

***ENVIRONMENT ENERGY & TECHNOLOGY COMMITTEE***

***ADMINISTRATIVE RULES REVIEW***

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***2010 Legislative Session***

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## **IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**

**DOCKET NO. 58-0101-0702**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** The temporary rule is effective April 1, 2009 and remains in effect until the conclusion of the 2010 legislative session unless rescinded by the agency. This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the conclusion of the Second Regular Session of the Sixtieth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that the Board has adopted a temporary and pending rule. This action is authorized by Sections 39-105 and 39-107, Idaho Code.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting this rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, November 5, 2008, Vol. 08-11, pages 94 through 114. After consideration of public comments, the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [http://www.deq.idaho.gov/rules/air/58\\_0101\\_0702\\_temporary\\_pending.cfm](http://www.deq.idaho.gov/rules/air/58_0101_0702_temporary_pending.cfm) or by contacting the undersigned.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of this rule is necessary to protect the public health. DEQ has received approval from the Governor's office for temporary adoption of this rule in an effort to reduce volatile organic compound emissions and potentially avoid an ozone nonattainment designation by the U.S. Environmental Protection Agency. The sooner the vapor collection systems are installed, the greater chance the area has to avoid nonattainment designation. It is particularly important to have a rule effective by spring 2009 so that the regulated community will have time to install the necessary vapor collection equipment before the hot summer weather sets in, which is when ozone is formed.

**IDAHO CODE SECTION 39-107D STATEMENT:** These rules do not regulate an activity not regulated by the federal government nor are they more stringent than federal regulations. The Clean Air Act requires, in moderate ozone nonattainment areas, the use of gasoline vapor collection for facilities that sell more than 10,000 gallons of gasoline per month. These rules are broader in scope than the federal law as they apply to sources in an area not yet designated nonattainment. Additionally, the National Emission Standard for Hazardous Air Pollutants (NESHAP) requires the use of gasoline vapor collection for gasoline dispensing facilities with throughput of 100,000 gallons or more of gasoline per month. 40 CFR Part 63, Subpart CCCCCC (40 CFR 63.11118). These rules require gasoline vapor collection for gasoline storage tanks with a capacity of 10,000 gallons or more; thus, they apply to a broader class of gasoline dispensing facilities than the NESHAPs.

These rules constitute an important preemptive step for the Treasure Valley to take to attempt

to avoid an ozone nonattainment designation. The ozone national ambient air quality standard is a standard designed to protect human health and the environment. It is clear under federal law that scientists have determined that vapor collection is an important control measure to implement for ozone reduction.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440, martin.bauer@deq.idaho.gov.

Dated this 13th day of February, 2009.

Paula J. Wilson, Hearing Coordinator  
(208)373-0418/Fax No. (208)373-0481  
paula.wilson@deq.idaho.gov

Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255

***THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized by Sections 39-105 and 39-107, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this proposed rulemaking will be held as follows:

**TUESDAY - DECEMBER 9, 2008 - 3:30 p.m.**

**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
Conference Room C  
1410 N. Hilton, Boise, Idaho

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

**DESCRIPTIVE SUMMARY:** The Treasure Valley is now, and has been for several years, experiencing high concentrations of ozone in the ambient air. The federal government lowered the national ambient air quality standard for ozone this year. Installation and operation of Stage 1 vapor collection equipment will reduce volatile organic compound (VOC) emissions by over 1,000 tons per year. Because VOCs are the major contributor to

ozone formation, such a reduction should reduce ozone in the ambient air and potentially lower concentrations such that ozone nonattainment may be avoided.

Additionally, the Treasure Valley Air Quality Plan, as developed by the Treasure Valley Air Quality Council and accepted by the Idaho Legislature, requires the Department of Environmental Quality (DEQ) to develop a rule requiring Stage 1 vapor collection in Ada and Canyon Counties. Treasure Valley Air Quality Plan, February 27, 2007 at page 95.

DEQ has received approval from the Governor's office for temporary adoption of this rule in an effort to reduce VOC emissions and potentially avoid an ozone nonattainment designation by the U.S. Environmental Protection Agency. The sooner the vapor collection systems are installed, the greater chance the area has to avoid nonattainment designation. It is particularly important to have a rule effective by spring 2009 so that the regulated community will have time to install the necessary vapor collection equipment before the hot summer weather sets in, which is when ozone is formed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality at the February 2009 Board meeting for adoption as a pending and temporary rule. If adopted by the Board, the temporary rule will become effective on April 1, 2009. The pending rule is expected to be final upon adjournment of the 2010 legislative session if approved by the Legislature.

**NEGOTIATED RULEMAKING:** The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code and IDAPA 04.11.01.810-815. On September 5, 2007, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 07-9, page 309. On August 1, 2008, a preliminary draft rule was made available for public review. Meetings were held on September 27, 2007; October 18, 2007; December 6, 2007; February 6, 2008; August 13, 2008; and August 26, 2008. Several members of the public participated in this negotiated rulemaking process by attending the meetings and by submitting written comments.

**IDAHO CODE SECTION 39-107D STATEMENT:** The proposed rules do not regulate an activity not regulated by the federal government nor are they more stringent than federal regulations. The Clean Air Act requires, in moderate ozone nonattainment areas, the use of gasoline vapor collection for facilities that sell more than 10,000 gallons of gasoline per month. The proposed rules are broader in scope than the federal law as they apply to sources in an area not yet designated nonattainment. Additionally, the National Emission Standard for Hazardous Air Pollutants (NESHAP) requires the use of gasoline vapor collection for gasoline dispensing facilities with throughput of 100,000 gallons or more of gasoline per month. 40 CFR Part 63, Subpart CCCCCC (40 CFR 63.11118). The proposed rules require gasoline vapor collection for gasoline storage tanks with a capacity of 10,000 gallons or more; thus, they apply to a broader class of gasoline dispensing facilities than the NESHAPs.

These proposed rules constitute an important preemptive step for the Treasure Valley to take to attempt to avoid an ozone nonattainment designation. The ozone national ambient air quality standard is a standard designed to protect human health and the environment. It is clear under federal law that scientists have determined that vapor collection is an important control measure

to implement for ozone reduction.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440 or martin.bauer@deq.idaho.gov.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before December 9, 2008.

DATED this 3rd day of October, 2008.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**006. GENERAL DEFINITIONS.**

**01. Accountable.** Any SIP emission trading program must account for the aggregate effect of the emissions trades in the demonstration of reasonable further progress, attainment, or maintenance. (4-5-00)

**02. Act.** The Environmental Protection and Health Act of 1972 as amended (Sections 39-101 through 39-130, Idaho Code). (5-1-94)

**03. Actual Emissions.** The actual rate of emissions of a pollutant from an emissions unit as determined in accordance with the following: (4-5-00)

**a.** In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. (4-5-00)

**b.** The Department may presume that the source-specific allowable emissions for the unit are equivalent to actual emissions of the unit. (4-5-00)

**c.** For any emissions unit (other than an electric utility steam generating unit as specified below) which has not yet begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date. (4-5-00)

**d.** For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the Department, on an annual basis for a period of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years may be required by the Department if it determines such a period to be more representative of normal source post-change operations. (4-5-00)

**04. Adverse Impact on Visibility.** Visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I Area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with: (3-30-07)

- a.** Times of visitor use of the Federal Class I Area; and (3-30-07)
- b.** The frequency and timing of natural conditions that reduce visibility. (3-30-07)
- c.** This term does not include affects on integral vistas when applied to 40 CFR 51.307. (3-30-07)

**05. Air Pollutant/Air Contaminant.** Any substance, including but not limited to, dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon or particulate matter or any combination thereof. (4-5-00)

**06. Air Pollution.** The presence in the outdoor atmosphere of any air pollutant or combination thereof in such quantity of such nature and duration and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property. (4-5-00)

**07. Air Quality.** The specific measurement in the ambient air of a particular air pollutant at any given time. (5-1-94)

**08. Air Quality Criterion.** The information used as guidelines for decisions when establishing air quality goals and air quality standards. (5-1-94)

**09. Allowable Emissions.** The allowable emissions rate of a stationary source or facility calculated using the maximum rated capacity of the source or facility (unless the source or facility is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following: (4-5-00)

- a.** The applicable standards set forth in 40 CFR part 60 and 61; (4-5-00)
- b.** Any applicable State Implementation Plan emissions limitation including those with a future compliance date; or (4-5-00)

**c.** The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date. (4-5-00)

**10. Ambient Air.** That portion of the atmosphere, external to buildings, to which the general public has access. (5-1-94)

**11. Ambient Air Quality Violation.** Any ambient concentration that causes or contributes to an exceedance of a national ambient air quality standard as determined by 40 CFR Part 50. (4-11-06)

**12. Atmospheric Stagnation Advisory.** An air pollution alert declared by the Department when air pollutant impacts have been observed and/or meteorological conditions are conducive to additional air pollutant buildup. (4-11-06)

**13. Attainment Area.** Any area which is designated, pursuant to 42 U.S.C. Section 7407(d), as having ambient concentrations equal to or less than national primary or secondary ambient air quality standards for a particular air pollutant or air pollutants. (4-11-06)

**14. BART-Eligible Source.** Any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit two hundred fifty (250) tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted. (3-30-07)

**a.** Fossil-fuel fired steam electric plants of more than two hundred fifty (250) million BTU's per hour heat input; (3-30-07)

**b.** Coal cleaning plants (thermal dryers); (3-30-07)

**c.** Kraft pulp mills; (3-30-07)

**d.** Portland cement plants; (3-30-07)

**e.** Primary zinc smelters; (3-30-07)

**f.** Iron and steel mill plants; (3-30-07)

**g.** Primary aluminum ore reduction plants; (3-30-07)

**h.** Primary copper smelters; (3-30-07)

**i.** Municipal incinerators capable of charging more than two hundred fifty (250) tons of refuse per day; (3-30-07)

**j.** Hydrofluoric, sulfuric, and nitric acid plants; (3-30-07)

**k.** Petroleum refineries; (3-30-07)

- l.** Lime plants; (3-30-07)
- m.** Phosphate rock processing plants; (3-30-07)
- n.** Coke oven batteries; (3-30-07)
- o.** Sulfur recovery plants; (3-30-07)
- p.** Carbon black plants (furnace process); (3-30-07)
- q.** Primary lead smelters; (3-30-07)
- r.** Fuel conversion plants; (3-30-07)
- s.** Sintering plants; (3-30-07)
- t.** Secondary metal production facilities; (3-30-07)
- u.** Chemical process plants; (3-30-07)
- v.** Fossil-fuel boilers of more than two hundred fifty (250) million BTU's per hour heat input; (3-30-07)
- w.** Petroleum storage and transfer facilities with a capacity exceeding three hundred thousand (300,000) barrels; (3-30-07)
- x.** Taconite ore processing facilities; (3-30-07)
- y.** Glass fiber processing plants; and (3-30-07)
- z.** Charcoal production facilities. (3-30-07)
- 15. Baseline (Area, Concentration, Date).** See Section 579. (5-1-94)
- 16. Best Available Retrofit Technology (BART).** Means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. (3-30-07)
- 17. Board.** Idaho Board of Environmental Quality. (5-1-94)
- 18. Breakdown.** An unplanned failure of any equipment or emissions unit which may cause excess emissions. (4-5-00)

19. **BTU.** British thermal unit. (5-1-94)
20. **Clean Air Act.** The federal Clean Air Act, 42 U.S.C. Sections 7401 through 7671q. (5-1-94)
21. **Collection Efficiency.** The overall performance of the air cleaning device in terms of ratio of materials collected to total input to the collector unless specific size fractions of the contaminant are stated or required. (5-1-94)
22. **Commence Construction or Modification.** In general, this means initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change. (4-5-00)
23. **Complete.** A determination made by the Department that all information needed to process a permit application has been submitted for review. (5-1-94)
24. **Construction.** Fabrication, erection, installation, or modification of a stationary source or facility. (5-1-94)
25. **Control Equipment.** Any method, process or equipment which removes, reduces or renders less noxious, air pollutants discharged into the atmosphere. (5-1-94)
26. **Controlled Emission.** An emission which has been treated by control equipment to remove all or part of an air pollutant before release to the atmosphere. (5-1-94)
27. **Criteria Air Pollutant.** Any of the following: PM-10; sulfur oxides; ozone, nitrogen dioxide; carbon monoxide; lead. (4-5-00)
28. **Deciview.** A measurement of visibility impairment. A deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on the following equation (for the purposes of calculating deciview, the atmospheric light extinction coefficient must be calculated from aerosol measurements): Deciview Haze Index =  $10 \ln_e (b_{\text{ext}} / 10 \text{Mm}^{-1})$  where  $b_{\text{ext}}$  = the atmospheric light extinction coefficient, expressed in inverse megameters ( $\text{Mm}^{-1}$ ). (3-30-07)
29. **Department.** The Department of Environmental Quality. (5-1-94)
30. **Designated Facility.** Any of the following facilities: (5-1-94)
- a. Fossil-fuel fired steam electric plants of more than two hundred fifty (250) million BTU's per hour heat input; (5-1-94)
- b. Coal cleaning plants (thermal dryers); (5-1-94)

- c.** Kraft pulp mills; (5-1-94)
- d.** Portland cement plants; (5-1-94)
- e.** Primary zinc smelters; (5-1-94)
- f.** Iron and steel mill plants; (5-1-94)
- g.** Primary aluminum ore reduction plants; (5-1-94)
- h.** Primary copper smelters; (5-1-94)
- i.** Municipal incinerators capable of charging more than two hundred and fifty (250) tons of refuse per day; (5-1-94)
- j.** Hydrofluoric, sulfuric, and nitric acid plants; (5-1-94)
- k.** Petroleum refineries; (5-1-94)
- l.** Lime plants; (5-1-94)
- m.** Phosphate rock processing plants; (5-1-94)
- n.** Coke oven batteries; (5-1-94)
- o.** Sulfur recovery plants; (5-1-94)
- p.** Carbon black plants (furnace process); (5-1-94)
- q.** Primary lead smelters; (5-1-94)
- r.** Fuel conversion plants; (5-1-94)
- s.** Sintering plants; (5-1-94)
- t.** Secondary metal production facilities; (5-1-94)
- u.** Chemical process plants; (5-1-94)
- v.** Fossil-fuel boilers (or combination thereof) of more than two hundred and fifty (250) million BTU's per hour heat input; (5-1-94)
- w.** Petroleum storage and transfer facilities with a capacity exceeding three hundred thousand (300,000) barrels; (5-1-94)
- x.** Taconite ore processing facilities; (5-1-94)
- y.** Glass fiber processing plants; and (5-1-94)

- z.** Charcoal production facilities. (5-1-94)
- 31. Director.** The Director of the Department of Environmental Quality or his designee. (5-1-94)
- 32. Effective Dose Equivalent.** The sum of the products of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man. The unit of the effective dose equivalent is the rem. It is generally calculated as an annual dose. (5-1-94)
- 33. Emission.** Any controlled or uncontrolled release or discharge into the outdoor atmosphere of any air pollutants or combination thereof. Emission also includes any release or discharge of any air pollutant from a stack, vent, or other means into the outdoor atmosphere that originates from an emission unit. (5-1-94)
- 34. Emission Standard.** A permit or regulatory requirement established by the Department or EPA which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction. (4-5-00)
- 35. Emissions Unit.** An identifiable piece of process equipment or other part of a facility which emits or may emit any air pollutant. This definition does not alter or affect the term "unit" for the purposes of 42 U.S.C. Sections 7651 through 7651o. (5-1-94)
- 36. EPA.** The United States Environmental Protection Agency and its Administrator or designee. (5-1-94)
- 37. Environmental Remediation Source.** A stationary source that functions to remediate or recover any release, spill, leak, discharge or disposal of any petroleum product or petroleum substance, any hazardous waste or hazardous substance from any soil, ground water or surface water, and shall have an operational life no greater than five (5) years from the inception of any operations to the cessation of actual operations. Nothing in this definition shall be construed so as to actually limit remediation projects to five (5) years or less of total operation. (5-1-95)
- 38. Excess Emissions.** Emissions that exceed an applicable emissions standard established for any facility, source or emissions unit by statute, regulation, rule, permit, or order. (4-11-06)
- 39. Existing Stationary Source or Facility.** Any stationary source or facility that exists, is installed, or is under construction on the original effective date of any applicable provision of this chapter. (5-1-94)
- 40. Facility.** All of the pollutant-emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting

activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual. The fugitive emissions shall not be considered in determining whether a permit is required unless required by federal law. (4-11-06)

- 41. Federal Class I Area.** Any federal land that is classified or reclassified "Class I." (3-30-07)
- 42. Federal Land Manager.** The Secretary of the department with authority over the Federal Class I Area (or the Secretary's designee). (3-30-07)
- 43. Federally Enforceable.** All limitations and conditions which are enforceable by EPA and the Department under the Clean Air Act, including those requirements developed pursuant to 40 CFR Parts 60 and 61 requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Parts 51, 52, 60, or 63. (3-30-07)
- 44. Fire Hazard.** The presence or accumulation of combustible material of such nature and in sufficient quantity that its continued existence constitutes an imminent and substantial danger to life, property, public welfare or adjacent lands. (5-1-94)
- 45. Fuel-Burning Equipment.** Any furnace, boiler, apparatus, stack and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power by indirect heat transfer. (5-1-94)
- 46. Fugitive Dust.** Fugitive emissions composed of particulate matter. (5-1-94)
- 47. Fugitive Emissions.** Those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. (5-1-94)
- 48. Garbage.** Any waste consisting of putrescible animal and vegetable materials resulting from the handling, preparation, cooking and consumption of food including, but not limited to, waste materials from households, markets, storage facilities, handling and sale of produce and other food products. (5-1-94)
- 49. Gasoline.** Any mixture of volatile hydrocarbons suitable as a fuel for the propulsion of motor vehicles or motor boats. Gasoline also means aircraft engine fuels when used for the operation or propulsion of motor vehicles or motor boats and includes gasohol, but does not include special fuels. ( )
- 50. Gasoline Cargo Tank.** Any tank or trailer used for the transport of gasoline from sources of supply to underground gasoline storage tanks. ( )
- 51. Gasoline Dispensing Facility (GDF).** Any facility with underground gasoline storage tanks used for dispensing gasoline. ( )
- 4952. Grain Elevator.** Any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded. (5-1-94)

**503. Grain Storage Elevator.** Any grain elevator located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean extraction plant which has a permanent grain storage capacity of thirty five thousand two hundred (35,200) cubic meters (ca. 1 million bushels). (5-1-94)

