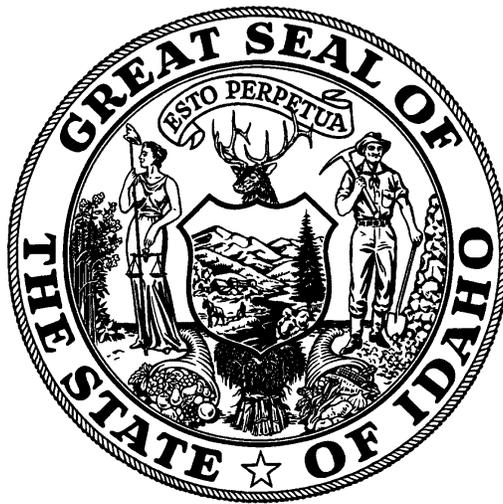


PENDING RULES COMMITTEE RULES REVIEW BOOK

**Submitted for Review Before
House Environment, Energy
& Technology Committee
66th Idaho Legislature
First Regular Session – 2021**



Prepared by:

*Office of the Administrative Rules Coordinator
Division of Financial Management*

January 2021



State of Idaho
DIVISION OF FINANCIAL MANAGEMENT
Executive Office of the Governor

BRAD LITTLE
Governor

ALEX J. ADAMS
Administrator

January 11, 2021

MEMORANDUM

TO: **Members of the 2021 Idaho State Legislature**

FROM: **Alex J. Adams, Administrator** *Alex J. Adams*
Bradley A. Hunt, Rules Coordinator *Bradley A. Hunt*

SUBJECT: **Overview of Executive Agency Rulemaking in 2020**

Background. Governor Little initiated a rules moratorium for calendar year 2020 and thus the volume of rulemaking is down substantially relative to most years. Most rules published in the Legislative Rules Review book are simply re-published because the 2020 Legislature adjourned *sine die* without passing a concurrent resolution approving any pending fee rules as specified in Section 67-5224, Idaho Code. The necessary fee rules were re-published in the following special bulletins:

- [April 15](#) – Temporary Fee Rules
- [September 16](#) – Proposed Fee Rules
- [November 18](#) – Pending Fee Rules

Changes in Existing Fee Rules. Since all fee rules expired upon sine die, there is no existing rule available to amend. Therefore, only a clean version of the rule chapter is able to be presented to the Legislature in January 2021. In some cases, fee rules were modified based on public comment, or to implement Executive Order [2020-13](#), among other reasons. Given the unprecedented volume, all edits are incorporated within a single docket and presented as a clean fee rule chapter. There are several ways that legislators may view previous rules for comparison purposes:

- An [archive of any rule](#) since 1996 is available on the DFM website. This allows legislators to see the evolution of a rule over time.
- The Legislative Services Office analyzes all proposed rules. You can find their analysis of proposed rules which, in some cases, may discuss changes to rules between sine die and the proposed rules. These may be found on the [Legislature's website](#).
- Changes made between the proposed and pending rule stages were noted in the [November 18th](#) bulletin where applicable.

Process for Approving/Extending Rules. Below, you will find a brief description on legislative actions and outcomes regarding the rules review process and contents of the Legislative Rules Review Books:

- Pending Fee Rules must be affirmatively approved by both bodies via adoption of concurrent resolution to become final.
- Temporary Rules must be affirmatively approved by both bodies via adoption of concurrent resolution to be extended.
- Pending Rules become final and effective sine die unless rejected, in whole or in part, via concurrent resolution adopted by both bodies.
 - Pending rules may be approved, in whole or in part, or rejected if determined to be inconsistent with legislative intent of the governing statute.
 - If rejected, new or amended language must be identified at a numerical or alphabetical designation within the rule and specified in the concurrent resolution.
- A link to LSO's proposed rule analysis is provided at the beginning of each docket and includes any required supporting documentation (e.g. Cost Benefit Analysis (CBA), Incorporation By Reference Synopsis (IBRS)) as part of the analysis.
- All 2021 review books can be accessed on the DFM website [here](#).

Contact Information. If questions arise during the rules review process, please do not hesitate to contact the Rules Coordinator, Brad Hunt: Brad.Hunt@dfm.idaho.gov; 208-854-3096.

HOUSE ENVIRONMENT, ENERGY, & TECHNOLOGY COMMITTEE

ADMINISTRATIVE RULES REVIEW

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**IDAPA 41 – IDAHO PUBLIC HEALTH DISTRICTS
(PANHANDLE HEALTH DISTRICT #1)**

DOCKET NO. 41-0101-2000

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Proposed Rule Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2021 Idaho State Legislature for final approval. The pending rule becomes final and effective upon the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and full force and effect upon adoption of the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 39-408 *et seq.*, Idaho Code

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

This pending rule adopts and re-publishes the following existing rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 41, rules of the Panhandle Health District:

IDAPA 41

- 41.01.01, *Rules of Idaho Public Health District #1.*

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the Sept. 16, 2020, Idaho Administrative Bulletin, [Vol. 20-9SE, pages 2210-2238.](#)

FISCAL IMPACT: 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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Mr. Erik Ketner, PHD#1 Environmental Health Section Manager at (208) 415-5224.

Dated this 22nd day of October, 2020.

Joe Righello
Division Administrator
Environmental and Health Protection Division
Panhandle Health District
8500 N. Atlas Road
Hayden, Idaho 83835
Phone: (208) 415-5200
Fax: (208) 415-5201

THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 39-143, Idaho Code.

PUBLIC HEARING SCHEDULE: Opportunity for presentation of oral comments concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of the purpose of the proposed rulemaking:

This proposed rulemaking re-publishes the following existing temporary rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 41, rules of the Panhandle Health District:

IDAPA 41

- 41.01.01, *Rules of Idaho Public Health District #1.*

FEE SUMMARY: This rulemaking does not impose a fee or charge.

