority of the depart-
41 ment of environmental quality to administer and enforce an Idaho national
42 pollutant discharge elimination system (NPDES) program for poultry opera-
43 tions, including without limitation the authority to issue permits, access
44 records, conduct inspections and take enforcement action, as set forth in
45 chapter 1, title 39, Idaho Code, and the rules adopted pursuant thereto. The
46 provisions of this chapter do not alter the requirements, liabilities and
47 authorities with respect to or established by an Idaho NPDES program.

48 (5) The director of the department of environmental quality and the di-
49 rector of the Idaho state department of agriculture shall, as appropriate,

1 establish an agreement relating to the administration of an Idaho NPDES pro-
2 gram that recognizes the expertise of the Idaho state department of agricul-
3 ture. The director shall have the authority to exercise any other author-
4 ities delegated by the director of the department of environmental quality
5 regarding the protection of ground water, surface water and other natural
6 resources associated with poultry operations, and this shall be the author-
7 ity for the director of the department of environmental quality to so dele-
8 gate.

9 (6) The director of the department of environmental quality shall con-
10 sult with the director of the Idaho state department of agriculture before
11 certifying discharges from poultry operations as provided under 33 U.S.C.
12 1341.

13 SECTION 3. That Chapter 40, Title 25, Idaho Code, be, and the same is
14 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
15 ignated as Section 25-4015, Idaho Code, and to read as follows:

16 25-4015. DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE IN-
17 TENT. (1) The legislature recognizes the importance of protecting state
18 natural resources including surface water and ground water. It is the intent
19 of the legislature to protect the quality of these natural resources while
20 maintaining an ecologically sound, economically viable and socially respon-
21 sible poultry industry in the state. The poultry industry produces manure
22 and process wastewater that, when properly used, supplies valuable nutri-
23 ents and organic matter to soils and is protective of the environment, but
24 may, when improperly stored and managed, create adverse impacts on natural
25 resources, including waters of the state. This chapter is intended to ensure
26 that manure and process wastewater associated with poultry operations are
27 handled in a manner that protects the natural resources of the state.

28 (2) Successful implementation of this chapter is dependent upon the
29 department receiving adequate funding from the legislature. Moreover, the
30 legislature recognizes that it is important for the state to obtain a dele-
31 gated national pollutant discharge elimination system (NPDES) program from
32 the United States environmental protection agency under the clean water act.
33 The department's authority to enforce this chapter should be consistent and
34 coordinated with the department of environmental quality's authorities pur-
35 suant to title 39, Idaho Code, to protect state ground and surface waters and
36 to obtain approval from the United States environmental protection agency to
37 implement and administer an Idaho NPDES program governing the discharge of
38 pollutants to the waters of the United States as defined in the federal clean
39 water act.

40 SECTION 4. That Section 39-175B, Idaho Code, be, and the same is hereby
41 amended to read as follows:

42 39-175B. RELATIONSHIP BETWEEN STATE AND FEDERAL LAW. The legislature
43 cannot conveniently or advantageously set forth in this chapter all the re-
44 quirements of all of the regulations which have been or will be established
45 under the clean water act. However, any state permitting program must avoid
46 the existence of duplicative, overlapping or conflicting state and federal
47 regulatory systems. Further, the board may promulgate rules to implement

1 a state permitting program but such rules shall not impose conditions or
 2 requirements more stringent or broader in scope than the clean water act
 3 and regulations adopted pursuant thereto. Further, the department will not
 4 require ~~NPDES~~ Idaho pollutant discharge elimination system (IPDES) permits
 5 for activities and sources not required to have permits by the United States
 6 environmental protection agency.

