IDAHO DEPARTMENT
OF HEALTH AND WELFARE

DIVISION OF
ENVIRONMENTAL QUALITY

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WATER

1410 North Hilton, Boise, ID 83706-1255, (208) 373-0502

Philip E. Batt, Governor

L. Wadsuff

August 20, 1998

Philip Millam
Director, EPA Region 10
1200 6th Avenue
Seattle, WA 98101

Dear Mr. Millam:

Enclosed for your preliminary review is a draft of the state of Idaho's *Continuing Planning Process* (CPP). This document is designed to meet the requirements of Section 303(e) of the Clean Water Act. 40 CFR §130.5(b) states that the CPP must address the following elements:

1. A process for assuring adequate authority for intergovernmental cooperation in the implementation of new or revised surface water quality standards (Part II).

2. A process for updating and maintaining the Water Quality Management Plan (Part II).

3. A process for establishing and assuring adequate implementation of surface water quality standards (Part III).

4. A process for developing total maximum daily loads (Part IV).

5. A process for developing effluent limitations and schedules of compliance (Part V).

6. A process for assuring adequate controls over the disposition of residual waste from treatment processing (Part V).

7. A process for developing a priority ranking of construction for waste treatment facilities (Part V).

Under 40 CFR §130.5(b)(2), area wide waste treatment plans as related to section 208 and 209 of the CWA are maintained as part of the WQMP, but the program is not currently active in the state. 40 CFR §130.5(b)(9) describing "a process for determining the priority of permit issuance" is a program that is implemented by the regional EPA office.

The intent of the CPP is to serve as a resource guide to understanding surface water management in the state of Idaho. In addition, it summarizes the major operational or planning processes in effect and explains how and when concerned citizens can become involved.

Thank you for reviewing this draft document and I look forward to your comments.

Sincerely,

Larry L. Koenig

Larry L. Koenig
Assistant Administrator
Water Quality and Remediation Division

cc: Susan Burke, DEQ

Idaho's Continuing Planning Process

Idaho Department of Health and Welfare
Division of Environmental Quality
July 1998, DRAFT

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Acknowledgments

Development of this Continuing Planning Process was made possible by the valuable oversight, direction, and effort of the following individuals:

Susan Burke
Mark Shumar
Valerie MacMillian
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In addition, this document would not have been possible without the assistance of those who were involved in the development of the other state of Idaho documents. Furthermore, we would like to thank the states who responded to our survey and for allowing us to gain insight and ideas from their Continuing Planning Process documents.

Preface

Established by the state legislature in 1974, the Division of the Environment reported to the Director of the Department of Health and Welfare. In May 1995, the department and the division entered into a memorandum of understanding, wherein the Division of Environmental Quality (DEQ) was made semi-independent of the department. To complete the administrative separation, some budget, financial, human resource, and administrative functions were transferred, along with the associated personnel. DEQ now reports to the Office of the Governor.

The DEQ's Administrator, Assistant Administrators, and Regional Administrators are appointed by and serve at the pleasure of the Governor. The Central Office (located in Boise) and six regional offices (Coeur d'Alene, Lewiston, Boise, Twin Falls, Pocatello, and Idaho Falls) consist of four main operating divisions: Regional Services, Water Quality and Remediation, Air and Hazardous Waste, and Planning and Support Services. Regional Services are the link between community activities and the Central Office. The Water Quality and Remediation Division is responsible for water quality monitoring and protection; point and nonpoint source pollution prevention; remediation, including RCRA underground storage tank programs and CERCLA programs; solid waste management; and safe drinking water programs. The Air and Hazardous Wastes Division is responsible for permit issuance to and compliance monitoring of facilities affected by the Air Quality and RCRA programs. The Planning and Support Services Division is responsible for financial matters, human resource administration, planning, performance management, and environmental information and analysis.

In carrying out its responsibilities, the Water Quality and Remediation Division has prepared this document consistent with the Clean Water Act to serve as a guide for the processes involved and for the administration of the programs and the rules related to water quality management.

Additional information about the organization, mission, and mandates of each of the operating divisions of DEQ can be found in the *Strategic Plan of 1995.*

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Introduction

The Department of Health and Welfare, Division of Environmental Quality (DEQ) is the state agency responsible for implementing environmental protection laws and programs for the state of Idaho. DEQ manages a broad range of activities, including: the regulation of facilities that generate pollution; monitoring the quality of Idaho's environment; cleaning up sites where contamination has occurred; and providing education and technical assistance on environmental issues. One tool DEQ utilizes to implement a surface water quality standards program and maintain regulation efforts is the Water Quality Management Plan. The Water Quality Management Plan consists of a holistic collection of surface water quality programs or plans in effect.

Purpose

This document is meant to be used as a reference by all persons interested in surface water quality management in Idaho. The Clean Water Act (CWA), section 303(e), requires states to develop a Continuing Planning Process (CPP) which describes the on going processes and planning requirements of the Water Quality Management Plan (WQMP). Specific sections of the WQMP to be included are operational policies, procedures, and practices. The CPP provides a means for development of plans and programs to meet requirements of state and federal environmental laws and regulations. In addition, it provides the opportunity for the development and the analysis of alternatives. Furthermore, it summarizes the major operational or planning processes in effect and explains how and when concerned citizens can become involved. DEQ will update the CPP and will adopt portions of this document into rule as necessary.

Requirements

Federal regulations (40 CFR §130.5) describe a minimum of nine CPP requirements. Currently, seven of the nine requirements are applicable to the state of Idaho. Under 40 CFR §130.5(b)(2), area wide waste treatment plans as related to section 208 and 209 of the CWA are maintained as part of the WQMP, but the program is not currently active in the state. 40 CFR §130.5(b)(9) describing "a process for determining the priority of permit issuance" is a program that is implemented by the regional EPA office. The following seven points illustrate the remaining processes required as part of the CPP and the section they are found in:

1. A process for assuring adequate authority for intergovernmental cooperation in the implementation of new or revised surface water quality standards (Part II).
2. A process for updating and maintaining the Water Quality Management Plan (Part II).
3. A process for establishing and assuring adequate implementation of surface water quality standards (Part III).
4. A process for developing total maximum daily loads (Part IV).
5. A process for developing effluent limitations and schedules of compliance (Part V).
6. A process for assuring adequate controls over the disposition of residual waste from treatment processing (Part V).
7. A process for developing a priority ranking of construction for waste treatment facilities (Part V).

Part I. Water Quality Management Plan

The assemblage of the surface water quality programs and plans in effect make up the state of Idaho's Water Quality Management Plan (WQMP) which fulfills provisions of the CWA. Previous WQMPs were heavily based on area wide sewerage facility planning popular in the late 1970s. Today the WQMP reflects the myriad of programs and techniques used to manage pollution from a wide variety of sources. A list of the component documents used in the state's surface water quality management activities can be found in Appendix A.

A. Authority/Cooperation in Implementing Water Quality Protection Measures

The DEQ receives authority to regulate surface water quality and to conduct a variety of programs aimed at water quality protection from federal and state statutes, laws, and implementing rules. A list of regulating documents can be found in Appendix B. In addition, federal funding is allocated through Performance Partnership Agreements and the Idaho Legislature appropriates a budget annually to DEQ for the implementation of its water quality programs.

DEQ interacts with a variety of other governmental entities in surface water quality protection efforts. Within each agency, statements of responsibility can be found in their respective statues, codes, or rules that explain their commitment

to upholding all federal and state surface water quality standards through their projects and programs. A list of agencies and their surface water quality management roles can be found in Appendix C.

B. Process for Updating WQMP

Each of the components of the WQMP are updated on an individual basis. The updating processes vary in their triggers, participants, and time frames. However, all of the updating processes include a public comment period. In addition, the WQMP list of component documents is periodically inspected by the Water Quality and Remediation Division and is appropriately updated. Plan-specific information can be found in the respective component documents. Any update to a component of the WQMP is automatically considered an update of the WQMP itself. All area wide or basin plans developed under the criteria outlined in Section 209, updates to the CPP, and all Total Maximum Daily Loads developed under Section 303 of the CWA also become components of the state's WQMP upon their adoption and EPA approval. All of the documents of the WQMP are centrally located at the DEQ Central Office, 1410 N. Hilton, Boise, Idaho and can be viewed by the public at this location during business hours.

Part II. Surface Water Quality Standards

Surface water quality standards define the designated beneficial uses of a water body and the water quality criteria necessary to support those uses. The standards are designed to protect public health and welfare, enhance the quality of water, and serve the purposes of the CWA. The minimum beneficial uses for establishing standards are public water supplies, propagation of fish and wildlife, recreation, agricultural uses, industrial uses, and navigation. The following sections describe how standards are reviewed, updated, monitored, and enforced.

A. Triennial Review Process

Section 303(e) of the CWA requires that state surface water quality standards be reviewed in a public forum at least once every three years; this process is also known as the triennial review. The review is intended to ensure that standards meet public concerns, follow EPA guidelines, and reflect new scientific and technical information.

