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State NPDES Authority Statutes: *Idaho*



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[ID Code § 39-175A](#)

[ID Code § 39-175B](#)

[ID Code § 39-175C](#)

[ID Code § 39-175D](#)

[ID Code § 39-175E](#)

Current through the 2022 legislative session.

§ 39-175A. Legislative Findings and Purposes.

(1) The legislature finds:

- (a) That navigable waters within the state are one of the state's most valuable natural resources;
- (b) That it is in the public interest to promote effective and efficient regulation of the discharge of pollutants into navigable waters, and that the state should control such permitting decisions as authorized under the federal clean water act;
- (c) That the clean water act allows a state to develop and implement, with approval from the United States environmental protection agency, a national pollutant discharge elimination system (NPDES) program to be administered by the state;
- (d) That the clean water act, as amended, and regulations adopted pursuant thereto, establishes complex and detailed provisions for regulation of those who discharge pollutants into navigable waters;
- (e) That a state program to implement permitting decisions as authorized in the clean water act, and regulations adopted pursuant thereto, may enable the state to issue flexible permits consistent with the clean water act and avoid the existence of duplicative, overlapping or conflicting state and federal regulatory and enforcement processes;
- (f) That a state program must be run with a minimum of federal interference in permitting, inspection and enforcement activities and that all state permitting actions under the approved state program are to be state actions and are not subject to consultation under the endangered species act or analysis under the provisions of the



national environmental policy act. There should be no conditions of approval of the state program that have the effect of undermining or circumventing these principles;

(g) That the decision to accept delegation of authority from the environmental protection agency to operate an NPDES program has significant public policy implications that should be made by the legislature.

(2) Therefore, it is the intent of the legislature to establish requirements that must be satisfied prior to legislative approval of a permitting program that complies with the clean water act and incorporates flexible permitting procedures and rules to be promulgated by the board.

§ 39-175B. Relationship Between State and Federal Law.

The legislature cannot conveniently or advantageously set forth in this chapter all the requirements of all of the regulations which have been or will be established under the clean water act. However, any state permitting program must avoid the existence of duplicative, overlapping or conflicting state and federal regulatory systems. Further, the board may promulgate rules to implement a state permitting program but such rules shall not impose conditions or requirements more stringent or broader in scope than the clean water act and regulations adopted pursuant thereto. Further, the department will not require Idaho pollutant discharge elimination system (IPDES) permits for activities and sources not required to have permits by the United States environmental protection agency.

§ 39-175C. Approval of Idaho Pollutant Discharge Elimination System Program.

(1) The department is authorized to implement an Idaho pollutant discharge elimination system (IPDES) program consistent with the requirements of this section. The program shall not include the authority to issue permits for any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation, such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility or when secured to the bed of a lake or river, contiguous zone or waters of the United States for the purpose of mineral or oil exploration or development.

(2) The board is authorized to proceed with negotiated rulemaking and all other actions necessary to maintain approval of the IPDES program by the United States environmental protection agency including rules authorizing the collection of reasonable fees for processing and implementing an IPDES permit program. Such fees shall not be assessed or collected unless the state maintains an approved IPDES program consistent with the requirements of this section.



(3) Any memorandum of agreement negotiated by the director to maintain approval to operate an IPDES program shall be binding on the state of Idaho upon enactment of this statute.

(4) Implementation of the IPDES program shall not occur prior to statutory enactment of implementing legislation and authorization of a memorandum of agreement as specified in subsection (3) of this section.

(5) The director, as appropriate, shall establish agreements with other state agencies with expertise to administer the IPDES program.

(6) No provision of this chapter shall be interpreted as to supersede, abrogate, injure or create rights to divert or store water and apply water to beneficial uses established under section 3, article XV, of the constitution of the state of Idaho, and title 42, Idaho Code.

(7) Nothing in this section is intended to supersede any existing agreements between federal, state or local agencies regarding authority over inspections, enforcement or other obligations under the clean water act.

§ 39-175D. Idaho Pollutant Discharge Elimination System Permit Decisions and Appeal of Decisions.

(1) Prior to making a final decision regarding Idaho pollutant discharge elimination system (IPDES) permits authorized by sections 39-175A through 39-175C, Idaho Code, the department shall provide the public notice and an opportunity to comment on the department's tentative decision. The department shall develop an administrative record that shall, at a minimum, include the tentative decision, all comments received, the department's response to comments and the basis for the department's decision. The decision-making process and the final decision with respect to IPDES permits shall not be subject to the contested case provisions set forth in chapter 52, title 67, Idaho Code.

(2) Notwithstanding any other provision of law, including without limitation, chapter 52, title 67, Idaho Code, the exclusive means of appealing the department's final decision regarding an IPDES permit shall be as set forth in this section and in rules authorized by this section and sections 39-175A through 39-175C, Idaho Code. Any person aggrieved by the department's final decision regarding an IPDES permit may appeal that decision. The appeal of the decision shall be heard by a hearing officer appointed by the director from a pool of hearing officers approved by the board. Hearing officers should be persons with technical expertise or experience in the issues presented in appeals. All appeals shall be based solely on the record developed by the department as required by subsection (1) of this section and the rules adopted by the board, and no further or additional evidence may be presented except as provided in rules adopted by the board.

(3) No person, including the director and hearing officer, who has or shares authority to approve all or portions of IPDES permits either in the first instance, as modified or reissued, or on appeal, shall have a conflict of interest as defined in 40 CFR 123.25(c).



(4) Any person aggrieved by a final determination of the hearing officer regarding an IPDES permit may secure judicial review by filing a petition for review as prescribed under the rules adopted by the board and the provisions of chapter 52, title 67, Idaho Code. The petition for review shall be served upon the hearing officer, the director of the department and the attorney general. Such service shall be jurisdictional, and the provisions of this section shall be the exclusive procedure for appeal.

(5) The board shall adopt rules consistent with the provisions of this section.

§ 39-175E. Idaho Pollutant Discharge Elimination System Program Investigation, Inspection and Enforcement Authorities.

(1) All investigation, inspection and enforcement authorities and requirements set forth in the environmental protection and health act, sections 39-101 through 39-130, Idaho Code, shall be available to the department and shall apply with respect to the Idaho pollutant discharge elimination system (IPDES) program. Such authorities include, without limitation, the authorities in sections 39-108, 39-109 and 39-117, Idaho Code, which shall be available to the department to conduct investigations, inspections and enforcement relating to violations of the rules, permits, requirements or orders issued or adopted pursuant to sections 39-175A through 39-175E, Idaho Code.

(2) The department is further authorized to enforce, through the authorities provided in this section, pretreatment standards, including local limits, developed and adopted by publicly owned treatment works, as required by 40 CFR 403.10(f)(1)(iv).