**514. Grain Terminal Elevator.** Any grain elevator which has a permanent storage capacity of more than eighty-eight thousand one hundred (88,100) cubic meters (ca. 2.5 million bushels), except those located at animal food manufacturers, pet food manufacturers, cereal manufacturers, breweries, and livestock feedlots. (5-1-94)

**525. Hazardous Air Pollutant (HAP).** Any air pollutant listed pursuant to Section 112(b) of the Clean Air Act. Hazardous Air Pollutants are regulated air pollutants. (4-11-06)

**536. Hazardous Waste.** Any waste or combination of wastes of a solid, liquid, semisolid, or contained gaseous form which, because of its quantity, concentration or characteristics (physical, chemical or biological) may: (5-1-94)

**a.** Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible, or incapacitating reversible illnesses; or (5-1-94)

**b.** Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties; provided that such wastes do not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are allowed under a national pollution discharge elimination system permit, or source, special nuclear, or by-product material as defined by 42 U.S.C. Sections 2014(e),(z) or (aa). (5-1-94)

**547. Hot-Mix Asphalt Plant.** Those facilities conveying proportioned quantities or batch loading of cold aggregate to a drier, and heating, drying, screening, classifying, measuring and mixing the aggregate and asphalt for the purpose of paving, construction, industrial, residential or commercial use. (5-1-94)

**558. Incinerator.** Any source consisting of a furnace and all appurtenances thereto designed for the destruction of refuse by burning. "Open Burning" is not considered incineration. For purposes of these rules, the destruction of any combustible liquid or gaseous material by burning in a flare stack shall be considered incineration. (5-1-94)

**569. Indian Governing Body.** The governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government. (5-1-94)

**5760. Integral Vista.** A view perceived from within the mandatory Class I Federal Area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal Area. (3-30-07)

**5861. Kraft Pulping.** Any pulping process which uses, for a cooking liquor, an alkaline sulfide solution containing sodium hydroxide and sodium sulfide. (5-1-94)

**5962. Least Impaired Days.** The average visibility impairment (measured in deciviews) for the twenty percent (20%) of monitored days in a calendar year with the lowest amount of visibility impairment. (3-30-07)

**603. Lowest Achievable Emission Rate (LAER).** For any source, the more stringent rate of emissions based on the following: (4-5-00)

**a.** The most stringent emissions limitation which is contained in any State Implementation Plan for such class or category of facility, unless the owner or operator of the proposed facility demonstrates that such limitations are not achievable; or (4-5-00)

**b.** The most stringent emissions limitation which is achieved in practice by such class or category of facilities. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the facility. In no event shall the application of the term permit a proposed new or modified facility to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance. (4-5-00)

**614. Mandatory Class I Federal Area.** Any area identified in 40 CFR 81.400 through 81.437. (3-30-07)

**625. Member of the Public.** For purposes of Subsection 006.103.a.xvi., a person located at any off-site point where there is a residence, school, business or office. (3-30-07)

**636. Modification.** (4-11-06)

**a.** Any physical change in, or change in the method of operation of, a stationary source or facility which results in an emission increase as defined in Section 007 or which results in the emission of any regulated air pollutant not previously emitted. (4-11-06)

**b.** Any physical change in, or change in the method of operation of, a stationary source or facility which results in an increase in the emissions rate of any state only toxic air pollutant, or emissions of any state only toxic air pollutant not previously emitted. (4-11-06)

**c.** Fugitive emissions shall not be considered in determining whether a permit is required for a modification unless required by federal law. (4-11-06)

**d.** For purposes of this definition of modification, routine maintenance, repair and replacement shall not be considered physical changes and the following shall not be considered a change in the method of operation: (3-30-07)

**i.** An increase in the production rate if such increase does not exceed the operating design capacity of the affected stationary source, and if a more restrictive production rate is not specified in a permit; (5-1-94)

ii. An increase in hours of operation if more restrictive hours of operation are not specified in a permit; and (5-1-94)

iii. Use of an alternative fuel or raw material if the stationary source is specifically designed to accommodate such fuel or raw material and use of such fuel or raw material is not specifically prohibited in a permit. (4-5-00)

**647. Monitoring.** Sampling and analysis, in a continuous or noncontinuous sequence, using techniques which will adequately measure emission levels and/or ambient air concentrations of air pollutants. (5-1-94)

**658. Most Impaired Days.** The average visibility impairment (measured in deciviews) for the twenty percent (20%) of monitored days in a calendar year with the highest amount of visibility impairment. (3-30-07)

**669. Multiple Chamber Incinerator.** Any article, machine, equipment, contrivance, structure or part of a structure used to dispose of combustible refuse by burning, consisting of three (3) or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned. (5-1-94)

**670. Natural Conditions.** Includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration. (3-30-07)

**6871. New Stationary Source or Facility.** (5-1-94)

a. Any stationary source or facility, the construction or modification of which is commenced after the original effective date of any applicable provision of this chapter; or (5-1-94)

b. The restart of a nonoperating facility shall be considered a new stationary source or facility if: (5-1-94)

i. The restart involves a modification to the facility; or (5-1-94)

ii. After the facility has been in a nonoperating status for a period of two (2) years, and the Department receives an application for a Permit to Construct in the area affected by the existing nonoperating facility, the Department will, within five (5) working days of receipt of the application notify the nonoperating facility of receipt of the application for a Permit to Construct. Upon receipt of this Departmental notification, the nonoperating facility will comply with the following restart schedule or be considered a new stationary source or facility when it does restart: Within thirty (30) working days after receipt of the Department's notification of the application for a Permit to Construct, the nonoperating facility shall provide the Department with a schedule detailing the restart of the facility. The restart must begin within sixty (60) days of the date the Department receives the restart schedule. (5-1-94)

**6972. Nonattainment Area.** Any area which is designated, pursuant to 42 U.S.C. Section 7407(d), as not meeting (or contributes to ambient air quality in a nearby area that does

not meet) the national primary or secondary ambient air quality standard for the pollutant. (5-1-94)

**703. Noncondensibles.** Gases and vapors from processes that are not condensed at standard temperature and pressure unless otherwise specified. (5-1-94)

**714. Odor.** The sensation resulting from stimulation of the human sense of smell. (5-1-94)

**725. Opacity.** A state which renders material partially or wholly impervious to rays of light and causes obstruction of an observer's view, expressed as percent. (5-1-94)

**736. Open Burning.** The burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through a stack, duct or chimney. (5-1-94)

**747. Operating Permit.** A permit issued by the Director pursuant to Sections 300 through 386 and/or 400 through 461. (4-5-00)

**758. Particulate Matter.** Any material, except water in uncombined form, that exists as a liquid or a solid at standard conditions. (5-1-94)

**769. Particulate Matter Emissions.** All particulate matter emitted to the ambient air as measured by an applicable reference method, or any equivalent or alternative method in accordance with Section 157. (4-5-00)

**7780. Permit to Construct.** A permit issued by the Director pursuant to Sections 200 through 228. (7-1-02)

**7881. Person.** Any individual, association, corporation, firm, partnership or any federal, state or local governmental entity. (5-1-94)

**7982. PM-10.** All particulate matter in the ambient air with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53. (5-1-94)

**803. PM-10 Emissions.** All particulate matter, including condensible particulates, with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method in accordance with Section 157. (4-5-00)

**814. Potential to Emit/Potential Emissions.** The maximum capacity of a facility or stationary source to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the facility or source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state or federally enforceable. Secondary emissions do not

count in determining the potential to emit of a facility or stationary source. (3-30-07)

**825. Portable Equipment.** Equipment which is designed to be dismantled and transported from one (1) job site to another job site. (5-1-94)

**836. PPM (parts per million).** Parts of a gaseous contaminant per million parts of gas by volume. (5-1-94)

**847. Prescribed Fire Management Burning.** The controlled application of fire to wildland fuels in either their natural or modified state under such conditions of weather, fuel moisture, soil moisture, etc., as will allow the fire to be confined to a predetermined area and at the same time produce the intensity of heat and rate of spread required to accomplish planned objectives, including: (5-1-94)

- a. Fire hazard reduction; (5-1-94)
- b. The control of pests, insects, or diseases; (5-1-94)
- c. The promotion of range forage improvements; (5-1-94)
- d. The perpetuation of natural ecosystems; (5-1-94)
- e. The disposal of woody debris resulting from a logging operation, the clearing of rights of way, a land clearing operation, or a driftwood collection system; (5-1-94)
- f. The preparation of planting and seeding sites for forest regeneration; and (5-1-94)
- g. Other accepted natural resource management purposes. (5-1-94)

**858. Primary Ambient Air Quality Standard.** That ambient air quality which, allowing an adequate margin of safety, is requisite to protect the public health. (5-1-94)

**869. Process or Process Equipment.** Any equipment, device or contrivance for changing any materials whatever or for storage or handling of any materials, and all appurtenances thereto, including ducts, stack, etc., the use of which may cause any discharge of an air pollutant into the ambient air but not including that equipment specifically defined as fuel-burning equipment or refuse-burning equipment. (5-1-94)

**8790. Process Weight.** The total weight of all materials introduced into any source operation which may cause any emissions of particulate matter. Process weight includes solid fuels charged, but does not include liquid and gaseous fuels charged or combustion air. Water which occurs naturally in the feed material shall be considered part of the process weight. (5-1-94)

**8891. Process Weight Rate.** The rate established as follows: (5-1-94)

- a. For continuous or long-run steady-state source operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the

number of hours of such period or portion thereof; (4-5-00)

**b.** For cyclical or batch source operations, the total process weight for a period that covers a complete cycle of operation or an integral number of cycles, divided by the hours of actual process operation during such a period. Where the nature of any process or operation or the design of any equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply. (4-5-00)

**892. Quantifiable.** The Department must be able to determine the emissions impact of any SIP trading programs requirement(s) or emission limit(s). (4-5-00)

**903. Radionuclide.** A type of atom which spontaneously undergoes radioactive decay. (5-1-94)

**914. Regional Haze.** Visibility impairment that is caused by the emission of air pollutants from numerous sources located over a wide geographic area. Such sources include, but are not limited to, major and minor stationary sources, mobile sources, and area sources. (3-30-07)

**925. Regulated Air Pollutant.** (4-11-06)

**a.** For purposes of determining applicability of major source permit to operate requirements, issuing, and modifying permits pursuant to Sections 300 through 397, and in accordance with Title V of the federal Clean Air Act amendments of 1990, 42 U.S.C. Section 7661 et seq., “regulated air pollutant” shall have the same meaning as in Title V of the federal Clean Air Act amendments of 1990, and any applicable federal regulations promulgated pursuant to Title V of the federal Clean Air Act amendments of 1990, 40 CFR Part 70; (4-11-06)

**b.** For purposes of determining applicability of any other operating permit requirements, issuing, and modifying permits pursuant to Sections 400 through 410, the federal definition of “regulated air pollutant” as defined in Subsection 006.94.a. shall also apply; (3-30-07)

**c.** For purposes of determining applicability of permit to construct requirements, issuing, and modifying permits pursuant to Sections 200 through 228, except Section 214, and in accordance with Part D of Subchapter I of the federal Clean Air Act, 42 U.S.C. Section 7501 et seq., “regulated air pollutant” shall mean those air contaminants that are regulated in non-attainment areas pursuant to Part D of Subchapter I of the federal Clean Air Act and applicable federal regulations promulgated pursuant to Part D of Subchapter I of the federal Clean Air Act, 40 CFR 51.165; and (4-11-06)

**d.** For purposes of determining applicability of any other major or minor permit to construct requirements, issuing, and modifying permits pursuant to 200 through 228, except Section 214, “regulated air pollutant” shall mean those air contaminants that are regulated in attainment and unclassifiable areas pursuant to Part C of Subchapter I of the federal Clean Air Act, 40 CFR 52.21, and any applicable federal regulations promulgated pursuant to Part C of Subchapter I of the federal Clean Air Act, 42 U.S.C. Section 7470 et seq. (4-11-06)

**936. Replicable.** Any SIP procedures for applying emission trading shall be structured so that two (2) independent entities would obtain the same result when determining compliance with the emission trading provisions. (4-5-00)

**947. Responsible Official.** One (1) of the following: (5-1-94)

**a.** For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either: (5-1-94)

i. The facilities employ more than two hundred fifty (250) persons or have gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) (in second quarter 1980 dollars); or (4-5-00)

ii. The delegation of authority to such representative is approved in advance by the Department. (5-1-94)

**b.** For a partnership or sole proprietorship: a general partner or the proprietor, respectively. (5-1-94)

**c.** For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of Section 123, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA). (4-5-00)

**d.** For Phase II sources: (5-1-94)

i. The designated representative in so far as actions, standards, requirements, or prohibitions under 42 U.S.C. Sections 7651 through 7651o or the regulations promulgated thereunder are concerned; and (5-1-94)

ii. The designated representative for any other purposes under 40 CFR Part 70. (5-1-94)

**958. Safety Measure.** Any shutdown (and related startup) or bypass of equipment or processes undertaken to prevent imminent injury or death or severe damage to equipment or property which may cause excess emissions. (4-5-00)

**969. Salvage Operation.** Any source consisting of any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers, or drums, and specifically including automobile graveyards and junkyards. (5-1-94)

**97100. Scheduled Maintenance.** Planned upkeep, repair activities and preventative

maintenance on any air pollution control equipment or emissions unit, including process equipment, and including shutdown and startup of such equipment. (3-20-97)

**98101. Secondary Ambient Air Quality Standard.** That ambient air quality which is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of air pollutants in the ambient air. (5-1-94)

**99102. Secondary Emissions.** Emissions which would occur as a result of the construction, modification, or operation of a stationary source or facility, but do not come from the stationary source or facility itself. Secondary emissions must be specific, well defined, quantifiable, and affect the same general area as the stationary source, facility, or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the primary stationary source, facility or modification. Secondary emissions do not include any emissions which come directly from a mobile source regulated under 42 U.S.C. Sections 7521 through 7590. (3-30-07)

**1003. Shutdown.** The normal and customary time period required to cease operations of air pollution control equipment or an emissions unit beginning with the initiation of procedures to terminate normal operation and continuing until the termination is completed. (5-1-94)

**1014. Significant.** In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following: (4-11-06)

- a. Pollutant and emissions rate: (4-11-06)
  - i. Carbon monoxide, one hundred (100) tons per year; (5-1-94)
  - ii. Nitrogen oxides, forty (40) tons per year; (5-1-94)
  - iii. Sulfur dioxide, forty (40) tons per year; (5-1-94)
  - iv. Particulate matter, twenty-five (25) tons per year of particulate matter emissions; fifteen (15) tons per year of PM<sub>10</sub> emissions; (4-11-06)
  - v. Ozone, forty (40) tons per year of volatile organic compounds; (4-11-06)
  - vi. Lead, six-tenths (0.6) of a ton per year; (5-1-94)
  - vii. Fluorides, three (3) tons per year; (5-1-94)
  - viii. Sulfuric acid mist, seven (7) tons per year; (5-1-94)
  - ix. Hydrogen sulfide (H<sub>2</sub>S), ten (10) tons per year; (5-1-94)
  - x. Total reduced sulfur (including H<sub>2</sub>S), ten (10) tons per year; (5-1-94)

- xi. Reduced sulfur compounds (including H<sub>2</sub>S), ten (10) tons per year; (5-1-94)
  - xii. Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans), thirty-five ten-millionths (0.0000035) tons per year; (5-1-94)
  - xiii. Municipal waste combustor metals (measured as particulate matter), fifteen (15) tons per year; (5-1-94)
  - xiv. Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride), forty (40) tons per year; (5-1-94)
  - xv. Municipal solid waste landfill emissions (measured as nonmethane organic compounds), fifty (50) tons per year; or (4-11-06)
  - xvi. Radionuclides, a quantity of emissions, from source categories regulated by 40 CFR Part 61, Subpart H, that have been determined in accordance with 40 CFR Part 61, Appendix D and by Department approved methods, that would cause any member of the public to receive an annual effective dose equivalent of at least one tenth (0.1) mrem per year, if total facility-wide emissions contribute an effective dose equivalent of less than three (3) mrem per year; or any radionuclide emission rate, if total facility-wide radionuclide emissions contribute an effective dose equivalent of greater than or equal to three (3) mrem per year. (5-1-95)
- b.** In reference to a net emissions increase or the potential of a source or facility to emit a regulated air pollutant not listed in Subsection 006.103.a. above and not a toxic air pollutant, any emission rate; or (3-30-07)
- c.** For a major facility or major modification which would be constructed within ten (10) kilometers of a Class I area, the emissions rate which would increase the ambient concentration of an emitted regulated air pollutant in the Class I area by one (1) microgram per cubic meter, twenty-four (24) hour average, or more. (4-5-00)

**1025. Significant Contribution.** Any increase in ambient concentrations which would exceed the following: (5-1-94)

- a.** Sulfur dioxide: (5-1-94)
  - i. One (1.0) microgram per cubic meter, annual average; (5-1-94)
  - ii. Five (5) micrograms per cubic meter, twenty-four (24) hour average; (5-1-94)
  - iii. Twenty-five (25) micrograms per cubic meter, three (3) hour average; (5-1-94)
- b.** Nitrogen dioxide, one (1.0) microgram per cubic meter, annual average; (5-1-94)
- c.** Carbon monoxide: (5-1-94)
  - i. One-half (0.5) milligrams per cubic meter, eight (8) hour average; (5-1-94)

- ii. Two (2) milligrams per cubic meter, one (1) hour average; (5-1-94)
- d. PM-10: (5-1-94)
  - i. One (1.0) microgram per cubic meter, annual average; (5-1-94)
  - ii. Five (5.0) micrograms per cubic meter, twenty-four (24) hour average. (5-1-94)

**1036. Small Fire.** A fire in which the material to be burned is not more than four (4) feet in diameter nor more than three (3) feet high. (5-1-94)

**1047. Smoke.** Small gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon and other combustible material. (5-1-94)

**1058. Smoke Management Plan.** A document issued by the Director to implement Sections 606 through 616, Categories of Allowable Burning. (5-1-94)

**1069. Smoke Management Program.** A program whereby meteorological information, fuel conditions, fire behavior, smoke movement and atmospheric dispersal conditions are used as a basis for scheduling the location, amount and timing of open burning operations so as to minimize the impact of such burning on identified smoke sensitive areas. (5-1-94)