FISCAL IMPACT: 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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mr. Erik Ketner, PHD#1 Environmental Health Section Manager at (208) 415-5224.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of August, 2020.

THE FOLLOWING IS THE TEXT OF OMNIBUS DOCKET NO. 41-0101-2000

**IDAPA 41 – IDAHO PUBLIC HEALTH DISTRICTS
(PANHANDLE HEALTH DISTRICT #1)**

41.01.01 – RULES OF IDAHO PUBLIC HEALTH DISTRICT #1

000. LEGAL AUTHORITY.

The rules and standards set forth hereinafter shall be known as the Environmental Code of Panhandle Health District 1. This Code is adopted pursuant to the authority granted to the District Board of Health under Chapter 4, Title 39, Idaho Code. The provisions of the Code are supplementary, and should be interpreted in a manner consistent with Chapter 1, Title 39, Idaho Code and any state or federal laws which establish exclusivity or primacy in a field of rule for another public entity as a matter of law. ()

01. Conflict. In the event of any conflict between city or county ordinances or heretofore existing rules of county health boards and departments and this Code, the respective provision which more completely protects public health or the environment, prevails. Nothing in this Code is deemed to prevent the enforcement of any standard, or rule relating to air, water, or health quality now existing or hereinafter adopted by the State Board of Health and Welfare or any interested agency of the federal government. Nothing in this Code is deemed to conflict with the enactment by any city or county in the District of any ordinance or rule placing additional restrictions or limitations which contribute to enhancement of water, air, land, or health quality. Where the provisions of this Code conflict with state or federal statutes or rules which preempt regulation of a particular subject or application of this Code in a particular manner, the preemptive state rule or federal regulation prevails to the extent that application of the conflicting rules cannot be accommodated. ()

02. Policy. This Environmental Health Code is based on the recognition that pollution of the air, land, and waters of this district constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish, and other aquatic life, and impairs domestic, agricultural, industrial, recreational, and other beneficial uses of air, land, and water. It is the duty of the Board to establish the quality standards of the environment in the interest of health, individual and community alike, and to prevent the outbreak and spread of dangerous and infectious disease. ()

001. TITLE AND SCOPE.

01. Title. This chapter is titled IDAPA 41.01.01, “Rules of Idaho Public Health District #1.” ()

02. Scope. These rules govern issues concerning the mission of Idaho Public Health District #1 as established by the Idaho Legislature, in particular addressing matters of local concern in order to protect public health and the environment in the counties that comprise the District. ()

002. OFFICE – OFFICE HOURS – MAILING ADDRESS – STREET ADDRESS.

01. Office Hours. 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. ()

02. Mailing and Street Address. The District’s mailing/street address is: Panhandle Health District, 8500 N. Atlas Road, Hayden, ID 83835. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

The following definitions apply: ()

01. Board. The Board of Panhandle Health District 1. ()

02. Code. Environmental Health Code of Panhandle Health District 1, including the several sections which follow and the entire series of rules now and hereinafter adopted by the Board and by the State Board of Health and Welfare. ()

03. Floathouse. A watercraft that is not self-propelled and with a dwelling place on it for habitation by human beings, whether said habitat is seasonal, itinerant, temporary, or permanent; and whether the floathouse is attached to land, floating free in the water, or tied to a fixed structure. ()

04. Health Officer. Means the Director of Panhandle Health District 1, or any agent or employee

thereof whose duties include enforcement of any provision of this Code. ()

05. Public Sewage Treatment Facility. Any sewage collection and treatment system with more than two (2) individual service connections. ()

06. Variance. A grant of relief from the literal application of a Panhandle Health District 1 rule upon a showing that undue hardship, related to unique characteristics of a site, would result from literal adherence to such rule. ()

011. -- 099. (RESERVED)

100. WATER QUALITY CONTROL.

01. Sewage and Waste Disposal: Political Subdivisions. Any political subdivision within the District may enter into a sewage management plan agreement with the District, the purpose of which will be to establish permanent sewage disposal practices that will fulfill the needs and goals of the political subdivision and the responsibilities of the District. The Board has authority to enforce the provisions of sewage management plan agreements. ()

02. Sewage and Waste Disposal: Prohibited Conditions. ()

a. Domestic sewage, septage, sanitary sewage, industrial waste, agricultural waste, sewage effluent, or human excreta is not allowed to remain open to the atmosphere or on the surface of the ground in such a manner so as to be a source of noxious or offensive odors, to be dangerous to health, or to be a public nuisance. ()

b. Domestic sewage, sanitary sewage, septage, industrial sewage, industrial waste, agricultural waste, sewage effluent, or human excreta is not allowed to endanger any source or supply of drinking water, or cause damage to any public or private property. ()

c. Raw or untreated sewage, septage, or industrial waste, or agricultural waste is not allowed in any body of water, water course, or any underground water drain, any storm water drain, channel, or other surface water drain. ()

101. -- 109. (RESERVED)

110. SEWAGE DISPOSAL ON THE RATHDRUM PRAIRIE IN KOOTENAI COUNTY, IDAHO.

The Board has determined that extensive use of subsurface wastewater disposal on the Rathdrum Prairie presents a threat to the public health by contamination of the Rathdrum Aquifer, which is a drinking water source. It is the intent of the Board to adopt rules to govern subsurface sewage disposal on the Rathdrum Prairie. ()

01. Title. These rules, within this Section, are known and cited as the "Rathdrum Prairie Sewage Disposal Rules." ()

02. Scope. The provisions of this Section apply to subsurface sewage disposal systems installed on the Rathdrum Prairie. ()

