

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, January 14, 2019

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Heider, Vice Chairman Brackett, Senators Bair, Johnson, Mortimer, Patrick, Guthrie, 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 Heider** convened the Senate Resources and Environment Committee (Committee) at 1:32 p.m.

INTRODUCTION OF PAGE: **Chairman Heider** introduced Committee Page Drew Bingham, of Nampa, Idaho. **Mr. Bingham** spoke briefly about his interests and future goals.

RS 26431 **Proposed Legislative Amendment clarifying language in the statute.** **Gary Spackman**, Director, Idaho Department of Water Resources (IDWR), presented background for this proposed amendment. He stated that the proposed amendment eliminates language that created an expectation of a cost-share from the State of Idaho for owners of artesian wells which have been ordered repaired or plugged. **Director Spackman** indicated that the IDWR has the authority and was directed to inventory the artesian wells in the state. They work with owners of those wells to control any free flow in an effort to protect the artesian pressure.

Director Spackman advised that there was never any money appropriated for a cost-share and the time period that was specified in the statute has long since expired. IDWR is again in the process of inventorying artesian wells in the state and feels that this cost-sharing language confuses the owners.

DISCUSSION: **Senator Bair** asked why an artesian well would be closed. **Director Spackman** discussed a variety of reasons why these wells may be free flowing.

Senator Brackett and **Director Spackman** discussed the number of wells that IDWR is inventorying and the level of problems found. **Senator Brackett** then stated he would like to hear the bill, but does have some concerns.

MOTION: **Senator Brackett** moved to send **RS 26431** to print. **Senator Stennett** seconded the motion.

DISCUSSION: **Senator Guthrie** commented that at a further hearing, he would be interested in knowing what the cost-sharing model was on the work that has already been done on wells.

VOICE VOTE: The motion to send **RS 26431** to print passed by **voice vote**.

DOCKET NO. 58-0102-1703 **Water Quality Standards. Barry Burnell** Water Quality Division Administrator, Department of Environmental Quality (DEQ), indicated this rulemaking was initiated to designate domestic water supply as a beneficial use in 27 water bodies where the Safe Drinking Water Information system indicates an active surface water intake or ground water is under direct influence of surface water and where domestic water supply is not currently designated. **Mr. Burnell** discussed details of this rulemaking (see attachment 1) and requested the Committee approve **Docket No. 58-0102-1703**.

DISCUSSION: **Senator Stennett** inquired if anything of concern came out of the public review. **Mr. Burnell** advised it was recommended that some text in the rule be put into table format and that recommendation was adopted.

MOTION: **Senator Bair** moved to approve **Docket No. 58-0102-1703**. **Senator Brackett** seconded the motion. The motion passed by **voice vote**.

DOCKET NO. 58-0102-1802 **Water Quality Standards. Mr. Burnell** advised the purpose of this rulemaking is to adopt criteria to protect aquatic life in surface waters from three toxic substances: acrolein, carbaryl, and diazinon; and to adopt an alternate fecal indicator bacteria criteria. He discussed details of this rulemaking (see attachment 2), advised there are no controversial issues with this rule, and requested the Committee approve **Docket No. 58-0102-1802**.

DISCUSSION: **Senator Bair** commented that he was not comfortable with the changes involving classification of primary and secondary contact for recreation, noting that a secondary contact (wading) has been included with waters that are designated for primary contact recreation (swimming), making the rule more stringent. He asked that **Mr. Burnell** explain the rationale for doing this. **Mr. Burnell** indicated that in order for a person to get into the water to swim, they might actually have to wade in first.

In response to further questions from Senator Bair regarding the differences in the 576, 126, and 35 counts that are listed in the rule, **Mr. Burnell** explained that at this time the E. coli standard is 126 counts per 100 mL and that does not change between primary contact and secondary contact. The 576 reference is not a criteria, but rather a trigger value for secondary contact recreation to do additional monitoring. The E. coli standard of 126 is equivalent to the enterococci standard of 35 counts per 100 mL. The enterococci number is lower because it has a direct relationship to gastrointestinal illness, whereas E. coli has an indirect relationship.

