

TITLE 39
HEALTH AND SAFETY

CHAPTER 36
WATER QUALITY

39-3601. DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE INTENT. The legislature, recognizing that surface water is one of the state's most valuable natural resources, has approved the adoption of water quality standards and authorized the director of the department of environmental quality in accordance with the provisions of this chapter, to implement these standards. In order to maintain and achieve existing and designated beneficial uses and to conform to the expressed intent of congress to control pollution of navigable waters of the United States, the legislature declares that it is the purpose of this chapter to enhance and preserve the quality and value of the navigable waters of the United States within the state of Idaho, and to define the responsibilities of public agencies in the control, and monitoring of water pollution, and, through implementation of this chapter, enhance the state's economic well-being. In consequence of the benefits resulting to the public health, welfare and economy, it is hereby declared to be the policy of the state of Idaho to protect this natural resource by monitoring and controlling water pollution; to support and aid technical and planning research leading to the control of water pollution, and to provide financial and technical assistance to municipalities, soil conservation districts and other agencies in the control of water pollution. The director, in cooperation with such other agencies as may be appropriate, shall administer this chapter. It is the intent of the legislature that the state of Idaho fully meet the goals and requirements of the federal clean water act and that the rules promulgated under this chapter not impose requirements beyond those of the federal clean water act.

[39-3601, added 1995, ch. 352, sec. 1, p. 1166; am. 2001, ch. 103, sec. 30, p. 274; am. 2011, ch. 116, sec. 1, p. 320.]

39-3602. DEFINITIONS. Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

(1) "Applicable water quality standard" means those water quality standards identified in the rules of the department.

(2) "Attainable" beneficial uses means uses that can be achieved by the implementation of required effluent limits for point sources and cost-effective and reasonable best management practices for nonpoint sources.

(3) "Best management practice" means practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.

(4) "Board" means the board of environmental quality.

(5) "Consult" or "consultation" with basin advisory groups and watershed advisory groups, when not otherwise defined in this chapter, means that the director shall:

(a) Upon request, provide the groups with all available information in the possession of the department concerning the subject of the consultation;

(b) Utilize the knowledge, expertise, experience and information of the groups in making the determination that is the subject of the consultation; and

(c) Consider the groups' recommendations regarding the determination that is the subject of the consultation.

(6) "Control strategies" means cost-effective actions in TMDL implementation plans to control the discharge of pollutants that can reasonably be taken to improve the water quality within the physical, operational, economic and other constraints that affect individual enterprises and communities.

(7) "Degradation" or "lower water quality" means, for purposes of anti-degradation review, a change in a pollutant that is adverse to designated or existing uses, as calculated for a new point source, and based upon monitoring or calculated information for an existing point source increasing its discharge. Such degradation shall be calculated or measured after appropriate mixing of the discharge and receiving water body.

(8) "Department" means the department of environmental quality.

(9) "Designated agency" means the department of lands for timber harvest activities, for oil and gas exploration and development and for mining activities; the soil and water conservation commission for grazing activities and for agricultural activities; the transportation department for public road construction; the department of agriculture for aquaculture; and the department of environmental quality for all other activities.

(10) "Designated use or designated beneficial use" means those uses assigned to waters as identified in the rules of the department whether or not the uses are being attained. The department may adopt subcategories of a use.

(11) "Director" means the director of the department of environmental quality, or his or her designee.

(12) "Discharge" means any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. For the purposes of this chapter, discharge shall not include surface water runoff from nonpoint sources or natural soil disturbing events.

(13) "Existing use" means those surface water uses actually attained on or after November 28, 1975, whether or not they are designated uses. Existing uses may form the basis for subcategories of designated uses.

(14) "Full protection, full support, or full maintenance of designated beneficial uses of water" means compliance with those levels of water quality criteria listed in the appropriate rules of the department, or where there is no applicable numerical criteria, compliance with the reference streams or conditions approved by the director in consultation with the appropriate basin advisory group.

(15) "General permit" means an NPDES permit issued by the U.S. environmental protection agency authorizing a category of discharges under the federal clean water act or a nationwide or regional permit issued by the U.S. army corps of engineers under the federal clean water act.

(16) "Integrated report" means the consolidated listing and reporting of the state's water quality status pursuant to the federal clean water act.

(17) "National pollutant discharge elimination system (NPDES)" means the point source permitting program established pursuant to section 402 of the federal clean water act.

(18) "New nonpoint source activity" means a new nonpoint source activity or a substantially modified existing nonpoint source activity on or

adversely affecting an outstanding resource water which includes, but is not limited to, new silvicultural activities, new mining activities and substantial modifications to an existing mining permit or approved plan, new recreational activities and substantial modifications to existing recreational activities, new residential or commercial development that includes soil disturbing activities, new grazing activities and substantial modifications to existing grazing activities, except that reissuance of existing grazing permits, or grazing activities and practices authorized under an existing permit, is not considered a new activity. It does not include naturally occurring events such as floods, landslides, and wildfire including prescribed natural fire.

(19) "Nonpoint source activities" includes grazing, crop production, silviculture, log storage or rafting, construction, mining, recreation, septic systems, runoff from storms and other weather related events and other activities not subject to regulation under the federal national pollutant discharge elimination system. Nonpoint source activities on waters designated as outstanding resource waters do not include issuance of water rights permits or licenses, allocation of water rights, operation of diversions, or impoundments.

(20) "Nonpoint source runoff" means water which may carry pollutants from nonpoint source activities into the waters of the state.

(21) "Outstanding resource water" means a high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been so designated by the legislature. It constitutes an outstanding national or state resource that requires protection from point source and nonpoint source activities that may lower water quality.

(22) "Person" means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties.

(23) "Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be, discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition.

(24) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged or released to water in excessive quantities cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities.

(25) "Reference stream or condition" means one (1) of the following:

(a) The minimum biological, physical and chemical conditions necessary to fully support the designated beneficial uses; or

(b) A water body representing natural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin; or

(c) A water body representing minimum conditions necessary to fully support the designated beneficial uses.

In highly mineralized areas or in the absence of such reference streams or water bodies, the director, in consultation with the basin advisory group and the technical advisers to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported.

(26) "Short-term or temporary activity" means an activity which is limited in scope and is expected to have only minimal impact on water quality as determined by the director. Short-term or temporary activities include, but are not limited to, maintenance of existing structures, limited road and trail reconstruction, soil stabilization measures, and habitat enhancement structures.

(27) "Silviculture" means those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, drainage of surface water which inhibits tree growth or logging operations, fertilization, application of herbicides or pesticides, all logging operations, and all forest management techniques employed to enhance the growth of stands of trees or timber.

(28) "Soil and water conservation commission" means an agency of state government as created in section 22-2718, Idaho Code.

(29) "Soil conservation district" means an entity of state government as defined in section 22-2717, Idaho Code.

(30) "State" means the state of Idaho.

(31) "State water quality management plan" means the state management plan developed and updated by the department in accordance with sections 205, 208, and 303 of the federal clean water act.

(32) "Subbasin assessment" means a document that describes a watershed or watersheds for which a total maximum daily load is proposed, the water quality concerns, the status and attainability of designated uses and water quality criteria for individual water bodies, the nature and location of pollutant sources, past and ongoing pollutant control activities, and such other information that the director with the advice of the local watershed advisory group determines is pertinent to the analysis of water quality and the development and implementation of a total maximum daily load.

(33) "Total maximum daily load (TMDL)" means a plan for a water body not fully supporting designated beneficial uses and includes the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, and natural background levels of the pollutant impacting the water body. Pollutant allocations established through TMDLs shall be at a level necessary to implement the applicable water quality standards for the identified pollutants with seasonal variations and a margin of safety to account for uncertainty concerning the relationship between the pollutant loading and water quality standards.

(34) "Waters or water body" means the navigable waters of the United States as defined in the federal clean water act. For the purposes of this chapter, water bodies shall not include municipal or industrial wastewater

treatment or storage structures or private reservoirs, the operation of which has no effect on waters.

(35) "Water pollution" is such alteration of the thermal, chemical, biological or radioactive properties of any waters of the state, or such discharge or release of any contaminant into the waters of the state as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other legitimate uses or to livestock, wild animals, birds, fish or other aquatic life.

(36) "Water quality standards" are the designated uses of a water body and water quality criteria necessary to support those uses, and an antidegradation policy.

(37) "Watersheds" means the land area from which water flows into a stream or other body of water which drains the area. For the purposes of this chapter, the area of watersheds shall be recommended by the basin advisory group described in section 39-3613, Idaho Code.

[39-3602, added 1995, ch. 352, sec. 1, p. 1167; am. 1997, ch. 279, sec. 1, p. 829; am. 2001, ch. 103, sec. 31, p. 274; am. 2005, ch. 334, sec. 1, p. 1045; am. 2010, ch. 279, sec. 25, p. 747; am. 2011, ch. 116, sec. 2, p. 320; am. 2013, ch. 348, sec. 1, p. 941.]

