

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Wednesday, February 10, 2021

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

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Vick, Vice Chairman Johnson, Senators Bair, Heider, Patrick, Burtenshaw, Stennett, and Rabe

**ABSENT/ EXCUSED:** Senator Guthrie

**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 Vick** called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:30 p.m.

**MINUTES APPROVAL:** **Senator Rabe** moved to approve the Minutes of February 1, 2021. **Vice Chairman Johnson** seconded the motion. The motion carried by **voice vote**.

**RS 28326C1** **Removes responsibility of the Office of the Attorney General. Senator Harris** presented **RS 28326C1**. **Senator Harris** said this legislation removes the responsibility of the Office of the Attorney General to provide legal representation to the Idaho Department of Lands (IDL) and allows IDL to hire or contract its own legal counsel. **Senator Harris** stated that having the Attorney General's Office represent IDL is a conflict of interest because the Attorney General is a member of the State Board of Land Commissioners.

**DISCUSSION:** **Senator Stennett** inquired as to what precipitated the reason for this RS. **Senator Harris** said it was because there is an appearance of a conflict of interest. **Senator Harris** also said that he has heard from some constituents who are unhappy and view the legal representation as a problem.

**MOTION:** **Senator Heider** moved to send **RS 28326C1** to print. **Senator Bair** seconded the motion. The motion carried by **voice vote**.

**GUBERNATORIAL APPOINTMENT:** **Chairman Vick** welcomed Ms. Tammy Overacker of Salmon, Idaho, who was appointed to the Outfitters and Guides Licensing Board (OGLB) for a term commencing August 31, 2020, and expiring April 20, 2023. He asked her to tell the Committee why she would like to fill this seat.

**Ms. Overacker** stated she has worked in the outfitting industry in Salmon for 28 years. She said she started in bookkeeping and worked her way up through the ranks. She is currently the general manager of Flying Resort Ranches and also owns two properties in the wilderness area, including the Frank Church River of No Return Wilderness. **Ms. Overacker** said duties include dealing with recreational activities, river floaters, the private pilot sector, rental cabins, and fall hunting.

**Ms. Overacker** said she has "hands-on" experiences with the industry including the Idaho Department of Fish and Game (IDFG) and governmental affairs. Ms. Overacker indicated that she will be able to help with issues that might involve OGLB.

**Senator Heider** inquired how Ms. Overacker felt about the process of issuance of hunting tags to outfitters. **Ms. Overacker** indicated that she would like to see reductions come from the nonresident and nonguided issuance of tags rather than from residents. Because of lower game counts in some areas, there needs to be reductions in the number of hunters, she said.

**Ms. Overacker** said her company employs 28 people, with a payroll of a half million dollars each year, and she feels they are significant to the local economy.

**Senator Heider** asked Ms. Overacker if she can work with IDFG in an objective manner and understand their perspective when making decisions. **Ms. Overacker** responded by saying she has worked closely with IDFG for several years and has a very good relationship with them.

**PASSED THE  
GAVEL:**

Chairman Vick passed the gavel to Vice Chairman Johnson.

**WELCOME:**

**Vice Chairman Johnson** welcomed Jess Byrne, Director, Department of Environmental Quality (DEQ) and asked him to summarize the discussion of this docket, which was held February 1.

**DOCKET NO:  
58-0000-2000F**

**Notice of Omnibus Rulemaking – Adoption of Pending Fee Rule. Mr. Byrne** reminded the Committee there were 12 rule chapters in **Docket 58-0000-2000F**. Six of the fee rule chapters had no changes and six chapters did. At the previous meeting, three chapters were discussed, and today the remaining three chapters were due to be presented. He introduced Michael McCurdy, Waste Management and Remediation Division Administrator, DEQ, who was tasked to review them for the Committee.

**Mr. McCurdy** said the rules for processing by cyanidation were negotiated and are included in the omnibus rule docket. These rules established the procedures and requirements for the issuance and maintenance of a permit to construct and operate enclosed cyanidation facilities. Such facilities are intended to contain, treat, or dispose of processed water or processed contaminated water containing cyanide processes, utilizing cyanide to extract various metals such as gold, silver, and copper from ores.