In Idaho, each new rulemaking to develop surface water quality standards or modify an existing surface water quality standard is part of its triennial review. Idaho will typically conduct two or three rulemakings within a single triennial period. The public review associated with these rulemakings constitutes the public review required by the CWA. Idaho's rulemaking process has a minimum of three (and the possibility of six) opportunities for public participation, which often is in the form of negotiated rulemaking, a public hearing and comment period, Idaho Department of Health and Welfare Board adoption, and legislative review. Final revisions are submitted to EPA for approval.

B. Rule Promulgation Process

Idaho's Water Quality Standards and Wastewater Treatment Requirements (IDAPA 16.01.02) are amended through the state's rule promulgation process {Figure 1}. The promulgation process is governed by the Idaho Administrative Procedure Act (Idaho Code 67-5201 *et seq.*) and includes many opportunities for public input.

Usually DEQ will initiate any revision to the surface water quality standards. DEQ can initiate the change as a proposed rule which, when adopted by the Board of Health and Welfare (Board), becomes a pending rule. Pending rules are subject to legislative review before becoming final and effective.

A conceptual rule change must be brought to the Governor's Office for approval. If the concept is approved, DEQ drafts the text of the rule. At this time, the agency can choose to go through a negotiated rulemaking process to draft the rule by publishing a Notice of Negotiated Rulemaking in the Administrative Bulletin (Bulletin). Through informal meetings, interested parties can offer input and recommend changes to the draft rule. Taking into consideration the input received from the negotiating parties, DEQ then writes a proposed rule and publishes a Notice of Proposed Rule (including the proposed rule's text) in the Bulletin.

As part of publication in the Bulletin, a public comment period is scheduled. The address to which written comments can be submitted is provided and public hearings may be scheduled by the same notice. If no public hearing is scheduled, the public may request one. After the public comment period, DEQ reviews the rule and may make changes based on the comments received.

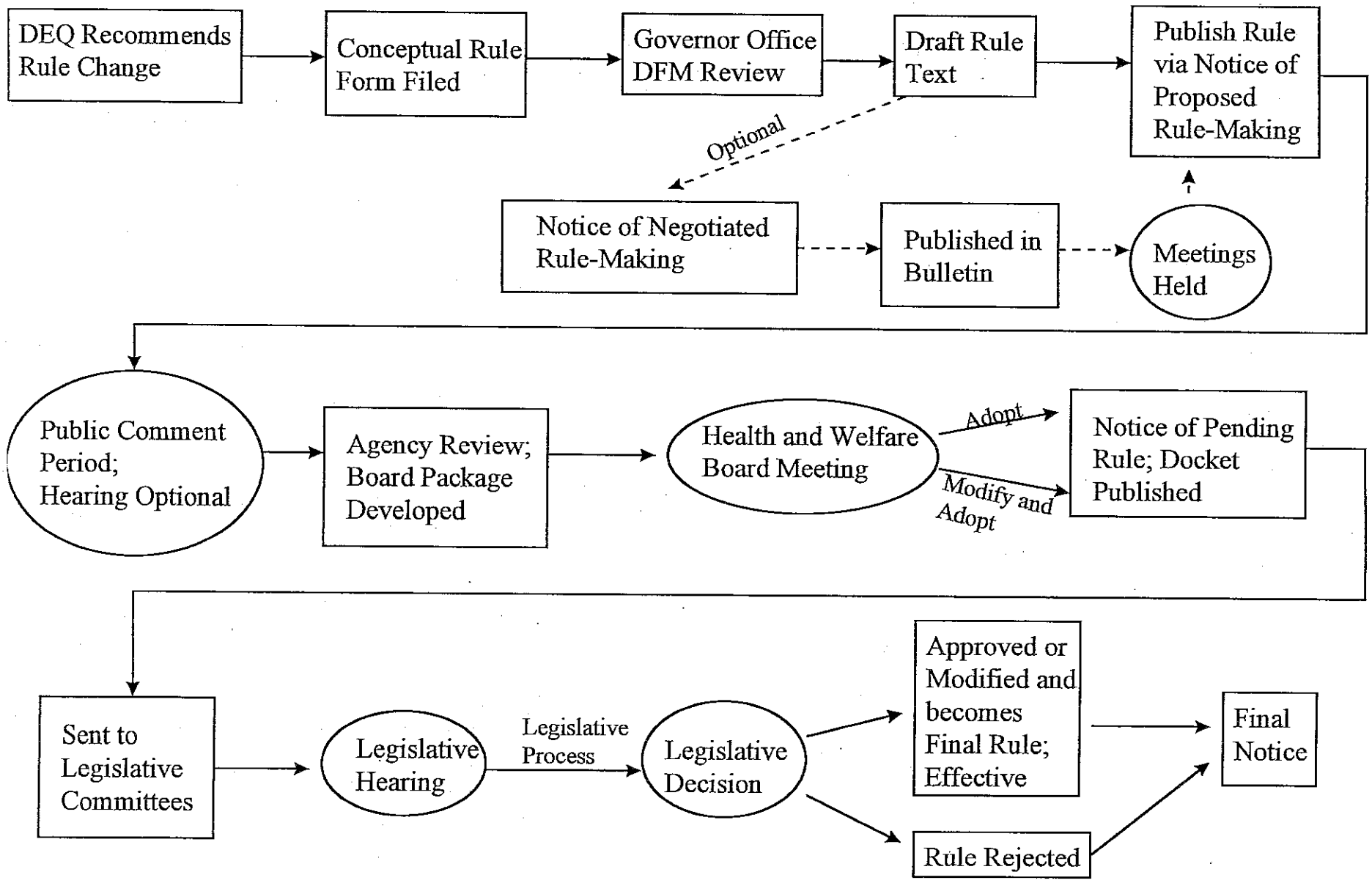
DEQ then brings the proposed rule to a public meeting of the Board for consideration. The Board can adopt, modify and adopt, or deny the proposed rule. If the rule is adopted by the Board, it becomes a pending rule, which must be submitted for legislative review before becoming final and effective. The pending rule is published in the next available Bulletin.

During the legislative process, which includes committee hearings, the public may comment on the pending rule through testimony or by contacting elected representatives. If the Legislature does not take action on the rule before adjournment, or approves the rule in its original language, the rule will become a final rule and part of the surface water quality standards. If the Legislature rejects the pending rule, the rulemaking is terminated without any revisions to the standards. Upon adjournment of the Legislature, a notice reflecting the Legislature's action is published in the Bulletin.

When circumstances necessitate that the rule come into effect immediately, DEQ can initiate the change as a temporary rule, which involves a slightly different procedure {Figure 2}. Again, the Governor's office must approve the conceptual rule. After the drafting of the rule's text (and the conclusion of optional negotiated rulemaking), the temporary rule is sent to the Board. Upon adoption by the Board, the temporary rule becomes part of the surface water quality standards with the full force and effect of law. Notice of the adoption of the rule, the rule's text, and DEQ's desire to have it go through the proposed rule process is given by publishing a Notice of Temporary and Proposed Rulemaking in the Bulletin. (The proposed rule process then continues with the public comment period.) The temporary rule remains in effect until its companion proposed rule (which follows the standard structure) is approved by the Legislature. If the Board has not adopted the proposed rule and made it a pending rule in time for review in the next legislative session, the temporary rule must be extended by the Legislature through a concurrent resolution or it expires. If the proposed rule has gone through the process, receives Legislative review, and the Legislature adopts it, it takes the place of the temporary rule in the standards.