39-3603. ANTIDEGRADATION POLICY AND IMPLEMENTATION. (1) Policy.

(a) Maintenance of existing uses for all waters -- Tier I protection. The existing instream beneficial uses of each water body and the level of water quality necessary to protect those uses shall be maintained and protected.

(b) High quality waters -- Tier II protection. Where the quality of waters exceeds levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water, that quality shall be maintained unless the department finds, after full satisfaction of the intergovernmental coordination and public participation provisions of this chapter, and the department's planning processes, along with appropriate planning processes of other agencies, that lowering water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such reductions in water quality, the department shall assure water quality adequate to protect existing uses fully.

(c) Outstanding resource waters -- Tier III protection. Where an outstanding resource water has been designated by the legislature that water quality shall be maintained and protected from the impacts of point and nonpoint source activities.

(2) Implementation.

(a) General permits. For general permits issued on or after July 1, 2011, the department will conduct an antidegradation review, including any required Tier II analysis, at the time at which general permits are certified. For general permits that the department determines adequately address antidegradation, review of individual applications for coverage will not be required unless it is required by the general permit. For general permits that the department determines do not adequately address antidegradation, the department may conclude that other conditions, such as the submittal of additional information or individual certification at the time an application is submitted for coverage under a general permit, may be necessary in the general permit

to provide reasonable assurance of compliance with the antidegradation policy. If supported by the permit record, the department may also presume that discharges authorized under a general permit are insignificant or that the pollution controls required in the general permit are the least degrading alternative as specified in the department's rules.

(b) Identification of Tier II waters. The department will utilize a water body by water body approach in determining where Tier II protection is appropriate in addition to Tier I protection. This approach shall be based on an assessment of the chemical, physical, biological and other information regarding the water body. The most recent federally approved integrated report and supporting data will be used to determine the appropriate level of protection as follows:

(i) Water bodies identified in the integrated report as fully supporting assessed uses will be provided Tier II protection.

(ii) Water bodies identified in the integrated report as not assessed will be provided an appropriate level of protection on a case-by-case basis using information available at the time of a proposal for a new or reissued permit or license.

(iii) Water bodies identified in the integrated report as not fully supporting assessed uses will receive Tier I protection for the impaired aquatic life or recreational use, except as follows:

1. For aquatic life uses identified as impaired for dissolved oxygen, pH or temperature, if biological or aquatic habitat parameters show a healthy, balanced biological community is present, as described in the water body assessment guidance published by the department, then the water body shall receive Tier II protection for aquatic life.

2. For recreational uses, if water quality data show compliance with those levels of water quality criteria listed in the department's rules, then the water body shall receive Tier II protection for recreational uses.

(iv) Special resource waters listed in the department's rules shall be evaluated in the same fashion as all other waters.

(c) Tier II analysis for insignificant degradation. If the department determines an activity or discharge will cause degradation, then the department shall determine whether the degradation is insignificant.

(i) A cumulative decrease in assimilative capacity of more than ten percent (10%), from conditions as of July 1, 2011, shall constitute significant degradation. If the cumulative decrease in assimilative capacity from conditions as of July 1, 2011, is equal to or less than ten percent (10%), then, taking into consideration the size and character of the activity or discharge and the magnitude of its effect on the receiving stream, the department may determine that the degradation is insignificant.

(ii) The department may request additional information from the applicant as needed to determine the significance of the degradation.

(iii) If degradation is determined to be insignificant, then no further Tier II analysis for other source controls, alternatives analysis or socioeconomic justification is required.

[39-3603, added 1995, ch. 352, sec. 1, p. 1170; am. 2011, ch. 116, sec. 3, p. 324; am. 2014, ch. 60, sec. 1, p. 142.]

39-3604. DESIGNATION OF INSTREAM BENEFICIAL USES. (1) The director shall designate the beneficial uses each surface water body can reasonably be expected to attain.

(2) Designated beneficial uses shall reflect existing uses. The director shall designate beneficial uses without regard to whether the uses are currently being attained or whether the uses are fully supported at the time of designation. In designating beneficial uses, the director shall consider:

- (a) The existing uses of the water body;
- (b) The physical, geological, hydrological, atmospheric, chemical and biological measures that affect the water body;
- (c) The beneficial use attainability measures identified in section 39-3607, Idaho Code; and
- (d) The economic impact of the designation and the economic costs required to fully support the beneficial uses.

(3) When designating beneficial uses for a water body, the director shall consult with the basin advisory group and the watershed advisory group with the responsibilities described in this chapter for the water body. After consultation, the director shall identify the designated beneficial uses of each water body in the rules of the department pursuant to the rulemaking and public participation provisions of chapter 52, title 67, Idaho Code.

(4) Persons who either conduct nonpoint activities or who conduct operations on waters described in section 39-3609, Idaho Code, pursuant to a national pollution discharge elimination system permit, shall not be required to meet water quality criteria other than those necessary for the full support of a water body's existing and designated beneficial uses, except as provided in section 39-3611, Idaho Code.

[39-3604, added 1995, ch. 352, sec. 1, p. 1170; am. 1997, ch. 279, sec. 2, p. 832; am. 2013, ch. 348, sec. 2, p. 945.]

39-3605. IDENTIFICATION OF REFERENCE STREAMS OR CONDITIONS. The director shall, in consultation with the appropriate basin advisory group, identify reference streams or conditions to assist in determining whether the designated beneficial uses of water bodies within a basin are being fully supported. Streams or conditions shall be selected to represent the land types, land uses, hydrology, water uses and geophysical features within the basins described in this chapter. Reference streams or conditions shall be representative of one (1) of the following:

(1) A stream or other water body reflecting natural conditions with few impacts from human activities and which is representative of the highest level of support attainable in the basin; or

(2) A stream or water body reflecting the minimum conditions necessary to fully support the designated beneficial uses of the stream or water body; or

(3) Physical, chemical and biological indicators identified in the rules of the department which reflect full support of designated beneficial uses.

[39-3605, added 1995, ch. 352, sec. 1, p. 1171; am. 1997, ch. 279, sec. 3, p. 833; am. 2013, ch. 348, sec. 3, p. 945.]

39-3605C. ENVIRONMENTAL REMEDIATION FUND ESTABLISHED. There is hereby created in the state treasury a fund to be known as the environmental reme-

diation fund. Surplus moneys in the environmental remediation fund shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury under section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the environmental remediation fund. The fund may have paid into it:

- (1) Legislative appropriations and transfers from other funds;
 - (2) All donations and grants from any source which may be used for the provisions of this act;
 - (3) Any other funds which may hereafter be provided by law.
- [39-3605C, added 1995, ch. 344, sec. 2, p. 1133.]

39-3606. MONITORING AND USE OF REFERENCE STREAMS OR CONDITIONS AND BENEFICIAL USE SUPPORT ASSESSMENT. (1) The director shall conduct monitoring to determine whether designated beneficial uses of water bodies are fully supported. In making such determinations, the director shall consult with the basin advisory group and the watershed advisory group with the responsibilities described in this chapter for the water body. The director shall use the appropriate water quality standards as identified in the rules of the department and shall compare the physical, chemical and biological measures of the water body with the reference stream or condition appropriate to the land type, land uses, hydrology, water uses and geophysical features of the water body as described in section 39-3605(2), Idaho Code. If the water body has such physical, chemical or biological measures as the reference stream or condition, even though such measures may be diminished from the conditions set forth in section 39-3605(1), Idaho Code, then the director shall deem the designated beneficial uses for the water body to be fully supported and as having achieved the objectives of the federal clean water act and of this chapter. When site-specific standards have been developed for an activity pursuant to the rules of the department, the use of reference streams as described in this section shall not be necessary.

(2) The physical, geological, hydrological, atmospheric, chemical or biological measures of a water body to be used to determine whether beneficial uses are fully supported may include, but are not limited to: stream width, stream depth, stream shade, sediment, bank stability, water flows, physical characteristics of the stream that affect habitat for fish, macroinvertebrate species or other aquatic life, and the variety and number of fish or other aquatic life.

[39-3606, added 1995, ch. 352, sec. 1, p. 1171; am. 1997, ch. 279, sec. 4, p. 833; am. 2013, ch. 348, sec. 4, p. 946.]

39-3606C. APPROPRIATION OF ENVIRONMENTAL REMEDIATION FUND -- PURPOSE OF CHAPTER. Moneys in the environmental remediation fund may be used for annual legislative appropriations for the purpose of environmental cleanup and remediation and restoration in, but not limited to, the following areas:

- (1) To provide the state's matching share of grants for remediation including superfund grants;
- (2) To provide for the operations of remediation activities.