**Mr. McCurdy** said to move away from the prescriptive design and construction requirements in the current rule, DEQ held 10 negotiated rulemaking meetings between May 3, 2019, and June 10, 2020. DEQ received and discussed comments during the rulemaking meetings. DEQ's rules are broader in scope and more stringent than federal regulations, Mr. McCurdy said. The federal government does not regulate cyanidation facilities. A major change in the rule was making the preliminary design report mandatory as opposed to letting it being optional in the current rule. Approval of the preliminary design report does not authorize construction operation or modification of a cyanidation facility. Also, the report is not part of the 180-day period for issuing a notice of rejection or approval of a permit.

Next, **Mr. McCurdy** discussed fees in the cost recovery rule for processing permit applications. The current rule from 2006 requires applicants to submit a fee ranging from \$5,000 to \$20,000, depending on the tons of ore processed during the life of the facility. The current rule also includes an option for the applicant to enter into an agreement with DEQ for actual costs incurred to process an application and issue a final permit in lieu of paying a fee. The cost recovery approach is necessary to provide the flexibility required to assess reasonable fees on applicants proposing facilities that can vary substantially in complexity, size, and size-specific conditions. The approach is also necessary to accommodate the option for an applicant to propose alternatives to the design requirements.

**Mr. McCurdy** said the changes in the next section move away from what essentially amounted to a one-size-fits-all double liner with leak detection requirements for all cyanidation facilities. These changes were rewritten from the 2006 rule to clarify common cyanidation, facility design criteria, and liner system design criteria that would be applicable to all cyanidation facilities. The Department of Environmental Quality (DEQ) revised the next section which covers financial assurance in the pending federal review book, to account for the change during the 2020 Legislative Session. This change was necessary to address the timeline conflict between the Department of Lands processes for approval of the permanent closure plan and approval of financial assurance. The due process is related to cyanidation permit issuance. DEQ held a public hearing on October 7, 2020 according to Mr. McCurdy and received no comments. However, DEQ did receive written comments from the Idaho Mining Association and the Idaho Conservation League. DEQ made a few revisions, including some grammatical corrections, to the rule as a result of those comments.

**DISCUSSION:** **Vice Chairman Johnson** said he inquired about cyanidation requirements at a previous meeting and wondered if this rule was about the Stibnite Gold Project. **Mr. McCurdy** said yes and it was what Midas Gold is waiting on to move forward with its permit application.

**PRESENTATION:** **Dr. Mary Anne Nelson**, Surface and Wastewater Division Administrator, DEQ, presented portions of **Docket No. 58-0000-2000F** regarding the rules regulating the Idaho Pollution Discharge Elimination program (IPDES). The Environmental Agency dedicated authority to DEQ for IPDES in June, 2018 and DEQ is working under a phased implementation schedule to take full authority of this program.

**Dr. Nelson** said DEQ will have full authority from EPA in July 2021. As part of this delegated authority, DEQ is required to keep the rules regulating the program up-to-date and has up to two years to ensure that changes to the federal rules are reflected in the State's program.

DEQ updated the rules so they would be consistent with federal regulations. DEQ took public comment through October 16, and held a public hearing on October 7. DEQ received no comments on this proposed rule. DEQ does not anticipate any additional cost to the regulated entities, and based on this action, no controversial issues were raised during the public comment period.

**Dr. Nelson** stated some concerns were brought forward about the strain on state resources by not including a fee for small-scale suction dredging. DEQ decided to table that discussion for the specific fee schedule evaluation.

DEQ made small changes to the chapter, such as minor grammatical and typographical corrections. Specific changes included the definition of waters of the United States. DEQ updated this particular definition to ensure compliance with the Navigable Waters Protection Rule, which EPA passed in April, 2020.

**Dr. Nelson** said DEQ updated the definition of "equivalent dwelling unit" to clarify who will be charged fees under the municipal rate, which involves publicly and privately owned treatment works and how those fees will be calculated. This applies to systems treating domestic sewage. The revised chapter clarifies the term "average household size" as that used by the US Census Bureau. DEQ added the definition of "proposed settlement" of a state enforcement agreement action, clarifying that particular item.