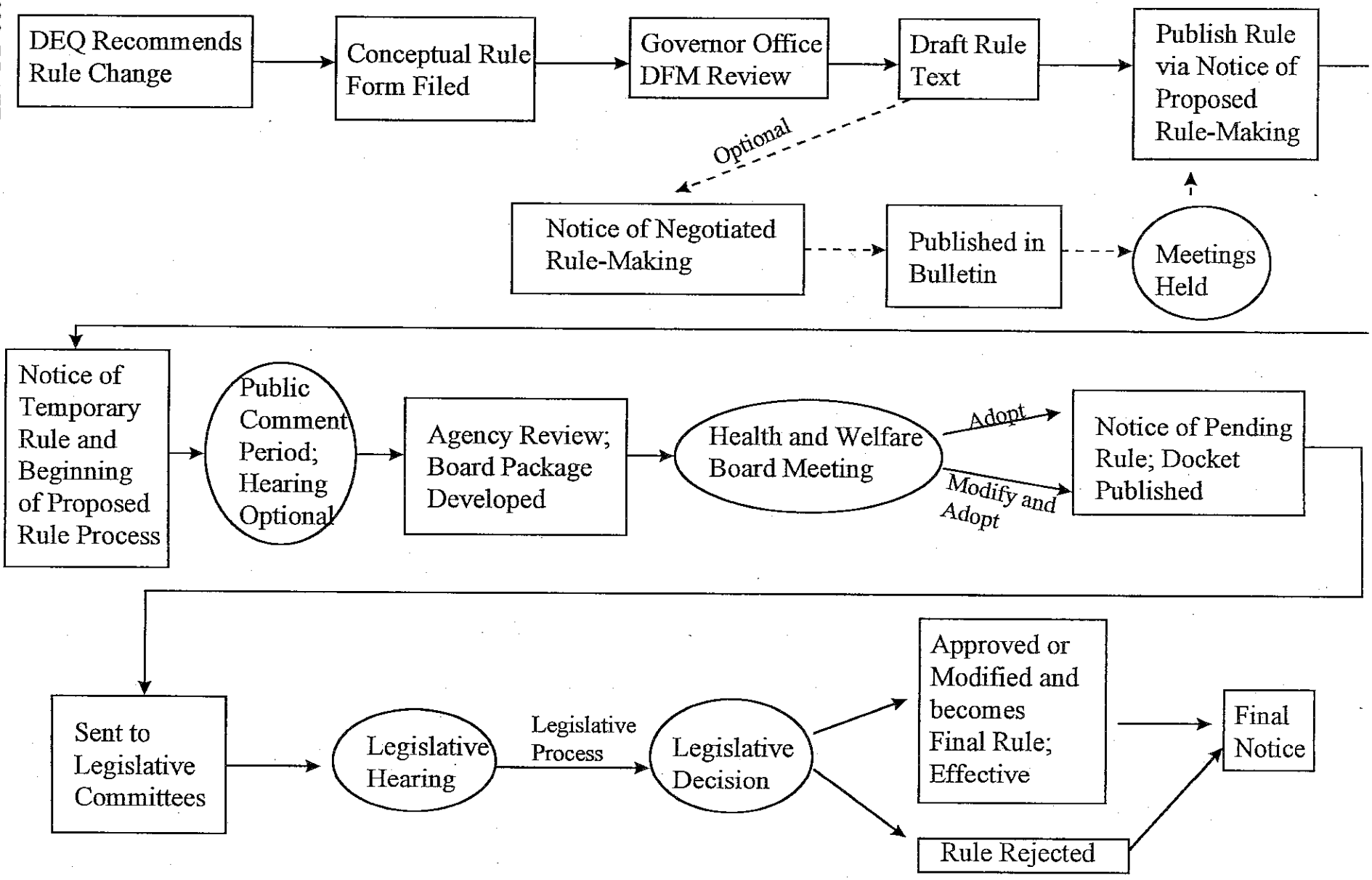
{Figure 1}

RULE-MAKING PROCESS (PROPOSED RULE)



{Figure 2}

RULE-MAKING PROCESS (TEMPORARY RULE)



C. Monitoring

In order to determine whether Idaho's water bodies are meeting both the designated uses and the criteria set in the standards, the state has developed a process, the Water Body Assessment Guidance (WBAG), to regulate and characterize the surface water quality and the integrity of wadable streams, large rivers, and lakes. Data for WBAG is collected through the Beneficial Use Reconnaissance Project (BURP) which is a monitoring effort with its primary focus on biological and physical water quality measures. The project is intended to differentiate between impaired and non-impaired water bodies. It is not intended to identify specific pollutants or their sources. Pollutant and source identification are distinguished by special studies or through the Total Maximum Daily Load process. A complete description of the data gathering process is found in the BURP Workplan produced each year. The results of all efforts are consolidated in the Water Quality Status Report, which details the surveyed conditions and describes various monitoring processes.

Water Body Assessment Process

In analyzing a specific water body, WBAG does the following:

- Assesses the status of aquatic life, recreation, and water supply uses through the analysis of physical, chemical, and biological data;
- Establishes whether the narrative criteria are being met; and
- Reports the results as information for the Water Quality Limited List and for the Water Quality Status Report.

More specific questions about the assessment process can be answered directly by the WBAG document, which contains highly detailed, step-by-step instructions for conducting an assessment.

Water Quality Status Reports

Every two years, DEQ develops a Water Quality Status Report, as required under Section 305(b) of the CWA, to communicate observed water quality conditions to the citizens of the state, the EPA, and the United States Congress. The purpose of the document is to report on existing water quality conditions, trends, and programs. In addition, the report prioritizes pollution problems throughout the

state. Data gathered from the various monitoring programs is compiled to summarize the condition of navigable waters.

D. Implementation and Enforcement

Through meeting the requirements for 401 Certification and maintaining high standards through state enforcement, DEQ ensures that water quality standards are applied to all applicable activities within the state.

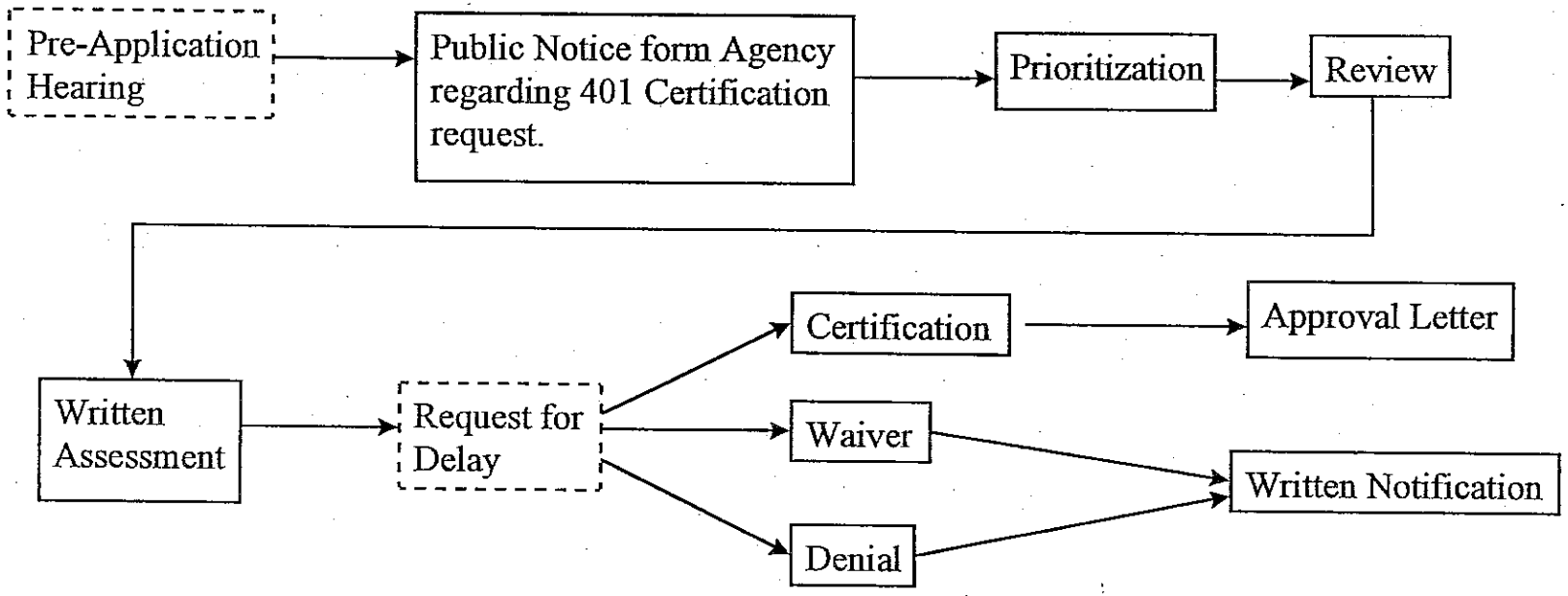
Process for 401 Certification by the State

Water quality discharge related permits (FERC relicensing, Dredge and Fill 404 permits, and National Pollutant Discharge Elimination System Permits) issued by the federal government must meet state water quality standards, those permits which qualify receive 401 certification. Usually, the applicant for a federal permit, the federal agency, and the state will work together throughout the process to insure that all aspects of the project become certified.

Typically, the 401 certification process begins with the receipt of a Public Notice from the federal agency, either the Corp of Engineering or EPA, and a request for certification {Figure 3}.

{Figure 3}

401/404 CERTIFICATION PROCESS



DEQ recommends an applicant hold a pre-application meeting with all concerned resource agencies and other effected parties, often referred to as a Collaborative Team, to insure that all necessary information is included in the application, thereby reducing permit process delays. Also, pre-application meetings are a forum in which other issues that may delay the permit process can be addressed and potentially resolved.

Application review includes consideration of potential adverse impacts to designated uses of the waterway. Review will also focus on possible violations of state regulations designed to protect surface water quality and aquatic life. Additional information, such as stream or wetland mitigation plans, may be requested during the review process if necessary. After reviewing a certification application, DEQ may prepare a written assessment on each proposed activity. These assessments are available to the permitting agency, the applicant, and the public. DEQ has 60 days from the issuance of a public notice to respond to the permitting agency concerning certification of a proposed activity. DEQ's response may be certification, waiver, denial, or a request for delay. The federal agency can extend the time period up to one year for a state response when so requested by the state. If DEQ has not responded within 60 days, the federal agency is authorized to waive certification requirements.

If the assessment concludes that the project is consistent with all current federal and state laws, 401 regulations, and state surface water quality standards, the applicant and the federal agency will receive a certification approval letter. The approval letter will include a description of any conditions which are necessary or desirable with respect to the discharge from the activity. In cases where no discharge will result or the certification process is halted for another reason, a certification waiver is issued.

If DEQ proposes to deny certification for a project, a written notice setting forth the reasons for denial is provided to the applicant. Certification will be denied if:

- The proposed activity will result in a violation of any applicable provision of the CWA under the jurisdiction of the state;
- The proposed activity prevents or interferes with the attainment or maintenance of applicable state surface water quality standards; or

- A feasible alternative to the activity exists, which reduces adverse consequences on water quality and existing and designated beneficial uses.