[39-3606C, added 1995, ch. 344, sec. 3, p. 1133.]

39-3607. REVISIONS AND ATTAINABILITY OF BENEFICIAL USES. The director shall, in consultation with the appropriate basin advisory group and watershed advisory group, conduct a beneficial use attainability assessment to determine whether beneficial uses should be revised. Designated uses shall

be reviewed and revised when such physical, geological, hydrological, atmospheric, chemical or biological measures indicate the need to do so. The director shall consider the economic costs required to attain a revised beneficial use. A designated use, that is not an existing use, shall be removed when it is demonstrated that attaining the use is not feasible, using those factors set forth in 40 CFR 131.10(g).

Previous assessments of beneficial use attainability that are of a quality and content acceptable to the director shall constitute the baseline data against which future assessments shall be made to determine changes in the water body and what beneficial uses can be attained in it. In addition, the director, to the extent possible, may determine whether changes in the condition of the water body are the result of past or ongoing point or nonpoint source activities. The director shall also seek information from appropriate public agencies regarding land uses, water uses and geological or other information for the watershed that may affect water quality and the ability of the water body in question to attain designated beneficial uses. In carrying out the provisions of this section, the director may contract with private enterprises or public agencies to provide the desired data.

[39-3607, added 1995, ch. 352, sec. 1, p. 1171; am. 2013, ch. 348, sec. 5, p. 946.]

39-3608. REGULATORY ACTIONS FOR WATER BODIES WHERE BENEFICIAL USES ARE FULLY SUPPORTED. For streams or other water bodies where the director has determined that designated beneficial uses are being fully supported, the director shall assure, in a manner consistent with other existing applicable statutes, and rules, that all programs deemed necessary to maintain full support of designated beneficial uses are employed. In providing such assurances, the director may enter together into an agreement with public agencies in accordance with sections 67-2326 through 67-2333, Idaho Code.

[39-3608, added 1995, ch. 352, sec. 1, p. 1172.]

39-3609. IDENTIFICATION OF WATER BODIES WHERE BENEFICIAL USES ARE NOT FULLY SUPPORTED. In accordance with the provisions set forth in the federal clean water act and after consultation with the appropriate basin advisory group and watershed advisory group, the director shall notify the appropriate public agencies of any water bodies in which the designated beneficial uses are not fully supported. For water bodies so identified, the director shall place such water bodies into one (1) of the following priority classifications for the development of total maximum daily load or equivalent processes:

(1) "High." The director shall place water bodies in this category taking into account the availability and quality of data, department resources, and whether the severity of pollution poses a significant risk to designated or existing beneficial uses. The director, in establishing this category, shall consider public involvement as set forth in this chapter.

(2) "Medium." The director shall place water bodies in this category taking into account the availability and quality of data, department resources, and whether the severity of the pollution poses a risk to designated or existing beneficial uses.

(3) "Low." The director shall place water bodies in this category taking into account the availability and quality of data, department resources, and whether the severity of pollution poses a minimal risk to designated or existing beneficial uses.

[39-3609, added 1995, ch. 352, sec. 1, p. 1172; am. 1997, ch. 279, sec. 5, p. 833; am. 2013, ch. 348, sec. 6, p. 947; am. 2016, ch. 111, sec. 1, p. 316.]

39-3610. GENERAL LIMITATIONS ON POINT AND NONPOINT SOURCES FOR WATER BODIES NOT FULLY SUPPORTING BENEFICIAL USES. The director shall assure, in a manner consistent with existing statutes or rules, that for each category of water body, as described in section 39-3609(1) through (3), Idaho Code, the following limitations shall apply:

(1) For waters in the "high," category a total maximum daily load or equivalent process as described in this chapter shall be undertaken. Provided however, that nothing in this section shall be interpreted as requiring best management practices for agricultural operations which are not adopted on a voluntary basis.

(2) For waters in the "medium" category, such changes in permitted discharges from point sources on the water body or to the best management practices for nonpoint sources within the watershed deemed necessary to prohibit further impairment of the designated or existing beneficial uses.

(3) For waters in the "low" category, such changes in permitted discharges from point sources on the water body or to the best management practices for nonpoint sources within the watershed deemed necessary to prohibit further impairment of the designated or existing beneficial uses.

[39-3610, added 1995, ch. 352, sec. 1, p. 1172.]

39-3611. DEVELOPMENT AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOAD OR EQUIVALENT PROCESSES. (1) For water bodies described in section 39-3609, Idaho Code, the director shall, in accordance with the priorities set forth in section 39-3610, Idaho Code, and in accordance with sections 39-3614 through 39-3616, Idaho Code, and as required by the federal clean water act, prepare a subbasin assessment and develop a total maximum daily load to allocate pollutant loads to point source and nonpoint sources that discharge pollutants to the water body.

(2) Upon the completion of a total maximum daily load, the director shall publish notice of the final decision on the TMDL in the Idaho administrative bulletin and provide written notice to members of the applicable watershed advisory group. The director's final decision shall be based upon a record that provides the basis for the total maximum daily load. The rulemaking provisions in sections 67-5220 through 67-5231, Idaho Code, shall not apply to TMDLs. The director's final decision regarding a TMDL may be appealed to the board of environmental quality in accordance with section 39-107(5), Idaho Code, and the rules governing such appeals. The time for appeal to the board shall commence upon publication in the administrative bulletin. The board's final decision is subject to judicial review under section 39-107(6), Idaho Code. The provisions of this subsection shall apply to all total maximum daily loads developed by the director after January 1, 1995. Provided however, that the rulemaking provisions in sections 67-5220 through 67-5231, Idaho Code, shall apply to TMDLs for metals in the Coeur d'Alene River Basin, upstream from the head of the Spokane River. Provided further, that nothing herein shall modify the requirement that water quality standards be promulgated as rules of the department pursuant to title 67, chapter 52, Idaho Code.

(3) For water bodies where an applicable water quality standard has not been attained due to impacts that occurred prior to 1972, no further restric-

tions under a total maximum daily load process shall be placed on a point source discharge unless the point source contribution of a pollutant exceeds twenty-five percent (25%) of the total load for that pollutant. Existing uses shall be maintained on all such water bodies.

(4) Subbasin assessments and total maximum daily load processes developed pursuant to this section shall include, but not be limited to:

- (a) Identification of pollutant(s) impacting the water body;
- (b) An inventory of all point and nonpoint sources of the identified pollutant(s), if practical, or an analysis of the land types, land uses and geographical features within the watershed that may be contributing identified pollutants to the water body;
- (c) An analysis of why current control strategies are not effective in assuring full support of designated beneficial uses;
- (d) A plan to monitor and evaluate progress toward meeting water quality standards;
- (e) Pollution control strategies for both point sources and nonpoint sources;
- (f) Identification of the period of time necessary to achieve full support of designated beneficial uses through implementation of pollution control strategies, which takes into account any expected changes to applicable water quality standards; and
- (g) An adequate margin of safety to account for uncertainty.

(5) Point source discharges for which a national pollutant discharge elimination system permit is approved after January 1, 1995, shall be deemed to have met the requirements of this section.

(6) No instream target for a pollutant shall be set as part of a TMDL process unless the data and analysis in the subbasin assessment demonstrate that the pollutant is causing or contributing to a violation of a water quality standard in the stream for which the TMDL is being developed. If a pollutant load is allocated to a tributary inflow as part of a downstream TMDL, the director shall develop a plan to meet such allocation in consultation with the tributary watershed advisory group as provided in subsection (8) of this section.

(7) The director shall review and reevaluate each TMDL, supporting subbasin assessment, implementation plan(s) and all available data periodically at intervals of no greater than five (5) years. Such reviews shall include the assessments required by section 39-3607, Idaho Code, and an evaluation of the water quality criteria, instream targets, pollutant allocations, assumptions and analyses upon which the TMDL and subbasin assessment were based. If the members of the watershed advisory group, with the concurrence of the basin advisory group, advise the director that the water quality standards, the subbasin assessment, or the implementation plan(s) are not attainable or are inappropriate based upon supporting data, the director shall initiate the process or processes to determine whether to make recommended modifications. The director shall report to the legislature annually the results of such reviews.

(8) Each TMDL and any supporting subbasin assessment shall be developed and periodically reviewed and modified in consultation with the watershed advisory group for the watershed in which the water bodies are located. Consultation shall include, but not be limited to:

- (a) Upon request, providing the watershed advisory group with all available information in the possession of the department concerning applicable water quality standards, water quality data, monitoring,

assessments, reports, procedures and schedules for developing and submitting the TMDL and any supporting subbasin assessment to the United States environmental protection agency;

(b) Utilizing the knowledge, expertise, experience and information of the watershed advisory group in assessing the status, attainability or appropriateness of water quality standards, and in developing a TMDL and any supporting subbasin assessment; and

(c) Providing the watershed advisory group with an adequate opportunity to participate in drafting the documents for the TMDL and any supporting subbasin assessment and to suggest changes to the documents.