**10710. Source.** A stationary source. (5-1-94)

**10811. Source Operation.** The last operation preceding the emission of air pollutants, when this operation: (5-1-94)

- a. Results in the separation of the air pollutants from the process materials or in the conversion of the process materials into air pollutants, as in the case of fuel combustion; and (5-1-94)
- b. Is not an air cleaning device. (5-1-94)

**112. Special Fuels.** All fuel suitable as fuel for diesel engines; a compressed or liquefied gas obtained as a by-product in petroleum refining or natural gasoline manufacture, such as butane, isobutane, propane, propylene, butylenes, and their mixtures; and natural gas, either liquid or gas, and hydrogen, used for the generation of power for the operation or propulsion of motor vehicles. ( )

**10913. Stack.** Any point in a source arranged to conduct emissions to the ambient air, including a chimney, flue, conduit, or duct but not including flares. (5-1-94)

**114. Stage 1 Vapor Collection.** Used during the refueling of underground gasoline storage tanks to reduce hydrocarbon emissions. Vapors in the tank, which are displaced by the incoming gasoline, are routed through a hose into the gasoline cargo tank and returned to the terminal for processing. Two (2) types of Stage 1 systems exist: coaxial and dual point. ( )

**a.** Coaxial System. A Stage 1 vapor collection system that requires only one (1) tank opening. The tank opening is usually four (4) inches in diameter with a three (3) inch diameter product fill tube inserted into the opening. Fuel flows through the inner tube while vapors are displaced through the annular space between the inner and outer tubes. ( )

**b.** Dual Point System. A Stage 1 vapor collection system that consists of two (2) separate tank openings, one (1) for delivery of the product and the other for the recovery of vapors. ( )

**1105. Standard Conditions.** Except as specified in Subsection 576.02 for ambient air quality standards, a dry gas temperature of twenty degrees Celsius (20C) sixty-eight degrees Fahrenheit (68F) and a gas pressure of seven hundred sixty (760) millimeters of mercury (14.7 pounds per square inch) absolute. (4-5-00)

**1146. Startup.** The normal and customary time period required to bring air pollution control equipment or an emissions unit, including process equipment, from a nonoperational status into normal operation. (5-1-94)

**1127. Stationary Source.** Any building, structure, facility, emissions unit, or installation which emits or may emit any air pollutant. The fugitive emissions shall not be considered in determining whether a permit is required unless required by federal law. (4-11-06)

**1138. Tier I Source.** Any of the following: (5-1-94)

**a.** Any source located at any major facility as defined in Section 008; (4-5-00)

**b.** Any source, including an area source, subject to a standard, limitation, or other requirement under 42 U.S.C. Section 7411 or 40 CFR Part 60, and required by EPA to obtain a Part 70 permit; (4-11-06)

**c.** Any source, including an area source, subject to a standard or other requirement under 42 U.S.C. Section 7412, 40 CFR Part 61 or 40 CFR Part 63, and required by EPA to obtain a Part 70 permit, except that a source is not required to obtain a permit solely because it is subject to requirements under 42 U.S.C. Section 7412(r); (4-11-06)

**d.** Any Phase II source; and (5-1-94)

**e.** Any source in a source category designated by the Department. (5-1-94)

**1149. Total Suspended Particulates.** Particulate matter as measured by the method described in 40 CFR 50 Appendix B. (4-5-00)

**14520. Toxic Air Pollutant.** An air pollutant that has been determined by the Department to be by its nature, toxic to human or animal life or vegetation and listed in Section 585 or 586. (5-1-94)

**14621. Toxic Air Pollutant Carcinogenic Increments.** Those ambient air quality increments based on the probability of developing excess cancers over a seventy (70) year

lifetime exposure to one (1) microgram per cubic meter (1 ug/m<sup>3</sup>) of a given carcinogen and expressed in terms of a screening emission level or an acceptable ambient concentration for a carcinogenic toxic air pollutant. They are listed in Section 586. (5-1-94)

**11722. Toxic Air Pollutant Non-carcinogenic Increments.** Those ambient air quality increments based on occupational exposure limits for airborne toxic chemicals expressed in terms of a screening emission level or an acceptable ambient concentration for a non-carcinogenic toxic air pollutant. They are listed in Section 585. (5-1-94)

**11823. Toxic Substance.** Any air pollutant that is determined by the Department to be by its nature, toxic to human or animal life or vegetation. (5-1-94)

**11924. Trade Waste.** Any solid, liquid or gaseous material resulting from the construction or demolition of any structure, or the operation of any business, trade or industry including, but not limited to, wood product industry waste such as sawdust, bark, peelings, chips, shavings and cull wood. (5-1-94)

**1205. TRS (Total Reduced Sulfur).** Hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide and any other organic sulfide present. (5-1-94)

**1216. Unclassifiable Area.** An area which, because of a lack of adequate data, is unable to be classified pursuant to 42 U.S.C. Section 7407(d) as either an attainment or a nonattainment area. (5-1-94)

**1227. Uncontrolled Emission.** An emission which has not been treated by control equipment. (5-1-94)

**1238. Upset.** An unplanned disruption in the normal operations of any equipment or emissions unit which may cause excess emissions. (4-5-00)

**1249. Visibility Impairment.** Any humanly perceptible change in visibility (light extinction, visual range, contrast, coloration) from that which would have existed under natural conditions. (3-30-07)

**12530. Visibility in Any Mandatory Class I Federal Area.** Includes any integral vista associated with that area. (3-30-07)

**12631. Wigwam Burner.** Wood waste burning devices commonly called teepee burners, silos, truncated cones, and other such burners commonly used by the wood product industry for the disposal by burning of wood wastes. (5-1-94)

**12732. Wood Stove Curtailment Advisory.** An air pollution alert issued through local authorities and/or the Department to limit wood stove emissions during air pollution episodes. (5-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

~~592.—599. (RESERVED).~~

**592. STAGE 1 VAPOR COLLECTION.**

The purpose of Sections 592 through 598 is to set forth requirements for Stage 1 vapor collection systems. Section 599 sets forth the requirements for gasoline cargo tanks that deliver gasoline to those required to install and operate Stage 1 vapor collection systems. These sections apply to gasoline dispensing facilities (GDF) and gasoline cargo tanks in Ada and Canyon Counties only. Nothing in these rules is intended to supersede or render inapplicable any federal, state, or local laws, including, but not limited to, the National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities, 40 CFR Part 63, Subpart CCCCCC, of the federal Clean Air Act. ( )

**593. AFFECTED EQUIPMENT OR PROCESSES.**

**01. Applicability.** Sections 592 through 598 apply to transfers of gasoline to underground storage tanks with a tank capacity of ten thousand (10,000) gallons and not otherwise subject to 40 CFR 63.11118. The emission sources include the underground gasoline storage tanks and associated equipment components in vapor or liquid gasoline service at new, reconstructed, or existing GDFs. Pressure/vacuum vents on underground gasoline storage tanks and the equipment necessary to unload product from cargo tanks into the storage tanks at GDFs are covered emission sources. ( )

**02. New Sources.** A source is a new source if construction commenced on the source after April 1, 2009. ( )

**03. Reconstructed Sources.** A source is reconstructed if meeting the criteria for reconstruction as defined in 40 CFR 63.2, incorporated by reference into these rules at Section 107. ( )

**04. Existing Sources.** A source is an existing source if it is not new or reconstructed. ( )

**594. COMPLIANCE DATES.**

**01. New or Reconstructed Sources.** For a new or reconstructed source, the owner or operator must comply with the standards in Sections 595 and 596 no later than April 1, 2009 or upon startup, whichever is later. Owners or operators of new sources shall install dual point systems. ( )

**02. Existing Sources.** For an existing source, the owner or operator must comply with the standards in Sections 595 and 596 upon installation of the Stage 1 vapor collection system, or by May 1, 2010, whichever is earlier. ( )

**595. SUBMERGED FILL REQUIREMENTS.**

The owner or operator must only load gasoline into underground storage tanks at the facility by

utilizing submerged filling. ( )

**01. Installed On or Before November 9, 2006.** Submerged fill pipes installed on or before November 9, 2006 must be no more than twelve (12) inches from the bottom of the storage tank. ( )

**02. Installed After November 9, 2006.** Submerged fill pipes installed after November 9, 2006 must be no more than six (6) inches from the bottom of the storage tank. ( )

**596. VAPOR BALANCE REQUIREMENTS.**

The owner or operator of a GDF must comply with the following requirements on and after the applicable compliance date in Section 594: ( )

**01. Loading.** When loading an underground gasoline storage tank equipped with a vapor balance system, connect and ensure the proper operation of the vapor balance system whenever gasoline is being loaded. ( )

**02. Maintenance.** Maintain all equipment associated with the vapor balance system to be vapor tight and in good working order. ( )

**03. Inspection.** In order to ensure that the vapor balance equipment is maintained to be vapor tight and in good working order, inspect the vapor balance equipment on an annual basis to discover potential or actual equipment failures. A log form is available on the Department's website at [www.deq.idaho.gov](http://www.deq.idaho.gov). ( )

**04. Repair.** Replace, repair or modify any worn or ineffective component or design element within twenty-four (24) hours to ensure the vapor-tight integrity and efficiency of the vapor balance system. If repair parts must be ordered, either a written or verbal order for those parts must be initiated within two (2) working days of detecting such a leak. Such repair parts must be installed within five (5) working days after receipt. ( )

**597. TESTING AND MONITORING REQUIREMENTS.**

The owner or operator of a GDF must comply with the following requirements within ninety (90) days of registration under Section 598 and every three (3) years thereafter. ( )

**01. Testing.** ( )

**a.** The owner or operator must demonstrate compliance with the leak rate and cracking pressure requirements, specified in item 1(g) of Table 1 to 40 CFR Part 63, Subpart CCCCC, incorporated by reference into these rules at Section 107, for pressure-vacuum vent valves installed on underground gasoline storage tanks using the test methods identified in Subsection 597.01.a.i. or 597.01.a.ii. ( )

**i.** California Air Resources Board Vapor Recovery Test Procedure TP-201.1E,--Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, adopted October 8, 2003 (see 40 CFR 63.14, incorporated by reference into these rules at Section 107). ( )

**ii.** Use alternative test methods and procedures in accordance with the alternative test

method requirements in 40 CFR 63.7(f), incorporated by reference into these rules at Section 107. ( )

**b.** The owner or operator must demonstrate compliance with the static pressure performance requirement, specified in item 1(h) of Table 1 to 40 CFR Part 63, Subpart CCCCCC, for the vapor balance system by conducting a static pressure test on the underground gasoline storage tanks using the test methods identified in paragraph 597.01.b.i. or 597.01.b.ii. ( )

**i.** California Air Resources Board Vapor Recovery Test Procedure TP-201.3,-- Determination of 2-Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, adopted April 12, 1996, and amended March 17, 1999 (see 40 CFR 63.14, incorporated by reference into these rules at Section 107). ( )

**ii.** Use alternative test methods and procedures in accordance with the alternative test method requirements in 40 CFR 63.7(f), incorporated by reference into these rules at Section 107. ( )

**02. Alternative Testing.** The owner or operator of a GDF, choosing, under the provisions of 40 CFR 63.6(g), to use a vapor balance system other than that described in Table 1 to 40 CFR Part 63, Subpart CCCCCC, must demonstrate to the Department the equivalency of their vapor balance system to that described in Table 1 to 40 CFR Part 63, Subpart CCCCCC, using the procedures specified in Subsections 597.02.a. and 597.02.b. ( )

**a.** The owner or operator must demonstrate compliance by conducting a performance test on the vapor balance system to demonstrate that the vapor balance system achieves 95 percent reduction using the California Air Resources Board Vapor Recovery Test Procedure TP-201.1,-- Volumetric Efficiency for Phase I Vapor Recovery Systems, adopted April 12, 1996, and amended February 1, 2001, and October 8, 2003, (see 40 CFR 63.14, incorporated by reference into these rules at Section 107). ( )

**b.** The owner or operator must, during the performance test required under Subsection 597.02.a., determine and document alternative acceptable values for the leak rate and cracking pressure requirements specified in item 1(g) of Table 1 to 40 CFR Part 63, Subpart CCCCCC, and for the static pressure performance requirement in item 1(h) of Table 1 to 40 CFR Part 63, Subpart CCCCCC. ( )

**598. REGISTRATION, RECORDKEEPING, AND REPORTING REQUIREMENTS.**

**01. Registration.** ( )

**a.** Any GDF subject to these rules shall: ( )

**i.** Within thirty (30) days of installation of the Stage 1 vapor collection system, the owner or operator of the GDF shall submit to the Department a registration which provides, at a minimum, the operation name and address, signature of the owner or operator in accordance with Section 123 of these rules, the location of records and reports required by Subsections 598.02 and 598.03 (including contact person's name, address and telephone number), the number of underground gasoline storage tanks, the number of gasoline tank pipe vents, and the date of

completion of installation of the Stage 1 vapor collection system and pressure/vacuum relief valve; and ( )

ii. The registration certification shall be displayed at the GDF. ( )

b. Upon modification of an existing Stage 1 vapor collection system or pressure/vacuum relief valve, the owner or operator of the GDF shall submit to the Department a registration that details the changes to the information provided in the previous registration and which includes the signature of the owner or operator. The registration must be submitted to the Department within thirty (30) days after completion of such modification. ( )

c. A new registration must be submitted to the Department within thirty (30) days after any change in ownership of the GDF. ( )

**02. Recordkeeping Requirements.** ( )

a. Each owner or operator must keep the following records: ( )

i. Records of all tests performed under Section 597; ( )

ii. Records related to the operation and maintenance of vapor balance equipment required under Section 596. Any vapor balance component defect must be logged and tracked by station personnel on a monthly basis using forms provided by the Department or a reasonable facsimile; and ( )

iii. Records of permanent changes made at the GDF and vapor balance equipment which may affect emissions. ( )

b. Records required under 598.02.a. must be kept for a period of five (5) years and must be made available for inspection by the Department upon request. ( )

**03. Reporting Requirements.** Each owner or operator subject to the management practices in Section 596 must report to the Department the results of all volumetric efficiency tests required under Section 597. Reports submitted under these rules must be submitted within thirty (30) days of the completion of the performance testing. ( )

**599. GASOLINE CARGO TANKS.**

**01. Prohibitions.** After May 1, 2010, or if a Stage 1 vapor collection system is installed and operating, whichever is earlier, owners or operators of gasoline cargo tanks that unload gasoline into an underground gasoline storage tank with a capacity of ten thousand (10,000) gallons or more, in Ada or Canyon Counties, shall comply with Table 2 to 40 CFR Part 63, Subpart CCCCCC, incorporated by reference into these rules at Section 107. Table 2 requires that the following conditions are met prior to unloading the gasoline: ( )

a. All hoses in the vapor balance system are properly connected; ( )

b. The adapters or couplers that attach to the vapor line on the storage tank have

closures that seal upon disconnect; ( )

c. All vapor return hoses, couplers, and adapters used in the gasoline delivery are vapor-tight; ( )

d. All tank truck vapor return equipment is compatible in size and forms a vapor-tight connection with the vapor balance equipment on the GDF storage tank; and ( )

e. All hatches on the tank truck are closed and securely fastened. ( )

f. The filling of storage tanks at GDF shall be limited to unloading by vapor-tight gasoline cargo tanks. Documentation that the cargo tank has met the specifications of EPA Method 27 (40 CFR Part 60, Appendix A-8, incorporated by reference into these rules at Section 107), shall be carried on the cargo tank. ( )

02. **Compliance.** The owner or operator of a gasoline cargo tank subject to Section 599 shall ensure compliance with Table 2 to 40 CFR Part 63, Subpart CCCCCC, by visually inspecting the requirements set out in Subsections 599.01.a., b., d., and e. and by successfully completing the testing requirements set out in Subsections 599.01.c. and f. ( )

03. **Recordkeeping and Reporting.** ( )

a. The owner or operator of the gasoline cargo tank subject to Section 599 shall maintain records of all certification testing and repairs. The records must identify the gasoline cargo tank; the date of the test or repair; and if applicable, the type of repair and the date of retest. The records must be maintained in a legible, readily available condition for at least two (2) years after the date of testing or repair was completed and must be available for inspection by the Department upon request. ( )

b. Copies of all tests required under Subsection 599.01 shall be submitted to the Department within thirty (30) days of certification testing. ( )

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**  
**DOCKET NO. 58-0101-0902**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Sixtieth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Sections 39-105 and 39-107, Idaho Code.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, July 1, 2009, Vol. 09-7, pages 135 and 136. After consideration of public comments, the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [http://www.deq.idaho.gov/rules/air/58\\_0101\\_0902\\_pending.cfm](http://www.deq.idaho.gov/rules/air/58_0101_0902_pending.cfm) or by contacting the undersigned.

**IDAHO CODE SECTION 39-107D STATEMENT:** This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440 or [martin.bauer@deq.idaho.gov](mailto:martin.bauer@deq.idaho.gov).

Dated this 13th day of October, 2009.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

***THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Sections 39-105 and 39-107, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this proposed rulemaking will be held as follows:

**TUESDAY - AUGUST 4, 2009 - 3:30 p.m.**

**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**Conference Room B**  
**1410 N. Hilton, Boise, Idaho**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

**DESCRIPTIVE SUMMARY:** The Rules for the Control of Air Pollution in Idaho limit, for fuel burning sources, the amount of sulfur allowed in residual fuel oil, distillate fuel oil, and coal. This limits the flexibility of industries to use less expensive alternative fuels with higher sulfur contents. DEQ has initiated this rulemaking to allow industries a less expensive alternative to current fuels with no additional environmental impact. The revisions included in this proposed rule allow for higher sulfur content fuels to be used in fuel burning equipment in Idaho as long as the resulting emissions are at levels equal to or lower than those provided for in the existing rules.

Members of the regulated community who may be subject to Idaho's air quality rules, as well as special interest groups, public officials, or members of the public who have an interest in the regulation of air emissions from sources in Idaho, may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. It is this addition to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality at the October 2009 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon the adjournment of the 2010 legislative session if adopted by the Board and approved by the Legislature.

**NEGOTIATED RULEMAKING:** The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 58.01.23.810-815. On April 1, 2009, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 09-4, page 40. On April 15, 2009, a preliminary draft negotiated rule was made available for public review. One meeting was held on April 14, 2009. Members of the public participated in this

negotiated rulemaking process by attending the meeting and by submitting written comments.

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440 or martin.bauer@deq.idaho.gov.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before August 4, 2009.