DEQ added definitions for "pesticide residues" and "pesticide discharges", and removed some unnecessary requirements for pesticide applicators filling out forms. DEQ outlined requirements needed on an application for nondomestic individual discharges. If a facility has collected and analyzed data less than four and one half years old, then that data is considered good and can be submitted.

DEQ also made another change if an applicant is operating or requesting to operate under a variance. Now, that form is to be included with the application. Regarding treatment works, data must be submitted to the agency within 24 months of commencing discharge. The applicant is required to report the number of significant industrial users and nonsignificant categorical industrial users discharging to the collection system.

**Dr. Nelson** stated DEQ updated public notification. It now reads that in lieu of notification in a newspaper, notices of draft permits may be published on the DEQ website. Also, DEQ adjusted the fee schedule to exclude small-scale suction dredges from IPDES fees. Currently, individuals operating small-scale suction dredges that are covered under the general permit do not have a fee associated with their permit. If an individual who cannot be covered under the general permit were to apply for an individual permit, they would be subject to a fee of either \$4,000 or \$13,000 annually. During the rulemaking process, a DEQ board member suggested that the fee might be a little high for some. DEQ then clarified that if an individual permit was given, there would not be a fee associated with that permit.

Regarding contested permit conditions, DEQ removed a reference to judicial review since it would not be applicable at that stage of a contested permit. The last item Dr. Nelson covered was the requirement of committees to report specific information for noncompliance scheduled events related to combined sewer overflows, sanitary overflows, or bypass. This change corrected an oversight, Dr. Nelson said.

**Jerri Henry**, Drinking Water Protection and Finance Division Administrator, DEQ, said she would cover the rules for what DEQ uses to provide low-interest loans for design and construction of both drinking water and wastewater facilities. DEQ determined that the rules could be simplified and consolidated. DEQ published the notice of negotiated rulemaking on August 12, 2019, in the Administrative Bulletin, and a meeting was held August 27, 2019, in person and by video conference in the five DEQ regional offices. The notice of proposed rulemaking was published November 2019, and DEQ invited public comment from November 6 through December 4, 2019. DEQ didn't receive any public comments. **Ms. Henry** stated DEQ removed about 8,000 words and deleted approximately 19 pages of rules by combining these rule chapters.

**TESTIMONY:**

Johanna Bell, Policy Analyst, Association of Idaho Cities (AIC), submitted written testimony in support of **Docket No 58-0000-2000F**. Ms. Bell stated that AIC worked with DEQ over the past year through their negotiated rulemaking process, provided input, and are now expressing their support for the promulgation of these rules.

**MOTION:**

**Senator Burtenshaw** moved to approve **Docket 58-0000-2000F**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
58-0104-1901  
AND  
58-0122-1901**

**Rules for Administration of Wastewater Treatment Facility Grants. Ms. Henry** presented **Docket No. 58-0104-1901** and a companion docket, **Rules for Administration of Planning Grants for Drinking Water Facilities, 58-0122-1901**. She stated these rules are what DEQ used to administer a grant program that provides drinking water and wastewater facilities, funding assistance to prepare engineering, planning documents for infrastructure and design, and construction. This is usually the grant program that feeds into the loan program, Ms. Henry said. This rulemaking was intended to meet the Governor's Red Tape Reduction Act. DEQ simplified the drinking water and wastewater grant rural chapters and consolidated them into a single rural chapter. DEQ held negotiated rulemaking and didn't receive any public comments. The DEQ Board adopted the rule dockets on May 14, 2020, as pending rules. DEQ didn't find any

controversial issues related to this rulemaking nor any additional costs to the regulator, community, or agency. DEQ removed approximately 50,500 words and roughly 14 pages in this rulemaking effort.

**MOTION:** **Senator Heider** moved to approve **Docket 58-0104-1901**. **Senator Burtenshaw** seconded the motion. The motion carried by **voice vote**.

