

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, January 22, 2025

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Burtenshaw, Vice Chairman Hart, Senators Guthrie, Harris, Okuniewicz, Cook, VanOrden, Kohl, and Taylor

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

RS 31801 **Relating to Energy and Mineral Resources.** **Richard Stover**, Administrator, Idaho Governor's Office of Energy and Mineral Resources (OEMR) explained the purpose of this legislation was to update Idaho Code to direct that a portion of the State's assessments received from Federal Energy Regulatory Commission (FERC) licensees for the use of federal land was remitted to a dedicated fund used by OEMR. OEMR needed the increased funding to help manage their responsibility to advise policy makers on energy and mining issues in the face of an increasing workload. He estimated the increased funding would amount to approximately \$150,000 annually and would not have a negative impact on any other programs or revenues.

MOTION: **Senator Harris** moved that **RS 31801** be sent to print. **Senator Cook** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Cook** moved to send the Gubernatorial Reappointment of **Linda Mitchell** of Sagle, Idaho to the Lake Pend Oreille Basin Commission to the floor with recommendation that she be confirmed by the Senate. **Senator Taylor** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator VanOrden** moved to send the Gubernatorial Reappointment of **Craig Hill** of Priest Lake, Idaho to the Lake Pend Oreille Basin Commission to the floor with recommendation that he be confirmed by the Senate. **Vice Chairman Hart** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Taylor** moved to send the Gubernatorial Reappointment of **Dean Stevenson** of Paul, Idaho to the Idaho Water Resource Board to the floor with recommendation that he be confirmed by the Senate. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT VOTE: **Vice Chairman Hart** moved to send the Gubernatorial Reappointment of **Marc Gibbs** of Grace, Idaho to the Idaho Water Resource Board to the floor with recommendation that he be confirmed by the Senate. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Burtenshaw passed the gavel to Vice Chairman Hart.

Individual/Subsurface Sewage Disposal Rules and Rules for Cleaning of Septic Tanks (ZBR Chapter Rewrite) - Pending Rule. Mary Anne Nelson, Surface and Wastewater Division Administrator, Department of Environmental Quality (DEQ) referred the Committee to the 2025 Senate Resources and Environment Pending Rules Review Book, starting on page 275. She explained DEQ initiated this negotiated rulemaking in compliance with Executive Order No. 2020-01, also known as Zero-Based Regulation.

Major proposed changes to the rule included removing and replacing definitions, revising and simplifying septic tank approval processes, removing specific requirements for large septic tanks, reducing setbacks to surface water, combining the cleaning of septic tanks sections into one section, simplifying the permitting process for service providers, and identifying certain provisions of the Technical Guidance Manual for Individual and Subsurface Sewage Disposal Systems (TGM) to be moved into rule. **Ms. Nelson** explained the TGM was the product of the Technical Guidance Committee, who were authorized by this rule. This committee was composed of three environmental health professionals from the health districts, one professional engineer, one licensed installer, and one environmental health professional from DEQ. The committee met quarterly to review and update the TGM.

She reviewed the negotiated rulemaking process for this rule, which included participation by representatives of Idaho public health districts, DEQ, the Idaho Office of the Attorney General, representatives from the Association of Idaho Cities and the South Fork Coeur d'Alene River Sewer District, owners and operators of individual companies providing septic installation and maintenance services, and members of the public.

Ms. Nelson reviewed substantive changes to this Docket, which included:

- Section 003, beginning on page 278, several terms were added to reflect standard practice, experience, and input from the rulemaking committee. These included: adsorption bed, bedroom, drainfield, dwelling unit, minimum tank capacity, septic tank, septic tank facility, and trench. Similarly, some definitions were updated to reflect these same parameters. These definitions included: alternative system, standard system, extended treatment package system, and proprietary wastewater treatment product.
- Section 004, beginning on page 282, added clarifying language to Subsection 01.e regarding adverse impacts to public health and to Subsection 03. regarding substances detrimental to the system's operation or performance.
- Section 005, beginning on page 283, modified to Subsection 05. to remove two criteria from reasons for permit denial, to Subsection 11. to remove duplicative language, and to Subsection 15. to move As Built Plans and Specifications requirements to a different section.
- Section 006, beginning on page 286, included changes to Subsection 02. to streamline exam requirements, to Subsection 03. to remove service provider licensing requirements, to Subsection 05. to increase the bond requirements for installers and service providers, and to Subsection 06. to update language regarding allowable damage recovery. Subsections 09. and 10. were removed.
- Section 007, beginning on page 289, modified to Subsection 02. to require product and tank submittals by a licensed professional engineer, to Subsection 08. to align minimum tank capacity requirements to 1000 gallons, to Subsection 09. to simplify the wastewater flows table, to Subsection 13. to remove a condition for horizontally installed tanks, to Subsection 14. to require

risers to the surface for all newly installed tanks, removed Subsection 20. as it was duplicative with the definition, and removed conditions associated with influent and effluent piping from Subsection 21.