(9) No TMDL shall be published for public comment or submitted for approval to the United States environmental protection agency until consultation, as herein provided, has occurred. If, after consultation, the watershed advisory group disagrees with the TMDL or any supporting subbasin assessment, or has determined that applicable water quality standards should be reevaluated or revised, such position and the basis therefor shall be documented in the public notice of availability to the TMDL and any supporting subbasin assessment for review, and in any submission of the same to the United States environmental protection agency. The director shall respond to the points raised by the watershed advisory group and shall document the response in the final decision.

(10) Nothing in this section shall be interpreted as requiring best management practices for agricultural nonpoint source activities which are not adopted on a voluntary basis, nor shall this section be interpreted to relieve any person from the responsibility to comply with the Idaho forest practices act.

[39-3611, added 1995, ch. 352, sec. 1, p. 1173; am. 1997, ch. 279, sec. 6, p. 834; am. 2003, ch. 351, sec. 1, p. 938; am. 2005, ch. 334, sec. 2, p. 1049.]

39-3612. INTEGRATION OF TOTAL MAXIMUM DAILY LOAD PROCESSES WITH OTHER PROGRAMS. Upon completion of total maximum daily load processes as set forth in section 39-3611, Idaho Code, the director shall integrate such processes into the state's water quality management plan developed pursuant to the federal clean water act. Total maximum daily load processes shall be used by all designated agencies for achieving water quality standards.

[39-3612, added 1995, ch. 352, sec. 1, p. 1173; am. 2003, ch. 351, sec. 2, p. 939.]

39-3613. CREATION OF BASIN ADVISORY GROUPS. The director, in consultation with the designated agencies, shall name, for each of the state's major river basins, no less than one (1) basin advisory group which shall generally advise the director on water quality objectives for each basin and work in a cooperative manner with the director to achieve these objectives. Each such group shall establish by majority vote, operating procedures to guide the work of the group. Members shall be compensated pursuant to section 59-509(c), Idaho Code. The membership of each basin advisory group shall be representative of the industries and interests directly affected by the implementation of water quality programs within the basin and each member of the group shall either reside within the basin or represent persons with a real property interest within the basin. Recognized groups representing those industries or interests in the basin may nominate members of the group to the director. Each basin advisory group named by the director shall

reflect a balanced representation of the interests in the basin and shall, where appropriate, include a representative from each of the following: agriculture, mining, nonmunicipal point source discharge permittees, forest products, local government, livestock, Indian tribes (for areas within reservation boundaries), water-based recreation, and environmental interests. In addition, the director shall name one (1) person to represent the public at large who may reside outside the basin. Members named to the basin advisory groups shall, in the opinion of the director, have demonstrated interest or expertise which will be of benefit to the work of the basin advisory group. The director may also name as may be needed those who have expertise necessary to assist in the work of the basin advisory group who shall serve as technical nonvoting advisers to the basin advisory group.

[39-3613, added 1995, ch. 352, sec. 1, p. 1174; am. 1997, ch. 214, sec. 1, p. 634; am. 2001, ch. 103, sec. 32, p. 277; am. 2001, ch. 371, sec. 1, p. 1296; am. 2007, ch. 90, sec. 21, p. 258.]

39-3614. DUTIES OF THE BASIN ADVISORY GROUP. Each basin advisory group shall meet as necessary to conduct the group's business and to provide general coordination of the water quality programs of all public agencies pertinent to each basin. Duties of the basin advisory groups shall include, but not be limited to, providing advice to the director for:

- (1) Determining priorities for monitoring;
- (2) Revisions in the beneficial uses designated for each stream and the status and attainability of designated or existing beneficial uses for the water bodies within the basin;
- (3) Assigning water bodies to the categories described in section 39-3609, Idaho Code;
- (4) Reviewing the development and implementation of total maximum daily load processes as described in section 39-3611, Idaho Code;
- (5) Suggesting members of the watershed advisory groups described in section 39-3615, Idaho Code; and

(6) Establishing priorities for water quality programs within the basin based on the economic resources available to implement such programs. In carrying out the provisions of this chapter, the director and the basin advisory groups shall employ all means of public involvement deemed necessary, including the public involvement required by section 39-3603, Idaho Code, or required in chapter 52, title 67, Idaho Code, and shall cooperate fully with the public involvement or planning processes of other appropriate public agencies.

[39-3614, added 1995, ch. 352, sec. 1, p. 1174.]

39-3615. CREATION OF WATERSHED ADVISORY GROUPS. Basin advisory groups shall identify representatives of the industries and other interests affected by the management of water quality within a watershed who are prospective members of an advisory group for the watershed and shall advise the director of their findings. The director, upon the advice of the appropriate basin advisory group, shall name watershed advisory groups which will generally advise the department on the appropriateness, attainability and status of existing and designated beneficial uses and water quality criteria within the watershed, and on the development and implementation of TMDLs and other state water quality plans, including those specific actions needed to control point and nonpoint sources of pollution within the watersheds of those water bodies where designated beneficial uses are not fully supported.

Each watershed advisory group shall be formed early enough to complete consultation, as provided in section 39-3611(8), Idaho Code, prior to the date the TMDL and any supporting subbasin assessment is scheduled to be submitted to the United States environmental protection agency for approval.

If the members of the watershed advisory group, with the concurrence of the basin advisory group, advise the director that applicable water quality standards within the watershed are not attainable or are inappropriate based upon supporting data, the director shall initiate the process or processes to assess such standards and to change or remove the standards that are shown by the assessment to be unattainable or inappropriate, consistent with this chapter.

Members of each watershed advisory group shall be representative of the industries and interests affected by the management of that watershed and shall, where appropriate, include a representative from each of the following: agriculture, mining, point source dischargers, forest products, local government, livestock, Indian tribes (for areas within reservation boundaries), water-based recreation, environmental interests and the land managing or regulatory agencies with an interest in the management of that watershed and the quality of the water bodies within it.

Members of each watershed advisory group shall serve and shall not be reimbursed for their expenses during their term of service.

[39-3615, added 1995, ch. 352, sec. 1, p. 1175; am. 1997, ch. 279, sec. 7, p. 835; am. 2005, ch. 334, sec. 3, p. 1051.]

39-3616. DUTIES OF EACH WATERSHED ADVISORY GROUP. Each watershed advisory group shall generally be responsible for recommending those specific actions needed to control point and nonpoint sources of pollution within the watershed so that, within reasonable periods of time, designated beneficial uses are fully supported and other state water quality plans are achieved. Watershed advisory groups shall, as described in this chapter, consult with the director and participate in the development of each TMDL and any supporting subbasin assessment for water bodies within the watershed, and shall develop and recommend actions needed to effectively control sources of pollution. In carrying out the provisions of this section, the director and the watershed advisory groups shall employ all means of public involvement deemed necessary or required in chapter 52, title 67, Idaho Code, and shall cooperate fully with the public involvement or planning processes of other appropriate public agencies.

[39-3616, added 1995, ch. 352, sec. 1, p. 1175; am. 1997, ch. 279, sec. 8, p. 835; am. 2005, ch. 334, sec. 4, p. 1052.]

39-3617. DESIGNATION OF OUTSTANDING RESOURCE WATERS. Any person may request, in writing to the board of environmental quality, that a stream segment may be considered for designation as an outstanding resource water. The board shall recommend to the legislature those stream segments the board proposes for designation as outstanding resource waters. The legislature shall determine by law which such stream segments to designate as outstanding resource waters. Stream segments so designated shall be included in a list of outstanding resource waters to be compiled and updated by the department of environmental quality in its rules governing water quality standards. Interim status or special protection shall not be provided to streams recommended by the board prior to legislative designation as an outstanding resource water. No state agency shall delay actions, or deny or

delay the processing or approval of any permit for a nonpoint source activity based on nomination of a segment for designation as an outstanding resource water, or while the legislature is considering such designation.

[39-3617, added 1995, ch. 352, sec. 1, p. 1175; am. 2001, ch. 103, sec. 33, p. 279.]

39-3618. RESTRICTION PROVISIONS FOR NEW NONPOINT SOURCE ACTIVITIES ON OUTSTANDING RESOURCE WATERS. No person shall conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of an outstanding resource water, except for short-term or temporary nonpoint source activities which do not alter the essential character or special uses of a segment, issuance of water rights permits or licenses, allocation of water rights, or operation of water diversions or impoundments.

[39-3618, added 1995, ch. 352, sec. 1, p. 1176.]