If the denial decision is based on information provided by the application or other existing information, this information will be referenced. In instances where specific information is not provided to base the denial, but there is a reasonable expectation that the proposed project will violate surface water quality standards, the denial letter cites those rules which may be violated. References to scientific studies that support the denial decision are also included. Lastly, the written notice advises the applicant of appeal rights and procedures.

In cases which involve the FERC relicensing program, a lead person from the appropriate DEQ Regional Office is permanently assigned to the process by the Regional Administrator. The Central Office of DEQ will also appoint a lead person to serve as the DEQ FERC Coordinator. These positions act as liaisons to keep DEQ involved in the application process because of the potential impacts to water quality from a relicensing project.

Letters from FERC applicants requesting 401 certification begin a one-year time period for DEQ to complete the certification process. Technical reviews of the information submitted may be completed by the Regional and Central Offices. A FERC Process Review Team is established within DEQ to review all draft conditions, stipulations, etc. and agree upon the final requirements for certification. The team consists of: the Assistant Administrator for Water Quality & Remediation, the Regional Administrator, the FERC 401 Coordinator, and the lead person from the Regional Office.

<u>Enforcement</u>

When a standard is violated, the Idaho Environmental Protection and Health Act provides that the Department of Health and Welfare (Department) may issue a Notice of Violation (NOV) to the responsible party[1]. The NOV must state with specificity which standard(s) has been violated and the amount of penalty assessed. The NOV shall also inform the responsible party of an opportunity to

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[1] In 1995 this authority was delegated from the Department's Director to the Administrator of DEQ.

attend a compliance conference with DEQ to discuss the violation(s). A compliance conference must be requested by the responsible party within 15 days of receipt of the NOV. A compliance conference should be held within 20 days of receipt of the NOV unless another time period is agreed upon.

The compliance conference is the responsible party's opportunity to explain the violation(s), to describe what actions will be taken to remedy any damage caused, and to indicate what initiatives will be taken to assure future compliance with water quality standards. The outcome of a compliance conference is drafted into a document called a consent order. The consent order sets forth the plan, with time frames, which the responsible party agrees to remedy environmental damage and assure future compliance with water quality standards. The consent order may also include provisions for the payment of penalties. If a responsible party fails to comply with the terms of a consent order, DEQ may file a civil complaint seeking specific performance of the consent order along with penalties.

The failure to reach agreement on the terms of a consent order or failure of the responsible party to request a compliance conference, may lead DEQ to file a civil complaint in district court. Such a complaint would ask the court to compel compliance with the surface water quality standards as well as seek penalties. An administrative action is not a prerequisite to DEQ initiating a civil action.

Both administrative and civil enforcement action must be commenced within two years from the initial discovery of the polluting action. Monetary penalties are limited to $10,000 per violation or $1,000 per day for a continuing violation, whichever is greater. Monetary penalties may be addressed in the form of a supplemental environmental project (SEP). A SEP is an environmentally beneficial project which the responsible party is not otherwise legally required to perform. DEQ will evaluate the appropriateness of any proposed SEPs using its SEP Guidance Document dated March 12, 1998.

Additional enforcement actions available to DEQ include, immediate injunctive relief, in circumstances involving emergency situations of imminent and substantial danger to public health or the environment, and criminal misdemeanor actions.

Part III. Total Maximum Daily Loads

Section 303(d) of the CWA requires each state to periodically identify waters that will not meet state surface water quality standards under current controls or technology-based limits. In addition, DEQ is required to prioritize the list based on the severity of pollution, uses of the water, and other important attributes. In accordance with the priority listing, total maximum daily loads (TMDLs) are developed for the water bodies on the list. Such loads are set at a level that will meet state water quality standards, taking into account seasonal variation plus a margin of safety to account for uncertainty in the relationship between loads and water quality.

A. TMDL Schedule Development

The state's TMDL development schedule is structured around several principles, which include basin management in Idaho, development of priority TMDLs in the short term (three-years) and a subbasin TMDL approach to develop remaining TMDLs in the long term (eight-years). (Subbasins are multiple waters with similar problems and water quality characteristics.) The process of developing the TMDL schedule involves:

- Assessing the relative priority of completing TMDLs for each subbasin,
- Evaluating the relative complexities of TMDLs for each subbasin,
- Judging the time needed to complete it, and
- Ensuring that the priorities and timetables appropriately allocate the work among DEQ's six Regional Offices and the Central Office.

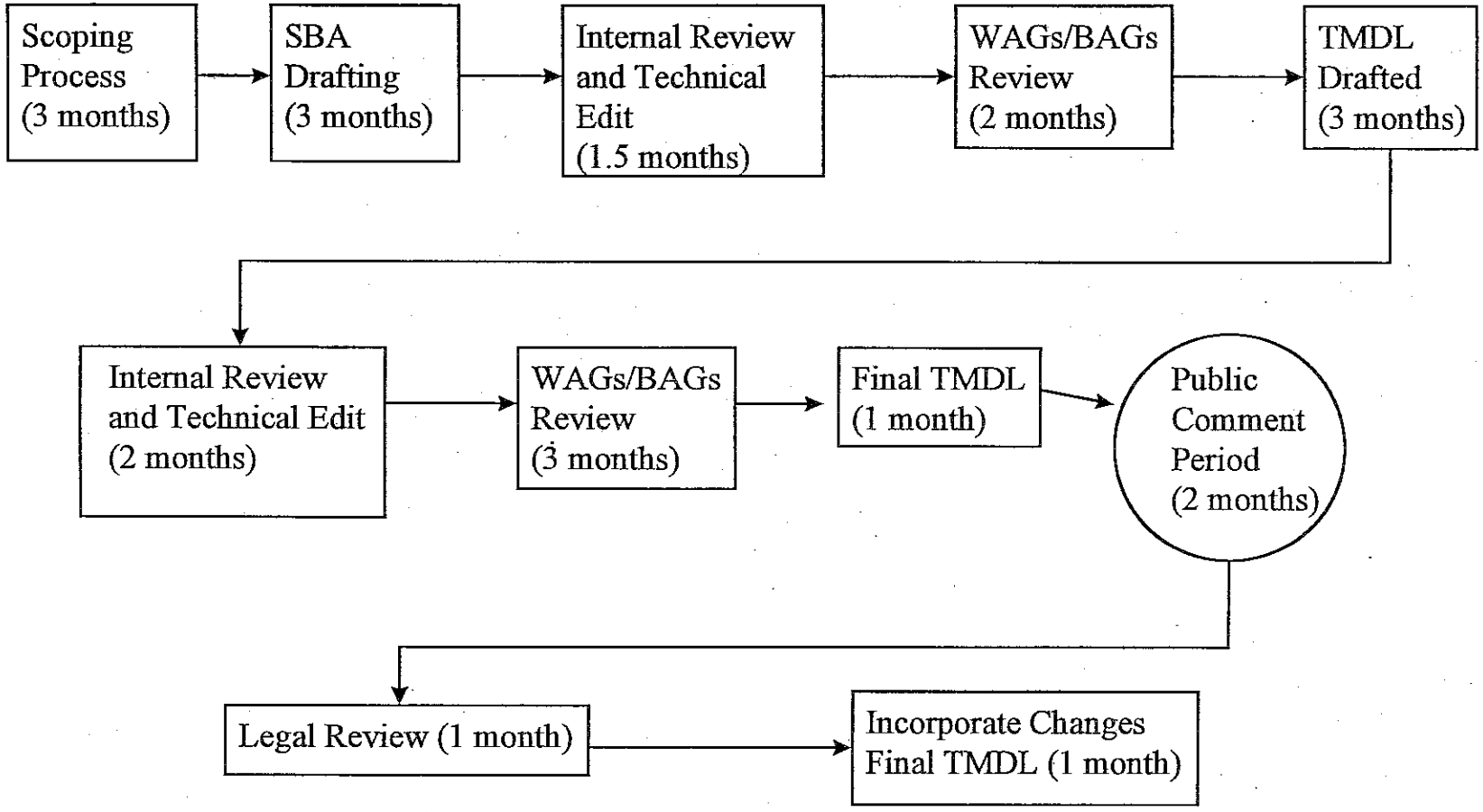
For more information on the TMDL development schedule, reference the *Idaho TMDL Development Schedule, EPA Review and Evaluation, April 1997.*

B. Subbasin TMDL Development

The development of a typical subbasin TMDL is idealized as a 22-month process {Figure 4}. The first ten months focus on preparing a Subbasin Assessment (SBA) and the following year is spent developing the total maximum daily load itself.

{Figure 4}

SUBBASIN TMDL DEVELOPMENT



The first three months of the process are spent scoping, during which the agency gathers available information about the subbasin. The next three months are spent drafting the SBA. The SBA is intended to describe water quality concerns in the context of the setting, the aquatic resource, beneficial uses, applicable standards, and the conditions of key indicators. Also, the draft will evaluate pollution sources and disturbance activities that contribute to water quality problems and outline water quality management needs including identification of those waters which still require TMDLs. After internal reviews and technical editing, the draft SBA is then given to the appropriate Basin Advisory Group (BAG) and any applicable Watershed Advisory Groups (WAGs) for their input[2]. The feedback from the BAGs and WAGs is considered in preparing the final SBA by the end of the tenth month.