03. Definitions. The following definitions apply to the Rathdrum Prairie sections of these rules. ()

a. Sewage Loading. The total liquid volume of sewage produced on any given parcel of land and expressed as gallons/day. ()

b. Dwelling Equivalent. The total sewage loading from a single family dwelling. When applied to structures or facilities other than housing units, a dwelling equivalent shall be equal to two-hundred and fifty (250) gallons per day or be equal to twenty (20) persons using a non-residential facility on forty (40) hour per week basis, with no wastewater generation except from restrooms. ()

c. Rathdrum Prairie. That area of land situated in Kootenai County and more particularly defined by the USGS map describing the boundaries of the Rathdrum Prairie Aquifer identified and designated under the authority of Section 1424(e) of the Safe Drinking Water Act (PL 93-523) (Federal Register, Vol. 43, No. 28 -Thursday, February 9, 1978). ()

d. Sewage Management Plan. A method of action, procedure, or arrangement approved by the Panhandle Health District 1 describing how collection, treatment, and disposal of sewage shall be addressed within the boundaries of a political subdivision and include a map of the area affected by the Sewage Management Plan. ()

04. Subsurface Sewage Disposal Systems. ()

a. All installations of subsurface sewage disposal systems must be made in compliance with the Code and the rules of the Idaho Department of Environmental Quality. ()

b. A subsurface sewage disposal system for one (1) dwelling equivalent may be installed without requirements other than Subsection 110.04.a., if the system is on a single parcel of land of five (5) acres or larger in surface area and the total loading for that parcel does not exceed one (1) dwelling equivalent per five (5) acres, except where one (1) system is replacing another. Every parcel of land created after December 20, 1977, except as otherwise permitted by these rules, maintains the dwelling equivalent(s) allowed for the original parcel of land. ()

c. No subsurface sewage disposal system may be installed on any parcel of land of less than (5) five acres in surface area except under the following conditions: ()

i. The parcel of land is located within the boundaries of a public sewer district or municipality where the governing board has adopted a Sewage Management Plan approved by the Board which will result in the construction and operation of, or connection to, a central sewage treatment plant. The Sewage Management Plan area must be entirely within the boundaries of the municipality, and the Sewage Management Plan must include a map delineating the boundaries of the Sewage Management Plan Area; ()

ii. Parcels of land less than five (5) acres in size and acquired or established prior to December 20, 1977, will be permitted for a subsurface sewage disposal system for a single-dwelling equivalent, provided such parcels meet all other rules governing individual and subsurface sewage disposal systems; or ()

iii. Where one (1) subsurface sewage disposal system is replacing another with no increase in sewage loading. ()

d. On all developments subject to the provisions of Subsection 110.04.c.iii., the subsurface sewage disposal system needs to have the dry or wet sewer system with necessary laterals installed within the development. All installations need to be done in coordination with local government planning, and approved by the state Department of Environmental Quality where applicable. ()

e. Upon notification by the Health Officer the owner of any parcel of land utilizing a subsurface sewage disposal system shall disconnect such system from any buildings on his parcel of land and connect the building sewer from the buildings to a collection and treatment system whenever it becomes available for service to his parcel. ()

111. -- 199. (RESERVED)

200. OPEN WATER PROTECTION.

01. Boats and Houseboats. ()

a. It is unlawful for any boat, motorboat, floathouse, sailboat, or any other kind of boat containing wastewater facilities to be on the waters of any stream, river, or lake in Panhandle Health District 1 unless such wastewater facilities shall be sealed to prevent a discharge into any waters. The method of sealing such wastewater facilities is subject to the approval of Panhandle Health District 1. ()

b. Any person authorized by the Health Officer or any law enforcement person may stop and board any boat on the said waters and examine the wastewater facilities on such boats to see that such facilities are properly closed and sealed. ()

c. It is unlawful for any person to throw overboard, dump, or otherwise dispose of or discharge, or cause, permit, or suffer to be discharged, any garbage, refuse, rubbish, waste, or sewage from any boat into or upon the waters of any stream, river, lake, or other body of water within the boundaries of Panhandle Health District 1. ()

d. If any watercraft located upon the waters of this District is found to have a marine toilet which is not in compliance with the requirements of this section, the Health Officer shall have the following alternative or cumulative powers to: ()

i. Cause the marine toilet to be locked and sealed to prevent usage; ()

ii. Require such watercraft to be removed from the waters of Panhandle Health District 1 until the marine toilets are made to conform with the requirements of this Code. ()

02. Public and Private Marinas. ()

a. Any marinas, whether public or private, providing moorage for vessels equipped with on-board wastewater facilities shall provide sewage waste disposal facilities. These facilities shall consist of a pump station that is capable of adequately cleaning waste retention tanks on the largest boat that could reasonably use the moorage. Such plans must be approved by the Department of Environmental Quality. ()

b. All marinas, whether public or private, must provide shore-based toilet facilities for their users. ()

03. Floathouses. ()

a. All floathouses must have approved wastewater facilities. ()

b. All discharges from all floathouses, whether old or new, regardless of source, are prohibited. ()

201. -- 399. (RESERVED)

400. CRITICAL MATERIALS AT FIXED FACILITIES ON THE RATHDRUM PRAIRIE IN KOOTENAI COUNTY, IDAHO.

01. Purpose and Intent. The purpose and intent of this section is to provide agencies that are currently involved with emergency planning and emergency response duties and businesses with duties to report their handling of chemicals and other potentially hazardous materials, with a mechanism to meet the mandate of existing rules by facilitating channels of communication. It is also intended to aid in protection of the Rathdrum Prairie Aquifer in Kootenai County, designated as a sole source aquifer by the United States of America, from potential sources of contamination from materials handling and storage at facilities located over or adjacent to the Aquifer. The rules strive to achieve such protection through proper use of secondary containment systems at Fixed Facilities that use, store, manufacture or handle Critical Materials. Reporting these chemicals to the concerned agencies will facilitate coordination among industry, government agencies and response personnel so that they may more successfully meet the requirements of the following: ()

a. Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA III). ()

b. The International Fire Code. ()

c. The International Building Code. ()