DATED this 29th day of May, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**725. RULES FOR SULFUR CONTENT OF FUELS.**

This section applies to fuel burning sources in Idaho. Its purpose is to prevent excessive ground level concentrations of sulfur dioxide. The reference test method for measuring fuel sulfur content shall be ASTM method, D129-95 Standard Test for Sulfur in Petroleum Products (General Bomb Method) or such comparable and equivalent method approved in accordance with Subsection 157.02.d. Test methods and procedures shall comply with Section 157. (5-8-09)

**01. Definitions.** (5-8-09)

**a. ASTM.** American Society for Testing and Materials. (5-1-94)

**b. Distillate Fuel Oil.** Any oil meeting the specifications of ASTM Grade 1 or Grade 2 fuel oils. (5-1-94)

**c. Residual Fuel Oil.** Any oil meeting the specifications of ASTM Grade 4, Grade 5 and Grade 6 fuel oils. (5-1-94)

**02. Residual Fuel Oils.** No person shall sell, distribute, use or make available for use, any residual fuel oil containing more than one and three-fourths percent (1.75%) sulfur by weight.

(5-8-09)

**03. Distillate Fuel Oil.** No person shall sell, distribute, use or make available for use, any distillate fuel oil containing more than the following percentages of sulfur: (5-8-09)

**a. ASTM Grade 1.** ASTM Grade 1 fuel oil - zero point three percent (0.3%) by weight. (5-8-09)

**b. ASTM Grade 2.** ASTM Grade 2 fuel oil - zero point five percent (0.5%) by weight. (5-8-09)

**04. Coal.** No person shall sell, distribute, use or make available for use, any coal containing greater than one percent (1.0%) sulfur by weight. (5-8-09)

**05. Exemptions.** The Department may approve an exemption from the requirements of Subsections 725.01 through 725.04 if the applicant demonstrates that, through control measures or other means, sulfur dioxide emissions are equal to or less than those resulting from the combustion of fuels complying with the limitations of Subsections 725.01 through 725.04.

( )

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**  
**DOCKET NO. 58-0101-0903**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Sixtieth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates citations to the federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 5, 2009, Vol. 09-8, pages 134 through 139. DEQ received no public comments, and the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [http://www.deq.idaho.gov/rules/air/58\\_0101\\_0903\\_pending.cfm](http://www.deq.idaho.gov/rules/air/58_0101_0903_pending.cfm) or by contacting the undersigned.

**IDAHO CODE SECTION 39-107D STATEMENT:** This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440 or [martin.bauer@deq.idaho.gov](mailto:martin.bauer@deq.idaho.gov).

Dated this 13th day of October, 2009.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

***THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates citations to the federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this proposed rulemaking will be held as follows:

**TUESDAY - SEPTEMBER 8, 2009 - 3:30 p.m.**

**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**Conference Room B**  
**1410 N. Hilton, Boise, Idaho**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

**DESCRIPTIVE SUMMARY:** This rulemaking is necessary to ensure that the Rules for the Control of Air Pollution in Idaho are consistent with federal regulations. This proposed rule updates citations to federal regulations incorporated by reference at Sections 008 and 107 to include those revised as of July 1, 2009.

**Members of the regulated community who may be subject to Idaho's air quality rules as well as special interest groups, public officials, or members of the public who have an interest in the regulation of air emissions from sources in Idaho may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.**

**After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality at the October 2009 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon adjournment of the 2010 legislative session if adopted by the Board and approved by the Legislature.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during

the fiscal year: N/A

**NEGOTIATED RULEMAKING:** Due to the nature of this rulemaking, negotiations were not held.

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440 or martin.bauer@deq.idaho.gov.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 8, 2009.

DATED this 30th day of June, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**008. DEFINITIONS FOR THE PURPOSES OF SECTIONS 300 THROUGH 386.**

- 01. Affected States.** All States: (5-1-94)
- a.** Whose air quality may be affected by the emissions of the Tier I source and that are contiguous to Idaho; or (5-1-94)
- b.** That are within fifty (50) miles of the Tier I source. (5-1-94)
- 02. Allowance.** An authorization allocated to a Phase II source by the EPA to emit during or after a specified calendar year, one (1) ton of sulfur dioxide. (5-1-94)
- 03. Applicable Requirement.** All of the following if approved or promulgated by EPA as they apply to emissions units in a Tier I source (including requirements that have been promulgated through rulemaking at the time of permit issuance but which have future-effective compliance dates): (5-1-94)
- a.** Any standard or other requirement provided for in the applicable state implementation plan, including any revisions to that plan that are specified in 40 CFR Parts 52.670 through 52.690. (5-1-94)
- b.** Any term or condition of any permits to construct issued by the Department pursuant to Sections 200 through 223 or by EPA pursuant to 42 U.S.C. Sections 7401 through

7515; provided that terms or conditions relevant only to toxic air pollutants are not applicable requirements. (4-5-00)

**c.** Any standard or other requirement under 42 U.S.C. Section 7411 including 40 CFR Part 60; (5-1-94)

**d.** Any standard or other requirement under 42 U.S.C. Section 7412 including 40 CFR Part 61 and 40 CFR Part 63; (5-1-94)

**e.** Any standard or other requirement of the acid rain program under 42 U.S.C. Sections 7651 through 7651o; (5-1-94)

**f.** Any requirements established pursuant to 42 U.S.C. Section 7414(a)(3), 42 U.S.C. Section 7661c(b) or Sections 120 through 128 of these rules; (3-23-98)

**g.** Any standard or other requirement governing solid waste incineration, under 42 U.S.C. Section 7429; (5-1-94)

**h.** Any standard or other requirement for consumer and commercial products and tank vessels, under 42 U.S.C. Sections 7511b(e) and (f); and (5-1-94)

**i.** Any standard or other requirement under 42 U.S.C. Sections 7671 through 7671q including 40 CFR Part 82. (5-1-94)

**j.** Any ambient air quality standard or increment or visibility requirement provided in 42 U.S.C. Sections 7470 through 7492, but only as applied to temporary sources receiving Tier I operating permits under Section 324. (5-1-94)

**04. Designated Representative.** A responsible person or official authorized by the owner or operator of a Phase II unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a Phase II unit, and the submission of and compliance with permits, permit applications, and compliance plans for the Phase II unit. (5-1-94)

**05. Draft Permit.** The version of a Tier I operating permit that is made available by the Department for public participation and affected State review. (5-1-94)

**06. Emergency.** For the purposes of Section 332, an emergency is any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation and that causes the Tier I source to exceed a technology-based emission limitation under the Tier I operating permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. (4-5-00)

**07. Final Permit.** The version of a Tier I permit issued by the Department that has completed all review procedures required in Sections 364 and 366. (5-1-94)

- 08. General Permit.** A Tier I permit issued pursuant to Section 335. (3-23-98)
- 09. Insignificant Activity.** Those activities that qualify as insignificant in accordance with Section 317. (3-23-98)
- 10. Major Facility.** A facility (as defined in Section 006) is major if the facility meets any of the following criteria: (3-23-98)
- a.** For hazardous air pollutants: (3-23-98)
- i. The facility emits or has the potential to emit ten (10) tons per year (tpy) or more of any hazardous air pollutant, other than radionuclides, which has been listed pursuant to 42 U.S.C. Section 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)
- ii. The facility emits or has the potential to emit twenty-five (25) tpy or more of any combination of any hazardous air pollutants, other than radionuclides, which have been listed pursuant to 42 U.S.C. 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)
- b.** For non-attainment areas: (3-23-98)
- i. The facility is located in a “serious” particulate matter (PM-10) nonattainment area and the facility has the potential to emit seventy (70) tpy or more of PM-10. (5-1-94)
- ii. The facility is located in a “serious” carbon monoxide nonattainment area in which stationary sources are significant contributors to carbon monoxide levels and the facility has the potential to emit fifty (50) tpy or more of carbon monoxide. (5-1-94)
- iii. The facility is located in an ozone transport region established pursuant to 42 U.S.C. Section 7511c and the facility has the potential to emit fifty (50) tpy or more of volatile organic compounds. (5-1-94)
- iv. The facility is located in an ozone nonattainment area and, depending upon the classification of the nonattainment area, the facility has the potential to emit the following amounts of volatile organic compounds or oxides of nitrogen; provided that oxides of nitrogen shall not be included if the facility has been identified in accordance with 42 U.S.C. Section 7411a(f)(1) or (2) if the area is “marginal” or “moderate,” one hundred (100) tpy or more, if the area is “serious,” fifty (50) tpy or more, if the area is “severe,” twenty-five (25) tpy or more, and if the area is “extreme,” ten (10) tpy or more. (3-23-98)
- c.** The facility emits or has the potential to emit one hundred (100) tons per year or more of any regulated air pollutant. The fugitive emissions shall not be considered in determining

whether the facility is major unless the facility belongs to one (1) of the following categories:

- (4-11-06)
- i. Designated facilities. (3-23-98)
  - ii. All other source categories regulated by 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63, but only with respect to those air pollutants that have been regulated for that category and only if determined by rule by the Administrator of EPA pursuant to Section 302(j) of the Clean Air Act. (4-5-00)
- 11. Part 70.** Unless specified otherwise in this chapter, all definitions adopted under 40 CFR Part 70, revised as of July 1, 2008~~9~~, are hereby incorporated by reference. ~~(5-8-09)~~(\_\_\_\_)
- 12. Permit Revision.** Any permit modification, administrative amendment or reopening. (3-19-99)
- 13. Phase II Source.** A source that is subject to emissions reduction requirements of 42 U.S.C. Section 7651 through 7651o and shall have the meaning given to it pursuant to those sections. (5-1-94)
- 14. Phase II Unit.** A unit that is subject to emissions reduction requirements of 42 U.S.C. Sections 7651 through 7651o and the term shall have the meaning given to it pursuant to those sections. (5-1-94)
- 15. Proposed Permit.** The version of a permit that the Department proposes to issue and forwards to the EPA for review. (5-1-94)
- 16. Section 502(b)(10) Changes.** Changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements. (3-19-99)
- 17. Tier I Operating Permit.** Any permit covering a Tier I source that is issued, renewed, amended, or revised pursuant to Sections 300 through 386. (3-19-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**107. INCORPORATIONS BY REFERENCE.**

**01. General.** Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “documents” includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-1-94)

**02. Availability of Referenced Material.** Copies of the documents incorporated by reference into these rules are available at the following locations: (5-1-94)

**a.** All federal publications: U.S. Government Printing Office, <http://www.gpoaccess.gov/index.html>; and (3-20-04)

**b.** All documents herein incorporated by reference: (7-1-97)

**i.** Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373-0502. (7-1-97)

**ii.** State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)

**03. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (5-1-94)

**a.** Requirements for Preparation, Adoption, and Submittal of Implementation Plans and Appendix W to Part 51--Guideline on Air Quality Models. 40 CFR Part 51 revised as of July 1, 2008<sup>9</sup>. The following portions of 40 CFR Part 51 are expressly excluded from any incorporation by reference into these rules: (~~5-8-09~~)(    )

**i.** All sections included in 40 CFR Part 51, Subpart P, Protection of Visibility, except that 40 CFR 51.301, 51.304(a), 51.307, and 51.308 are incorporated by reference into these rules; and (3-30-07)

**ii.** Appendix Y to Part 51, Guidelines for BART Determinations Under the Regional Haze Rule. (3-30-07)

**b.** National Primary and Secondary Ambient Air Quality Standards, 40 CFR Part 50, revised as of July 1, 2008<sup>9</sup>. (~~5-8-09~~)(    )

**c.** Requirements for Preparation, Adoption, and Submittal of Implementation Plans, Protection of Visibility, 40 CFR 51.301, 51.304(a), 51.307, and 51.308, revised as of July 1, 2008<sup>9</sup>. (~~5-8-09~~)(    )

**d.** Approval and Promulgation of Implementation Plans, 40 CFR Part 52 revised as of July 1, 2008<sup>9</sup>. (~~5-8-09~~)(    )

**e.** Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR Part 53, revised as of July 1, 2008<sup>9</sup>. (~~5-8-09~~)(    )

**f.** Ambient Air Quality Surveillance, Quality Assurance Requirements for Prevention of Significant Deterioration (PSD Air Monitoring), 40 CFR Part 58, Appendix B, revised as of July 1, 2008<sup>9</sup>. (~~5-8-09~~)(    )

**g.** Standards of Performance for New Stationary Sources, 40 CFR Part 60, revised as

of July 1, 2008~~9~~.

~~(5-8-09)~~( )

**h.** National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, revised as of July 1, 2008~~9~~.

~~(5-8-09)~~( )

**i.** National Emission Standards for Hazardous Air Pollutants for Source Categories, 40 CFR Part 63, revised as of July 1, 2008~~9~~.

~~(5-8-09)~~( )

**j.** Compliance Assurance Monitoring, 40 CFR Part 64, revised as of July 1, 2008~~9~~.

~~(5-8-09)~~( )

**k.** Permits, 40 CFR Part 72, revised as of July 1, 2008~~9~~.

~~(5-8-09)~~( )

**l.** Sulfur Dioxide Allowance System, 40 CFR Part 73, revised as of July 1, 2008~~9~~.

~~(5-8-09)~~( )

**m.** Protection of Stratospheric Ozone, 40 CFR Part 82, revised as of July 1, 2008~~9~~.

~~(5-8-09)~~( )

**n.** Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997).

(3-19-99)

**o.** Determining Conformity of Federal Actions to State or Federal Implementation Plans: Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, 40 CFR Part 93, Subpart A, Sections 93.100 through 93.129, revised as of July 1, 2008~~9~~, except that Sections 93.102(c), 93.104(d), 93.104(e)(2), 93.105, 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1), and 93.124(b) are expressly omitted from the incorporation by reference.

~~(5-8-09)~~( )

**p.** The final rule for Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units, 70 Fed. Reg. 28,606 (May 18, 2005), corrected at 70 Fed. Reg. 51,266 the final rule for Standards of Performance for Electric Utility Steam Generating Units, Industrial-Commercial-Institutional Steam Generating Units, and Small Industrial-Commercial-Institutional Steam Generating Units, only as it applies to coal fired electric steam generating units as defined in 40 CFR 60.24, 71 Fed. Reg. 9865 (February 27, 2006); Revision of December 2000 Clean Air Act Section 112(n) Finding Regarding Electric Utility Steam Generating Units; and Standards of Performance for New and Existing Electric Utility Steam Generating Units: Reconsideration, 71 Fed. Reg. 33,388 (June 9, 2006) are expressly excluded from any incorporation by reference into these rules.

(3-30-07)

# **IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

## **58.01.02 - WATER QUALITY STANDARDS**

**DOCKET NO. 58-0102-0801**

### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Sixtieth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, May 6, 2009, Vol. 09-5, pages 23 through 33. After consideration of public comments, the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [http://www.deq.idaho.gov/rules/water/58\\_0102\\_0801\\_pending.cfm](http://www.deq.idaho.gov/rules/water/58_0102_0801_pending.cfm) or by contacting the undersigned.

**IDAHO CODE SECTION 39-107D STATEMENT:** The standards included in this rule are not broader in scope, nor more stringent, than federal regulations and do regulate an activity regulated by the federal government. Furthermore, the standards are less stringent than those recommended by EPA. If this rule is not successfully adopted by the Board of Environmental Quality and approved by the Idaho Legislature, EPA may be compelled to take action by promulgating water quality standards for Idaho that would be more stringent than the standards included in this proposed rule.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Don Essig at [don.essig@deq.idaho.gov](mailto:don.essig@deq.idaho.gov), (208)373-0119.

Dated this 30th day of July, 2009.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton, Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

***THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before May 22, 2009. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** The purpose of this rulemaking is to protect human health from adverse effects of elevated arsenic (As) and protect sensitive aquatic life from cadmium (Cd) toxicity in low hardness waters. The Department of Environmental Quality (DEQ) proposes to lower Idaho's arsenic (As) human health criteria from 50 ug/L to 10 ug/L and lower the low-end hardness cap used in calculation of cadmium (Cd) aquatic life criteria from 25 mg/L to 10mg/L (Section 210). In addition, DEQ proposes to make nonsubstantive revisions to portions of Section 210 identified as needing correction or clarification.

DEQ is also initiating this rulemaking in an effort to forestall pending legal action against the U.S. Environmental Protection Agency (EPA) that would force EPA to disapprove Idaho's As standard and require EPA to promulgate a federal rule to lower the As human health criteria applicable to Idaho waters. EPA is also prepared to disapprove Idaho's Cd standard to remove the low end hardness cap for calculating criteria. DEQ proposes to reduce the low end hardness cap for Cd from 25 mg/L to 10 mg/L. Idaho's current As human health criteria are also several times higher than EPA's recommendation for protecting human health.

Anyone with an interest in the quality of surface water in Idaho may be interested in commenting on this proposed rule. For arsenic (As), those affected include Idahoans that eat fish caught from Idaho surface waters and dischargers of As to surface water. For cadmium (Cd), those affected include those who enjoy or profit from healthy communities of aquatic life in, and dischargers of Cd to, Idaho's surface waters with hardness below 25 mg/L. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality at the July 2009 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon the adjournment of the 2010 legislative session if adopted by the Board and approved by the Legislature.

**NEGOTIATED RULEMAKING:** The text of the rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-

**5220 and IDAPA 04.11.01.812-815.** On December 3, 2008, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 08-12, pages 106 and 107, and a preliminary draft rule was made available for public review. One meeting was held on December 17, 2008. Members of the public participated in this negotiated rulemaking process by attending the meeting and submitting written comments.

**IDAHO CODE SECTION 39-107D STATEMENT:** The standards included in this proposed rule are not broader in scope, nor more stringent, than federal regulations and do regulate an activity regulated by the federal government. Furthermore, the proposed standards are less stringent than those recommended by EPA. If this proposed rule is not successfully adopted by the Board of Environmental Quality and approved by the Idaho Legislature, EPA may be compelled to take action by promulgating water quality standards for Idaho that would be more stringent than the standards included in this proposed rule.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Don Essig at don.essig@deq.idaho.gov, (208)373-0119.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before June 5, 2009.

DATED this 3rd day of April, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**210. NUMERIC CRITERIA FOR TOXIC SUBSTANCES FOR WATERS DESIGNATED FOR AQUATIC LIFE, RECREATION, OR DOMESTIC WATER SUPPLY USE.**

**01. Criteria for Toxic Substances.** The criteria of Section 210 apply to surface waters of the state as follows. (5-3-03)

**a.** Columns B1, B2, and C2 of the following table apply to waters designated for aquatic life use. (5-3-03)

**b.** Column C2 of the following table applies to waters designated for recreation use. (5-3-03)

**c.** Column C1 of the following table applies to waters designated for domestic water

supply use.