- Section 008, beginning on page 294, removed Subsection 01., which included language now included in definitions. Section 008.01.d revised the size of the separation distance required between drainfields and certain features, including surface waters and double-encased water lines. DEQ found that their setbacks were more stringent than surrounding states, and in researching documentation from when Idaho added the more stringent language to the rule, DEQ could find no justification to continue with the more stringent setbacks. Section 008 was also modified with an addition at 10. regarding vehicle traffic on a drainfield and the removal of 11. regarding seepage pits.
- Section 009, beginning on page 298, simplified the aerobic treatment systems and proprietary product approval process, consolidated language, and moved Subsection 07., Amendments or Revocations, to Section 012.
- Section 011, on page 303, specified that a system was not approved for use until the health district provided a final as-built drawing and inspection report to the owner.
- Section 012, beginning on page 303, added a new subsection regarding amendments or revocation of permits, which was language moved from other sections, along with a requirement that written notice be provided 35 days in advance of revocation.
- Section 013, beginning on page 303, was modified to Subsection 04. to incorporate design and installation requirements for standard systems and requirements for large soil adsorption systems, requirements specific to large septic tanks were removed from Subsection 05., and language was added to Subsection 06. to refer to the wastewater rules for operator licensing requirements for large soil absorption systems.
- Sections 050 and 051, beginning on page 306, were consolidated into one section.

DISCUSSION:

Vice Chairman Hart asked if the setback of a septic facility was to surface water or to running water. **Ms. Nelson** responded that it was the setback distance allowed between where the drainfield would be located and an associated surface water or water line. She confirmed that DEQ had reduced that setback. **Vice Chairman Hart** asked for the philosophy behind the decision to take the Technical Guidance Manual and move that into the rules. **Ms. Nelson** explained that as DEQ reviewed the Technical Guidance Manual while completing their rules review for this Docket, they identified some elements in the manual that were more of a requirement than guidance. According to DEQ's rules versus guidance policy, when they found this kind of instance, they moved it into rule. This would allow changes to become part of the rulemaking process and to be reviewed by the Legislature. **Vice Chairman Hart** noted the definition of wastewater was removed from page 282 and asked if there was any substantive change to the definition. **Ms. Nelson** responded that there was no substantive change to that definition, and this section was revised to point to the definition already existing in the Wastewater Rules. **Vice Chairman Hart** asked why the minimum requirement for a septic tank went from 750 gallons to 1,000 gallons. **Ms. Nelson** responded that industrial septic tanks were no longer being built or designed at less than 1,000 gallons.

Senator Taylor asked if there had been any discussion about moving away from concrete tanks to a tank that would be less susceptible to breakage. **Ms. Nelson** was aware that concrete septic tanks were not in the best interest of our surface water, and noted plastic tanks were approved and included in the technical guidance manual.

Chairman Burtenshaw asked why the amount of bonding was raised as noted on page 287. **Ms. Nelson** responded bonding was raised in response to increased cost of coverage and cost of installation, and not due to a rise in the number of inaccurate or improper installations.

Vice Chairman Hart stated he had a conflict of interest pursuant to Senate Rule 39(H) but intended to vote.

MOTION:

Chairman Burtenshaw moved to approve **Docket No. 58-0103-2301**. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
58-0114-2401**

Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services (ZBR Chapter Rewrite, Fee Rule) - Pending Rule. **Ms. Nelson** referred the Committee to the 2025 Senate Resources and Environment Pending Rules Review Book, starting on page 319. She explained DEQ initiated this negotiated rulemaking in compliance with Executive Order No. 2020-01, also known as Zero-Based Regulation. In addition to changes made as a result of their review, DEQ proposed consolidating environmental fees into one chapter. The purpose of this effort was to streamline access to fee schedules and create a location where the regulated community could view all applicable fees in one place. DEQ also proposed a new fee for recycled water permits. **Ms. Nelson** referred the Committee to her presentation and reviewed the components of the rule with significant changes, provided a background on the new proposed fees, reviewed the criteria for establishing the proposed fees, provided reasoning for the need for increased funding to support DEQ's recycled water permits program, and detailed the changes implemented by this rule. (Attachment 1)

DISCUSSION:

Senator Okuniewicz asked for more information on the ability of local agencies to charge fees. **Ms. Nelson** responded that the health districts had always charged owner's for septic permits, but new in the rule was a structure for the health districts to use to identify their minimum fees. **Senator Okuniewicz** asked for how much the fees had changed compared to 1992 when they were added to the rule. **Ms. Nelson** responded that the fee from 1992 was roughly \$90 for a septic permit and this was shown in the blue strikeout language in Section 110. **Senator Okuniewicz** asked if the other charges listed in the table at the end of Section 110 were brand new and not also raised. **Ms. Nelson** responded that these fees were new to the rule, but not new for the health districts, and the minimum values shown in the table came from the health district fee schedules. **Senator Okuniewicz** asked if these fees were collected by locals, or were they also collected by DEQ. **Ms. Nelson** responded that DEQ did not collect these fees. She explained this fee schedule was in place at the advice of DEQ's legal counsel, to provide for the possibility that a health district was no longer able to conduct the permit program.