- d. Local building, planning and zoning codes applicable to lands which overlie the Aquifer. ()
- e. Any applicable rules administered by any other state, federal or local agency which has jurisdiction over matters related to Critical Materials. ()
- 02. Definitions.** The following have the following definitions: ()
 - a. Container. Any vessel used to hold critical materials. A single container is one not connected to any other container by way of valves, piping, etc. ()
 - b. Critical Material. Any liquid, semi-liquid, flowable, or water soluble solid that is listed on the most current Superfund Amendments and Reauthorization Act, Title III (SARA III) List of Lists published by the Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency, Washington, D.C. or is required by the U.S. Occupational Safety and Health Administration to have a safety data sheet (SDS). ()
 - c. Critical Materials Compliance Certificate (CMCC). A certificate indicating compliance with the reporting and secondary containment requirements of this rule. ()
 - d. Critical Materials Use Activity. Any undertaking that involves the use, storage, manufacture or handling of Critical Materials at a Fixed Facility above the secondary containment quantity set forth in this rule, or incorporated into this rule by reference. ()
 - e. Director. The Director of Panhandle Health District 1 or his designee. ()
 - f. Fixed Facility. Any established land use, building, dwelling, structure or site upon which or wherein a Critical Material Use Activity is conducted. ()
 - g. Key Box. A durable, locked box that holds keys firefighters or other emergency personnel may use to gain entry into a structure. The key box needs to be a type approved by the local fire chief pursuant to Section 10.209 of the Uniform Fire Code. ()
 - h. Local Emergency Planning Committee (LEPC). A standing committee established by the Office of the Governor through the State Emergency Response Commission (SERC) to fulfill Emergency Planning and Community Right to Know requirements pursuant to SARA III. ()
 - i. Safety Data Sheets (SDS). Documentation required by OSHA to provide a description of the characteristics and potential hazards of a wide range of substances that are potentially Critical Materials. ()
 - j. NFPA 704. The National Fire Protection Association's placarding system used to identify the health hazard, flammability, reactivity and potential to react with water of a particular substance. ()
 - k. Secondary Containment Quantity. The quantity of a Critical Material that requires compliance with this rule. For those Critical Materials specifically listed in the SARA III List of Lists (or as otherwise noted) the following quantities of qualifying substances are subject to this rule: ()
 - i. SARA Section 302 Extremely Hazardous Substances - ten (10) pounds in the aggregate, exclusive of solvent or other medium or, one hundred (100) pounds in the aggregate, inclusive of solvent or other medium. ()
 - ii. CERCLA Hazardous Substances (listed in 40 CFR 302, Table 302.4) - one hundred (100) pounds in the aggregate, exclusive of solvent or other medium or, one thousand (1000) pounds in the aggregate, inclusive of solvent or other medium. ()
 - iii. SARA Section 313 Toxic Chemicals - one hundred (100) pounds in the aggregate, exclusive of solvent or other medium or, one thousand (1000) pounds in the aggregate, inclusive of solvent or other medium. ()
 - iv. SARA Section 311 and 312 Chemicals (Not listed in the List of Lists) for which OSHA MSDS

must be developed pursuant to OSHA Hazard Communication Standards - five thousand (5000) pounds in the aggregate, inclusive of solvent or other medium. ()

l. Secondary Containment System. Site improvements and/or development criteria that are designed to isolate and prevent Critical Materials from entering the soil or surface or ground waters. ()

m. Rathdrum Prairie Aquifer (Aquifer). The underground water source identified and designated under the authority of Section 1424(e) of the Safe Drinking Water Act (PL 93- 523) (Federal Register, Vol. 43, No. 28 - Thursday, February 9, 1978). ()

03. Applicability. ()

a. This rule applies to any person, firm, corporation, or government agency owning, operating, or proposing to locate, establish, or operate a Fixed Facility over the Aquifer or within a recognized Aquifer recharge area in Kootenai County, Idaho. Any Fixed Facility so located shall comply with the requirements of this rule prior to initiation of operation or engaging in any Critical Materials Use Activity, if established after the effective date of this rule. Every owner or operator of a Fixed Facility needs to show compliance with this rule by obtaining a Critical Materials Compliance Certificate appropriate for current operations. ()

b. The following activities require a new application to the Panhandle Health District 1 to determine compliance with this rule: ()

i. Establishing a new use that could qualify as a Fixed Facility. ()

ii. Remodeling, operating changes, or expansion of an existing Fixed Facility which would modify the type or quantity of Critical Materials Use Activity. ()

iii. Changes in the location or method of use, storage, manufacture or handling of Critical Materials in any Fixed Facility. ()

iv. A change in ownership or addition of new Critical Materials meeting the quantity thresholds established by this rule at a Fixed Facility. ()

c. Any CMCC granted is specific to that action and the application filed therefore. Subsequent actions, meeting the criteria set by Subsection 400.03.b., shall require separate plan reviews and approvals to obtain compliance. ()

d. All businesses over the Rathdrum Prairie Aquifer in Kootenai County are subject to inspection in order to determine if they are governed by this rule. ()