39-3619. CONTINUATION PROVISIONS FOR EXISTING ACTIVITIES ON OUTSTANDING RESOURCE WATERS. Existing activities may continue and shall be conducted in a manner that maintains and protects the current water quality of an outstanding resource water. The provisions of this section shall not affect short-term or temporary activities that do not alter the essential character or special uses of a segment, allocation of water rights, or operations of water diversions or impoundments, provided that such activities shall be conducted in conformance with applicable laws and regulations.

[39-3619, added 1995, ch. 352, sec. 1, p. 1176.]

39-3620. APPROVAL PROVISIONS FOR BEST MANAGEMENT PRACTICES FOR NEW NONPOINT SOURCE ACTIVITIES ON OR AFFECTING OUTSTANDING RESOURCE WATERS. No person may conduct a new nonpoint source activity on or affecting an outstanding resource water, except for a short-term or temporary activity as set forth in section 39-3602, Idaho Code, prior to approval by the designated agency as provided in this section.

(1) Within six (6) months of designation of an outstanding resource water by the legislature, the designated agency shall develop best management practices for reasonably foreseeable new nonpoint source activities. In developing best management practices the designated agencies shall:

(a) Solicit technical advice from state and federal agencies, research institutions, and universities and consult with affected landowners, land managers, operators, and the public;

(b) Shall assure that all public participation processes required by law have been completed, but if no public participation process is required by law, will require public notification and the opportunity to comment; and

(c) Recommend proposed best management practices to the board of environmental quality.

(2) The board of environmental quality and designated agencies shall adopt the proposed best management practices that are in compliance with the rules and regulations governing water quality standards, and based on the recommendations of the designated agency and the comments received during the public participation process;

(3) After adoption, these best management practices will be known as the outstanding resource water best management practices and will be published by the designated agency. Outstanding resource water approved

best management practices will be reviewed and revised where needed by the designated agency every four (4) years in consultation with the department, landowners, federal managers, operators and the public to determine conformance with objectives of this chapter;

(4) Following adoption of best management practices, the designated agency shall require implementation of applicable outstanding resource water best management practices which will assure that water quality of an outstanding resource water is not lowered;

(5) Where outstanding resource water best management practices have not been adopted as set forth in subsections (1) through (4) of this section, the designated agency shall:

(a) Assure that all public participation processes required by law have been completed, but if no public participation process is required by law, the designated agency shall provide for public notification of the new activity and the opportunity to comment;

(b) Determine that the site-specific best management practices selected for a new nonpoint source activity are designed to ensure that water quality of the outstanding resource water is not lowered; and

(c) Provide for review by the department that the activity is in compliance with rules and regulations governing water quality standards.

(6) When the applicable outstanding resource water best management practices are applied, the landowner, land manager, or operator applying those practices will be in compliance with the provisions of this chapter. In the event water quality is lowered, the outstanding resource water best management practices will be revised within a time frame established by the designated agency to ensure water quality is restored.

[39-3620, added 1995, ch. 352, sec. 1, p. 1176; am. 1997, ch. 279, sec. 9, p. 835; am. 2001, ch. 103, sec. 34, p. 279.]

39-3621. MONITORING PROVISIONS. The designated agencies, in cooperation with the appropriate land management agency and the department shall ensure best management practices are monitored for their effect on water quality. The monitoring results shall be presented to the department on a schedule agreed to between the designated agency and the department.

[39-3621, added 1995, ch. 352, sec. 1, p. 1177.]

39-3622. ENFORCEMENT PROVISIONS. (1) The designated agency shall ensure that the approved outstanding resource water best management practices are implemented for new nonpoint source activities. If a person fails to obtain approval from a designated agency for a new nonpoint source activity as set forth in section 39-3620, Idaho Code, or if a person fails to implement approved best management practices and water quality is lowered, the designated agency may institute a civil action for an immediate injunction to halt the activity or pursue other remedies provided by law.

(2) Nothing in this act shall restrict the enforcement authority of the department or designated agencies as provided by law.

[39-3622, added 1995, ch. 352, sec. 1, p. 1177.]

39-3623. EFFECT OF RULES. Every rule promulgated within the authority conferred in sections 39-3617 through 39-3622, Idaho Code, shall be of temporary effect and shall become permanent only by enactment of statute at the first regular session following adoption of the rule. Rules not approved in

the above manner shall be rejected, null, void and of no force and effect on July 1, following submission of the rules to the legislature.

(1) The rules promulgated within the authority conferred in this act and adopted by the board of health and welfare on January 31, 1990, and contained in IDAPA 16.01.2003,31 and 16.01.2003,32 and 16.01.2053,01 through 16.01.2053,07, are hereby approved by the legislature.

(2) The rules promulgated within the authority conferred in this act and adopted by the board of environmental quality on November 10, 2010, and contained in IDAPA 58.01.02.010, 58.01.02.051 and 58.01.02.052, and on November 19, 2014, and contained in IDAPA 58.01.02.060 and 58.01.02.010 are hereby approved by the legislature. A mixing zone approved by the department shall be subject to the applicable laws and rules for mixing zones in effect at the time it is approved and such mixing zone shall remain effective until the applicable permit is renewed or modified.

[39-3623, added 1995, ch. 352, sec. 1, p. 1177; am. 2011, ch. 116, sec. 4, p. 325; am. 2015, ch. 98, sec. 1, p. 239.]

39-3624. DECLARATION OF POLICY -- DESIGNATION OF DIRECTOR. The legislature, recognizing that water is one of the state's most valuable natural resources, has adopted water quality and public drinking water standards and authorized the director of the department of environmental quality to implement these standards. In order to provide and maintain maximum water quality in the state for domestic, industrial, agricultural (irrigation and stockwatering), mining, manufacturing, electric power generation, municipal, fish culture, artificial ground water recharge, transportation and recreational purposes and to provide safe drinking water to the public at the earliest possible date, and to conform to the expressed intent of congress to abate pollution of ground waters, streams and lakes and to provide safe drinking water to the public, the legislature declares the purpose of this chapter is to enhance and preserve the quality and value of the water resources of the state of Idaho and to assist in the prevention, control, abatement and monitoring of water pollution. In consequence of the benefits resulting to the public health, welfare and economy it is hereby declared to be the policy of the state of Idaho to protect this natural resource and to provide safe drinking water to the public by assisting in monitoring, preventing and controlling water pollution; to support and aid technical and planning research leading to the prevention and control of water pollution; to provide financial and technical assistance to municipalities and other agencies in the abatement and prevention of water pollution; and to provide financial and technical assistance to community water systems and nonprofit noncommunity water systems. The director of the department of environmental quality shall administer this chapter and nothing herein shall be construed as impairing or in any manner affecting the statutory authority or jurisdiction of municipalities in providing domestic water, sewage collection and treatment.

[(39-3624) 1970, ch. 87, sec. 1, p. 211; am. 1974, ch. 23, sec. 153, p. 633; am. 1980, ch. 208, sec. 1, p. 474; am. 1987, ch. 174, sec. 1, p. 343; am. and redesig. 1995, ch. 352, sec. 8, p. 1182; am. 1999, ch. 137, sec. 9, p. 394; am. 2000, ch. 53, sec. 1, p. 103; am. 2001, ch. 103, sec. 35, p. 280.]

39-3625. DEFINITIONS. (1) "Sewage treatment works" means any facility for the purpose of collecting, treating, neutralizing or stabilizing sewage

or industrial wastes of a liquid nature, including treatment by disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishings thereof and their appurtenances.

(2) "Community water system" means a public drinking water system that serves at least fifteen (15) service connections used by year-round residents or serves at least twenty-five (25) year-round residents.

(3) "Nonprofit noncommunity water system" means a public drinking water system that is not a community water system and is governed by section 501 of the Internal Revenue Code and includes, but is not limited to: state agencies, municipalities and nonprofit organizations such as churches and schools.

(4) "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of sewage treatment works or best management practices, preliminary planning to determine the economic and engineering feasibility of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or best management practices, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or best management practices, and the inspection and supervision of the construction of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or best management practices.

(5) "Eligible construction project" means a project for construction of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or for a project for the application of best management practices as set forth in the approved state water quality plan, in related project areas:

(a) For which approval of the Idaho board of environmental quality is required under section 39-118, Idaho Code;

(b) Which is, in the judgment of the Idaho board of environmental quality, eligible for water pollution abatement assistance or for provision of safe drinking water, whether or not federal funds are then available therefor;

(c) Which conforms with applicable rules of the Idaho board of environmental quality;

(d) Which is, in the judgment of the Idaho board of environmental quality, necessary for the accomplishment of the state's policy of water purity as stated in section 39-3601, Idaho Code; and

(e) Which is needed, in the judgment of the Idaho board of environmental quality, to correct existing water pollution problems or public health hazards and to provide reasonable reserve capacity to prevent future water pollution problems or public health hazards or to provide for safe drinking water.

(6) "Municipality" means any county, city, special service district, nonprofit corporation or other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project.

(7) "Board" means the Idaho board of environmental quality.