A		B Aquatic life		Human health for consumption of:		
(Number) Compound	<sup>a</sup> CAS Number	<sup>b</sup> CMC (µg/L)	<sup>b</sup> CCC (µg/L)	Water & organisms (µg/L)	Organisms only (µg/L)	
		B1	B2	C1	C2	
1	Antimony	7440360		5.6 c	640 c	
2	Arsenic	7440382	340 e	510 d	510 d	
3	Beryllium	7440417		h	h	
4	Cadmium	7440439	1.3 i	0.6 i	h	h
5a	Chromium III	16065831	570 i	74 i	h	h
5b	Chromium VI	18540299	16 e	11 e	h	h
6	Copper	7440508	17 i	11 i		
7	Lead	7439921	65 i	2.5 i	h	h
8a	Mercury	7439976	g	g		
8b	Methylmercury	22967926				0.3 mg/kg p
9	Nickel	7440020	470 i	52 i	610 c	4600 c
10	Selenium	7782492	20 f	5 f	170	4200
11	Silver	7440224	3.4 i			
12	Thallium	7440280			0.24 c	0.47 c
13	Zinc	7440666	120 i	120 i	7400	26000
14	Cyanide	57125	22 j	5.2 j	140 c	140 c
15	Asbestos	1332214			7,000,000 fibers/L k	
16	2, 3, 7, 8-TCDD Dioxin	1746016			0.000000005 l	0.0000000051 l
17	Acrolein	107028			190	290
18	Acrylonitrile	107131			0.051 cl	0.25 cl
19	Benzene	71432			2.2 cl	51 cl
20	Bromoform	75252			4.3 cl	140 cl
21	Carbon Tetrachloride	56235			0.23 cl	1.6 cl
22	Chlorobenzene	108907			130 c	1600 c
23	Chlorodibromomethane	124481			0.40 cl	13 cl
24	Chloroethane	75003				
25	2-Chloroethylvinyl Ether	110758				
26	Chloroform	67663			5.7 l	470 l

A		B Aquatic life		Human health for consumption of:		
(Number) Compound	<sup>a</sup> CAS Number	<sup>b</sup> CMC (µg/L)	<sup>b</sup> CCC (µg/L)	Water & organisms (µg/L)	Organisms only (µg/L)	
		B1	B2	C1	C2	
27	Dichlorobromomethane	75274		0.55 cl	17 cl	
28	1,1-Dichloroethane	75343				
29	1,2-Dichloroethane	107062		0.38 cl	37 cl	
30	1,1-Dichloroethylene	75354		330 l	7100 l	
31	1,2-Dichloropropane	78875		0.50 cl	15 cl	
32	1,3-Dichloropropene	542756		0.34	21	
33	Ethylbenzene	100414		530 c	2100 c	
34	Methyl Bromide	74839		47 c	1500 c	
35	Methyl Chloride	74873		h	h	
36	Methylene Chloride	75092		4.6 cl	590 cl	
37	1,1,2,2-Tetrachloroethane	79345		0.17 cl	4.0 cl	
38	Tetrachloroethylene	127184		0.69 l	3.3 l	
39	Toluene	108883		1300 c	15000 c	
40	1,2-Trans-Dichloroethylene	156605		140 c	10000 c	
41	1,1,1-Trichloroethane	71556		h	h	
42	1,1,2-Trichloroethane	79005		0.59 cl	16 cl	
43	Trichloroethylene	79016		2.5 l	30 l	
44	Vinyl Chloride	75014		0.025 l	2.4 l	
45	2-Chlorophenol	95578		81 c	150 c	
46	2,4-Dichlorophenol	120832		77 c	290 c	
47	2,4-Dimethylphenol	105679		380 c	850 c	
48	2-Methyl-4,6-Dinitrophenol	534521		13	280	
49	2,4-Dinitrophenol	51285		69 c	5300 c	
50	2-Nitrophenol	88755				
51	4-Nitrophenol	100027				
52	3-Methyl-4-Chlorophenol	59507				
53	Pentachlorophenol	87865	20 m	13 m	0.27 cl	3.0 cl
54	Phenol	108952			21000 c	1700000 c
55	2,4,6-Trichlorophenol	88062			1.4 cl	2.4 cl

A		B Aquatic life		Human health for consumption of:	
(Number) Compound	<sup>a</sup> CAS Number	<sup>b</sup> CMC (µg/L)	<sup>b</sup> CCC (µg/L)	Water & organisms (µg/L)	Organisms only (µg/L)
		B1	B2	C1	C2
56	Acenaphthene	83329		670 c	990 c
57	Acenaphthylene	208968			
58	Anthracene	120127		8300 c	40000 c
59	Benzenidine	92875		0.000086 cl	0.00020 cl
60	Benzo(a)Anthracene	56553		0.0038 cl	0.018 cl
61	Benzo(a)Pyrene	50328		0.0038 cl	0.018 cl
62	Benzo(b)Fluoranthene	205992		0.0038 cl	0.018 cl
63	Benzo(ghi)Perylene	191242			
64	Benzo(k)Fluoranthene	207089		0.0038 cl	0.018 cl
65	Bis(2-Chloroethoxy) Methane	111911			
66	Bis(2-Chloroethyl)Ether	111444		0.030 cl	0.53 cl
67	Bis(2-Chloroisopropyl) Ether	108601		1400 c	65000 c
68	Bis(2-Ethylhexyl) Phthalate	117817		1.2 cl	2.2 cl
69	4-Bromophenyl Phenyl Ether	101553			
70	Butylbenzyl Phthalate	85687		1500 c	1900 c
71	2-Chloronaphthalene	91587		1000 c	1600 c
72	4-Chlorophenyl Phenyl Ether	7005723			
73	Chrysene	218019		0.0038 cl	0.018 cl
74	Dibenzo (a,h) Anthracene	53703		0.0038 cl	0.018 cl
75	1,2-Dichlorobenzene	95501		420 c	1300 c
76	1,3-Dichlorobenzene	541731		320	960
77	1,4-Dichlorobenzene	106467		63	190
78	3,3'-Dichlorobenzidine	91941		0.021 cl	0.028 cl
79	Diethyl Phthalate	84662		17000 c	44000 c
80	Dimethyl Phthalate	131113		270000	1100000
81	Di-n-Butyl Phthalate	84742		2000 c	4500 c
82	2,4-Dinitrotoluene	121142		0.11 l	3.4 l

A		B Aquatic life		Human health for consumption of:	
(Number) Compound	<sup>a</sup> CAS Number	<sup>b</sup> CMC (µg/L)	<sup>b</sup> CCC (µg/L)	Water & organisms (µg/L)	
		B1	B2	C1	C2
83	2,6-Dinitrotoluene	606202			
84	Di-n-Octyl Phthalate	117840			
85	1,2-Diphenylhydrazine	122667		0.036	cl 0.20
86	Fluoranthene	206440		130	c 140
87	Fluorene	86737		1100	c 5300
88	Hexachlorobenzene	118741		0.00028	cl 0.00029
89	Hexachlorobutadiene	87683		0.44	cl 18
90	Hexachloro-cyclopentadiene	77474		40	1100
91	Hexachloroethane	67721		1.4	cl 3.3
92	Ideno (1,2,3-cd) Pyrene	193395		0.0038	cl 0.018
93	Isophorone	78591		35	cl 960
94	Naphthalene	91203			
95	Nitrobenzene	98953		17	c 690
96	N-Nitrosodimethylamine	62759		0.00069	cl 3.0
97	N-Nitrosodi-n-Propylamine	621647		0.0050	cl 0.51
98	N-Nitrosodiphenylamine	86306		3.3	cl 6.0
99	Phenanthrene	85018			
100	Pyrene	129000		830	c 4000
101	1,2,4-Trichlorobenzene	120821		35	70
102	Aldrin	309002	3	0.000049	cl 0.000050
103	alpha-BHC	319846		0.0026	cl 0.0049
104	beta-BHC	319857		0.0091	cl 0.017
105	gamma-BHC (Lindane)	58899	2	0.08	0.98
106	delta-BHC	319868			
107	Chlordane	57749	2.4	0.0043	0.00080
108	4,4'-DDT	50293	1.1	0.001	0.00022
109	4,4'-DDE	72559			0.00022
110	4,4'-DDD	72548			0.00031
111	Dieldrin	60571	2.5	0.0019	0.000052

A		B Aquatic life		Human health for consumption of:				
(Number) Compound	<sup>a</sup> CAS Number	<sup>b</sup> CMC (µg/L)	<sup>b</sup> CCC (µg/L)	Water & organisms (µg/L)		Organisms only (µg/L)		
		B1	B2	C1		C2		
112	alpha-Endosulfan	959988	0.22	0.056	62	c	89	c
113	beta-Endosulfan	33213659	0.22	0.056	62	c	89	c
114	Endosulfan Sulfate	1031078			62	c	89	c
115	Endrin	72208	0.18	0.0023	0.059	c	0.060	c
116	Endrin Aldehyde	7421934			0.29	c	0.30	c
117	Heptachlor	76448	0.52	0.0038	0.000079	cl	0.000079	cl
118	Heptachlor Epoxide	1024573	0.52	0.0038	0.000039	cl	0.000039	cl
119	Polychlorinated Biphenyls PCBs:	n		0.014 n	0.000064	clo	0.000064	clo
120	Toxaphene	8001352	0.73	0.0002	0.00028	cl	0.00028	cl
121	Chlorine		19 k	11 k				

Table Footnotes

- a. Chemical Abstracts Service (CAS) registry numbers which provide a unique identification for each chemical.
- b. See definitions of Acute Criteria (CMC) and Chronic Criteria (CCC), Section 010 of these rules.
- c. This criterion has been revised to reflect The Environmental Protection Agency's q1\* or RfD, as contained in the Integrated Risk Information System (IRIS) as of May 17, 2002. The fish tissue bioconcentration factor (BCF) from the 1980 Ambient Water Quality Criteria document was retained in each case.
- d. Inorganic form only.
- e. Criteria for these metals are expressed as a function of the water effect ratio, WER, as defined in Subsection 210.03.c.iii. CMC = column B1 value X WER. CCC = column B2 value X WER.
- f. Criterion expressed as total recoverable (unfiltered) concentrations.
- g. No aquatic life criterion is adopted for inorganic mercury. However, the narrative criteria for toxics in Section 200 of these rules applies. The Department believes application of the human health criterion for methylmercury will be protective of aquatic life in most situations.
- h. No numeric human health criteria has been established for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the narrative criteria for toxics from Section 200 of these rules.
- i. Aquatic life criteria for these metals are ~~expressed as~~ a function of total hardness (mg/L as calcium carbonate), the pollutant's water effect ratio (WER) as defined in Subsection 210.03.c.iii. and multiplied by an appropriate dissolved conversion factor as defined in Subsection 210.02. For comparative purposes only, the example values displayed in this table are shown as dissolved metal and correspond to a total hardness of one hundred (100) mg/L and a water effect ratio of one (1.0).
- j. Criteria are expressed as weak acid dissociable (WAD) cyanide.

A		B Aquatic life		Human health for consumption of:	
(Number) Compound	<sup>a</sup> CAS Number	<sup>b</sup> CMC (µg/L)	<sup>b</sup> CCC (µg/L)	Water & organisms (µg/L)	Organisms only (µg/L)
		B1	B2	C1	C2
<b>k.</b> Total chlorine residual concentrations.					
<b>l.</b> EPA guidance allows states to choose a risk factor of 10 <sup>-4</sup> to 10 <sup>-6</sup> . Idaho has chosen to base this criterion on carcinogenicity of 10 <sup>-6</sup> risk.					
<b>m.</b> Aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows. Values displayed above in the table correspond to a pH of seven and eight tenths (7.8). CMC = exp(1.005(pH)-4.830) CCC = exp(1.005(pH)-5.290)					
<b>n.</b> PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.					
<b>o.</b> This criterion applies to total PCBs, (e.g. the sum of all congener, isomer, or Aroclor analyses).					
<b>p.</b> This fish tissue residue criterion (TRC) for methylmercury is based on a human health reference dose (RfD) of 0.0001 mg/kg body weight-day; a relative source contribution (RSC) estimated to be 27% of the RfD; a human body weight (BW) of 70 kg (for adults); and a total fish consumption rate of 0.0175 kg/day for the general population, summed from trophic level (TL) breakdown of TL2 = 0.0038 kg fish/day + TL3 = 0.0080 kg fish/day + TL4 = 0.0057 kg fish/day. This is a criterion that is protective of the general population. A site-specific criterion or a criterion for a particular subpopulation may be calculated by using local or regional data, rather than the above default values, in the formula: TRC = [BW x {RfD - (RSCxRfD)}] / Σ TL. In waters inhabited by species listed as threatened or endangered under the Endangered Species Act or designated as their critical habitat, the Department will apply the human health fish tissue residue criterion for methylmercury to the highest trophic level available for sampling and analysis.					

(4-11-06)( )

**02. Factors for Calculating Hardness Dependent Metals Criteria.** Hardness dependent metals criteria are calculated using values from the following table in the equations:  
 (5-3-03)

**a.**  $CMC = WER \exp\{mA[\ln(\text{hardness})] + bA\}$  X Acute Conversion Factor. (5-3-03)

**b.**  $CCC = WER \exp\{mc[\ln(\text{hardness})] + bc\}$  X Chronic Conversion Factor.

Metal	mA	bA	mc	bc	aAcute Conversion Factor	aChronic Conversion Factor
Arsenic	b	b	b	b	1.0	1.0
Cadmium	0.8367	-3.560	0.6247	-3.344	0.944 see footnote a	0.909
Chromium (III)	0.819	3.7256	0.8190	0.6848	0.316	0.860
Chromium (VI)	b	b	b	b	0.982	0.962

Copper	0.9422	-1.464	0.8545	-1.465	0.960	0.960
Lead	1.273	-1.460	1.273	-4.705	0.791	0.791
Mercury	b	b	b	b	0.85	0.85
Nickel	0.846	2.255	0.8460	0.0584	0.998	0.997
Silver	1.72	-6.52	c	c	0.85	c
Zinc	0.8473	0.884	0.8473	0.884	0.978	0.986

Note to table: The term "exp" represents the base e exponential function.

Footnotes to table:

**a.** Conversion factors (CF) are from "Stephan, C. E. 1995. Derivation of conversion factors for the calculation of dissolved freshwater aquatic life criteria for metals. U.S. Environmental Protection Agency, Environmental Research Laboratory – Duluth." The conversion factors for cadmium and lead are hardness-dependent and can be calculated for any hardness (see limitations in Subsection 210.03.b.i.) using the following equations. For comparative purposes, the conversion factors for a total hardness of one hundred (100) mg/L are shown in the table. The conversion factor shall not exceed one (1).

Cadmium

Acute:  $CF = 1.136672 - [(\ln \text{hardness})(0.041838)]$  NOTE: The cadmium acute criterion equation was derived from dissolved metals toxicity data and thus requires no conversion; this conversion factor may be used to back calculate an equivalent total recoverable concentration.

Chronic:  $CF = 1.101672 - [(\ln \text{hardness})(0.041838)]$

Lead (Acute and Chronic):  $CF = 1.46203 - [(\ln \text{hardness})(0.145712)]$

**b.** Not applicable

**c.** No chronic criteria are available for silver.

(4-11-06)( )

**03. Applicability.** The criteria established in Section 210 are subject to the general rules of applicability in the same way and to the same extent as are the other numeric chemical criteria when applied to the same use classifications including mixing zones, and low flow design discharge conditions below which numeric standards can be exceeded in flowing waters. (5-3-03)

**a.** For all waters for which the Department has determined mixing zones to be applicable, the criteria apply at the appropriate locations specified within or at the boundary of the mixing zone(s); otherwise the criteria apply through the waterbody including at the end of any discharge pipe, canal or other discharge point. (4-11-06)

**b.** Low flow design discharge conditions. Numeric chemical standards can only be exceeded in perennial streams permitted discharges outside any applicable mixing zone when flows are less than the following values:

Aquatic Life		Human Health	
CMC ("acute" criteria)	1Q10 or 1B3	Non-carcinogens	30Q5
CCC ("chronic" criteria)	7Q10 or 4B3	Carcinogens	Harmonic mean flow

(4-11-06)

i. Where “1Q10” is the lowest one-day flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (5-3-03)

ii. Where “1B3” is biologically based and indicates an allowable exceedence of once every three (3) years. It may be determined by EPA’s computerized method (DFLOW model); (5-3-03)

iii. Where “7Q10” is the lowest average seven (7) consecutive day low flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (5-3-03)

iv. Where “4B3” is biologically based and indicates an allowable exceedence for four (4) consecutive days once every three (3) years. It may be determined by EPA’s computerized method (DFLOW model); (5-3-03)

v. Where “30Q5” is the lowest average thirty (30) consecutive day low flow with an average recurrence frequency of once in five (5) years determined hydrologically; and (5-3-03)

vi. Where the harmonic mean flow is a long term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows. (5-3-03)

c. Application of metals criteria. (5-3-03)

i. For metals other than cadmium, for purposes of calculating hardness dependent aquatic life criteria ~~for metals~~ from the equations in Subsection 210.02, the minimum hardness allowed for use in those equations shall not be less than twenty-five (25) mg/l, as calcium carbonate, even if the actual ambient hardness is less than twenty-five (25) mg/l as calcium carbonate. For cadmium, the minimum hardness for use in those equations shall not be less than ten (10) mg/l, as calcium carbonate. The maximum hardness allowed for use in those equations shall not be greater than four hundred (400) mg/l, as calcium carbonate, except as specified in Subsections 210.03.c.ii. and 210.03.c.iii., even if the actual ambient hardness is greater than four hundred (400) mg/l as calcium carbonate. (~~4-6-05~~)(    )

ii. The hardness values used for calculating aquatic life criteria for metals at design discharge conditions shall be representative of the ambient hardnesses for a receiving water that occur at the design discharge conditions given in Subsection 210.03.b. (5-3-03)

iii. Except as otherwise noted, the aquatic life criteria for metals (compounds #1 through #13 in the criteria table of Subsection 210.02) are expressed as dissolved metal concentrations. Unless otherwise specified by the Department, dissolved concentrations are considered to be concentrations recovered from a sample which has passed through a forty-five hundredths (0.45) micron filter. For the purposes of calculating aquatic life criteria for metals from the equations in footnotes e. and i. in the criteria table in Subsection 210.01, the water effect ratio is computed as a specific pollutant’s acute or chronic toxicity values measured in water from the site covered by the standard, divided by the respective acute or chronic toxicity value in laboratory dilution water. The water-effect ratio shall be assigned a value of one (1.0), except where the Department assigns a different value that protects the designated uses of the water body from the toxic effects of the pollutant, and is derived from suitable tests on sampled water

representative of conditions in the affected water body, consistent with the design discharge conditions established in Subsection 210.03.b. For purposes of calculating water effects ratios, the term acute toxicity value is the toxicity test results, such as the concentration lethal one-half (1/2) of the test organisms (i.e., LC50) after ninety-six (96) hours of exposure (e.g., fish toxicity tests) or the effect concentration to one-half of the test organisms, (i.e., EC50) after forty-eight (48) hours of exposure (e.g., daphnia toxicity tests). For purposes of calculating water effects ratios, the term chronic value is the result from appropriate hypothesis testing or regression analysis of measurements of growth, reproduction, or survival from life cycle, partial life cycle, or early life stage tests. The determination of acute and chronic values shall be according to current standard protocols (e.g., those published by the American Society for Testing and Materials (ASTM)) or other comparable methods. For calculation of criteria using site-specific values for both the hardness and the water effect ratio, the hardness used in the equations in Subsection 210.02 shall be as required in Subsection 210.03.c.ii. Water hardness shall be calculated from the measured calcium and magnesium ions present, and the ratio of calcium to magnesium shall be approximately the same in laboratory toxicity testing water as in the site water, or be similar to average ratios of laboratory waters used to derive the criteria. (4-6-05)

iv. Implementation Guidance for the Idaho Mercury Water Quality Criteria. (4-6-05)