04. Application Requirements of Fixed Facilities Engaged in Critical Materials Use Activities. Each applicant for a Critical Materials Compliance Certificate must provide: ()

a. Sufficient information to allow the Director to determine the type, quantity, and physical state of all Critical Materials that are used, stored, manufactured, or handled at the Fixed Facility location. The Director may require the applicant to provide a complete list of Critical Materials present at the Fixed Facility. ()

b. Building plans and site development drawings showing compliance with the secondary containment requirements established by this rule. Such plans shall also provide confirmation that the secondary containment methods are compatible with the materials to be contained and that Critical Materials at the Fixed Facility are isolated from storm water or other surface waters on the site. The Director may require that any such plans be certified by a licensed engineer. The building and/or site plans need to show at least the following: ()

i. Location of Critical Materials in buildings and other designated site areas. ()

ii. Location of Key Box if needed by the local fire chief. ()

- iii. Location of NFPA 704 placards if needed by the local fire chief. ()
 - c. Proof of contact and resultant acknowledgment from the agencies named below which have codes, standards, and/or rules which must be met by the applicant with respect to handling of Critical Materials. The Director will designate the agencies needing contact for each Fixed Facility based upon information provided by the applicant. ()
 - i. Local Fire Department. ()
 - ii. Local Emergency Planning Committee. ()
 - iii. Kootenai County Department of Planning and Zoning. ()
 - iv. Kootenai County Building Department. ()
 - v. Applicable City Building Department. ()
 - vi. Applicable City Planning and Zoning Department. ()
 - vii. Bureau of Pesticides, Department of Agriculture. ()
 - viii. Department of Environmental Quality. ()
 - ix. Idaho Department of Water Resources. ()
 - d. An opportunity for Panhandle Health District 1 to perform an inspection to assure compliance with secondary containment criteria previously approved through the plan review. If approved, and the agency review and reporting checklist (Subsection 400.04.c.) has been completed, a CMCC will be issued. The Director may delegate site inspection duties to officials of a cooperating agency. ()
- 05. Performance Standards for Fixed Facilities.** Each Fixed Facility, as defined in this rule, needs to conform to the following performance standards: ()
- a. Construct and maintain a secondary containment system for all Critical Materials. Said secondary containment system shall be designed to prevent infiltration of any Critical Materials into the ground in the event that they are released from their original storage containers. ()
 - b. The secondary containment system and methods must be non-reactive and resistant to the materials to be contained and isolate the Critical Materials at the Fixed Facility from storm water, other surface waters on the site, and from reactive critical materials present in the same Fixed Facility. ()
 - c. Secondary containment systems must be sized to contain at least one-hundred and ten percent (110%) of the volume of the largest container, or ten percent (10%) of the aggregate volume of all containers, whichever is greater, in any containment area within a Fixed Facility. ()
 - d. The owner or operator of any Fixed Facility shall report the presence of any Critical Materials Use Activities to the responsible local, state, and federal agencies as specified by statutes, rules, and provisions of this rule. ()
 - e. Any spilling, leaking, emitting, discharging, escaping, or leaching of any Critical Material into the secondary containment system or the environment must be reported to Panhandle Health District 1 or the local fire department immediately upon discovery of the release. ()
 - f. Should conflict arise among the applications of local, state rules, and federal regulations regarding Critical Materials Use Activities, the rule that provides the greatest degree of protection to the Aquifer shall prevail, except where legal preemption of regulatory authority by state or federal agencies may require application of a different standard of protection. ()

g. Each Fixed Facility is subject to biennial inspection to verify continued compliance with these rules. ()

06. Violation. Any owner or operator of a Fixed Facility shall be deemed to have violated this rule if: ()

a. A Fixed Facility is operated or if Critical Materials Use Activities are conducted on any site without first procuring a Critical Materials Compliance Certificate or if changes are made to Critical Materials Use Activities at a Fixed Facility as set forth in Section 400.03.b. without reapplying for a CMCC for the Fixed Facility. ()

b. An owner or operator of a Fixed Facility submits knowingly false or incomplete reports to the Panhandle Health District or other responsible agencies or officials concerning the nature or quantity of Critical Materials present at a Fixed Facility governed by this rule. ()

c. An owner or operator fails to implement or maintain secondary containment of Critical Materials at a Fixed Facility as necessitated by this rule. ()

d. An owner or operator fails to comply with time and reporting standards for any Critical Materials Use Activities or fails to report any discharge of Critical Materials into the secondary containment system necessitated by this rule. ()

401. -- 499. (RESERVED)

500. CONTAMINANT MANAGEMENT IN THE BUNKER HILL SUPERFUND SITE, SHOSHONE COUNTY, IDAHO.

01. Legal Authority. The Idaho Legislature has given the Board of Health of the District the authority to promulgate rules governing contaminant management pursuant to Section 39-416, Idaho Code. ()

02. Purpose. The purpose of these rules is to ensure that activities involving excavations, building development, construction and renovation and grading within the Bunker Hill Superfund Site provide for the installation and maintenance of Barriers and implementation of other Contaminant management standards to preclude the migration of, and particularly, human exposure to Contaminants within the Site as necessary to protect the public health and the environment. It is imperative that redevelopment and future development proceed in a manner which minimizes the release of Contaminants into the air or water to minimize exposure to workers, Site residents and the communities. Further, it is the purpose of these rules to complement existing land use authorities and permitting processes, and to provide a screening process to determine whether proposed activities are subject to these rules. ()

03. Definitions. The following terms are defined as follows: ()

a. Applicant. Any person, contractor, public utility, government or other entity that is required to apply for an ICP Permit. ()

b. Barrier. Any physical structure, material or mechanism which breaks the pathway between contaminants and human receptors, including but not limited to walls, floors, ceilings, soil, asphalt, concrete, fences, control over access, or other structure or covering which separates contaminants from contact with people or keeps contaminants in place. ()

c. Board. The Board of Health of the District. ()

d. B.O.P. Barrier Option Plan, which will be provided by an Applicant when required; such plans needs to set forth the location and type of Barrier which the Applicant intends to construct as part of the permitted work. ()