Vice Chairman Hart asked who was paying these fees. **Ms. Nelson** responded that this depended on the particular fee. The Basic or Complex Sewage Disposal Permit fee was paid by the owner of the home or property that was installing or having the septic tank installed, the Installers Registration or Service Provider Certification fees were paid by the installer, and the Pumper Truck License annual fee was paid by the septic pumper company.

Ms. Nelson clarified that this material was all new. **Senator Guthrie** asked if there was any data showing how long it took for land application of effluent water rendered that land useless or ruined that ground forever. **Ms. Nelson** responded that DEQ examined what was in the effluent. Most often they were dealing with phosphorus and nitrogen, although there could be some ionic salts that could potentially cause buildup. They had the facility treat the water to a point that after the material was on the ground, all of those nutrients were taken up by the crop and not going into the groundwater. There were other things to consider that might require a slightly higher degree of treatment, but this would depend on how the material was used. She did not have specific data, but believed DEQ could potentially get to a point where they rendered land unable to grow crops, but they were cautious about how they did their permitting.

Chairman Burtenshaw asked if any recycled water was used in an injection well and what would be the stipulation for recycled water use. **Ms. Nelson** responded that the Idaho Department of Water Resources (IDWR) ran the underground injection well control program under the Safe Drinking Water Act. IDWR had recently made changes to their rules and DEQ was working closely with them on their first attempt to figure out how permit recycled water use in an injection well, both under IDWR's Underground Injection Control (UIC) program and under DEQ's recycled water program.

Vice Chairman Hart asked where their public meetings were held. **Ms. Nelson** responded that they were conducted virtually. DEQ had a representative present in Boise, but most of their attendees were online.

MOTION:

Senator Taylor moved to approve **Docket No. 58-0114-2401**. **Senator Cook** seconded the motion. The motion carried by **voice vote**. **Senator Harris** requested that he be recorded as voting nay.

**DOCKET NO.
58-0122-2401**

Rules for Administration of Planning Grants for Drinking Water and Wastewater Facilities (ZBR Chapter Rewrite) - Pending Rule Jerri Henry, Drinking Water Protection and Finance Division Administrator, DEQ referred the Committee to the 2025 Senate Resources and Environment Pending Rules Review Book, starting on page 326. She explained this chapter provided a framework for the administration of planning grants to support public drinking water and wastewater systems for developing planning documents such as engineering facility. This rulemaking was done to comply with Executive Order No. 2020-01, also known as Zero-Based Regulation.

DEQ removed unnecessary, duplicative, and outdated language, updated web links, removed unused reference material, and reorganized for better readability. Points were added under the priority rating system in Section 20.02.f and 03.f on page 334 for situations where user charges exceeded two percent of the median household income. Points for public health emergencies were removed from Section 020.03. on page 334 as DEQ handled emergencies through their loan program, which reserved funding annually to respond to such situations.

Ms. Henry reviewed the rulemaking process for this Docket. She shared feedback during the rulemaking process included three substantive comments:

- Regarding Section 050.05.d. on page 341, there was one public comment related to the professional liability insurance required of the consultant. The amounts were more relevant to construction projects and would be addressed during the next year's ZBR effort.
- Regarding Section 019, beginning on page 332, there was one question on why the eligibility was different for water versus wastewater facilities. System eligibility originates with Environmental Protection Agency (EPA) criteria and no change was made.
- Regarding Section 020.02.a. on page 333, one comment asked to see bonus points for communities that keep their system in good working order instead of most of the points going to delinquent systems. DEQ has been working toward this goal while trying to keep a balanced approach to ensure public health was addressed first, which was a requirement of the funding. Some of our efforts were reflected in their recent efforts to expand the incentives under section Section 020.02.e., Incentives.

This rule adhered to federal funding and eligibility criteria under EPA's Drinking Water and Clean Water State Revolving Funds.

DISCUSSION: **Vice Chairman Hart** asked why the word "shall" had been replaced with the word "must" throughout the rule. **Ms. Henry** responded that DEQ had been making this change in their rules for the last few years at the request of the Division of Financial Management (DFM). She did not know the reasoning for DFM's request.

MOTION: **Senator Harris** moved to approve **Docket No. 58-0122-2401**. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Hart passed the gavel to Chairman Burtenshaw.

ADJOURNED: There being no further business at this time, **Chairman Burtenshaw** adjourned the meeting at 2:29 p.m.

Senator Burtenshaw
Chair

Shelly Johnson
Secretary