(8) "Department" means the Idaho department of environmental quality.

(9) "Director" means the director of the Idaho department of environmental quality.

(10) "Nondomestic wastewater" means wastewater whose source of contamination is not principally human excreta.

(11) "Best management practice" means practices, techniques or measures identified in the state water quality plan which are determined to be the most effective, practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.

(12) "Nonpoint source pollution" means water pollution that comes from many varied, nonspecific and diffused sources and can be categorized by the general land disturbing activity that causes the pollution.

(13) "Training program" means any course of training established to provide sewage treatment plant operating personnel and public drinking water system personnel with increased knowledge to improve their ability to operate and maintain sewage treatment works and public drinking water systems.

[(39-3625) 1970, ch. 87, sec. 2, p. 211; am. 1974, ch. 23, sec. 154, p. 723; am. 1974, ch. 80, sec. 1, p. 1167; am. 1977, ch. 176, sec. 1, p. 452; am. 1980, ch. 208, sec. 2, p. 475; am. 1980, ch. 280, sec. 1, p. 727; am. 1986, ch. 66, sec. 1, p. 188; am. and redesig. 1995, ch. 352, sec. 9, p. 1183; am. 1999, ch. 137, sec. 10, p. 394; am. 2000, ch. 53, sec. 2, p. 104; am. 2001, ch. 103, sec. 36, p. 281.]

39-3626. AUTHORIZATION OF GRANTS AND LOANS -- DESIGNATION OF ADMINISTERING AGENCY -- RESERVATION OF FUNDS FOR OPERATIONS -- CRITERIA -- PRIORITY PROJECTS -- ELIGIBLE PROJECTS. (1) The state of Idaho is hereby authorized to make grants and loans at or below market interest rates, as funds are available, to any municipality to assist said municipality in the construction of sewage treatment works, to community public water systems and nonprofit non-community public water systems. The state of Idaho is hereby also authorized to make loans at or below market interest rates for the implementation of a management program established under section 319 of the federal water pollution control act, as amended.

(2) The department of environmental quality may use a portion of the interest revenues from wastewater and drinking water loans, in an amount not to exceed one percent (1%) of loans outstanding, subject to annual appropriation, for operation of the wastewater and drinking water loan programs.

(3) The Idaho board of environmental quality through the department of environmental quality shall be the agency for administration of funds authorized for grants or loans under this chapter, and may reserve up to four percent (4%) of the moneys accruing annually to the water pollution control and wastewater facility loan funds to be appropriated annually for the purpose of operating the water quality programs established pursuant to this chapter. The board may also reserve up to six percent (6%) of the moneys accruing annually to the water pollution control fund to be appropriated annually for the purpose of conducting water quality studies including monitoring.

(4) In allocating state construction grants and loans under this chapter, the Idaho board of environmental quality shall give consideration to water pollution control needs, protection of public health and provision of safe drinking water.

(5) Pursuant to subsection (4) of this section, the Idaho board of environmental quality shall establish an integrated list of priority municipal sewage facility and nonpoint source pollution control projects and a list of priority community and nonprofit noncommunity public water systems.

(6) The Idaho board of environmental quality through the department of environmental quality may transfer funds between the wastewater facility loan account and the drinking water loan account. Such transfers shall be listed in the annual intended use plan and approved by the Idaho board of environmental quality.

[(39-3626) 1970, ch. 87, sec. 3, p. 211; am. 1974, ch. 23, sec. 155, p. 725; am. 1974, ch. 80, sec. 2, p. 1167; am. 1977, ch. 176, sec. 2, p. 453; am. 1980, ch. 208, sec. 3, p. 476; am. 1980, ch. 280, sec. 2, p. 728; am. 1987, ch. 174, sec. 2, p. 343; am. 1988, ch. 270, sec. 1, p. 896; am. and redesig. 1995, ch. 352, sec. 10, p. 1184; am. 1999, ch. 137, sec. 11, p. 396; am. 2000, ch. 53, sec. 3, p. 105; am. 2000, ch. 363, sec. 1, p. 1200; am. 2001, ch. 103, sec. 37, p. 282; am. 2004, ch. 61, sec. 1, p. 279; am. 2014, ch. 59, sec. 1, p. 141.]

39-3627. PAYMENTS BY STATE BOARD OF ENVIRONMENTAL QUALITY -- CONTRACTS WITH MUNICIPALITIES AND COMMUNITY AND NONPROFIT NONCOMMUNITY PUBLIC WATER SYSTEMS -- RULES -- APPROVAL OF ATTORNEY GENERAL -- AUDIT OF PAYMENTS. (1) The Idaho board of environmental quality may make payments not to exceed ninety percent (90%) of the estimated reasonable cost of an eligible construction project funded by a grant. Payments may be made which are equal to one hundred percent (100%) of the estimated reasonable cost of an eligible construction project funded by a loan.

(2) The Idaho board of environmental quality may, in the name of the state of Idaho, enter into contracts with municipalities and community and nonprofit noncommunity public water systems and any such municipality and community and nonprofit noncommunity public water system may enter into a contract with the Idaho board of environmental quality, concerning eligible construction projects. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:

(a) An estimate of the reasonable cost of the project as determined by the Idaho board of environmental quality.

(b) An agreement by the municipality or community and nonprofit noncommunity public drinking water system, binding for the actual service life of the sewage treatment works or the actual service life of the community and nonprofit noncommunity public drinking water system:

(i) To proceed expeditiously with, and complete, the project in accordance with plans approved pursuant to section 39-118, Idaho Code.

(ii) To commence operation of the sewage treatment works or community and nonprofit noncommunity public drinking water system on completion of the project, and not to discontinue operation or dispose of the sewage treatment works or community and nonprofit noncommunity public drinking water system without the approval of the board of environmental quality.

(iii) To operate and maintain the sewage treatment works or community and nonprofit noncommunity public drinking water system in accordance with applicable provisions and rules of the board.

(iv) To make available on an equitable basis the services of the sewage treatment works or community and nonprofit noncommunity public drinking water system to the residents and commercial and industrial establishments of areas it was designed to serve.

(v) To provide for the payment of the municipality's share or the community and nonprofit noncommunity public drinking water system's share of the cost of the project when the project is built using grant funds.

(vi) To develop and to secure the approval of the department of plans for the operation and maintenance of the sewage treatment works or community and nonprofit noncommunity public drinking water system; and of plans and programs for the recovery of the capital costs and operating expenses of the works or system.

(vii) To allow the board to make loans of up to one hundred percent (100%) and supplemental grants based upon financial capability to a municipality for the estimated reasonable cost of an eligible project, which may include treatment of nondomestic wastewater.

(viii) To provide for the accumulation of funds through the use of taxing powers, through charges made for services, through revenue bonds, or otherwise, for the purposes of: (1) capital replacement, (2) future improvement, betterment, and extension of such works occasioned by increased wastewater loadings on the works, and (3) establishing a fund dedicated solely to repayment of principal and interest of loans made subsequent to this chapter.

(ix) To commence annual principal and interest payments not later than one (1) year from the date construction is completed and to provide for full amortization of loans not later than thirty (30) years from the date project construction is completed.

(c) The terms under which the Idaho board of environmental quality may unilaterally terminate the contract and/or seek repayment from the municipality or community and nonprofit noncommunity public drinking water system of sums already paid pursuant to the contract for noncompliance by the municipality with the terms and conditions of the contract and the provisions of this chapter.

(3) The board of environmental quality may, in the name of the state of Idaho, enter into loan contracts with applicants for the implementation of nonpoint source pollution control programs. To be eligible for a loan the project proposed by an applicant must be consistent with the state nonpoint source management plan. Up to twenty percent (20%) of the total state revolving loan fund may be used for nonpoint source pollution control projects which demonstrate a benefit/nexus to a municipality.

(4) The board may adopt rules necessary for the making and enforcing of contracts hereunder and establishing procedures to be followed in applying for state construction grants or loans or training grants herein authorized as shall be necessary for the effective administration of the grants and loans program.

(5) All contracts entered into pursuant to this section shall be subject to approval by the attorney general as to form. All payments by the state pursuant to such contracts shall be made after audit and upon warrant as provided by law on vouchers approved by the director.

[(39-3627) 1970, ch. 87, sec. 4, p. 211; am. 1974, ch. 23, sec. 156, p. 725; am. 1974, ch. 80, sec. 3, p. 1167; am. 1977, ch. 176, sec. 3, p. 454; am. 1980, ch. 208, sec. 4, p. 476; am. 1980, ch. 280, sec. 3, p. 728;

am. 1987, ch. 174, sec. 3, p. 344; am. 1988, ch. 270, sec. 2, p. 897; am. and redesig. 1995, ch. 352, sec. 11, p. 1185; am. 1999, ch. 137, sec. 12, p. 396; am. 2000, ch. 53, sec. 4, p. 106; am. 2000, ch. 363, sec. 2, p. 1201; am. 2001, ch. 103, sec. 38, p. 283; am. 2010, ch. 25, sec. 1, p. 44; am. 2011, ch. 44, sec. 1, p. 100.]

