

IN THE SENATE

SENATE BILL NO. 1239

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

1 RELATING TO ENVIRONMENTAL QUALITY; AMENDING CHAPTER 1, TITLE 39, IDAHO CODE,  
2 BY THE ADDITION OF A NEW SECTION 39-175D, IDAHO CODE, TO REQUIRE PUBLIC  
3 NOTICE AND OPPORTUNITY TO COMMENT ON TENTATIVE DECISIONS BY THE DE-  
4 PARTMENT OF ENVIRONMENTAL QUALITY REGARDING IDAHO POLLUTANT DISCHARGE  
5 ELIMINATION SYSTEM (IPDES) PERMITS, TO PROVIDE FOR AN ADMINISTRATIVE  
6 RECORD, TO PROVIDE THAT CERTAIN PROVISIONS OF LAW SHALL NOT APPLY TO  
7 FINAL DECISIONS, TO PROVIDE FOR APPEALS OF CERTAIN FINAL DECISIONS, TO  
8 PROHIBIT CERTAIN CONFLICTS OF INTEREST, TO PROVIDE FOR JUDICIAL REVIEW  
9 AND TO PROVIDE FOR THE ADOPTION OF RULES; AND AMENDING CHAPTER 1, TITLE  
10 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-175E, IDAHO CODE, TO  
11 PROVIDE THAT SPECIFIED PROVISIONS OF LAW SHALL APPLY TO THE IPDES PRO-  
12 GRAM AND TO PROVIDE FOR THE ENFORCEMENT OF PRETREATMENT STANDARDS.  
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14 Be It Enacted by the Legislature of the State of Idaho:

15 SECTION 1. That Chapter 1, Title 39, Idaho Code, be, and the same is  
16 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
17 ignated as Section 39-175D, Idaho Code, and to read as follows:

18 39-175D. IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT DECI-  
19 SIONS AND APPEAL OF DECISIONS. (1) Prior to making a final decision regarding  
20 Idaho pollutant discharge elimination system (IPDES) permits authorized by  
21 sections 39-175A through 39-175C, Idaho Code, the department shall provide  
22 the public notice and an opportunity to comment on the department's tenta-  
23 tive decision. The department shall develop an administrative record that  
24 shall, at a minimum, include the tentative decision, all comments received,  
25 the department's response to comments and the basis for the department's  
26 decision. The decision-making process and the final decision with respect  
27 to IPDES permits shall not be subject to the contested case provisions set  
28 forth in chapter 52, title 67, Idaho Code.

29 (2) Notwithstanding any other provision of law, including without lim-  
30 itation, chapter 52, title 67, Idaho Code, the exclusive means of appeal-  
31 ing the department's final decision regarding an IPDES permit shall be as set  
32 forth in this section and in rules authorized by this section and sections  
33 39-175A through 39-175C, Idaho Code. Any person aggrieved by the depart-  
34 ment's final decision regarding an IPDES permit may appeal that decision.  
35 The appeal of the decision shall be heard by a hearing officer appointed by  
36 the director from a pool of hearing officers approved by the board. Hearing  
37 officers should be persons with technical expertise or experience in the is-  
38 sues presented in appeals. All appeals shall be based solely on the record  
39 developed by the department as required by subsection (1) of this section and  
40 the rules adopted by the board, and no further or additional evidence may be  
41 presented except as provided in rules adopted by the board.

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

5 (4) Any person aggrieved by a final determination of the hearing offi-  
6 cer regarding an IPDES permit may secure judicial review by filing a petition  
7 for review as prescribed under the rules adopted by the board and the provi-  
8 sions of chapter 52, title 67, Idaho Code. The petition for review shall be  
9 served upon the hearing officer, the director of the department and the at-  
10 torney general. Such service shall be jurisdictional, and the provisions of  
11 this section shall be the exclusive procedure for appeal.

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

14 SECTION 2. That Chapter 1, Title 39, Idaho Code, be, and the same is  
15 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
16 ignated as Section 39-175E, Idaho Code, and to read as follows:

17 39-175E. IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM INVES-  
18 TIGATION, INSPECTION AND ENFORCEMENT AUTHORITIES. (1) All investigation,  
19 inspection and enforcement authorities and requirements set forth in the  
20 environmental protection and health act, sections 39-101 through 39-130,  
21 Idaho Code, shall be available to the department and shall apply with re-  
22 spect to the Idaho pollutant discharge elimination system (IPDES) program.  
23 Such authorities include, without limitation, the authorities in sections  
24 39-108, 39-109 and 39-117, Idaho Code, which shall be available to the de-  
25 partment to conduct investigations, inspections and enforcement relating to  
26 violations of the rules, permits, requirements or orders issued or adopted  
27 pursuant to sections 39-175A through 39-175E, Idaho Code.

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