(1) The “Implementation Guidance for the Idaho Mercury Water Quality Criteria” describes in detail suggested methods for discharge related monitoring requirements, calculation of reasonable potential to exceed (RPTE) water quality criteria in determining need for mercury effluent limits, and use of fish tissue mercury data in calculating mercury load reductions. This guidance, or its updates, will provide assistance to the Department and the public when implementing the methylmercury criterion. The “Implementation Guidance for the Idaho Mercury Water Quality Criteria” also provides basic background information on mercury in the environment, the novelty of a fish tissue criterion for water quality, the connection between human health and aquatic life protection, and the relation of environmental programs outside of Clean Water Act programs to reducing mercury contamination of the environment. The “Implementation Guidance for the Idaho Mercury Water Quality Criteria” is available at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706, and [www.deq.idaho.gov](http://www.deq.idaho.gov). (4-6-05)

(2) The implementation of a fish tissue criterion in NPDES permits and TMDLs requires a non-traditional approach, as the basic criterion is not a concentration in water. In applying the methylmercury fish tissue criterion in the context of NPDES effluent limits and TMDL load reductions, the Department will assume change in fish tissue concentrations of methylmercury are proportional to change in water body loading of total mercury. Reasonable potential to exceed (RPTE) the fish tissue criterion for existing NPDES sources will be based on measured fish tissue concentrations potentially affected by the discharge exceeding a specified threshold value, based on uncertainty due to measurement variability. This threshold value is also used for TMDL decisions. Because measured fish tissue concentrations do not reflect the effect of proposed new or increased discharge of mercury, RPTE in these cases will be based upon an estimated fish tissue methylmercury concentration, using projected changes in waterbody loading of total mercury and a proportional response in fish tissue mercury. For the above purposes, mercury will be measured in the skinless filets of sport fish using techniques capable of detecting tissue concentrations down to point zero five (0.05) mg/kg. Total mercury analysis may be used, but will be assumed to be all methylmercury for purposes of implementing the criterion. (4-6-05)

v. Frequency and duration for toxics criteria. Column B1 criteria are concentrations not to be exceeded for a one-hour average more than once in three (3) years. Column B2 criteria are concentrations not to be exceeded for a four-day average more than once in three (3) years. (4-11-06)

**04. National Pollutant Discharge Elimination System Permitting.** For the purposes of NPDES permitting, interpretation and implementation of metals criteria listed in Subsection 210.02 should be governed by the following standards, that are hereby incorporated by reference, in addition to other scientifically defensible methods deemed appropriate by the Department; provided, however, any identified conversion factors within these documents are not incorporated by reference. Metals criteria conversion factors are identified in Subsection 210.02 of this rule. (5-3-03)

**a.** "Guidance Document on Dissolved Criteria -- Expression of Aquatic Life Criteria," EPA, October 1993. (4-5-00)

**b.** "Guidance Document on Dynamic Modeling and Translators," EPA, August 1993. (4-5-00)

**c.** "Guidance Document on Clean Analytical Techniques and Monitoring," EPA, October 1993. (4-5-00)

**d.** "Interim Guidance on Determination and Use of Water-Effect Ratios for Metals," EPA, February 1994. (4-5-00)

**05. Development of Toxic Substance Criteria.** (4-5-00)

**a.** Aquatic Life Communities Criteria. Numeric criteria for the protection of aquatic life uses not identified in these rules for toxic substances, may be derived by the Department from the following information: (4-5-00)

i. Site-specific criteria developed pursuant to Section 275; (4-5-00)

ii. Effluent biomonitoring, toxicity testing and whole-effluent toxicity determinations; (4-5-00)

iii. The most recent recommended criteria defined in EPA's Aquatic Toxicity Information Retrieval (ACQUIRE) database. When using EPA recommended criteria to derive water quality criteria to protect aquatic life uses, the lowest observed effect concentrations (LOECs) shall be considered; or (4-5-00)

iv. Scientific studies including, but not limited to, instream benthic assessment or rapid bioassessment. (4-5-00)

**b.** Human Health Criteria. (4-5-00)

i. When numeric criteria for the protection of human health are not identified in

these rules for toxic substances, quantifiable criteria may be derived by the Department from the most recent recommended criteria defined in EPA's Integrated Risk Information System (IRIS). When using EPA recommended criteria to derive water quality criteria to protect human health, a fish consumption rate of seventeen point five (17.5) grams/day, a water ingestion rate of two (2) liters/day and a cancer risk level of  $10^{-6}$  shall be utilized. (4-11-06)

## **IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **58.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE**

**DOCKET NO. 58-0105-0901**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Sixtieth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 5, 2009, Vol. 09-8, pages 140 through 146. DEQ received no public comments, and the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [http://www.deq.idaho.gov/rules/haz\\_waste/58\\_0105\\_0901\\_pending.cfm](http://www.deq.idaho.gov/rules/haz_waste/58_0105_0901_pending.cfm) or by contacting the undersigned.

**IDAHO CODE SECTION 39-107D STATEMENT:** This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact John Brueck, [john.brueck@deq.idaho.gov](mailto:john.brueck@deq.idaho.gov), (208)373-0458.

Dated this 13th day of October, 2009.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

***THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 19, 2009. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** Idaho's Rules and Standards for Hazardous Waste are updated annually to maintain consistency with the U.S. Environmental Protection Agency's federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). Idaho has historically adopted both required and optional federal regulations so that Idaho's hazardous waste rules are the same as federal requirements. Optional federal regulations usually allow more flexibility to the regulated community; required federal regulations are necessary to maintain program primacy. Adoption by reference allows the Department of Environmental Quality (DEQ) to keep its rules up to date with federal regulation changes and minimizes the EPA Region 10 effort needed to keep Idaho's authorization current. Adoption by reference also simplifies compliance for the regulated community. This proposed rule updates the federal regulations incorporated by reference to include those revised as of July 1, 2009.

Groups interested in hazardous waste and handlers of hazardous waste including generators, transporters, and treatment, storage, and disposal facilities may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality at the October 2009 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon the conclusion of the 2010 legislative session if adopted by the Board and approved by the Legislature.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULEMAKING:** Due to the nature of this rulemaking, negotiations were not held.

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the proposed rulemaking, contact John Brueck, john.brueck@deq.idaho.gov, (208)373-0458.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before September 2, 2009.

Dated this 30th day of June, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**002. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.**

Any reference in these rules to requirements, procedures, or specific forms contained in the Code of Federal Regulations (CFR), Title 40, Parts 124, 260 - 268, 270, 273, 278, and 279 shall constitute the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 2008<sup>9</sup>, including any notes and appendices therein, unless expressly provided otherwise in these rules. (5-8-09)( )

**01. Exceptions.** Nothing in 40 CFR Parts 260 - 268, 270, 273, 278, 279 or Part 124 as pertains to permits for Underground Injection Control (U.I.C.) under the Safe Drinking Water Act, the Dredge or Fill Program under Section 404 of the Clean Water Act, the National Pollution Discharge Elimination System (NPDES) under the Clean Water Act or Prevention of Significant Deterioration Program (PSD) under the Clean Air Act is adopted or included by reference herein. (5-8-09)

**02. Availability of Referenced Material.** The federal regulations adopted by reference throughout these rules are maintained at the following locations: (7-2-97)

- a.** U.S. Government Printing Office, <http://www.gpoaccess.gov/index.html>; and (3-20-04)
- b.** State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051, (208)334-3316; and (7-2-97)
- c.** Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. (7-2-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. HAZARDOUS WASTE MANAGEMENT SYSTEM.**

40 CFR Part 260 and all Subparts, except 40 CFR 260.2, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008<sup>9</sup>. For purposes of 40 CFR 260.10, in the definition of hazardous waste constituent, “Administrator” shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 260.20, “Federal Register” shall be defined as the Idaho Administrative Bulletin. (5-8-09)(\_\_\_\_)

**005. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.**

40 CFR Part 261 and all Subparts, except the language “in the Region where the sample is collected” in 40 CFR 261.4(e)(3)(iii), except remanded waste codes “K064, K065, K066, K090 and K091” listed in 40 CFR Part 261 Appendix VII, and except 40 CFR 261.23(a)(8), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008<sup>9</sup>. For purposes of 40 CFR 261.10 and 40 CFR 261.11, “Administrator” shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 261.41(a), Regional Administrator shall be defined as U.S. Environmental Protection Agency Region 10 Regional Administrator. Copies of advance notification required under this section should also be sent to the Director. For purposes of 40 CFR 261.4(b)(11)(ii), 40 CFR 261.39(a)(5), and 40 CFR 261 Appendix IX, “EPA” shall be defined as the U.S. Environmental Protection Agency. (5-8-09)(\_\_\_\_)

**01. Excluded Wastes.** Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) generated by Envirosafe Services of Idaho, Inc. (ESII) at ESII’s facility in Grand View, Idaho using the Super Detox(R) treatment process as modified by ESII and that is disposed of in a Subtitle D or Subtitle C landfill is excluded from the lists of hazardous waste provided ESII implements a program that meets the following conditions: (3-16-96)

**a. Verification Testing Requirements.** Sample Collection and analyses, including quality control procedures, conducted pursuant to Subsections 005.01.b. and 005.01.c., must be performed according to SW-846 methodologies and the RCRA Part B permit, including future revisions. (3-16-96)

**b. Initial Verification Testing.** (3-16-96)

**i.** For purposes of Subsections 005.01.b., “new source” shall mean any generator of Electric Arc Furnace Dust (EAFD), EPA and Idaho Department of Environmental Quality Hazardous Waste No. KO61, whose waste has not previously been processed by ESII using the Super Detox(R) treatment process resulting in processed EAFD which has been subjected to initial verification testing and has demonstrated compliance with the delisting levels specified in Subsection 005.01.d. (3-16-96)

**ii.** Prior to the initial treatment of any new source of EAFD, ESII must notify the Department in writing. The written notification shall include: (3-16-96)

- (1) The waste profile information; and (3-16-96)
- (2) The name and address of the generator. (3-16-96)
- iii. The first four (4) consecutive batches treated must be sampled in accordance with Subsection 005.01.a. Each of the four (4) samples shall be analyzed to determine if the CSEAFD generated meets the delisting levels specified in Subsection 005.01.d. (3-16-96)
- iv. If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Subsection 005.01.d., ESII shall submit the operational and analytical test data, including quality control information, to the Department, in accordance with Subsection 005.01.f. Subsequent to such data submittal, the CSEAFD generated from EAFD originating from the new source shall be considered delisted. (3-16-96)
- v. CSEAFD generated by ESII from EAFD originating from a new source shall be managed as hazardous waste in accordance with Subtitle C of RCRA until: (3-16-96)
- (1) Initial verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d.; and (3-16-96)
- (2) The operational and analytical test data is submitted to the Department pursuant to Subsection 005.01.b.iv. (3-16-96)
- vi. For purposes of Subsections 005.01.b. and 005.01.c., “batch” shall mean the CSEAFD which results from a single treatment episode in a full scale mixing vessel. (3-16-96)
- c. Subsequent Verification Testing.** (3-16-96)
- i. Subsequent to initial verification testing, ESII shall collect a representative sample, in accordance with Subsection 005.01.a., from each batch of CSEAFD generated by ESII. ESII may, at its discretion, conduct subsequent verification testing on composite samples. In no event shall a composite sample consist of representative samples from more than twenty (20) batches of CSEAFD. (3-16-96)
- ii. The samples shall be analyzed prior to disposal of each batch of CSEAFD to determine if the CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)
- iii. Each batch of CSEAFD generated by ESII shall be subjected to subsequent verification testing no later than thirty (30) days after it is generated by ESII. (3-16-96)
- iv. If the levels of constituents measured in a sample, or composite sample, of CSEAFD do not exceed the levels set forth in Subsection 005.01.d., then any batch of CSEAFD which contributed to the sample that does not exceed the levels set forth in Subsection 005.01.d. is non-hazardous and may be managed and/or disposed of in a Subtitle D or Subtitle C landfill. (3-16-96)
- v. If the constituent levels in a sample, or composite sample, exceed any of the delisting levels set forth in Subsection 005.01.d., then ESII must submit written notification of the

results of the analysis to the Department within fifteen (15) days from receiving the final analytical results, and any CSEAFD which contributed to the sample must be: (3-16-96)

(1) Retested, and retreated if necessary, until it meets the levels set forth in Subsection 005.01.d.; or (3-16-96)

(2) Managed and disposed of in accordance with Subtitle C of RCRA. (3-16-96)

vi. Each batch of CSEAFD shall be managed as hazardous waste in accordance with Subtitle C of RCRA until subsequent verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

**d.** Delisting Levels. (3-16-96)

i. All leachable concentrations for these metals must not exceed the following levels (mg/l):

antimony	0.06	mercury	0.009
arsenic	0.50	nickel	1
barium	7.60	selenium	0.16
beryllium	0.010	silver	0.30
cadmium	0.050	thallium	0.020
chromium	0.33	vanadium	2
lead	0.15	zinc	70

(3-16-96)

ii. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR Part 261.24. (3-16-96)

**e.** Modification of Treatment Process. (3-16-96)

i. If ESII makes a decision to modify the Super Detox(R) treatment process from the description of the process as set forth in ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995, ESII shall notify the Department in writing prior to implementing the modification. (3-16-96)

ii. After ESII's receipt of written approval from the Department, and subject to any conditions included with the approval, ESII may implement the proposed modification. (3-16-96)

iii. If ESII modifies its treatment process without first receiving written approval from the Department, this exclusion of waste will be void from the time the process was modified. (3-16-96)

iv. ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995 is available at the Department of Environmental

Quality, Permits and Enforcement, 1410 N. Hilton, Boise, Idaho 83706. (3-16-96)

**f.** Records and Data Retention and Submittal. (3-16-96)

i. Records of disposal site, operating conditions and analytical data from verification testing must be compiled, summarized, and maintained at ESII's Grand View facility for a minimum of five (5) years from the date the records or data are generated. (3-16-96)

ii. The records and data maintained by ESII must be furnished upon request to the Department or EPA. (3-16-96)

iii. Failure to submit requested records or data within ten (10) business days of receipt of a written request or failure to maintain the required records and data on site for the specified time, will be considered by the Department, at its discretion, sufficient basis to revoke the exclusion to the extent directed by the Department. (3-16-96)

iv. All records or data submitted to the Department must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the records or data submitted: "Under civil and/or criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to any identified sections of this document for which I cannot personally verify the truth and accuracy, I certify as the ESII official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by the Department in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to ESII, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the Department and that ESII will be liable for any actions taken in contravention of ESII's RCRA and CERCLA obligations premised upon ESII's reliance on the void exclusion." (3-16-96)

**g.** Facility Merger and Name Change. On May 4, 2001, the Department was notified of a stock transfer that resulted in ESII's facility merging with American Ecology. This created a name change from Envirosafe Services of Idaho, Inc. (ESII) to US Ecology Idaho, Inc. effective May 1, 2001. All references to Envirosafe Services of Idaho, Inc. or ESII now refer to US Ecology Idaho, Inc. (3-15-02)

## **006. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.**

**01. Incorporation by Reference.** 40 CFR Part 262 and all Subparts, except for the language "for the Region in which the generator is located" in 40 CFR 262.42(a)(2) and 40 CFR 262.42(b), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008<sup>9</sup>. For purposes of 40 CFR 262.55, 262.56, and 262.57(b), "Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. Copies of advance notification, annual reports, and exception reports, required under those sections, shall also be provided to the Director. For purposes of 40 CFR 262.21, 262.51, 262.53, 262.54(e), 262.54(g)(1), 262.60, and 262.85(g), EPA shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR Part 262 Subparts E, F, H, and 40 CFR 262.41(a)(4), "United States or U.S." shall be defined as the United States. (~~5-8-09~~)(\_\_\_\_)

**02. Generator Emergency Notification.** In addition to the emergency notification required by 40 CFR 265.56(d)(2), 262.34(d)(5)(iv)(C), (see 40 CFR 262.34(a)(4)), 263.30(c)(1), and 264.56(d)(2), the emergency coordinator must also immediately notify the State Communications Center by telephone, 1-800-632-8000, to file an identical report. (3-15-02)

**007. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.** 40 CFR Part 263 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008<sup>9</sup>. For purposes of 40 CFR 263.20(g), 263.20(g)(1), 263.20(g)(4), 263.21(a)(4), and 263.22(d), “United States” shall be defined as the United States. (~~5-8-09~~)(\_\_\_\_)

**008. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.** 40 CFR Part 264 and all Subparts (excluding 40 CFR 264.1(f), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f) and 264.1080(g)) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008<sup>9</sup>. For purposes of 40 CFR Subsection 264.12(a), “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 264.71(a)(3) and 264.1082(c)(4)(ii), “EPA” shall be defined as the U.S. Environmental Protection Agency. (~~5-8-09~~)(\_\_\_\_)