39-3628. WATER POLLUTION CONTROL FUND ESTABLISHED. There is hereby created and established in the state treasury a separate fund to be known as the water pollution control fund. The fund shall have paid into it:

1. The moneys provided for in section 63-3638, Idaho Code, that are paid over to the state treasurer shall be deposited to the credit of the water pollution control fund, and not to the credit of the state general fund;

2. All donations and grants from any source which may be used for the provisions of this act;

3. Any other funds which may hereafter be provided by law.

[(39-3628) 1970, ch. 87, sec. 5, p. 211; am. 1987, ch. 174, sec. 4, p. 346; am. 1988, ch. 270, sec. 3, p. 899; am. and redesig. 1995, ch. 352, sec. 12, p. 1187; am. 2000, ch. 132, sec. 14, p. 329.]

39-3629. WASTEWATER FACILITY LOAN ACCOUNT ESTABLISHED. There is hereby created and established in the agency asset fund in the state treasury an account to be known as the wastewater facility loan account. Surplus moneys in the wastewater facility loan account shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury under section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the wastewater facility loan account. The account shall have paid into it:

1. Federal funds which are received by the state to provide for wastewater facility loans together with required state matching funds coming from a portion of the moneys in the water pollution control account as established in section 39-3628, Idaho Code;

2. All donations and grants from any source which may be used for the provisions of this section;

3. All principal and interest repayments of loans made pursuant to this chapter;

4. Fund transfers from the drinking water loan account; and

5. Any other moneys which may hereafter be provided by law.

[(39-3629) 1987, ch. 174, sec. 5, p. 347; am. 1988, ch. 270, sec. 4, p. 900; am. and redesig. 1995, ch. 352, sec. 13, p. 1187; am. 1996, ch. 345, sec. 1, p. 1155; am. 1998, ch. 16, sec. 1, p. 114; am. 2014, ch. 59, sec. 2, p. 141.]

39-3630. APPROPRIATION OF WATER POLLUTION CONTROL FUND -- PURPOSE OF CHAPTER. Moneys in the water pollution control fund are hereby perpetually appropriated for the following purposes:

(1) To provide revenue for the payment of general obligation bonds issued pursuant to section 39-3633, Idaho Code, and general obligation refunding bonds issued pursuant to chapter 115, 1973 laws of the state of Idaho.

(2) To provide payments for contracts entered into pursuant to this chapter.

(3) To provide funds to capitalize the wastewater facility loan account established in section 39-3629, Idaho Code, including the required matching share of federal capitalization funds.

(4) To provide funds to capitalize the drinking water loan account established in section 39-7602, Idaho Code, including the required matching share of federal capitalization funds.

(5) Pending such expenditure or use, surplus moneys in the water pollution control fund shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury by section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the water pollution control fund.

[(39-3630) 1970, ch. 87, sec. 6, p. 211; am. 1977, ch. 176, sec. 4, p. 456; am. 1980, ch. 208, sec. 5, p. 478; am. 1980, ch. 280, sec. 4, p. 730; am. 1987, ch. 174, sec. 6, p. 347; am. 1988, ch. 270, sec. 5, p. 900; am. and redesig. 1995, ch. 352, sec. 14, p. 1188; am. 1996, ch. 345, sec. 2, p. 1155; am. 1998, ch. 16, sec. 2, p. 114; am. 2000, ch. 132, sec. 15, p. 329.]

39-3631. APPROPRIATION OF WASTEWATER FACILITY LOAN FUND -- PURPOSE OF CHAPTER. Moneys in the wastewater facility loan fund are hereby perpetually appropriated for the following purposes:

(1) To provide loans and other forms of financial assistance authorized under title VI of the federal water quality act of 1987, P.L. 100-4, to any municipality for construction of sewage treatment works.

(2) To provide funds, subject to annual federal and state appropriation and applicable federal limitations, for operation of the wastewater facility loan program by the department of environmental quality.

[(39-3631) 1988, ch. 270, sec. 6, p. 901; am. and redesig. 1995, ch. 352, sec. 15, p. 1188; am. 1996, ch. 345, sec. 3, p. 1156; am. 1998, ch. 16, sec. 3, p. 115; am. 2001, ch. 103, sec. 39, p. 285.]

39-3632. GRANTS AND LOANS FOR DESIGN, PLANNING OR CONSTRUCTION -- LIMITS ON AMOUNT OF GRANTS AND LOANS. (1) The board of environmental quality may divide financial assistance for eligible construction projects into separate grants, loans or a combination of grants and loans for the design, planning, and construction stages of project development. The making of a grant or loan for early stages of a project does not obligate the state to make a grant or loans for later stages of the same project.

(2) The board may make grants from the water pollution control fund; provided, that the projected payments for such grants would not cause the projected balance in the fund to fall below zero at any time. All grant payments shall be subject to the availability of moneys in the fund.

(3) The board may make loans from the wastewater facility loan fund, provided that the projected payments for such loans would not cause the projected balance in the fund to fall below zero at any time. All loan payments shall be subject to the availability of moneys in the fund.

[(39-3632) 1981, ch. 33, sec. 1, p. 53; am. 1987, ch. 174, sec. 7, p. 347; am. 1988, ch. 270, sec. 7, p. 901; am. and redesig. 1995, ch. 352, sec. 16, p. 1188; am. 1996, ch. 345, sec. 4, p. 1156; am. 1998, ch. 16, sec. 4, p. 115; am. 2001, ch. 103, sec. 40, p. 285.]

39-3633. WATER POLLUTION CONTROL BONDS. (1) Water pollution control bonds, as provided by section 5, article VIII of the constitution of the state of Idaho, shall be authorized by resolution of the state board of environmental quality. The bonds may be issued in one (1) or more series, may bear such date or dates, may be in such denomination or denominations, may

mature at such time or times, may mature in such amount or amounts, may bear interest at the most advantageous rate or rates available to the state at the time offered, payable semiannually, may be in such form, either coupon or registered, may carry such registration and such conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without premium, as such resolution or other resolutions may provide. The bonds, if sold to a federal agency, may be sold at a private sale at not less than par and accrued interest, without advertising the same at competitive bidding. If not sold to a federal agency, the bonds shall be sold publicly in a manner to be provided by the state board of environmental quality. The bonds shall be fully negotiable within the meaning and for all purposes of the Uniform Commercial Code.

(2) The moneys derived from the sale of any bonds shall be deposited in the state treasury to the credit of the water pollution control fund for the purposes of that fund.

(3) All bonds issued pursuant to this chapter shall be obligations of the state and shall be payable in accordance with the terms of this chapter and the provisions of section 5, article VIII of the constitution of the state of Idaho.

[(39-3633) 1970, ch. 87, sec. 7, p. 211; am. 1974, ch. 23, sec. 157, p. 633; am. and redesign. 1995, ch. 352, sec. 17, p. 1189; am. 2001, ch. 103, sec. 41, p. 286.]

39-3634. COTTAGE SITE DEFINED. "Cottage site" is defined as a state owned lot containing one (1) acre or less which is or may be leased by the state of Idaho primarily for recreational or homesite use by a lessee.

[(39-3634) 1970, ch. 191, sec. 1, p. 555; am. and redesign. 1995, ch. 352, sec. 18, p. 1189.]

39-3635. COTTAGE SITE LEASES -- REQUIREMENTS -- CONSTRUCTION OF SEWAGE DISPOSAL FACILITIES -- CONNECTION TO WATER AND SEWER DISTRICT SYSTEMS -- PAYMENT OF CHARGES -- NOTIFICATION OF DEFAULTS -- SATISFACTION OF REQUIREMENTS. (1) After the effective date of sections 39-3634 through 39-3639, Idaho Code, all cottage site leases authorized by the state of Idaho shall require that each lessee must construct, at his cost and expense, sewage disposal facilities, certified by the director of the department of environmental quality as adequate, as follows:

(a) For all new cottage or house construction completed after July 1, 1971 on any cottage site the certificate shall be issued prior to occupancy.

(b) Those cottages or houses existing on the cottage sites prior to the effective date of sections 39-3634 through 39-3639, Idaho Code, shall meet those standards required by the director of the department of environmental quality for certification within two (2) years of the effective date of sections 39-3634 through 39-3639, Idaho Code, unless a public or private sewage collection or disposal system is being planned or constructed in which case the director of the department of environmental quality may grant extensions on a year by year basis but not exceed three (3) such extensions for any one (1) cottage site.

(c) Isolated dwellings on sites situated on mining, grazing or other similar types of state land board leases shall not be affected unless within two hundred (200) yards of any flowing stream or a lake.