**MOTION:** **Senator Heider** moved to approve **Docket 58-0122-1901**. **Senator Burtenshaw** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 58-0102-2001** **Water Quality Standards**. **Dr. Nelson** said this docket covers water quality standards for recreational use. This rulemaking was initiated to revise water quality criteria associated with the recreational use of Idaho's surface waters and to remove obsolete language concerning specific pollutant variances disapproved by EPA. During the 2019 legislative review, stakeholders raised concerns regarding the implementation of criteria for bacteria. This pending rule seeks to revise Idaho water quality standards to address those unresolved concerns.

DEQ proposed new and revised criteria for pathogens including E. coli and enterococci. Prior to 2018, Idaho water quality standards used E. coli as the sole indicator of bacteria. When DEQ revised the rules in 2018, it added enterococci as an additional indicator of unsafe levels of pathogens that could lead to gastrointestinal illness.

**DISCUSSION:** **Chairman Vick** inquired if other states count enterococci in their samples to know if the water is safe. **Dr. Nelson** replied that EPA put forward recommended criteria and states have a certain time frame in which they either adopt the recommended criteria or find recommendations that are equally protective. Other states use enterococci in their criteria.

**MOTION:** **Senator Stennett** moved to approve **Docket 58-0102-2001**. **Senator Rabe** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 58-0103-1901** **Individual/Subsurface Sewage Disposal Rules and Rules for Cleaning of Septic Tanks**. **Dr. Nelson** provided the Committee with a brief orientation and background on septic systems in general. She stated that individual septic systems are a useful tool for treating and disposing human waste when access to a centralized treatment system is not available. Wastewater treatment in a basic system is accomplished by the separation of solids, fats, oils, grease, and water in a septic tank, and then by bacteria in the soil around and below the effluent absorption system, which is also called a "drain field". **Dr. Nelson** said this bacterial action reduces the level of pathogens in the effluent discharge from the waste system into the soil. She provided a handout depicting different types of systems. **Dr. Nelson** said these rules provide procedures for permitting systems, for providing installers with credentials to install systems, design criteria for basic septic tanks and drain fields, and requirements for designing, installing, and maintaining the alternative systems.

**Dr. Nelson** said the Septic Technical Guidance Committee, which is composed of three environmental health specialists from Idaho health districts, has been in place for several decades and holds quarterly meetings that are open to the public. Its responsibility is to maintain the technical guidance manual, which outlines requirements and processes for manufacturers, installers, and homeowners with subsurface sewage disposal systems. This Committee is also responsible for providing recommendations to the DEQ director for approval of different types of proprietary and extended treatment systems. There was a six-fold increase in the total number of systems permitted since 2012 and a seven-fold increase in the number of complex system permits issued during that time. .

**Dr. Nelson** said DEQ held a total of four negotiated rulemaking meetings in 2019 and 2020 to discuss the proposed changes associated with the alternative systems. In attendance at these meetings were representatives from Idaho Realtors Association, Idaho Groundwater Appropriators, and Idaho Rural Water Association, along with numerous representatives of individual manufacturers, installers, and pumping services. She said there are no known outstanding issues with the proposed rule language. **Dr. Nelson** said the federal government does not specifically regulate septic systems, but it prohibits the pollution of surface water, ground water or drinking water used because failed septic systems are a significant source of water pollution.

**MOTION:** **Senator Heider** moved to approve **Docket 58-0103-1901**. **Senator Stennett** seconded the motion.

**SUBSTITUTE MOTION:** **Senator Patrick** said there are some of the proposed changes he is quite uncomfortable with and would be happy if he knew more about them. **Senator Patrick** moved to hold **Docket No. 58-0103-1901** for further study and for the call of the Chair. **Chairman Vick** seconded the motion. The motion carried by **voice vote**, with Senator Stennett voting nay.

**PASSED THE GAVEL:** Vice Chairman Johnson passed the gavel to Chairman Vick.

**ADJOURNED:** There being no further business at this time, **Chairman Vick** adjourned the meeting at 3:02 p.m.

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Senator Vick  
Chair

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Juanita Budell  
Secretary