**009. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.** 40 CFR Part 265, and all Subparts (excluding Subpart R, 40 CFR 265.1(c)(4), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g)) and except the language contained in 40 CFR 265.340(b)(2) as replaced with, “The following requirements continue to apply even when the owner or operator has demonstrated compliance with the MACT requirements of part 63, subpart EEE of this chapter: 40 CFR 265.351 (closure) and the applicable requirements of Subparts A through H, BB and CC of this part,” are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008<sup>9</sup>. For purposes of 40 CFR Subsection 265.12(a), “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 265.71(a)(3) and 265.1083(c)(4)(ii), “EPA” shall be defined as the U.S. Environmental Protection Agency. (~~5-8-09~~)(\_\_\_\_)

**010. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE FACILITIES.** 40 CFR Part 266 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008<sup>9</sup>. (~~5-8-09~~)(\_\_\_\_)

**011. LAND DISPOSAL RESTRICTIONS.** 40 CFR Part 268 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008<sup>9</sup>, except for 40 CFR 268.1(e)(3), 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g). The authority for implementing the provisions of these excluded sections remains with the EPA. However, the requirements of Sections 39-4403(17) and 39-4423, Idaho Code, shall be applied in all cases where these requirements are more stringent than the federal standards. If the Administrator of the EPA grants a case-by-case variance pursuant to 40 CFR 268.5, that variance will simultaneously create the same case-by-case variance to the equivalent

requirement of these rules. For purposes of 40 CFR 268.2(j) “EPA” shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 268.40(b), “Administrator” shall be defined as U.S. Environmental Protection Agency Administrator. In 40 CFR 268.7(a)(9)(iii), “D009” is excluded, (from lab packs as noted in 40 CFR Part 268 Appendix IV.) In 40 CFR 268.48(a), the entry for “2,4,6-Tribromophenol” is excluded. (5-8-09)(\_\_\_\_)

**012. HAZARDOUS WASTE PERMIT PROGRAM.**

40 CFR Part 270 and all Subparts, except 40 CFR 270.12(a) and 40 CFR 270.14(b)(18), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008<sup>9</sup>. For purposes of 40 CFR 270.2, 270.5, 270.10(e)(2), 270.10(e)(3), 270.10(f)(2), 270.10(f)(3), 270.10(g), 270.11(a)(3), 270.32(a), 270.32(b)(2), 270.32(c), 270.51, 270.72(a)(5), and 270.72(b)(5), “EPA” and “Administrator” or “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator respectively. (5-8-09)(\_\_\_\_)

**013. PROCEDURES FOR DECISION-MAKING (STATE PROCEDURES FOR RCRA OR HWMA PERMIT APPLICATIONS).**

40 CFR Part 124, Subparts A, B and G are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008<sup>9</sup>, except that 40 CFR 124.19, the fourth sentence of 40 CFR 124.31(a), the third sentence of 40 CFR 124.32(a), and the second sentence of 40 CFR 124.33(a) are expressly omitted from the incorporation by reference of each of those subsections. For purposes of 40 CFR 124.6(e), 124.10(b), and 124.10(c)(1)(ii) “EPA” and “Administrator” or “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator, respectively. (5-8-09)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**015. STANDARDS FOR THE MANAGEMENT OF USED OIL.**

**01. Incorporation by Reference.** 40 CFR Part 279 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008<sup>9</sup>. For purposes of 40 CFR 279.43(c)(3)(ii) “Director” shall be defined as the Director, U.S.DOT Office of Hazardous Materials Regulation. (5-8-09)(\_\_\_\_)

**02. Used Oil as a Dust Suppressant.** 40 CFR Part 279 contains a prohibition on the use of used oil as a dust suppressant at 279.82(a), however, States may petition EPA to allow the use of used oil as a dust suppressant. Members of the public may petition the State to make this application to EPA. This petition to the State must: (2-11-94)

**a.** Be submitted to the Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706-1255; and (2-11-94)

**b.** Demonstrate how the requirements of 40 CFR 279.82(b) will be met. (2-11-94)

**016. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT.**

40 CFR Part 273 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008~~9~~. For purposes of 40 CFR 273.32(a)(3), "EPA" shall be defined as the U.S. Environmental Protection Agency. ~~(5-8-09)~~(\_\_\_\_)

**017. CRITERIA FOR THE MANAGEMENT OF GRANULAR MINE TAILINGS (CHAT) IN ASPHALT CONCRETE AND PORTLAND CEMENT CONCRETE IN TRANSPORTATION CONSTRUCTION PROJECTS FUNDED IN WHOLE OR IN PART BY FEDERAL FUNDS.**

40 CFR Part 278 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008~~9~~. ~~(5-8-09)~~(\_\_\_\_)

**018. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT.**

40 CFR Part 267 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2008~~9~~. ~~(5-8-09)~~(\_\_\_\_)

# IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.16 - WASTEWATER RULES

DOCKET NO. 58-0116-0802

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Sixtieth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. This rule was adopted as a temporary rule by the Board in February 2009 and is currently effective.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, June 3, 2009, Vol. 09-6, pages 111 through 122. DEQ received no public comments, and the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [http://www.deq.idaho.gov/rules/wastewater/58\\_0116\\_0802\\_pending.cfm](http://www.deq.idaho.gov/rules/wastewater/58_0116_0802_pending.cfm) or by contacting the undersigned.

**IDAHO CODE SECTION 39-107D STATEMENT:** This rule does regulate an activity not regulated by the federal government. There is no federal law or regulation comparable to the provisions governing wastewater treatment and collection system classification set forth in the Wastewater Rules; therefore, the changes to the rules are not broader in scope or more stringent than federal law or regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Ester Ceja at [ester.ceja@deq.idaho.gov](mailto:ester.ceja@deq.idaho.gov), (208)373-0585.

Dated this 13th day of October, 2009.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

*THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE*

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before June 17, 2009. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** The Department of Environmental Quality (DEQ) has initiated this rulemaking to allow for the creation of a combined very small wastewater treatment and collection system classification for communities with 500 connections or less. Operators struggle with obtaining the various licenses currently required for the different aspects of very small facility operation. This difficulty in obtaining more than one license results in there being too few properly licensed operators. This lack of properly licensed operators places the facilities in danger of being out of compliance with the rules that require they use the services of properly licensed operators. Smaller systems, due to their relative simplicity of operation, are good candidates for operation by individuals with combined licenses. Associated with this rulemaking is the need for the Idaho Bureau of Occupational Licenses (IBOL) to establish a very small wastewater system operator license. DEQ is working with IBOL to coordinate rulemaking activities.

Cities, water and sewer districts, homeowner associations, private wastewater contractors, operators, the Association of Idaho Cities, the Idaho Rural Water Association, and the Pacific Northwest Clean Water Association - Idaho Sections (North Idaho, Southeast and Southwest Idaho Operator Sections) may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality at the October 2009 Board meeting for adoption as a pending rule. The pending rule is expected to be final and effective upon the adjournment of the 2010 legislative session if adopted by the Board and approved by the Legislature. This rule was adopted as a temporary rule by the Board in February 2009 and is currently effective.

**NEGOTIATED RULEMAKING:** The text of the rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 58.01.23.810-815. On December 3, 2008, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 08-12, pages 123 through 124, and a preliminary draft rule was made available for public review. One meeting was held on December 16, 2008. Members of the public participated in this

negotiated rulemaking process by attending the meeting.

**IDAHO CODE SECTION 39-107D STATEMENT:** This rule does regulate an activity not regulated by the federal government. There is no federal law or regulation comparable to the provisions governing wastewater treatment and collection system classification set forth in the Wastewater Rules; therefore, the changes to the rules are not broader in scope or more stringent than federal law or regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Ester Ceja at ester.ceja@deq.idaho.gov, (208)373-0585. Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before July 1, 2009.

DATED this 1st day of May, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**010. DEFINITIONS.**

For the purpose of the rules contained in IDAPA 58.01.16, "Wastewater Rules," the following definitions apply: (4-11-06)

**01. Available.** Based on public wastewater system size, complexity, and variation in raw waste, a licensed wastewater operator must be on site, on call, or able to be contacted as needed to initiate the appropriate action for normal or emergency conditions in a timely manner. (4-11-06)

**02. Adequate Emergency Storage Capacity.** The emergency storage capacity of a lift station wet well is the volume of the wet well measured between the high water alarm and the gravity sewer invert into the wet well. The collection system shall not be used in the calculation for emergency storage. For the purpose of this definition, "adequate" shall be defined as twice the estimated emergency response time multiplied by the peak hour flow to the wet well. The high water alarm shall be placed at an elevation below the wet well invert sufficient to achieve the defined volumetric emergency storage capacity. (5-8-09)

**03. Average Day Flow.** The average day flow is the average of daily volumes to be received for a continuous twelve (12) month period expressed as a volume per unit time. However, the average day flow for design purposes for facilities having critical seasonal high hydraulic loading periods, such as recreational areas or industrial facilities, shall be based on the average day flow during the seasonal period. See also the definition of Wastewater Flows.

(5-8-09)

**04. Beneficial Use.** Any of the various uses which may be made of the water of Idaho, including, but not limited to, domestic water supplies, industrial water supplies, agricultural water supplies, navigation, recreation in and on the water, wildlife habitat, and aesthetics. The beneficial use is dependent upon actual use, the ability of the water to support a non-existing use either now or in the future, and its likelihood of being used in a given manner. The use of water for the purpose of wastewater dilution or as a receiving water for a waste treatment facility effluent is not a beneficial use. (4-11-06)

**05. Biochemical Oxygen Demand (BOD).** The measure of the amount of oxygen necessary to satisfy the biochemical oxidation requirements of organic materials at the time the sample is collected; unless otherwise specified, this term will mean the five (5) day BOD incubated at twenty (20) degrees C. (4-11-06)

**06. Blackwaste.** Human body waste, such as excreta or urine. This includes toilet paper and other products used in the practice of personal hygiene. (5-8-09)

**07. Blackwater.** A wastewater whose principal pollutant is blackwaste; a combination of blackwaste and water. (5-8-09)

**08. Board.** The Idaho Board of Environmental Quality. (4-11-06)

**09. Capacity.** The capabilities required of a wastewater system in order to achieve and maintain compliance with these rules. It is divided into three (3) main elements: (5-8-09)

**a.** Technical capacity means the system has the physical infrastructure to safely collect wastewater and consistently meet discharge standards and treatment requirements, and is able to meet the requirements of routine and emergency operations. It further means the ability of system personnel to adequately operate and maintain the system and to otherwise implement technical knowledge. Training of operator(s) is required, as appropriate, for the system size and complexity. (5-8-09)

**b.** Financial capacity means the financial resources of the wastewater system, including an appropriate budget; rate structure; cash reserves sufficient for current operation and maintenance, future needs and emergency situations; and adequate fiscal controls. (5-8-09)

**c.** Managerial capacity means that the management structure of the wastewater system embodies the aspects of wastewater system operations, including, but not limited to; (5-8-09)

i. Short and long range planning; (5-8-09)

ii. Personnel management; (5-8-09)

iii. Fiduciary responsibility; (5-8-09)

iv. Emergency response; (5-8-09)

v. Customer responsiveness; and (5-8-09)

vi. Administrative functions such as billing and consumer awareness. (5-8-09)

**10. Class A Effluent.** Class A effluent is treated municipal reclaimed wastewater that must be oxidized, coagulated, clarified, and filtered, or treated by an equivalent process and adequately disinfected. For comprehensive Class A Effluent criteria and permitting requirements refer to IDAPA 58.01.17, “Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater.” (3-30-07)

**11. Class A Effluent Distribution System.** The delivery system for Class A effluent. The distribution system does not include any of the collection or treatment portions of the wastewater facility and is not subject to operator licensing requirements in Section 203 of these rules. (4-11-06)

**12. Collection System.** That portion of the wastewater system or treatment facility in which wastewater is received from the premises of the discharger and conveyed to the point of treatment through a series of lines, pipes, manholes, pumps/lift stations and other appurtenances. (3-30-07)

**13. Compliance Schedule or Compliance Agreement Schedule.** A schedule of remedial and preventative measures and sequence of actions leading to compliance with a regulation, statute or rule, enforceable as set forth in Sections 39-116 and 39-116A, Idaho Code, respectively. (5-8-09)

**14. Department.** The Idaho Department of Environmental Quality. (4-11-06)

**15. Design Flow.** The critical flow used for steady-state wasteload allocation modeling. (4-11-06)

**16. Designated Beneficial Use or Designated Use.** Those beneficial uses assigned to identify waters in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, “Water Quality Standards,” Sections 110 through 160, whether or not the uses are being attained. (4-11-06)

**17. Director.** The Director of the Idaho Department of Environmental Quality or his authorized agent. (4-11-06)

**18. Discharge.** When used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. (4-11-06)

**19. Disinfection.** A method of reducing the pathogenic or objectionable organisms by means of chemicals or other acceptable means. (4-11-06)

**20. Disposal Facility.** Any facility used for disposal of any wastewater. Facilities for the disposal of sludge are regulated under Section 650 of these rules. (3-30-07)

- 21. Effluent.** Any treated wastewater discharged from a treatment facility. (5-8-09)
- 22. Environmental Review.** An environmental review document for a specific project includes a description of purpose and need for the project; a description of the affected environment and environmental impacts including, but not limited to, endangered species, historical and archaeological impacts, air impacts, surface and ground water impacts, and noise and visual impacts; a description of the planned mitigation for these impacts; and descriptions of the public process, agencies consulted, referenced documents, and a mailing list of interested parties. A checklist, which can be used as guidance, can be found at [http://www.deq.idaho.gov/water/permits\\_forms/forms/waste\\_water/form\\_j\\_eid\\_outline\\_checklist.doc](http://www.deq.idaho.gov/water/permits_forms/forms/waste_water/form_j_eid_outline_checklist.doc). This checklist is for Department grant and loan projects, but can be used in part or in whole as a guide. (5-8-09)
- 23. EPA.** The United States Environmental Protection Agency. (4-11-06)
- 24. Equivalent Dwelling Unit (EDU).** A measure where one (1) unit is equivalent to wastewater generated from one (1) single-family detached housing unit. For example, a business generating three (3) times as much wastewater as an average single-family detached housing unit would be considered three (3) equivalent dwelling units. (5-8-09)
- 25. Facility Plan.** The facility plan for a municipal wastewater treatment and disposal facility describes the overall system, including the collection system, the treatment systems, and the disposal systems. It is a comprehensive planning document for the existing infrastructure and includes the plan for the future of the systems, including upgrades and additions. It is usually updated on a regular basis due to anticipated or unanticipated growth patterns, regulatory requirements, or other infrastructure needs. A Facility Plan is sometimes referred to as a master plan or facilities planning study. In general, a Facility Plan is an overall system-wide plan as opposed to a project specific plan. (5-8-09)
- 26. Facility and Design Standards.** Facility and design standards are described in Sections 400 through 599 of these rules. Facility and design standards found in Sections 400 through 599 of these rules must be followed in the planning, design, construction, and review of municipal wastewater facilities. (3-30-07)
- 27. Geometric Mean.** The geometric mean of “n” quantities is the “nth” root of the product of the quantities. (4-11-06)
- 28. Gray Water.** Domestic wastewater that does not contain wastewater from toilets, kitchen sinks, dishwashers, cloth washing machines, and water softeners. (5-8-09)
- 29. Ground Water.** Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (4-11-06)
- 30. Industrial Wastewater.** Any waste, together with such water as is present, that is the by-product of industrial processes including, but not limited to, food processing or food washing wastewater. (4-11-06)
- 31. Land Application.** A process or activity involving application of wastewater, surface water, or semi-liquid material to the land surface for the purpose of disposal, pollutant

removal, or ground water recharge. (4-11-06)

**32. License.** A physical document issued by the Idaho Bureau of Occupational Licenses certifying that an individual has met the appropriate qualifications and has been granted the authority to practice in Idaho under the provisions of Chapter 24, Title 54, Idaho Code. (4-11-06)

**33. Major Wastewater Collection System Project.** A wastewater collection system project that is not a simple wastewater main extension. (5-8-09)

**34. Material Deviation.** A change from the design plans that significantly alters the type or location of facilities, requires engineering judgment to design, or impacts the public safety or welfare. (4-11-06)

**35. Material Modification.** Material modifications are those that are intended to increase system capacity or to alter the methods or processes employed. Any project that increases the pumping capacity of a system, increases the potential population served by the system or the number of service connections within the system, adds new or alters existing wastewater system components, or affects the wastewater flow of the system is considered to be increasing system capacity or altering the methods or processes employed. Maintenance and repair performed on the system and the replacement of valves, pumps, or other similar items with new items of the same size and type are not considered a material modification. (5-8-09)

**36. Maximum Day Flow.** The design maximum day flow is the largest volume of flow to be received during a continuous twenty four (24) hour period expressed as a volume per unit time. See also Wastewater Flows. (5-8-09)

**37. Maximum Month Flow.** The maximum month flow is the largest volume of flow to be received during any calendar month expressed as a volume per unit time. See also the definition of Wastewater Flows. (5-8-09)

**38. Mixing Zone.** A defined area or volume of the receiving water surrounding or adjacent to a wastewater discharge where the receiving water, as a result of the discharge, may not meet all applicable water quality criteria or standards. It is considered a place where wastewater mixes with receiving water and not as a place where effluents are treated. (4-11-06)

**39. Municipal Wastewater.** Unless otherwise specified, sewage and associated solids, whether treated or untreated, together with such water that is present. Also called domestic wastewater. Industrial wastewater may also be present, but is not considered part of the definition. (4-11-06)

**40. National Pollutant Discharge Elimination System (NPDES).** Point source permitting program established pursuant to Section 402 of the federal Clean Water Act. (4-11-06)

**41. Natural Background Conditions.** No measurable change in the physical, chemical, biological, or radiological conditions existing in a water body without human sources of pollution within the watershed. (4-11-06)

**42. Non-Contact Cooling Water.** Water used to reduce temperature which does not come into direct contact with any raw material, intermediate product, waste product (other than heat) or finished product. Non-contact cooling water is not considered wastewater. Non-contact cooling water can be land applied as recharge water as discussed in Section 600 based on a Department approval as described in Subsections 600.04 and 600.05. (3-30-07)

**43. Nuisance.** Anything which is injurious to the public health or an obstruction to the free use, in the customary manner, of any waters of the state. (4-11-06)

**44. Nutrients.** The major substances necessary for the growth and reproduction of aquatic plant life, consisting of nitrogen, phosphorus, and carbon compounds. (4-11-06)

