LEGISLATURE OF THE STATE OF IDAHO

Sixty-second Legislature Second Regular Session - 2014

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 392

BY ENVIRONMENT, ENERGY, AND TECHNOLOGY COMMITTEE

AN ACT

RELATING TO WATER QUALITY; AMENDING SECTION 39-3603, IDAHO CODE, TO REVISE PROVISIONS RELATING TO TIER II ANALYSIS FOR INSIGNIFICANT DEGRADATION, TO REVISE AND TO PROVIDE GUIDELINES FOR DETERMINATION OF WHETHER DEGRADATION IS SIGNIFICANT OR INSIGNIFICANT, TO REVISE PROVISIONS RELATING TO REQUESTS BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR ADDITIONAL INFORMATION AND TO PROVIDE THAT IF DEGRADATION IS DETERMINED TO BE INSIGNIFICANT, THEN NO FURTHER TIER II ANALYSIS FOR OTHER SOURCE CONTROLS, ALTERNATIVES ANALYSIS OR SOCIOECONOMIC JUSTIFICATION IS REQUIRED; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-3603, Idaho Code, be, and the same is hereby amended to read as follows:

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 ~~activity or discharge. The department shall consider the size and character of an activity or discharge or the magnitude of its effect on the receiving stream and~~ degradation. If the department determines an activity or discharge will cause degradation, then the department shall determine whether ~~it~~ the degradation is insignificant. ~~If an activity or discharge is determined to be insignificant, then no further Tier II analysis for other source controls, alternatives analysis or socioeconomic justification is required.~~

(i) ~~The department shall determine insignificance when the proposed change in an activity or discharge, from conditions as of July 1, 2011, will not cumulatively decrease assimilative capacity by more than ten percent (10%)~~ 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 ~~in making a determination whether a proposed change in an activity or discharge is insignificant~~ 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.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.