- e.** Building Renovation. Construction activity to be performed on any structure involving any ceiling or insulation removal or disturbance of soil in basements or crawl spaces. ()
- f.** Contaminants. Soil or other materials containing, or likely to contain, lead in excess of the levels established in Section 510 of these rules. ()
- g.** Director. The Director of the District. ()
- h.** Disposal. The placement of Contaminants into an authorized permanent repository. ()
- i.** District or PHD. The Idaho Public Health District No. 1 (also the Panhandle Health District). ()
- j.** Excavation. Any digging, breaching or disruption of a soil or other protective Barrier which may expose Contaminants to the environment. ()
- k.** Hearing Officer. A lawyer, engineer or other professional trained in conducting hearings, appointed by the Board for purposes of conducting hearings authorized by these rules. ()
- l.** ICP. The Institutional Controls Program for the Site. ()
- m.** ICP Permit. The Contaminant management authorization for projects subject to these rules. ()
- n.** Large Project. A project within the Site where one (1) cubic yard or more of soil containing Contaminants is disturbed or removed. Large Projects also include, but are not limited to, new building construction, demolition of existing buildings and construction of subdivisions and planned unit developments (PUD's) (and the infrastructure necessary to serve them) and construction within and maintenance of rights-of-way. ()
- o.** Owner. Any person, partnership, or corporation having ownership, title, or dominion over property for which an ICP permit is sought. ()
- p.** Record of Compliance. The record maintained by the District pursuant to Section 011 of these rules for Small Projects. ()
- q.** Site. The Area within the boundaries of the Bunker Hill Superfund Site Allocation Map dated December 10, 1993 attached as Appendix 1 to these rules. ()
- r.** Small Project. A project where less than one (1) cubic yard of soil containing Contaminants is disturbed or interior work that is not Building Renovation. ()
- s.** Working Day. Monday through Friday, but does not include any holiday recognized as such by the state of Idaho. ()
- 04. Statement of Intent.** It is the intent of Idaho Public Health District No. 1 (the 'District') to work with local governments, the state of Idaho, the United States Environmental Protection Agency and private parties in managing Contaminants within the regulated area by way of an Institutional Controls Program (herein referred to as the ICP). These rules establish standards for Barrier installation and maintenance, and other Contaminant management practices. These rules govern management of Contaminants by: ()

 - a.** Requiring ICP permits and requiring barriers for certain construction and excavation activities; ()
 - b.** Licensing contractors, utilities, and government entities which may disrupt or install Barriers, or otherwise disturb Contaminants; ()
 - c.** Adopting performance standards; ()

- d. Inspecting for project compliance as required; ()
 - e. Regulating the movement and disposal of Contaminants; ()
 - f. Making it unlawful to knowingly disrupt a barrier in a fashion likely to expose persons to contaminants. ()
- 05. Additional Provisions by District.** In conjunction with these Rules it is the intent of the District to provide, as needed: ()
- a. Technical assistance and testing; ()
 - b. Health screening and intervention; ()
 - c. That there will be a readily available repository for Contaminants; ()
 - d. Clean soil to restore Barriers for Small Projects; ()
 - e. Disposal containers to assist in removing contaminated soil for Small Projects and transport and disposal of such soil; ()
 - f. Health and safety information and education to licensees and the public; ()
 - g. Plastic, gravel and use of vacuums for interior projects; ()
 - h. A database tracking system to assist the public, lenders, and potential purchasers of property within the Site; and ()
 - i. Guidelines for managing Contaminants. ()

501. -- 509. (RESERVED)

510. THE BUNKER HILL SUPERFUND SITE; APPLICATION OF REGULATIONS.

These rules apply to the Bunker Hill Superfund Site in Shoshone County, Idaho, more particularly as shown on the Bunker Hill Superfund Site Allocation Map identified as Appendix 1 to these rules. These rules do not apply to operations undertaken at the direction of, under the supervision of, and subject to inspection by, the United States Environmental Protection Agency. ()

01. Standards Adopted. ()

- a. All Barriers now or hereinafter constructed within the Site shall be maintained and protected. ()
- b. Except as otherwise provided in this section, Contaminant management is required in connection with any Large or Small Project or Building Renovation involving the breaching or disturbance of a Barrier or the disturbance or migration of Contaminants exceeding one thousand (1000) ppm lead. ()
- c. No new PUD or subdivision may be occupied where the average concentration of Contaminants exceeds three hundred fifty (350) ppm lead or a single lot exceeds one thousand (1000) ppm lead without Contaminant management on any portion of the property that exceeds these levels. ()
- d. As necessary to protect public health and the environment, PHD may impose Contaminant management requirements, other than Barrier installations, on projects where soils exhibit lead concentrations in excess of three hundred fifty (350) ppm lead, particularly where a property has been remediated with either six (6) or twelve (12) inches of clean fill but Contaminants in the three hundred fifty to one thousand (350 - 1000) ppm lead range remain below the six (6) or twelve (12) inch depth and those Contaminants may be disturbed by a Large or

Small Project. ()

e. No person may conduct, except in accordance with these rules, any activity within the Site which breaches a Barrier, may breach a Barrier, or disturbs the same, or otherwise results in a threat to public health or the environment from the migration of Contaminants through tracking on tires or vehicles, visible airborne dust, excavation, transport, disposal, remodeling, demolition, or run-on or run-off from stormwater or in any other manner. ()