7 SECTION 5. That Section 39-175C, Idaho Code, be, and the same is hereby
 8 amended to read as follows:

9 39-175C. APPROVAL OF ~~STATE NPDES~~ IDAHO POLLUTANT DISCHARGE ELIMINA-
 10 TION SYSTEM PROGRAM. (1) The department is authorized to ~~pursue approval of~~
 11 ~~an NPDES~~ implement an Idaho pollutant discharge elimination system (IPDES)
 12 program consistent with the requirements of this section. ~~The department~~
 13 ~~shall submit a complete application consistent with the requirements of the~~
 14 ~~clean water act and 40 CFR 123 to the environmental protection agency to~~
 15 ~~obtain approval for a state NPDES program by September 1, 2016~~ The program
 16 shall not include the authority to issue permits for any discharge of sewage
 17 from vessels, effluent from properly functioning marine engines, laundry,
 18 shower, and galley sink wastes, or any other discharge incidental to the
 19 normal operation of a vessel. This exclusion does not apply to rubbish,
 20 trash, garbage, or other such materials discharged overboard; nor to other
 21 discharges when the vessel is operating in a capacity other than as a means of
 22 transportation, such as when used as an energy or mining facility, a storage
 23 facility or a seafood processing facility, or when secured to a storage fa-
 24 ility or a seafood processing facility or when secured to the bed of a lake
 25 or river, contiguous zone or waters of the United States for the purpose of
 26 mineral or oil exploration or development.

27 (2) The board is authorized to proceed with negotiated rulemaking and
 28 all other actions ~~that may eventually be necessary to obtain~~ maintain ap-
 29 ~~proval of a state NPDES~~ the IPDES program by the United States environmental
 30 protection agency including rules authorizing the collection of reason-
 31 able fees for processing and implementing an ~~NPDES~~ IPDES permit program.
 32 Such fees shall not be assessed or collected ~~until~~ unless the state ~~obtains~~
 33 maintains an approved ~~NPDES~~ IPDES program consistent with the requirements
 34 of this section.

35 (3) Any memorandum of agreement ~~executed~~ negotiated by the director to
 36 ~~obtain~~ maintain approval to operate a ~~state NPDES~~ an IPDES program shall ~~not~~
 37 be binding on the state of Idaho ~~unless authorized by~~ upon enactment of a
 38 this statute. ~~Any memorandum of agreement not authorized in the above man-~~
 39 ~~ner shall be of no force and effect.~~

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

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

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

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

5 SECTION 6. That Chapter 1, Title 39, Idaho Code, be, and the same is
6 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
7 ignated as Section 39-175F, Idaho Code, and to read as follows:

8 39-175F. IPDES PROGRAM FUND ESTABLISHED. (1) There is hereby created
9 in the state treasury a fund to be known as the "IPDES Program Fund," which
10 shall consist of all moneys received from fees collected from facilities ob-
11 taining an Idaho pollutant discharge elimination system (IPDES) permit or
12 coverage under a general permit pursuant to section 39-175C(2), Idaho Code,
13 and the rules promulgated pursuant thereto. Such fees shall be collected by
14 the department and shall be paid into the IPDES program fund, which is hereby
15 established, reserved, set aside, appropriated and made available until ex-
16 pended, used and administered consistent with this section.

17 (2) All moneys deposited in the IPDES program fund and all interest
18 earned thereon shall be kept in the IPDES program fund and shall be expended
19 pursuant to appropriation for the costs and expenses incurred by the de-
20 partment in performing the duties and the exercise of its powers in carrying
21 out the IPDES program including, but not limited to, compliance, training,
22 technical, legal and administrative support and proceedings necessary for
23 implementing the program required under the IPDES program as provided in
24 this chapter.

25 (3) Pending such expenditure and use, surplus moneys in the IPDES pro-
26 gram fund established in this section shall be invested by the state trea-
27 surer in the manner provided for idle state moneys in the state treasury by
28 section 67-1210, Idaho Code. Interest earned on all such investments shall
29 be paid into the IPDES program fund.

30 SECTION 7. An emergency existing therefor, which emergency is hereby
31 declared to exist, this act shall be in full force and effect on and after its
32 passage and approval.