After the SBA is complete, the next four months are devoted to drafting the TMDL document. Following internal reviews and technical editing, the TMDL document is provided to the BAGs and WAGs, which are allotted the next three months to study and comment on the document. DEQ produces the final TMDL document after considering the work of the two groups. A one month public comment period follows. Two months are allowed for legal and administrative review prior to final submittal to EPA by the end of the year it is due.

C. Implementation Process

Upon approval by EPA, each TMDL is automatically included in the state's WQMP. In addition, a new site-specific rule may need to be developed and adopted to address new numeric criteria for the assessed subbasin. Implementation plans for each completed and approved TMDL will be developed by DEQ and an appropriate WAG with cooperation and facilitation from designated state agencies and applicable federal agencies.

Part IV. Point Source Control Programs

Point Source Control Programs are designed to monitor and evaluate discharges into receiving waters from sewers and other identifiable points that effect the

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[2] BAGs and WAGs are citizen advisory groups appointed to advise DEQ on water quality concerns as per Idaho Code §39-3601 *et seq.*

state's water quality. The Regional Offices and the Central Office each play specific roles in the regulating and implementation of the programs.

A. Developing Effluent Limitations and Compliance Schedules

The EPA issues National Pollutant Discharge Elimination System (NPDES) permits for point source dischargers in Idaho. DEQ Regional Office staff are instrumental in the development of effluent limitations and compliance schedules which EPA incorporates into NPDES permits. Regional Offices receive the initial contact from applicants to begin the permit process. The Water Quality Division reviews data concerning the discharges of the applicant. From this information, wasteload allocations are computed, effluent limits are calculated, and a cost effective plan is developed by DEQ to meet the limits. All of the information is sent to EPA to use in the permit drafting process. Once completed, the draft permit is returned to the regional office for water quality certification. Lastly, the permit is issued by EPA.

Although EPA has primary responsibility for the NPDES permitting program, DEQ has certain responsibilities pertaining to:

- Storm water NPDES inspections and reviews;
- Inspections for joint applications for mining permits with EPA and Idaho Department of Lands;
- Inspection of minor pollution dischargers in regards to a complaint response; and
- Annual compliance inspections for major dischargers.

Recently, the Idaho Department of Agriculture has taken over the responsibilities associated with inspections for dairy feeding operations.

B. Wastewater Control and Treatment

DEQ provides grants and loans to help fund the construction of municipal facilities. DEQ also issues land application permits and reviews plans and specifications for most wastewater treatment facilities.

Municipal Wastewater Treatment Facility Construction Program

The state of Idaho has a Municipal Wastewater Treatment Facility Program for the purpose of protecting and enhancing the quality and value of the state's water resources by financially assisting in the prevention, control, and abatement of water pollution {Figure 5}.

The program includes providing both grants and loans for sewage wastewater treatment facility construction. (One condition of the state program is to be assured of residual waste control.) Projects are assigned an annual priority rating based on the severity of the pollution problems, public health needs, population affected, and the need to protect water resources. A more detailed description of the priority ranking system can be found in the Rules for Administration of Wastewater Treatment Facility Loans (IDAPA 16.01.12).

Once the priority list is developed, a public review and comment period follows, after which the Board must approve the priority rating. Under the condition of available funding, the qualifying entity is contacted and a target date for the submission of a completed loan or grant application is set. DEQ must receive an application or notification from the applicant within 30 days for grants or 60 days for loans or the next highest ranking project will receive the funds. Approved projects will receive initial funding for facility planning.

During the facility planning phase, loan applicants consult with DEQ to determine the required level of environmental review (projects funded solely with state money are exempt from the environmental review process described below.) DEQ assesses the possible environmental impacts associated with the project and notifies the applicant of the type of environmental documentation which will be required. The applicant must either prepare an environmental impact statement, an environmental information document, or submit a request for categorical exclusions with supporting backup documentation. A request for exclusion prompts a review by DEQ resulting in the issue of an exclusion or a request for an environmental information document or an environmental impact statement. The following combinations are possible results in the application process:

Action . . .	Result . . .
Applicant submits request for categorical exclusion, project description, and site plan.	DEQ reviews request and supporting information and either prepares a categorical exclusion or requests the preparation of an Environmental Information Document.
Environmental Information Document submitted to DEQ.	DEQ prepares categorical exclusion on Finding of No Significant Impact or requests additional information and agency consultation.
Finding of No Significant Impact is prepared and published by DEQ.	21 day comment period allowed. Meeting and/or hearing may be held.
Negative impacts are found in public review period, meeting, hearing.	Applicant collects more information/consults with agencies.
No public concern about project or Finding of No Significant Impact.	Applicant proceeds with project loan to do design and construction.
Early consultation with DEQ shows significant impacts associated with proposed project.	Applicant (DEQ) publishes Intent of Notice, conducts scoping, and prepares EIS.
Environmental Information Document identifies areas of significant impact.	Applicant (DEQ) publishes Intent of Notice, conducts scoping, and prepares EIS.
Draft EIS completed.	45 day published notice calls for public review and comments/hearing.
EIS comment period and hearing compiled with additional issues of concern, Final EIS prepared.	Record of Decision published.

Following this process, the mitigative measures which will be required of the applicant are agreed upon as conditions of the loan. Continued funding is not awarded until a final cost-effective alternative has been selected or a preliminary

engineering report is approved by DEQ. Selecting a cost-effective alternative requires at least one public hearing. This hearing may be joined with a public hearing on the environmental impact statement.

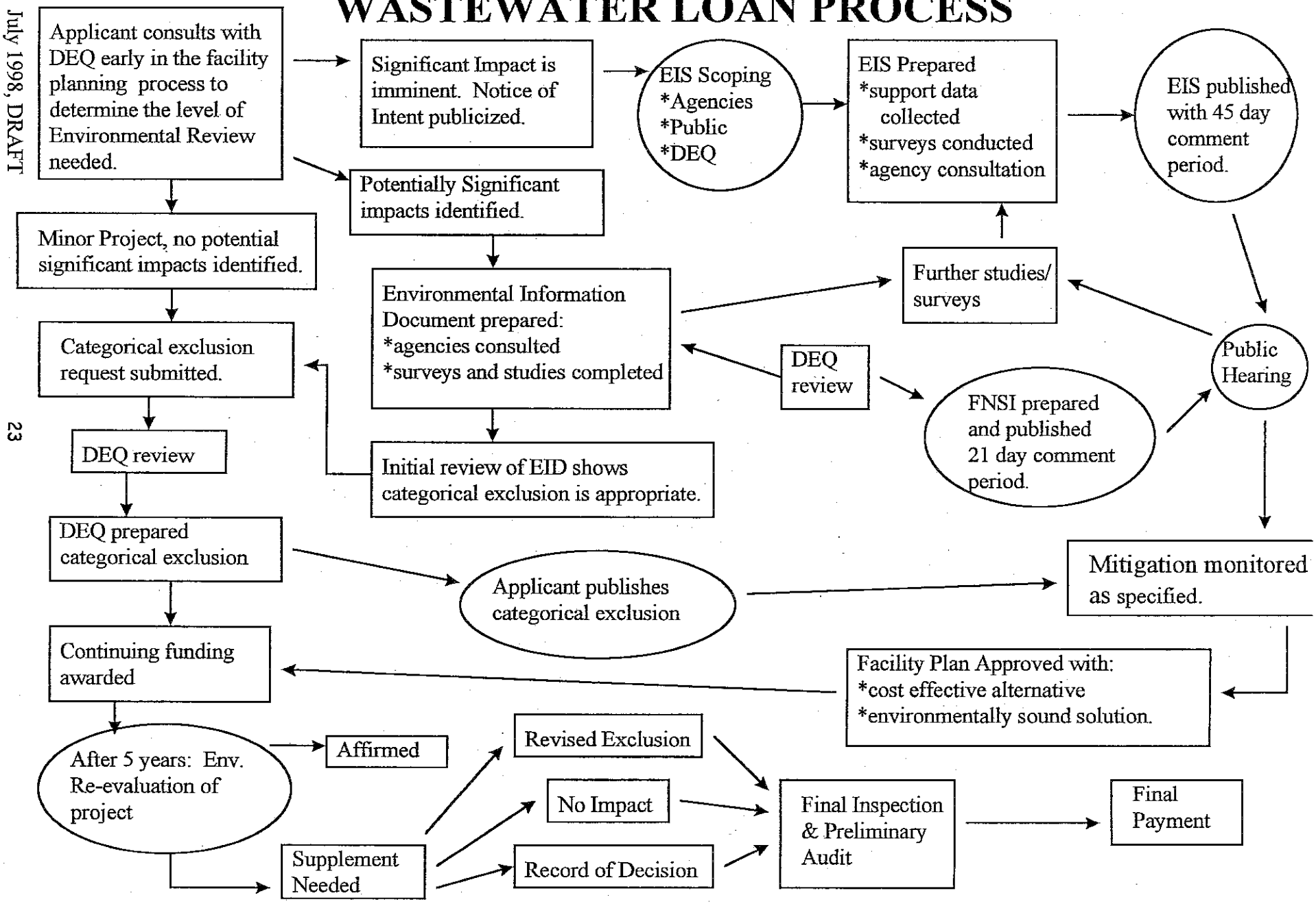
After five years, the environmental review of a loan expires. Re-evaluation of the project follows, including a reassessment of public views. Based on that evaluation, the earlier decision can be reaffirmed or supplemental information can be added. If additional information is necessary, DEQ issues a revised notice of categorical exclusion, a finding of no significant impact, or a record of decision.