02. Barriers; Construction and Maintenance. ()

a. Barriers are required as necessary to attain the standards described in Section 510. Temporary Barriers also may be required to prevent the migration of Contaminants during construction activities. ()

b. Types of acceptable Barriers for specific uses and activities are set forth in Appendices 3, 4, and 5. ()

c. All twelve (12) inch permanent permeable exterior Barriers required to be installed under the ICP which overlay soils having lead levels in excess of one thousand (1000) ppm shall have an underlying visual delineator at the twelve (12) inch depth. Visual delineators are not required if the soil underlying the Barrier has tested under one thousand (1000) ppm lead. Permanent impermeable Barriers such as concrete and asphaltic concrete do not require delineators. ()

d. The minimum Barrier requirements for residential properties and other properties that are frequently used by children (zero (0) to twelve (12) years) and/or pregnant women are as follows: ()

i. All soil which contains lead in excess of one thousand (1000) ppm and lies within twelve inches (12") of the final grade shall be removed, replaced, or covered as appropriate with clean earthen material such that, after all work is completed, the soil remaining in the top twelve inches (12") has less than one thousand (1000) ppm lead. Replacement material must meet the requirements listed in Section 008.06. Acceptable soil removal and Barrier thicknesses for these properties are set forth in Appendix 6. ()

ii. Any such property with unrestricted access to an adjacent property not meeting the requirements of Subsection 510.02.a. shall restrict access to such adjacent property. ()

e. The minimum Barrier requirements for properties that are not frequently used by children (zero (0) to twelve (12) years) and/or pregnant women are as follows: ()

i. All soil which contains lead in excess of one thousand (1000) ppm and lies within six inches (6") of the final grade shall be removed, replaced, or covered as appropriate with clean earthen material such that, after all work is completed, the soil remaining in the top six inches (6") has less than one thousand (1000) ppm lead, and the replacement material meets the requirements listed in Section 510.02.f. ()

ii. Acceptable soil removal and Barrier thicknesses for these properties are set forth in Appendix 7. ()

f. No earthen materials containing, on average, more than one hundred (100) ppm of lead or arsenic, nor more than five (5) ppm of cadmium, with no individual sample containing more than one hundred fifty (150) ppm of lead, shall be utilized for a Barrier. ()

g. Should any inconsistency exist between the wording of these rules and the wording in any appendix, the wording in the rule supercedes the wording in the appendix. ()

03. ICP Permits. ()

a. ICP Permits are required for: ()

i. Large projects; ()

ii. Building renovations. ()

b. A permit is required for a change in use of property which has Contaminants located thereon to a use which requires an additional or more substantial Barrier; constructing or establishing such additional Barriers shall be required, unless waived by the District. ()

c. A single annual permit covering a specific list of projects may be obtained from the District by entities eligible under Section 015 at the beginning of each year's construction season. ()

511. CONTAMINANT MANAGEMENT RULES IN THE BUNKER HILL SUPERFUND SITE OPERABLE UNIT #3 INSTITUTIONAL CONTROLS ADMINISTRATIVE AREA, SHOSHONE AND KOOTENAI COUNTIES, IDAHO.

01. Purpose. The purpose of these Rules is to ensure that activities associated with excavation and grading such as infrastructure development and maintenance; building construction and renovation; and land development, redevelopment and/or modification within the Institutional Controls Administrative Area of the Bunker Hill Superfund Site Operable Unit #3 (OU-3) provide for the construction and maintenance of Contaminant Barriers and implementation of other Contaminant management requirements to preclude the release and migration of Contaminants as necessary to protect the public health and the environment. It is imperative that current and future development and construction activities proceed in a manner which minimizes the release of Contaminants into the environment to minimize exposure to Area residents, communities, to workers involved in Area project work, and to environmental receptors. Further, it is the purpose of these Rules to complement existing land use regulations and permitting processes, and to provide a screening process to determine whether proposed activities are subject to these Rules. These Rules will rely upon procedures and provisions applicable to the Institutional Controls Program set forth in Section 500 of these rules. Differences identified in Sections 511 and 512 of these rules, is deemed applicable only to the lands encompassed by OU-3. ()

02. Implementation Policy and Standards. Implementation policy and standards which pertain to the interpretation and enforcement of these Rules or to the documentation of compliance with these Rules have been developed by PHD and are available for inspection and/or copying at cost at the PHD office, 35 Wildcat Way, Kellogg, ID 83837. ()

03. Definitions. The following terms are defined as follows: ()

a. Agricultural Land. Land used for pasturing animals or for cultivation and production of agricultural crops including conservation reserve activities. ()

b. Applicant. Any person, contractor, public utility, government or other entity that is required to apply for an Institutional Controls Program (ICP) Permit. ()

c. Access Restrictions. Physical barriers such as fences, barricades, curbs, barrier rocks, trenches, etc. that provide restricted access by vehicles, pedestrians, and animals to contaminated areas. ()

d. Barrier. Any physical structure, material or mechanism which acts to break the pathway between Contaminants and human receptors, including but not limited to soil, crushed aggregate/gravel, asphalt and Portland cement concrete, fences, access restrictions, or other structure or covering which separates Contaminants from contact with people or keeps Contaminants in place. ()

e. Board. The Board of Health of the Idaho Public Health District No. 1. ()

f. B.O.P. Barrier Option Plan, a plan which will be provided by an Applicant, when required, that sets forth the location and type of Barrier which the Applicant intends to construct as part of the permitted work. ()

g. Building Construction. Construction activity to be performed for any new structure involving disturbance of soil in excess of one cubic yard. ()