In response to a question from Senator Guthrie, **Mr. Burnell** also explained that just as the 576 reference is a trigger value for secondary contact recreation to do additional monitoring, the 406 reference is a threshold value to trigger further testing for the primary contact recreation.

TESTIMONY: **Lynn Tominaga**, Executive Director of Idaho Groundwater Appropriators, spoke in opposition to **Docket No. 58-0102-1802** as it is presently written (See attachment 3). He speculated this rule change will increase the number of violations for recreational use and if one part of a water body is in violation for the designated use, the entire water segment is then designated as impaired. This can create a problem for permit holders even though they are in compliance with their discharges.

DISCUSSION: **Senator Stennett** expressed concern that testing in high-use recreational areas should be done more often and if there is noncompliance, the recreational component should be advised to stay away until it clears. **Mr. Tominaga** stated that he would like to see the DEQ work with the health departments to find a better way of issuing a health warning instead of a recreational use designation of noncompliance.

Senator Stennett indicated testing earlier, at 30 days as opposed to 90 days, and working with the health departments might ward off a potential health hazard for recreational users. She noted she did not see how that might affect other users. **Mr. Tominaga** responded that he did not get the feeling through the negotiated rulemaking that the DEQ was working with the health districts to set up a standard. He felt the health districts are relying upon the State to do that. He voiced concern that when you have a violation and it is not the cities discharging into the river system who are in violation, but other activities which include wildlife, etc., the DEQ may try to make the cities do something to overcome that noncompliance standard in those areas.

Chairman Heider requested that Mr. Brunell address the issues raised by committee members.

Mr. Burnell indicated that there seems to be a misconception about the time period to evaluate bacteria and he wanted to correct that. He stated that DEQ has never had a 90-day period to evaluate bacteria and surface water, it has always been 30 days. He further advised that DEQ does not rely on a single sample to determine noncompliance. If they have a test value that is greater than the threshold value then they do more monitoring. They would then take five samples within a 30-day period, make a calculation on that, and if it is over the standard 126 counts per 100 mL they go through a public notice process for that water body. DEQ works with the health districts on postings at access points to water bodies that are in noncompliance. The role that the health districts play is communicating to the public the epidemiological information about getting ill at a particular water body.

Mr. Burnell responded to Mr. Tominaga's question regarding how bacteria limits are set in permits; he advised this is at the discharge point. **Mr. Burnell** stated that the municipal discharger does not need to worry about whatever else is going on in the water body. They need to treat their discharge to the point where it is less than 126 counts per 100 mL.

Senator Mortimer thanked Mr. Brunell for these clarifications and asked him to confirm his understanding that this rule applies not necessarily to a large body of water, but to the discharge of waters going into the large body of water. **Mr. Burnell** confirmed that this is correct when looking at a permitted discharge. He advised this rule does cover larger water bodies for bacteria standard. If DEQ is monitoring a water body, has done the five tests over 30 days, and that water body is exceeding the 126 counts per 100 mL, that would be a criteria violation. **Senator Mortimer** then asked what the DEQ does if the body of water is noncompliant but all of the permit holders are in compliance. **Mr. Burnell** advised that the process is to go forward and develop a Total Maximum Daily Load plan which is based on additional monitoring of the water body. If the cities are in compliance with their discharge permits, then the excess bacteria in the water body would most likely be coming from an agricultural source and there is no requirement in the total maximum daily loads for agricultural sources to reduce. It is a voluntary program.

Senator Johnson commented that it appears the proposed rule is less restrictive than the current rule for swimming beaches. **Mr. Burnell** confirmed that overall that is correct since the rule changes the threshold for single sample monitoring from 235 to 410.

TESTIMONY: **Jess Harrison**, Executive Director of the Association of Idaho Cities (AIC), spoke in opposition to **Docket No. 58-0102-1802**. She indicated that Idaho cities have a significant interest in the development of programs and regulations related to the protection of human and aquatic life. AIC is concerned with the proposed elimination of the paragraph that currently does not allow single sample values as a standard for water quality violation for both primary and secondary contact recreation and permit violation for any wastewater facility discharging surface water (see attachment 4).