A grant offer contains terms of agreement and upon signing becomes the grant contract agreement. A final project audit by the federal agency will determine the actual eligible costs for state-federal matching grants and the final project audit by DEQ will determine the actual eligible costs for separate state grants. The final payment is not made until final inspection and preliminary audit are completed.

If violations of the law or the terms of the contract occur, the state can suspend or terminate the loan or grant contract. The recipient is notified of the suspension or termination by certified mail. The notice includes the specific basis for suspension or termination and the availability of an informal hearing. If proof of the causes for suspension or termination are found, a written determination on the status of the loan or grant is sent by certified mail to the recipient. Suspended loans and grants can be reinstated upon written request as long as the cause for suspension no longer exists. Terminated loans and grants will not be reinstated.

{Figure 5}

WASTEWATER LOAN PROCESS



Wastewater Land Application Process

In order to construct, modify, operate, or continue to operate a land application facility, a permit from DEQ is necessary. A permit will not be granted unless controls of residual treatment waste are assured. For those facilities renewing permits who are not in compliance, the application must include a plan to come back into compliance. Prospective applicants are encouraged to begin the process by meeting with DEQ to discuss application procedure and anticipated application requirements {Figure 6}. The application must include the areas specified under the Wastewater Land Application Permit Rules, IDAPA 16.01.17.

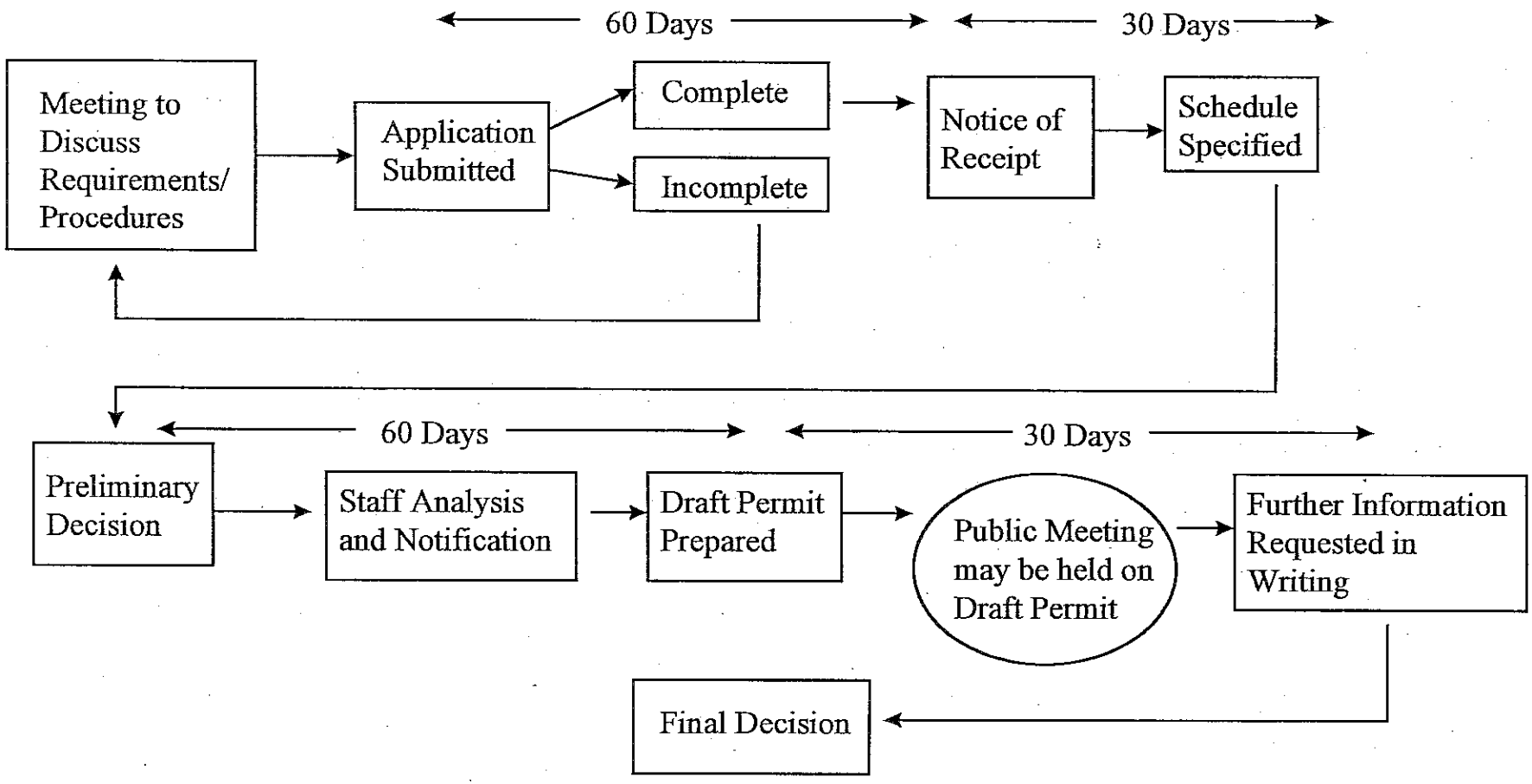
Within sixty days of receiving an application, DEQ provides written notice to the applicant of receipt. If the application is incomplete, the notice specifies deficiencies and additional required information. If the application is complete, the written notice includes a projected schedule for processing the permits, date of publication of preliminary permit decision, date of issuance of a final permit or application denial. Regardless of the decision, a staff analysis discussing the significant questions of the permit is included as part of the notification. If the decision is favorable, the draft permit can be prepared and included in the notification. Otherwise, the draft will be issued within sixty days of the preliminary decision. The draft permit specifies conditions of operation and management required for the final permit. At this time, DEQ may request additional information related to the intended operation and implementation of water quality standards. Within thirty days of the issuance of the draft permit, the final permit decision is made. The permit is in effect on the date of issue unless a later effective date is specified and the permit usually expires after five years.

Permit revocation can occur if the permittee violates any permit condition or state water quality standard. DEQ issues a written notice of intent to revoke to the permittee and revocation becomes final within 20 days of the receipt of the notice by the permittee. The permittee can then send a written request to DEQ for a hearing. DEQ notifies the permittee of a hearing date at least twenty days before the date of the hearing. In emergency circumstances, DEQ can revoke the permit immediately by sending a written notice of emergency revocation. By written request, a hearing and prior notice of that hearing occurs.

Further information on Idaho's wastewater land application permits, including possible permit conditions, can be found in the Wastewater Land Application Permit Rules (IDAPA 16.01.17).

{Figure 6}

WASTEWATER LAND APPLICATION PERMIT PROCESS



Wastewater Facilities Reviews

To protect water quality and public health as authorized under §39-118, Idaho Code, DEQ reviews the adequacy of engineering plans and specifications for:

- Construction and expansion of municipal and industrial wastewater treatment plants; and

- Collection systems for compliance with minimum design and construction standards.

C. Mining - Ore Cyanidation Permits

Title 39, Chapter 1 of Idaho Code requires that all plans for new facilities that process ore by cyanidation, or for modification to existing facilities, be approved by the Department. DEQ is the division which oversees the application process. The permit process may begin with a conceptual design approval, if requested by the applicant {Figure 7}. A Conceptual Design Report is prepared that demonstrates the basic operation, design concepts, and environmental safeguards.

If the information provided is favorable, initial written approval is awarded. Endorsement of the Conceptual Design Report is not an authorization, but rather an opportunity for communication between DEQ and the applicant. For this reason, participation in a pre-application conference is encouraged. At a pre-application conference, the siting and operating plans, anticipated application requirements, application procedures, and a site visit may be discussed.

