

WAG NEWS

An Update on Actions Impacting Watershed Advisory Groups in Idaho

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Watershed Advisory Groups and House Bill 145

What is House Bill 145?

During the 2005 legislative session, the Idaho Legislature passed House Bill 145 (HB145), which amended several sections of Idaho Code (39-3601 et seq.) that relate to how the Department of Environmental Quality (DEQ) develops total maximum daily loads (TMDLs). HB145 codifies some existing practices and also adds some new requirements. Many of the changes address the involvement of watershed advisory groups (WAGs) in TMDL development.

HB145 more clearly defines the role of WAGs in the TMDL process, clarifies who should serve on a WAG, and requires that the DEQ director appoint WAG members, with input from basin advisory groups (BAGs). A WAG must be formed for every TMDL and subbasin assessment (SBA) as the SBA process begins, unless the BAG advises DEQ that representatives to serve on a WAG cannot be identified.

The amended statute requires DEQ to work more closely with WAGs and provide them with an opportunity to participate in the development, implementation, and periodic reviews of TMDLs and SBAs for their watersheds. The statute specifies that WAGs are to include representatives of the industries and interests affected by the management of a specific watershed, just as a BAG does for an entire basin. As appropriate, WAG membership will include representatives of the following interests:

- Agriculture
- Mining
- Point source dischargers (industry)
- Forest products
- Local government
- Livestock
- Water-based recreation
- Native American tribes
- Environmental interests
- Land management/regulatory agencies with an interest in the management of the watershed.

As DEQ and the WAGs work together, Idaho's TMDLs, and the process for developing them, should continue to improve to protect water quality.



How Will This New Law Change How TMDLs are Developed?

HB145 has brought about changes in how WAGs are involved in TMDL development and review. The basic process for developing TMDLs and implementation plans is as follows:

- BAG members are appointed by DEQ's director for each of Idaho's basins.
- An "Integrated Report" is developed by DEQ every two years that highlights which water bodies in Idaho appear to be degraded.
- DEQ prepares to begin the SBA and TMDL process for individual degraded watersheds.
- A WAG is formed by DEQ (with help from the BAG) for a specific watershed/TMDL.
- With the assistance of the WAG, DEQ develops an SBA and any necessary TMDLs for the watershed.
- The WAG comments on the SBA/TMDL.
- WAG comments are considered and incorporated, as appropriate, by DEQ into the SBA/TMDL.
- The public comments on the SBA/TMDL.
- Public comments are considered and incorporated, as appropriate, by DEQ into the SBA/TMDL.
- DEQ sends the document to the U.S. Environmental Protection Agency (EPA) for approval.
- DEQ and the WAG develop, then implement, a plan to reach the goals of the TMDL.

For more detail on the development processes see www.deq.idaho.gov/water/data_reports/surface_water/tmdls/overview.cfm and www.deq.idaho.gov/water/data_reports/surface_water/tmdls/implementation_plans.cfm.

Formation of WAGs

WAGs are now required for all SBAs and TMDLs, unless the BAG advises DEQ that representatives to serve on a WAG cannot be identified. Prior to HB145, the formation of a WAG was not required, though WAGs



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were formed for most TMDLs. The types of interests represented on WAGs are also more clearly defined (see *What is House Bill 145?*). The DEQ director appoints WAG members after receiving recommendations from the appropriate BAG.

Use of WAG Expertise and Comments

DEQ has always strived to include WAG knowledge, expertise, experience, and information as it develops each SBA/TMDL, but now the consideration of this WAG input is required. DEQ will provide the WAG with all available information pertinent to the SBA/TMDL, when requested, such as monitoring data, water quality assessments, and relevant reports. The WAG will also have the opportunity to actively participate in preparing the SBA/TMDL documents.

Once a draft SBA/TMDL is complete, it is reviewed first by the WAG, then by the public. If, after WAG comments have been considered and incorporated, a WAG is not in agreement with an SBA/TMDL, the WAG’s position and the basis for it will be documented in the public notice of public availability of the SBA/TMDL for review. If the WAG still disagrees with the SBA/TMDL after public comments have been considered and incorporated, DEQ must incorporate the WAG’s dissenting opinion

in the TMDL that is submitted to EPA. However, DEQ strives to produce a document that is fully supported by the WAG.

WAGs have traditionally continued to be involved with a TMDL well after the TMDL is approved and implemented. This post-TMDL WAG role will expand to include assisting with review of the TMDL every five years.

Five-Year Review

Every five years, DEQ and the WAGs will re-evaluate each SBA/TMDL and implementation plan, as well as the beneficial uses and water quality criteria relevant to the SBA/TMDL being evaluated, and examine new information and data. If a WAG believes the SBA, water quality standards, or implementation plan is unattainable or inappropriate based upon supporting water quality data, and the BAG agrees, DEQ will begin a process to determine whether the changes recommended by the WAG/BAG should be made. If the WAG/BAG advises that designated uses should be changed, DEQ may initiate a “use attainability analysis.” The five-year reviews will begin in 2008; DEQ will begin reporting the results of those reviews to the legislature in 2009.

How Will the Changes Affect Me and My WAG?

Existing WAGs and WAG members are recognized by DEQ as meeting the new requirement that a WAG be formed, if possible, when developing a TMDL. While the involvement of a WAG, as a whole, may extend for many years (often at least two years for TMDL development, plus another five years for implementation and TMDL review), individual members may come and go. When a member chooses to no longer serve on a WAG, it is recommended that person offer suggestions to the BAG for an appropriate person to replace him or her as a representative of a specific interest.

As members leave an existing WAG and are replaced, an effort

will be made to include representation from each interest group in the watershed. When WAG members represent specific interest groups (this will be the case for all newly formed WAGs and is already the case for many current WAG members), it is recommended that the WAG member provide an alternate individual, recognized by the rest of the WAG, that can represent the interest group’s views when the appointed WAG member cannot be present at a meeting.

WAG duties have typically included providing local input to DEQ as an SBA/TMDL is developed and assisting with writing and implementing a plan to meet the goals of the

TMDL. WAG duties will now extend to participating in the five-year review of the TMDL (see above).

Depending on your WAG’s current and desired level of involvement, the new procedures may allow for more input into SBA and TMDL decisions. While DEQ is required to consider WAG knowledge, expertise, and opinions to a greater extent, and to provide WAGs with more information and greater access to the process, WAGs are not required to increase their involvement: the option for increased involvement is simply open to them. Many WAGs are already involved to the fullest extent they desire or deem necessary.



Questions?

Contact Marti Bridges, Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706
(208) 373-0502 • www.deq.idaho.gov

Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706