Senator Guthrie commented that it appears there has been good collaboration on this rule by the concerned parties, but it looks like we are not quite there yet. He wondered if there is some consistent language that would be acceptable to all. **Ms. Harrison** advised that DEQ has been responsive to AIC's comments, but they believe the rule still needs some work.

Senator Jordan asked if the concern being expressed by the cities harkens back to an old phosphorous debate. **Ms Harrison** noted that she was not with AIC during the previous phosphorous issue and could not comment on that.

Chairman Heider asked Mr. Burnell to respond to the comments of Miss Harrison. **Mr. Burnell** advised that, contrary to Miss Harrison's comments, one sample would not cause a water body to be put out of compliance, and 90 days for surface water to be considered noncompliant would be a change from the rule. He stated with respect to the total phosphorous and E. coli, the dischargers are going to have an end-of-pipe limit; that is not going to change.

Senator Bair expressed concerns regarding how this rule might affect future years. He asked what DEQ would do if a water body becomes impaired, continues to get worse, and there are no permit holders to blame because they are in compliance at the end of their pipe. **Mr. Burnell** indicated in that scenario, DEQ would work with the management agency that has oversight of that source to implement best management practices by working with the landowners to voluntarily reduce the bacteria load.

Senator Bair asked if DEQ could identify a contributor along an 80-mile canal that is causing a water body to become impaired as the canal enters into that water body. **Mr. Brunell** advised that DEQ would have to ask either Idaho Water Resources or Idaho Department of Agriculture to work with the canal company to identify the problem. **Senator Bair** also asked if DEQ currently has in any of their regulations anything to do with controlling discharge from agriculture. **Mr. Burnell** indicated they do not.

Senator Stennett stated it is her understanding that the E.coli standard has not changed; nothing is punitive, it is voluntary, and that she would prefer to see more sampling than less to help make sure that we can monitor a source for public health.

MOTION: **Senator Stennett** moved to approve **Docket No. 58-0102-1802**. **Senator Jordan** seconded the motion. The motion failed.

DOCKET NO. 58-0102-1803 **Water Quality Standards.** **Mr. Burnell** stated that this rulemaking point source discharges to add small amounts (de minimus) of heat (0.3°C) to surface waters when the surface water exceeds the applicable temperature criteria (see attachment 5).

MOTION: **Senator Guthrie** moved to approve **Docket No. 58-0102-1803**. **Senator Patrick** seconded the motion. The motion passed by **voice vote**.

DOCKET NO. 58-0125-1801 **Water Quality Division.** **Mr. Burnell** advised that this rulemaking has been initiated to correct inconsistencies relating to administrative provisions and incorporation by reference of federal regulations (see attachment 6).

TESTIMONY: **Jonathan Oppenheimer**, Government Relations Director with the Idaho Conservation League (ICL) stated that he simply wanted to clarify for the Committee that ICL supports Idaho having primacy over the National Pollutant Discharge Elimination System (NPDES) program being transferred to the State of Idaho. However, ICL did file a legal challenge relative to that because of some concerns over the lack of consistency with some of the requirements under the Clean Water Act (see attachment 7).

DISCUSSION: **Senator Stennett** asked Mr. Oppenheimer why he felt this is falling short on the Clean Water Act. **Mr. Oppenheimer** listed several issues. **Senator Jordan** stated that she appreciated the clarification of the purpose for filing the challenge and then asked if Mr. Oppenheimer was expressing a particular problem with this rule. **Mr. Oppenheimer** stated he wanted to clarify the reason for filing the challenge.

MOTION: **Senator Bair** moved to approve **Docket No. 58-0125-1801**. **Senator Guthrie** seconded the motion. The motion passed by **voice vote**.

ADJOURNED: **Chairman Heider** announced that due to time constraints, the final item on the agenda, **Docket No. 58-0124-1801**, will be rescheduled for the next Committee meeting, and adjourned the meeting at 2:58 p.m.

Senator Heider
Chair

Tyler Brock
Secretary

Lois Bencken
Assistant Secretary