The formal permitting process begins with the submission of a permit application. Public notice of the application is issued. (For application requirements, see IDAPA 16.01.13.) If the application is incomplete, it is returned to the applicant with a list of deficiencies. When all necessary information is included, DEQ, within sixty days, must assess whether the facility would meet all applicable water quality

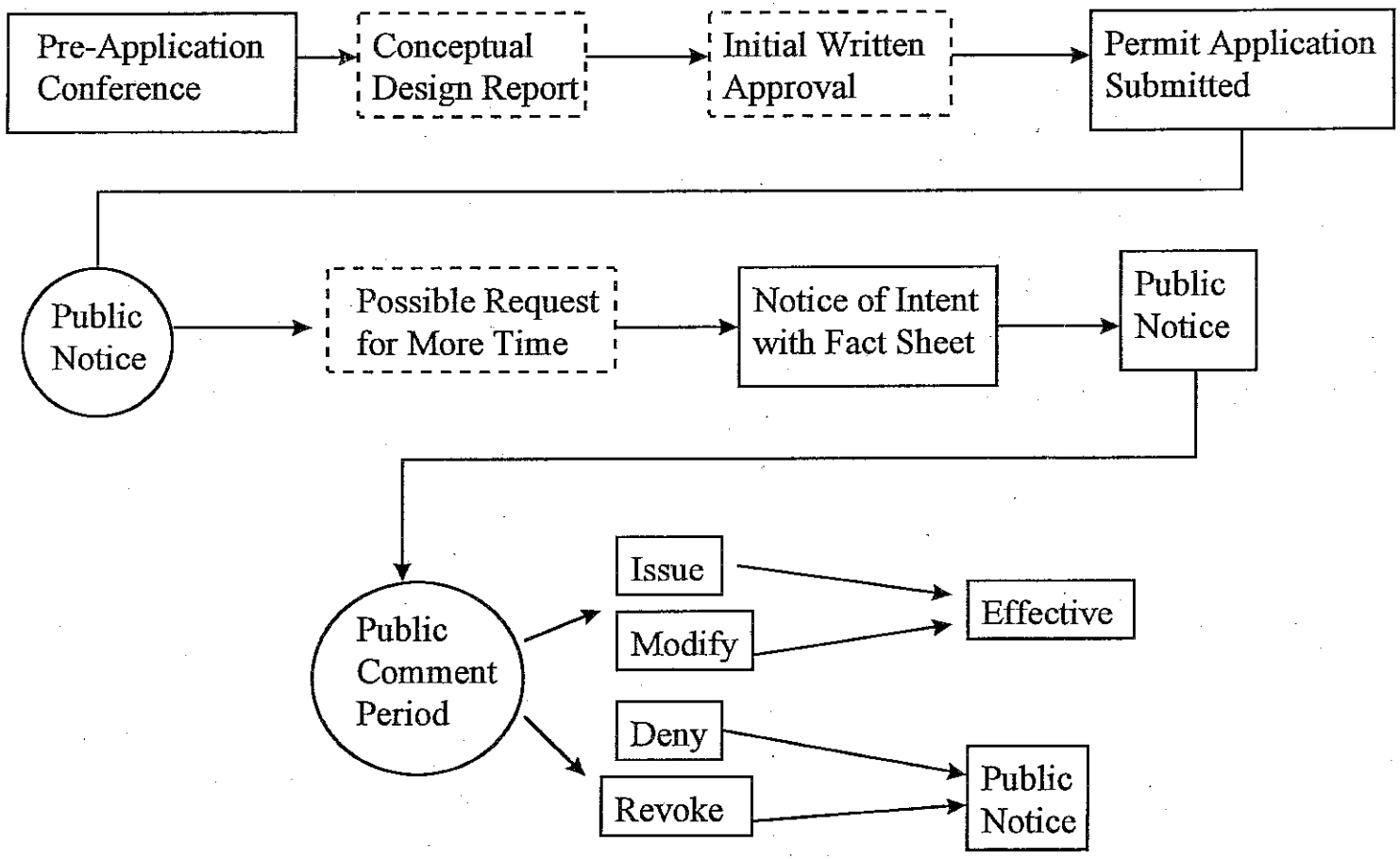
standards. If more detailed information must be gathered, an additional thirty days may be requested by either the applicant or DEQ.

DEQ then issues either a notice of intent to deny or a draft of the permit, accompanied by a fact sheet stating the principal facts as well as the significant legal and policy questions considered. Public notice of the action taken is given, and if a draft is issued, a public comment period is also opened. All comments are considered in making the final decision.

The final decision is made within thirty days after the end of the comment period. The decision can be to issue, deny, or modify a permit. Regardless of the decision, all comments, information received during the public comment period, and the response to those comments are made public. If changes were made between draft and final permits, the reasons are stated. Issued permits are effective immediately.

{Figure 7}

ORE-CYANIDATION PERMITS



Part V. Nonpoint Source Control Programs

Nonpoint source pollution is caused by diffuse sources usually associated with mining, transportation, hydrologic modifications, agricultural, silvicultural, urban runoff and runoff from construction activities. This type of pollution does not easily lend itself to regulation like point sources. Pollution from nonpoint sources occurs when the rate at which pollutant materials entering water bodies exceed natural levels. Nonpoint Source Control Programs are developed to monitor and implement controls for various aspects of pollution generation.

A. Nonpoint Source Control Strategies

Through the development of best management practices and the enforcement of surface water quality standards, nonpoint sources of pollution are to be maintained, at a minimum, as close as possible to background levels in order to lessen the impacts of nonpoint source activities to water quality.

Development

Idaho recognizes that nonpoint sources of pollution are the result of activities essential to the economic and social welfare of the state. The areal extent of most nonpoint source activities prevent practical application of conventional treatment technologies. Nonpoint source pollution management in Idaho is a process for protecting designated beneficial uses and ambient water quality through the implementation of best management practices (BMPs). BMPs should be designed, implemented, and maintained to provide full protection or maintenance of beneficial uses. Idaho Surface Water Quality Standards recognize the following sources for approved BMPs for water quality protection:

- "Rules Governing Dairy Wastes" IDAPA 02.04.14;
- "Rules for Individual Subsurface Sewage Disposal Systems," IDAPA 16.01.03;
- "Solid Waste Management Rules and Standards," IDAPA 16.01.06;
- "Idaho Forest Practices Rules," IDAPA 20.02.01;
- "Rules Governing Placer and Dredge Mining in Idaho" IDAPA 20.03.01;
- "Rules Governing Exploration and Surface Mining Operations in Idaho" IDAPA 20.03.02;

- "Rules and Minimum Standards for Stream Channel Alterations," IDAPA 37.03.07;
- "Rathdrum Prairie Sewage Disposal Regulations," IDAPA 41.01.01.

The Idaho Nonpoint Source Management Program and the Coordinated Nonpoint Source Water Quality Monitoring Program for Idaho (WQMP components, Appendix A) were developed under the requirements of Section 319 of the CWA. The Nonpoint Source Management Program is based on the concept of a feedback loop where BMPs are identified through a planning process and applied by land managers to site-specific conditions. The effectiveness of the BMPs in protecting water quality is evaluated through instream water quality monitoring and BMP

effectiveness monitoring. Ineffective BMPs are modified as required to protect water quality. For more details, refer to the WQMP components mentioned above.

<u>Enforcement</u>

Violations of water quality standards which occur in spite of the implementation of BMPs will not be subject to enforcement action, however, the current BMPs will be reviewed and modified as necessary by the appropriate agencies in accordance with the procedures of the Idaho Administrative Procedures Act. So long as a nonpoint source activity is being conducted in accordance with applicable rules and approved best management practices (or in the absence of referenced applicable best management practices conducted in a manner that demonstrates a knowledgeable and reasonable effort to minimize resulting adverse water quality impacts) the activity will not be subject to enforcement actions. In all cases, if it is determined by the Director that imminent and substantial danger to the public health or environment is occurring or may occur as a result of a nonpoint source by itself or in combination with other point or nonpoint source activities, the Director may seek immediate injunctive relief to stop or prevent that danger (§39-108, Idaho Code). For more details, refer to the Idaho Water Quality Standards and Wastewater Treatment Requirements, IDAPA 16.01.350.02.

B. Agricultural Pollution Control

Idaho has a state grant program for providing assistance to soil conservation districts for the control and abatement of water pollution from agricultural lands. Under the program, grants of up to 75 percent of the project costs of applying

BMPs can be given by the state. The project is co-administered by DEQ and the Soil Conservation Commission. The program is operated under the goals and objectives of Idaho's Agricultural Pollution Abatement Plan (see WQMP components, Appendix A), which lists those voluntary BMPs eligible for program cost sharing. Applications for funding are made jointly to DEQ and the Soil Conservation Commission with technical assistance provided by the Natural Resource Conservation Service. The grants are made according to the state agricultural project priority list, which rates and ranks projects on the basis of:

- Stream segment classification;
- Water quality effects and benefits;
- Project costs;
- Population affected; and
- Other available sources of funding.

The list is developed through an assessment of all applications. The priority project list is submitted to the Board of Health and Welfare annually. This meeting is an opportunity for public comment. If the list is approved, grant agreements are drawn up in accordance with the list.

C. Silvicultural Pollution Control

The Forest Practices Water Quality Management Plan calls for a statewide audit of the application and effectiveness of the Idaho Forest Practices Rules at least once every four years. The forest practices audit is one step in the process to determine if silvicultural management practices are being implemented and maintained on the ground and if they are being effective in controlling water pollutants. By conducting the audit and making rule revision recommendations, the audit team implements the monitoring and reporting provisions of the state's standards. Findings and recommendations from the audit are reported to the governor, the Forest Practices Steering Committee, the Idaho Board of Health and Welfare, the Idaho Board of Land Commissioners, the Idaho Department of Lands, and the Forest Practices Act Advisory Committee for their consideration as management or rule amendments.

