

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, January 15, 2018

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Bair, Vice Chairman Siddoway, Senators Brackett, Heider, Vick, Bayer, Johnson, Stennett and Jordan

ABSENT/ EXCUSED: None

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 Senate Resources and Environment Committee (Committee) meeting to order at 1:30 p.m.

WELCOME: **Chairman Bair** welcomed the audience; the Committee members; Juanita, the Committee secretary; and Jack Sherlock, the Committee page. **Chairman Bair** asked Jack to address the Committee and to provide information regarding his schooling and future plans.

Jack stated that he is from Gooding, Idaho and attends Gooding High School. His favorite subjects are science and health, which were instilled in him by a teacher during his freshman year. Upon graduating from high school, Jack plans to attend Vanderbilt University. Following his undergraduate education, Jack aspires to attend Johns Hopkins Medical School to become a cardiothoracic surgeon.

PASSED THE GAVEL: Chairman Bair passed the gavel to Vice Chairman Siddoway who will preside over the rules.

DEPARTMENT OF ENVIRONMENTAL QUALITY RULES: **Vice Chairman Siddoway** said the rules discussed today pertain to the Department of Environmental Quality (DEQ). Barry Burnell, Water Quality Division Administrator, will present.

DOCKET NO. 58-0102-1502 **Rules Governing Water Quality Standards. Mr. Burnell** said this rule was initiated to update DEQ's existing hardness dependent copper criteria by using the Environmental Protection Agency's (EPA) 2007 Clean Water Act Section 304(a) copper criteria. This update is identified in the National Oceanic and Atmospheric Administration's (NOAA) May 7, 2014 biological opinion (BiOp) on Idaho's criteria for toxic substances to support aquatic life.

This BiOp concluded that the current copper criteria were not always protective of aquatic life and would result in adverse modification of critical habitat. By adopting a copper criterion based on the Biotic Ligand Model (BLM), DEQ will employ the most current science to ensure that the criteria are more precise and are neither unnecessarily burdening dischargers, nor increasing risk to aquatic life. If DEQ had not undertaken this rulemaking activity, then EPA would have had to undertake a rulemaking for Idaho.

Mr. Burnell stated that there is no controversy surrounding this rule. However, monitoring costs for facilities with copper limits - and those facilities without a limit, but with monitoring requirements - will see higher monitoring costs associated with collecting and analyzing the samples. Costs are estimated to be \$157 per sample.

MOTION: **Senator Vick** moved to approve **Docket 58-0102-1502**. **Chairman Bair** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 58-0102-1701 **Rules Governing Water Quality Standards.** **Mr. Burnell** stated that this rule is to update the selenium criteria relating to aquatic life. The BiOp concluded that the current selenium criterion was likely to adversely affect endangered species and would result in adverse modification of critical habitat. The NOAA recommendation is to use the EPA's 2016 Clean Water Act Section 304(a) selenium criterion based on fish tissue concentrations.

Aquatic organisms exposed to selenium accumulate it primarily through their diets and not directly through water. Selenium toxicity effects fish primarily through transfer to the eggs which reduces reproductive success and survival. Current criteria are generally underprotective of aquatic life. The proposed criterion is derived from the allowable concentration of selenium in fish tissue found to be protective of aquatic life. The fish tissue concentration can be used to determine the allowable concentration of selenium in ambient water. By adopting the fish tissue-derived criterion, DEQ will ensure that its criterion neither unnecessarily burdens dischargers, nor increases risk to aquatic life.

Mr. Burnell provided a handout showing the site-specific criterion (attachment 1). Site-specific selenium criteria included the following locations: Upper Blackfoot River; Georgetown Creek Watersheds; Hoopes Spring; Sage Creek; Crow Creek; and all waters of the state, except the main stems of the Kootenai, Salmon, and Snake Rivers within the historic range of white sturgeon. It also included sub-basins flowing directly into the aforementioned rivers and those designated as critical salmonid or bull trout habitat.

MOTION: **Chairman Bair** moved to adopt **Docket 58-0102-1701** and to correct the typographical error of 151¹ to 15¹ on page 66 of the 2018 Pending Rules Review Book. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 58-0102-1702 **Rules Governing Water Quality Standards.** **Mr. Burnell** said this rule was initiated for administrative purposes including: housekeeping, streamlining, and reorganizing the Criteria for Toxic Substances table in Subsection 210.01. This table contains the criteria for protection of aquatic life and human health.

Water quality standards adopted and submitted to the EPA since May 30, 2000 are not effective for federal Clean Water Act (CWA) purposes until the EPA approves them. This is known as the Alaska Rule. DEQ proposes a new rule section, which establishes a rulemaking process. This would return the existing rule that continues to be effective for CWA purposes, until the EPA approves the rule revisions. This rulemaking process will allow the regulated community to stay informed regarding the status of rules enacted for CWA purposes.

The tables in Subsection 210.01 contain criteria for protection of aquatic life and human health. This rulemaking simplifies and streamlines the existing table by moving the information into two separate tables. One table will contain the criteria for protection of aquatic life and another will contain the criteria for protection of human health. Two separate tables will make it more manageable and easier to follow. The proposed revisions are for organizational purposes only and are not substantive. None of the criteria have changed, only the table format. All criteria values remain the same.

MOTION: **Senator Jordan** moved to approve **Docket 58-0102-1702**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
58-0125-1701**

Rules Regulating the Idaho Pollutant Discharge Elimination System Program. **Mr. Burnell** said the purpose of this rule is to ensure that the Rules Regulating the Idaho Pollutant Discharge Elimination System Program (IPDES), IDAPA 58.01.25, remain consistent with federal regulations.

The federal regulations incorporated by reference will be updated to the July 1, 2017 Code of Federal Regulations (CFR) effective date. Included in the rule books is the "Overview of Incorporation By Reference for the DEQ IPDES Program" document. This document outlines which "incorporated by reference" rules could affect Idaho facilities and describes the impact. These are federal requirements and are applicable for Idaho facilities. It is important for DEQ to incorporate these rules so that IPDES will be judged as equivalent to the EPA's National Pollutant Discharge Elimination System (NPDES). It is hopeful that the first phase of IPDES primacy - the municipal discharges - will be approved by the EPA on or before July 1, 2018.

In December 2015, the EPA's rule on electronic reporting became effective for NPDES permitting authorities. DEQ is proposing to update those portions of the IPDES rules affected by including the electronic reporting requirements of 40 CFR Part 127.

The EPA's Municipal Separate Storm Sewer System (MS4) remand rule became effective on January 9, 2017. Changes to these regulations are in response to the remand from the United States Court of Appeals for the Ninth Circuit. These changes allow the state to select an approach for permitting these discharges and establishing the method for permittees to meet standards established by the Clean Water Act.

Additional changes to the federal regulations include updates to effluent limitation guidelines for steam electric generating point sources, oil and gas point sources, and approved test methods for analysis of parameters in effluent discharges.

Mr. Burnell stated that there are no additional costs to the regulated community and there are no controversial issues with this rule.

MOTION:

Chairman Bair moved to approve **Docket 58-0125-1701**. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Vice Chairman Siddoway thanked Mr. Burnell for his presentation regarding DEQ's rules, then passed the gavel to Chairman Bair.

ADJOURN:

Chairman Bair said he would also like to thank Mr. Burnell and the Committee for their good work. There being no further business at this time, **Chairman Bair** adjourned the meeting at 2:50 p.m.

Senator Bair
Chair

Juanita Budell
Secretary