**45. Non-Potable Mains.** The pipelines that collect and convey non-potable discharges from or to multiple service connections. Examples would include sewage collection and interceptor mains, storm sewers, non-potable irrigation mains, and reclaimed wastewater mains. (3-30-07)

**46. Non-Potable Services.** The pipelines that convey non-potable discharges from individual facilities to a connection with the non-potable main. This term also refers to pipelines that convey non-potable water from a pressurized irrigation system, reclaimed wastewater system, and other non-potable systems to individual consumers. (4-11-06)

**47. Operating Personnel.** Any person who is employed, retained, or appointed to conduct the tasks associated with the day-to-day operation and maintenance of a public wastewater system. Operating personnel shall include every person making system control or system integrity decisions about water quantity or water quality that may affect public health. (4-11-06)

**48. Owner.** The person, company, corporation, district, association or other organizational entity that owns the public wastewater system, and who provides, or intends to provide, wastewater service to system users and is ultimately responsible for the public wastewater system operation. (3-30-07)

**49. Peak Instantaneous Flow.** The design peak instantaneous flow is the instantaneous maximum flow rate to be received. See also the definition of Wastewater Flows. (5-8-09)

**50. Peak Hour Flow.** The design peak hour flow is the largest volume of flow to be received during a one (1) hour period expressed as a volume per unit time. See also the definition of Wastewater Flows. (5-8-09)

**51. Person.** An individual, public or private corporation, partnership, association, firm, joint stock company, joint venture, trust, estate, state, municipality, commission, political subdivision of the state, state or federal agency, department or instrumentality, special district, interstate body or any legal entity, which is recognized by law as the subject of rights and duties. (4-11-06)

**52. Point Source.** Any discernible, confined, and discrete conveyance, including, but

not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be, discharged to surface waters of the state. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. (4-11-06)

**53. Pollutant.** Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged to water in excessive quantities, cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities. (4-11-06)

**54. Potable Water.** A water which is free from impurities in such amounts that it is safe for human consumption without treatment. (4-11-06)

**55. Potable Mains.** Pipelines that deliver potable water to multiple service connections. (3-30-07)

**56. Potable Service.** Pipelines that convey potable water from a connection to the potable water main across private property to individual consumers. (3-30-07)

**57. Preliminary Engineering Report.** The preliminary engineering report for the municipal wastewater treatment or disposal facility is the report that addresses specific portions of the systems as they are being contemplated for design. These reports address specific purpose and scope, design requirements, alternative solutions, costs, operation and maintenance requirements, and other requirements as described in Section 411. Preliminary engineering reports are generally project specific as opposed to an overall system-wide plan, such as a facility plan. (5-8-09)

**58. Primary Treatment.** Processes or methods that serve as the first stage treatment of wastewater, intended for removal of suspended and settleable solids by gravity sedimentation; provides no changes in dissolved and colloidal matter in the sewage or wastes flow. (4-11-06)

**59. Private Municipal Wastewater Treatment Plant.** A wastewater facility that treats municipal wastewater and is under private ownership. These systems are typically initially owned, operated, and maintained by a developer with the ownership, operation and maintenance transferring to a homeowners association, or similar entity as lots are sold within the development. (5-8-09)

**60. Public Wastewater System or Wastewater System.** ~~For purposes of Sections 202 through 204, a~~ A public wastewater system or wastewater system is any publicly or privately owned collection system or treatment system that generates, collects, ~~or treats, or disposes of~~ two thousand five hundred (2,500) or more gallons of wastewater per day. This does not include: ~~any wastewater treatment system operated and maintained exclusively by a single family residence or any wastewater system consisting solely of a gravity flow, non-mechanical septic tank and subsurface treatment and distribution system, any wastewater system with individual septic tanks and individual pump stations that discharge to a common gravity flow subsurface treatment and~~

~~distribution system when ownership of each septic tank and pumping station is by individual property owner and ownership of the common system is by a public or private entity;~~ ( )

**a.** ~~a~~Any animal waste system used for agricultural purposes that have been constructed in part or whole by public funds; ~~or industrial wastewater systems under private ownership.~~ ( )

**b.** ~~This definition also does not include a~~Any industrial or other nonmunicipal wastewater system which is covered under Section 401 of these rules. (3-30-07)( )

**61. Qualified Licensed Professional Engineer (QLPE).** A professional engineer licensed by the state of Idaho; qualified by education or experience in the specific technical fields involved in these rules; and retained or employed by a city, county, quasi-municipal corporation, or regulated public utility for the purposes of plan and specification review. (5-8-09)

**62. Quasi-Municipal Corporation.** A public entity, other than community government, created or authorized by the legislature to aid the state in, or to take charge of, some public or state work for the general welfare. For the purpose of these rules, this term refers to wastewater or sewer districts. (4-11-06)

**63. Receiving Waters.** Those waters which receive pollutants from point or nonpoint sources. (4-11-06)

**64. Recharge.** The process of adding water to the zone of saturation. (4-11-06)

**65. Recharge Water.** Water that is specifically utilized for the purpose of adding water to the zone of saturation. (4-11-06)

**66. Redundancy.** Redundancy for wastewater treatment and disposal facilities is generally focused on supplying or installing backup equipment and facilities to make the operation of the systems more reliable. These redundant systems are sometimes required to provide backup for emergencies, taking certain processes off-line, or for treating spikes in wastewater flow or strength. (3-30-07)

**67. Reliability.** Reliability for wastewater collection and treatment and disposal facilities is usually based on its ability to consistently handle the wastewater flows in the community and to meet the requirements of its permit. This reliability is in part based on the redundancy built into the wastewater infrastructure and proper maintenance of the system. (3-30-07)

**68. Reasonably Accessible.** The following criteria shall be used to determine whether a project proposing a new private municipal wastewater treatment plant, or a material modification or expansion of an existing private municipal wastewater treatment plant, is reasonably accessible to a public municipal wastewater collection system. (5-8-09)

**a.** For an existing private municipal wastewater treatment plant, reasonably accessible means the public municipal wastewater collection system becomes located within a minimum of one thousand (1,000) feet of any portion of the discharge piping of a private

municipal wastewater treatment plant, and the owner of the public municipal wastewater collection system will provide a “will serve” letter. (5-8-09)

**b.** For a proposed project which includes a new private municipal wastewater treatment plant, reasonably accessible means the public municipal wastewater collection system is located within a minimum of one thousand (1,000) feet of any portion of the proposed development or existing development property boundary, and the owner of the public municipal wastewater collection system will provide a “will serve” letter. (5-8-09)

**c.** The Department may determine that a private municipal wastewater treatment plant may be reasonably accessible to the public municipal wastewater collection system at distances greater than those distances specified in Paragraphs a. or b. of this Subsection based on site-specific factors. (5-8-09)

**69. Responsible Charge (RC).** For purposes of Sections 202 through 204, responsible charge means, active, daily on-site or on-call responsibility for the performance of operations or active, on-going, on-site or on-call direction of employees and assistants. (5-8-09)

**70. Responsible Charge Operator.** For purposes of Sections 202 through 204, a responsible charge operator is an operator licensed at a class equal to or greater than the classification of the system and who has been designated by the system owner to have direct supervision of and responsibility for the performance of operations of a specified wastewater treatment system(s) or wastewater collection system(s) and the direction of personnel employed or retained at the same system. The responsible charge operator has an active daily on-site or on-call presence at the specified facility. (5-8-09)

**71. Reuse.** The use of reclaimed wastewater for beneficial uses including, but not limited to, land treatment, irrigation, ground water recharge using surface spreading, seepage ponds, or other unlined surface water features. (3-30-07)

**72. Reviewing Authority.** For those projects requiring preconstruction approval by the Department, the Department is the reviewing authority. For those projects allowing for preconstruction approval by others, pursuant to Subsection 400.03.b. of these rules, the Qualified Licensed Professional Engineer (QLPE) is also the reviewing authority. (5-8-09)

**73. Sanitary Sewer Extension.** As used in Section 400, an extension of an existing wastewater collection system that does not require a lift station or force main and is intended to increase the service area of the wastewater collection system. (4-11-06)

**74. Secondary Treatment.** Processes or methods for the supplemental treatment of wastewater, usually following primary treatment, to affect additional improvement in the quality of the treated wastes by biological means of various types which are designed to remove or modify organic matter. (4-11-06)

**75. Septage.** Septage is a general term for the contents removed from septic tanks, portable vault toilets, privy vaults, wastewater holding tanks, very small wastewater treatment plants, or semi-public facilities (i.e., schools, motels, mobile home parks, campgrounds, small commercial endeavors) receiving wastewater from domestic sources. Non-domestic (industrial)

wastes are not included in this definition. This does not include drinking water treatment residuals that may be held in a holding tank. (3-30-07)

**76. Septage Transfer Station.** A place where septage from more than one (1) hauler is accumulated for collection and subsequent removal without processing to a treatment facility. (5-8-09)

**77. Sewage.** The water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. (4-11-06)

**78. Simple Wastewater Main Extension.** New or replacement wastewater main(s) that require plan and specification review per these rules and that will be connected by gravity, without the use of pumps or lift stations, to existing wastewater collection facilities that have the capacity to carry the additional wastewater flow. (5-8-09)

**79. Sludge.** The semi-liquid mass produced and removed by the wastewater treatment process. (3-30-07)

**80. Special Resource Water.** Those specific segments or bodies of water which are recognized as needing intensive protection: (4-11-06)

**a.** To preserve outstanding or unique characteristics; or (4-11-06)

**b.** To maintain current beneficial use. (4-11-06)

**81. State.** The state of Idaho. (4-11-06)

**82. Substitute Responsible Charge Operator.** A public wastewater operator holding a valid license at a class equal to or greater than the public wastewater system classification, designated by the system owner to replace and to perform the duties of the responsible charge operator when the responsible charge operator is not available or accessible. (4-11-06)

**83. Surface Water Body.** All surface accumulations of water, natural or artificial, public or private, or parts thereof which are wholly or partially within, which flow through or border upon the state. This includes, but is not limited to, rivers, streams, canals, ditches, lakes, and ponds. It does not include private waters as defined in Section 42-212, Idaho Code. (4-11-06)

**84. Total Maximum Daily Load (TMDL).** The sum of the individual wasteload allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources, and natural background. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. (3-30-07)

**85. Treatment.** A process or activity conducted for the purpose of removing pollutants from wastewater. (4-11-06)

**86. Treatment Facility.** Any physical facility or land area for the purpose of collecting, treating, neutralizing or stabilizing pollutants including treatment plants; the necessary collecting, intercepting, outfall and outlet sewers; pumping stations integral to such plants or sewers; disposal or reuse facilities; equipment and furnishing thereof; and their appurtenances. For the purpose of these rules, a treatment facility may also be known as a treatment system, a wastewater system, wastewater treatment system, wastewater treatment facility, or wastewater treatment plant. (3-30-07)

**87. User.** Any person served by a public wastewater system. (4-11-06)

**88. Very Small Wastewater System.** A public wastewater system that serves five hundred (500) connections or less and includes a collection system with a system size of six (6) points or less on the system classification rating form (Section 202) and is limited to only one (1) of the following wastewater treatment processes: ( )

**a. Aerated lagoons;** ( )

**b. Non-aerated lagoon(s);** ( )

**c. Primary treatment; or** ( )

**d. Primary treatment discharging to a large soil absorption system (LSAS).** ( )

**889. Wastewater.** Any combination of liquid or water and pollutants from activities and processes occurring in dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any ground water, surface water, and storm water that may be present; liquid or water that is chemically, biologically, physically or rationally identifiable as containing blackwater, gray water or commercial or industrial pollutants; and sewage. (5-8-09)

**890. Wastewater Flows.** The following flows for the design year shall be identified as required and used as a basis for design of sewer systems including sewer mains, lift stations, wastewater treatment plants, treatment units, and other wastewater handling facilities. The definition contained in this Subsection applies where any of the terms defined in Paragraphs a. through e. are used in these rules. (5-8-09)

**a. Average Day Flow.** The average day flow is the average of daily volumes to be received for a continuous twelve (12) month period expressed as a volume per unit time. However, the average day flow for design purposes for facilities having critical seasonal high hydraulic loading periods, such as recreational areas or industrial facilities, shall be based on the average day flow during the seasonal period. (5-8-09)

**b. Maximum Day Flow.** The design maximum day flow is the largest volume of flow to be received during a continuous twenty-four (24) hour period expressed as a volume per unit time. (5-8-09)

**c. Maximum Month Flow.** The maximum month flow is the largest volume of flow to be received during any calendar month expressed as a volume per unit time. (5-8-09)

**d.** Peak Instantaneous Flow. The design peak instantaneous flow is the instantaneous maximum flow rate to be received. (5-8-09)

**e.** Peak Hour Flow. The design peak hour flow is the largest volume of flow to be received during a one (1) hour period expressed as a volume per unit time. (5-8-09)

**901. Wastewater Lagoon.** Manmade impoundments for the purpose of storing or treating wastewater. (4-11-06)

**912. Wastewater Pipelines.** The pipelines that collect and convey non-potable discharges from or to multiple service connections. (4-11-06)

**923. Wastewater Pumping Station.** A wastewater facility that collects wastewater from the collection system or the treatment system and pumps it to a higher elevation. Also called lift station or wastewater lift station. (3-30-07)

**934. Wastewater System Operator.** The person who is employed, retained, or appointed to conduct the tasks associated with routine day to day operation and maintenance of a public wastewater treatment or collection system in order to safeguard the public health and environment. (4-11-06)

**945. Water Main Extension.** An extension of the distribution system of an existing public water system that does not require a booster pumping station and is intended to increase the service area of the water system. (4-11-06)

**956. Water Pollution.** Any alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters of the state, or the discharge of any pollutant into the waters of the state, which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to fish and wildlife, or to domestic, commercial, industrial, recreational, aesthetic, or other beneficial uses. (4-11-06)

**967. Waters and Waters of the State.** All the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. (4-11-06)

**978. Watershed.** The land area from which water flows into a stream or other body of water which drains the area. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**202. CLASSIFICATION OF PUBLIC WASTEWATER SYSTEMS.**

**01. Classification Requirement.** All public wastewater systems shall be classified based on indicators of potential health risks. (4-11-06)

a. Classification rating forms developed in accordance with the criteria in Subsection 202.02 must be completed by the public wastewater system owner or designee for every public wastewater treatment system and wastewater collection system no later than July 1, 2008. Public wastewater treatment and wastewater collection system owners or designee shall submit additional classification rating forms at five (5) year intervals ~~detailing existing conditions or~~ when directed by the Department to submit a revised classification rating form. (4-11-06)( )

b. The Department shall review system classification rating forms ~~submitted by the public wastewater treatment and wastewater collection system owners at five (5) year intervals and classify the systems to reflect the condition at the time of the initial classification, or changed conditions, if any, on subsequent submittals~~ and issue the final system classification. (4-11-06)( )

**02. Classification Criteria.** Public wastewater treatment systems and wastewater collection systems shall be classified under a system that uses the following criteria: (4-11-06)

a. Complexity, size, volume and variability in raw waste for treatment systems using guidelines established by the Department. (4-11-06)

b. Complexity or size of collection systems. (4-11-06)

c. Other criteria deemed necessary to completely classify systems. (4-11-06)

### 203. PUBLIC WASTEWATER SYSTEM OPERATOR LICENSURE REQUIREMENTS.

**01. System Operator Licensure Requirement.** Owners of all public wastewater systems must place the direct supervision of their wastewater system(s), including each treatment system and each collection system or each very small wastewater system, under the responsible charge of an operator who holds a valid license equal to or greater than the classification of ~~the wastewater treatment system and collection system~~ each treatment system and each collection system or each very small wastewater system. An operator in responsible charge of both a wastewater treatment system and a collection system shall hold two (2) licenses, one (1) for wastewater treatment and one (1) for collection, with the exception of a very small wastewater system for which the responsible charge operator may hold a single very small wastewater system license. Owners shall notify the Department in writing of any change of responsible charge or substitute responsible charge operator within ~~ten~~ thirty (30) days of such change. (4-11-06)( )

**02. Responsible Charge Operator License Requirement.** An operator in responsible charge of a public wastewater system in Idaho must hold a valid license equal to or greater than the classification of the wastewater system(s), including each treatment system; ~~where present~~, and each collection system or each very small wastewater system, as determined by the Department. (4-11-06)( )

**03. Substitute Responsible Charge Operator.** At such times as the responsible charge operator is not available, a substitute responsible charge operator shall be designated to replace the responsible charge operator. (4-11-06)

**04. Wastewater System Operator Licensure.** All other operating personnel at public wastewater systems, including each treatment system and each collection system or each very small wastewater system, must hold a valid license issued by the Idaho Bureau of Occupational Licenses. (4-11-06)( )

**05. ~~Class A Reclaimed~~ Wastewater System Operator Licensure Exceptions.** ( )

**a.** Any public wastewater system operating personnel that exclusively operate a Class A Effluent Distribution System of a Class A Municipal Reclaimed Wastewater System permitted in accordance with IDAPA 58.01.17, "Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater," ~~is~~ are not subject to operator ~~licensing~~ licensure requirements as outlined in these rules. (3-30-07)( )

**b.** Any non-pressurized drainfield and associated septic tank and collection system operating personnel are not subject to operator licensure requirements. ( )

**06. General Compliance Deadline.** All public wastewater systems addressed in Sections 202 and 203 shall be in compliance with these rules by April 15, 2006. (4-11-06)

**07. Land Application/Reuse Operator Compliance Deadline.** Each public wastewater land application/reuse system addressed in these rules shall employ, retain or contract with licensed land application/reuse operating personnel by April 15, 2007. (3-30-07)

**08. ~~Qualifications for Operator Licensure.~~** ~~All public wastewater system operating personnel, including responsible charge and substitute responsible charge operators, must qualify for and hold a valid license issued by the Idaho Bureau of Occupational Licenses.~~ (4-11-06)

#### **204. CONTRACTING FOR SERVICES.**

Public wastewater systems may contract with ~~a~~ properly licensed ~~public wastewater system operator or with a public wastewater system having licensed operators to provide supervision~~ operating personnel to provide responsible charge operators and substitute responsible charge operators. ~~The contracted public wastewater system operator or contracted entity shall employ and assign to that system an operator licensed at the grade equal to or greater than the classification of the system.~~ Proof of such contract shall be submitted to the Department prior to the contracted operating personnel performing any services at the public wastewater system. (4-11-06)( )