For surface water quality purposes, monitoring of management practice effectiveness is done by answering three primary questions in order. These

question are: have the practices been properly applied and maintained; are the practices functioning as intended; and are the practices causing the desired in-stream results? An in-depth description of the audit process can be found in the *Forest Practices Water Quality Audit Report.*

D. Storm Water and Construction Pollution Control

The Storm Water Program is primarily responsible for providing TMDL support, through technical assistance and education to community and watershed advisory groups to protect both surface and ground water quality from the effects of urban nonpoint source pollution. A comprehensive set of statewide guidance has been prepared by the Program to assist in preventing and controlling nonpoint source pollution. The following publications are available upon request from DEQ:

- *Environmental Planning Tools and Techniques*: Presents a menu of cost-effective measures that can be encouraged at both the site and watershed levels to better integrate comprehensive design principles during site development; and
- *Catalog of Storm Water BMPs for Idaho Cities and Counties*: Provides guidance for the selection (construction-phase/permanent) and basic design of source and treatment control measures.

Appendix A. State Water Quality Management Plan Components

General:

Division of Environmental Quality Strategic Plan, 1995
Strategic Directions 1997-2000, Strategic Plan Update, 1996
Strategic Directions 1998-2001, Strategic Plan Update, 1997

Surface Water Quality Planning and Monitoring Programs:

401 Certification Process
Catalog of Storm Water BMPs for Idaho Cities and Counties, 1997
Coordinated Nonpoint Source Water Quality Monitoring Program for Idaho, 1990
Environmental Planning Tools and Techniques (Storm Water), 1997
Governor Batt's State of Idaho Bull Trout Conservation Plan, 1996
Idaho Agricultural Pollution Abatement Plan, 1983
Idaho Nonpoint Source Management Program, 1989
Idaho Statewide Work Plan for the Beneficial Use Reconnaissance Project, annual
Idaho Water Quality Status Reports (305b), biennial
Municipal Wastewater Grants and Loans Program
Policy for Development of Total Maximum Daily Loads (draft), 1998
Priest Lake Management Plan, 1995
Total Maximum Daily Loads
Waterbody Assessment Guidance Document, 1996 (or latest version)
Watershed Approach Framework Document (draft), 1995

Rules:

IDAPA 16.01.02	Water Quality Standards and Wastewater Treatment Requirements
IDAPA 16.01.04	Rules and Regulations for the Administration of Wastewater Treatment Facility Grants
IDAPA 16.01.06	Solid Waste Management Rules and Standards
IDAPA 16.01.12	Rules for the Administration of Wastewater Treatment Facility Loans
IDAPA 16.01.13	Rules for Ore Processing by Cyanidation
IDAPA 16.01.14	Rules for the Administration of the Agricultural Water Quality Program

All rules may be reviewed by contacting the Rules Coordinator, Department of Administration and/or referencing the Administrative Bulletin.

Appendix B. List of Laws/Documents Granting DEQ Water Quality Authority

Federal Authority:

CERCLA of 1980 and the Reauthorization Act of 1986 (42 USC 9601-9657)
Clean Water Act
Code of Federal Regulations (40 CFR)
Resource Conservation and Recovery Act

State Authority:

Big Payette Lake Water Quality Act (Idaho Code §§ 39-6609 *et seq.*)
Clean Lakes Act (Idaho Code §§ 39-6401 *et seq.*)
Commission to Clean Up/Protect the Water Quality of Coeur d'Alene River and Lake (Idaho Code §§ 70-204 *et seq.*)
Environmental Protection and Health Act (Idaho Code §§ 39-101 *et seq.*)
Idaho Solid Waste Facilities Act (Idaho Code §§ 39-7401 *et seq.*)
Priest Lake Management Plan (Idaho Code § 39-105(3)(p))
Water Quality Act (Idaho Code §§ 39-3601 *et seq.*)

Rules:

IDAPA 16.01.02	Water Quality Standards and Wastewater Treatment Requirements
IDAPA 16.01.04	Rules for the Administration of Wastewater Treatment Facility Grants
IDAPA 16.01.06	Solid Waste Management Rules and Standards
IDAPA 16.01.12	Rules for the Administration of Wastewater Treatment Facility Loans
IDAPA 16.01.13	Rules for Ore Processing by Cyanidation
IDAPA 16.01.14	Rules for the Administration of the Agricultural Water Quality Program
IDAPA 16.01.17	Wastewater Land Application Permits Regulations

Appendix C. List of Agencies Involved in Water Quality Activities

Federal:

Bureau of Land Management (BLM): BLM regulates and licenses land use activities on 12 million acres of public land in Idaho to maintain or improve water quality consistent with state and federal water quality standards and to minimize non-point source pollution. It designs and implements monitoring programs for activities that may affect beneficial uses. BLM coordinates its water quality programs with local, state, and federal agencies, affected land users, adjoining land owners, and other affected interests.

Bureau of Reclamation (BOR): BOR administers federal programs in the 17 western states for water resource management. The BOR owns and operates a number of dams in the Northwest and several projects on the tributaries of the Columbia River. The programs implemented through the various dams and projects impact water quality.

Cooperative Extension Service (CES): CES is the education arm of the U.S. Department of Agriculture (USDA.) CES is the lead agency in implementing USDA water quality initiatives such as hydrologic unit planning and demonstration projects. CES helps plan, deliver, and analyze water quality procedures, publishes technical guides and other references, and organizes professional training.

Farm Service Agency (FSA): FSA shares the cost of soil, water, woodland, and wildlife conservation practices with individual farmers under the Conservation Reserve Program and the Rock Creek Rural Clean Water Program. FSA shares leadership with NRCS and the Cooperative Extension Service in implementing USDA water quality initiatives.

Federal Energy Regulatory Commission (FERC): FERC regulates the interstate aspects of the electric power and natural gas industries. The agency issues and enforces licenses for construction and operation of non-federal hydroelectric projects, and advises federal agencies on the merits of proposed federal multi-purposed water development projects. All of these activities may have an impact on water quality.

National Marine Fisheries Service (NMFS): NMFS is an agency of the National Oceanic and Atmospheric Administration. It provides management, research, and services for the protection and rational use of living marine resources for their aesthetic, economic and recreational value. NMFS determines the consequences of the natural environment and human activities on living marine resources. In addition, it provides knowledge and services to achieve efficient and judicious management, use, and conservation of the resources. NMFS interacts with DEQ during consultations on water pollution events, monitoring programs, and their effect on anadromous fish.

Natural Resource Conservation Service (NRCS): NRCS administers a number of programs which include water quality components. These programs provide technical assistance and funding to land users for planning and implementing water quality measures and initiatives. Private land owners participating in these programs are required to develop conservation plans to reduce soil erosion. NRCS shares leadership with Farm Service Agency and the Cooperative Extension Service in implementing USDA water quality initiatives.

U.S. Army Corps of Engineers (COE): COE is an agency of the U.S. Army with the responsibility for design, construction, and operation of civil works, including multi-purpose dams, levies, other types of flood control measures, and navigation projects. The management of these facilities has a direct impact on water quality in the state of Idaho.

U.S. Environmental Protection Agency (EPA): The EPA ensures that non-point source water quality impacts are adequately addressed by the state through review and approval of state water quality standards. The agency administers these programs through the Clean Water Act.

U.S. Fish and Wildlife Service (FWS): FWS manages the trust resources, including endangered species. DEQ interacts with FWS during consultations on water pollution events, monitoring programs, and their effect on trust resources.

U.S. Forest Service (USFS): The USFS regulates and permits land-use activities on National Forest System lands in Idaho. USFS implements non-point source pollution control and water quality standards on these lands to improve, protect,

and restore water quality so that beneficial uses are supported. USFS designs and implements monitoring programs for activities that may impact beneficial uses. These water quality programs are coordinated with local, state, and federal agencies, affected public land users, adjoining land owners, and other affected interests.

U.S. Geological Survey (USGS): Regarding water issues, the USGS is responsible for water quantity and quality monitoring on many of the main-stem rivers in Idaho.

State:

Department of Agriculture (IDA): The IDA regulates the use of pesticides and fertilizers, licenses applicators, and provides assistance in monitoring the effectiveness of best management practices relating to application of agricultural chemicals and dairy waste in relation to the protection of water quality.

Department of Fish and Game (IDFG): IDFG has executed Memorandums of Understanding with state and federal agencies to protect or enhance habitat, to protect populations, and to protect water quality. Also, IDFG consults with federal agencies concerning terms and conditions for hydroelectric licensing.

Department of Lands (IDL): IDL is the agency responsible for management of Idaho endowment and public trust lands. These lands include a mixture of forest, grazing, recreation, and other uses. IDL implements the management plans of agriculture, silviculture, and mining to meet water quality standards and protect beneficial uses.

Idaho Department of Water Resources (IDWR): IDWR regulates stream channel alterations, the safety of most impoundment structures, and waste water disposal by injection wells. It also appropriates and allocates surface and ground water resources, including geothermal resources, and protects those resources against waste and contamination.

Soil Conservation Commission (SCC): SCC is the lead agency for agricultural and grazing Idaho. SCC co-administers the State Agricultural Water Quality Program with DEQ. Water quality standards are maintained through the

development and implementation of various farm assistance programs, education programs, and voluntary agricultural best management practices applied through the soil and water conservation districts.

Sovereign Nations:
Pursuant 33 USC §1377, 33 USC §1313 and 40 CFR 131.8, Indian Tribes many petition EPA for "Treatment as State" to obtain authority to promulgate water quality standards applicable anywhere within tribal sovereign borders.