(2) Wherever any cottage site is located within the boundaries of a district organized for water or sewer purposes, or a combination thereof, pursuant to the provisions of chapter 32, title 42, Idaho Code, as amended, the cottage site lessee shall connect his property to the sewer system of the district within sixty (60) days after written notice from the district so to do, provided, however, no cottage site lessee shall be compelled to connect his property with such sewer system unless a service line is brought by the district to a point within two hundred (200) feet of his dwelling place. All cottage site leases hereafter issued shall require, as a condition of acceptance thereof by the lessee, that the lessee will connect his property to a district sewer system as required in this subsection (2). With respect to all cottage site leases issued subsequent to July 1, 1970, filing with the department issuing the lease of evidence of connection to the district sewer system as contemplated in this subsection (2) shall be conclusive evidence of compliance by the cottage site lessee with the requirements of subsection (1) of this section and of the provisions of the cottage site lease to provide sewage disposal facilities at the expense of the cottage site lessee. Each cottage site lessee whose cottage site is subject to connection to a district sewer system as required in this subsection (2) shall pay to the district to which the cottage site is required to be connected, in a timely manner and when due, all connection fees and charges, all monthly rates, tolls and charges, as provided by chapter 32, title 42, Idaho Code, as amended, and all special benefits payments in lieu of tax payments provided for in subsection (3) of this section.

(3) Notwithstanding that title to a cottage site remains in the state of Idaho, each cottage site lessee shall pay to any district operating a sewer system to which the cottage site is connected as provided in subsection (2) of this section, each year in the same manner and at the same time as county taxes are paid and collected a sum of money in lieu of taxes equal to the sum which would have been paid had the cottage site been held in private ownership, hereinafter called special benefits payments. The special benefits payments shall be computed by applying the millage levy of the district to the cottage site in the ordinary course to the assessed valuation of the property as determined by the county assessor of the county in which the cottage site is located. No special benefits payments shall be imposed prior to January 1, 1980. The cottage site lessee shall have such rights of protest, hearings and appeals with respect to the valuation of the cottage site for purposes of determining the special benefits payments as if such cottage site were held in private ownership.

It shall be the duty of the county assessor to establish the value of each cottage site as compared to like property upon the request, in writing, of the district.

(4) Each water and sewer district shall immediately notify the department issuing a cottage site lease of the failure of any cottage site lessee to connect to the district sewer system, or to pay any connection fee or charge, monthly rate, toll or charge, or any special benefits payments, all as required or provided for in subsection (3) of this section. Any such notification shall set forth the amount of any such fees, charges or payments which are delinquent.

(5) Approval, pursuant to the provisions of section 39-118, Idaho Code, by the department of environmental quality of the plans and specifications of a sewer system to be constructed, acquired, improved or extended by a wa-

ter and sewer district shall, as to all cottage sites connected to the district sewer system, satisfy the requirements of section 39-3637, Idaho Code.

(6) The state of Idaho, its boards, agencies or departments, shall not be liable, directly or indirectly, for any connection fees and charges, monthly rates, tolls and charges, or special benefits payments charged to cottage site lessees beyond those fees or payments collected from new lessees pursuant to section 58-304A, Idaho Code, and placed in the revolving fund created by section 58-141A, Idaho Code.

[(39-3635) 1970, ch. 191, sec. 2, p. 555; am. 1971, ch. 172, sec. 1, p. 810; am. 1974, ch. 23, sec. 158, p. 633; am. 1979, ch. 100, sec. 1, p. 242; am. and redesisg. 1995, ch. 352, sec. 19, p. 1189; am. 2001, ch. 103, sec. 42, p. 286.]

39-3636. FAILURE TO PROVIDE SEWAGE DISPOSAL -- PENALTIES. Failure to provide certified sewage disposal as provided in section 39-3635(1), Idaho Code, or failure to connect to a district sewer system or to pay, when due, any connection fee or charge, any monthly rate, toll or charge, or any special benefits payment, all as required and provided for in subsections (2) and (3) of section 39-3635, Idaho Code, shall result in the following:

(a) Forfeiture of lease to the state of Idaho after reasonable notice and hearing, as shall be prescribed in rules to be adopted by the department issuing the lease pursuant to the applicable provisions of chapter 52, title 67, Idaho Code, as now or hereafter in force.

(b) Loss of sewage treatment facility credit on any transfer of lease or new lease of such site after notice and hearing before the department issuing such lease.

The department issuing any cottage site lease, upon its own motion or upon receiving notice from a water and sewer district pursuant to the provisions of section 39-3635(4), Idaho Code, of the failure of a cottage site lessee to connect to a district sewer system or to pay any connection fee or charge, any monthly rate, toll or charge, or any special benefits payments, when due, is authorized to invoke either or both remedies at its discretion or may take such other action allowed by law to enforce the provisions of the lease and the requirements of section 39-3635, Idaho Code, that each cottage site lessee connect to a district sewer system and pay all fees, charges and payments when due.

[(39-3636) 1970, ch. 191, sec. 3, p. 555; am. 1979, ch. 100, sec. 2, p. 244; am. and redesisg. 1995, ch. 352, sec. 20, p. 1191.]

39-3637. STATE BOARD OF ENVIRONMENTAL QUALITY -- RULES -- INSPECTION. The state board of environmental quality shall adopt reasonable rules and standards for the installation and operation of cottage site sewage treatment facilities, and shall provide adequate inspection services so as not to delay unreasonably the construction of any lessee. Duplicate originals of all certificates issued by the director of the department of environmental quality shall be filed with the director of the department issuing a cottage site lease.

The director of the department of environmental quality shall maintain a site by site inventory of such sewage disposal systems that may exist. The inventory shall ascertain:

(1) If the existing system meets the board standards. If the system meets all standards and rules for cottage sewage disposal systems a certificate shall be issued immediately.

(2) If the system does not meet the board standards. In such case, the lessee shall be advised in writing of the actions necessary to meet the proper standards. A copy of such report shall be filed with the state agency granting the lease. The modifications, unless specifically exempted from the time limit, as provided in sections 39-3634 through 39-3637, Idaho Code, shall be completed within two (2) years of the date of the written notice.

[(39-3637) 1970, ch. 191, sec. 4, p. 555; am. 1971, ch. 172, sec. 2, p. 810; am. 1974, ch. 23, sec. 159, p. 633; am. and redesig. 1995, ch. 352, sec. 21, p. 1192; am. 2001, ch. 103, sec. 43, p. 288.]

39-3638. FINAL DETERMINATION BY ISSUING DEPARTMENT AUTHORIZED. In the event of dispute or unreasonable delay on the part of lessee or the department of environmental quality, the department issuing a cottage site lease may, upon notice and hearing, make a final determination consistent with control of water pollution and public health.

[(39-3638) 1970, ch. 191, sec. 5, p. 555; am. 1974, ch. 23, sec. 160, p. 633; am. and redesig. 1995, ch. 352, sec. 22, p. 1192; am. 2001, ch. 103, sec. 44, p. 288.]

39-3639. CONTINUATION OF COTTAGE SITE LEASE PROGRAM. (1) The legislature of the state of Idaho recognizes that certain state lands are presently leased for cottage site uses and are subject to leases and contracts duly authorized by law. It is legislative intent to continue to recognize such leases. However, it is also legislative intent that no new or additional lands be platted, subdivided or leased for cottage site leases, unless and until the condition and precedents listed below have been met.

(2) No additional state lands shall be further platted or subdivided, nor any new cottage site leases entered into, unless and until the following provisions have been met:

(a) The department of lands shall have completed a comprehensive planning process, as to its further participation in, and extension of, the cottage site lease program;

(b) The department of lands shall complete a comprehensive planning process as to the extension of cottage site leasing for that immediate geographic area;

(c) No new cottage site leases shall be entered into unless and until an adequate water system and an adequate sewage collection and treatment system have been installed. Both of these systems shall meet applicable state health standards and rules. (i) The costs for providing these systems shall be incorporated into the annual lease rates for the newly created serviced lots, unless other specific provisions for payment have been required by the state board of land commissioners. (ii) As an alternate means of securing the necessary funds for the construction of water and sewer systems which must meet state standards and rules, the state board of land commissioners may include as a condition of the new lease the requirement that the lessee must prepay his share of the construction costs of the water and sewer system. In all cases, however, such prepayment shall be made, and adequate water and sewer systems shall be installed and in operation before such cottage sites may be inhabited.

(3) The provisions of subsection (1) herein shall not apply to unimproved lots within cottage subdivisions in which at least eighty per cent (80%) of the lots already have cottages upon them.

[(39-3639) I.C., sec. 39-3613, as added by 1975, ch. 128, sec. 1, p. 280; am. and redesign. 1995, ch. 352, sec. 23, p. 1192.]