- h.** Building Renovation. Construction activity to be performed on any existing structure involving ceiling or insulation removal, work in dirt crawl spaces or basements, or disturbance of soil in excess of one cubic yard. ()
- i.** CERCLA. Comprehensive Environmental Response, Compensation, and Liability Act. ()
- j.** Commercial Property. Retail, wholesale and secondhand businesses; public and common use areas; public buildings; and undeveloped properties accessed by a maintained road or street and zoned for commercial development as of the date of promulgation of these Rules. ()
- i.** Type I. Commercial Property predominantly used by Sensitive Populations (e.g. daycare facilities, municipal parks, playgrounds, etc.) ()
- ii.** Type II. All other Commercial Property. ()
- k.** Contaminants. Soil or other material containing, or likely to contain, concentrations of lead equal to or greater than one thousand (1000) ppm or concentrations of arsenic equal to or greater than one hundred (100) ppm. ()
- l.** Developed Recreation Area. Commercial and public recreation areas containing constructed features such as boat ramps, picnic areas, and campgrounds outside the city limits of incorporated communities in the Coeur d'Alene River corridor as defined in Subsection 511.04.s. of these rules. The Developed Recreation Areas of the Trail of the Coeur d'Alenes includes all constructed trail surfaces, stop and views, oases (rest stops) and trailheads, exclusive of all undeveloped areas within the trail right of way. ()
- m.** Director. The Director of the Idaho Public Health District No. 1. ()
- n.** Disposal. The placement of Contaminants into an authorized repository. ()
- o.** Environmental Office. PHD office in Kellogg, ID. ()
- p.** Excavation – Any digging, breaching or disruption of soil not including cultivation of Agricultural Lands and gardens or mining activities regulated under other state and federal programs which may release or expose Contaminants to the environment. ()
- q.** Health Officer. The Director or designee. ()
- r.** Hearing Officer. An attorney, engineer or other professional trained in conducting hearings, appointed by the Board for purposes of conducting hearings authorized by these Rules. ()
- s.** Institutional Controls Administrative Area. The Area designated by the Administrative Area Map in Appendix 2 which includes areas of mining, milling, and smelting related contamination in the South Fork of the Coeur d'Alene River corridor from its headwaters to the confluence with the North Fork Coeur d'Alene River and from the confluence of the North and South Fork to the mouth of the River and its confluence with Coeur d'Alene Lake including adjacent floodplains, tributaries, and fill areas. The Area also includes the Trail of the Coeur d'Alenes inside and outside the administrative boundary indicated on the map in Appendix 2 except that portion within the exterior boundaries of the Coeur d'Alene Indian Reservation. The Area does not include any area within OU-1 and OU-2 (Box) which has a separate ICP, or any other area excluded under this rule. The Area also includes areas in the Coeur d'Alene River corridor, as defined above, outside the administrative boundary indicated on the map in Appendix 2 where testing has verified that Contaminants related to mining, milling, and smelting have come to lie and remediation is required. ()
- t.** ICP. The Institutional Controls Program for the Institutional Controls Administrative Area as defined in Subsection 511.05.s. of these rules. ()
- u.** ICP Permit. The Contaminant management authorization for projects subject to these Rules. ()

v. Infrastructure. Facilities such as trails, roads, streets, highways, bridges; storm water, drinking water, and wastewater systems; flood prevention systems including dikes and levees; and utilities including electrical power and natural gas systems. ()

w. Large Project. A project where one cubic yard or more of soil containing Contaminants is disturbed or removed. Large Projects include, but are not limited to, infrastructure construction and maintenance, building construction, renovation, and demolition, land development or any change in the use of land that may result in the release or migration of Contaminants. ()

x. Owner. Any person, partnership, or corporation having ownership, title, or dominion over property for which an ICP permit is required. ()

y. PHD. The Idaho Public Health District No. 1 (also the Panhandle Health District). ()

z. PUD. Planned Unit Development. ()

aa. Record of Compliance. The record maintained by the PHD pursuant to Section 523 of these rules for Small Projects. ()

bb. Release. Any excavation, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, dumping, or disposing of Contaminants into the environment. ()

cc. Residential Property. Property used by private individuals or families as a residence, and undeveloped properties accessed by a maintained road or street and zoned for residential development as of the date of promulgation of these Rules. ()

dd. Sensitive Populations. Pregnant women and children up to twelve (12) years old. ()

ee. Small Project. A project where less than one (1) cubic yard of soil containing Contaminants is disturbed or interior work that is not Building Renovation. ()

ff. Trail of the Coeur d'Alenes. All Developed Recreation Areas and undeveloped areas within the former Union Pacific Railroad Mullan and Wallace Branch right of way. ()

gg. Working day. Monday through Friday, excluding any legal holiday recognized as such by the State of Idaho. ()

04. Statement of Intent. It is the intent of the PHD to work with local governments, the State of Idaho, the United States Environmental Protection Agency, Federal Land Management Agencies (Bureau of Land Management, USDA Forest Service), Coeur d'Alene Tribe, and private parties in managing Contaminants within the regulated Institutional Controls Administrative Area by way of an ICP. These Rules establish standards for Barrier construction and maintenance, and other Contaminant management practices. These Rules do not address financial liability for Contaminant management resulting from a failure of a CERCLA remedy due to a natural disaster. These Rules govern management of Contaminants by: ()

a. Requiring ICP permits and requiring barriers for certain construction and excavation activities; ()

b. Licensing contractors, utilities, and state and local government entities which may disrupt or construct Barriers, or otherwise disturb Contaminants; ()

c. Adopting performance standards; ()

d. Inspecting for project compliance as required; ()

e. Regulating the movement and disposal of Contaminants; ()

f. Making it unlawful to knowingly disrupt a barrier in a fashion likely to expose persons or the environment to Contaminants; ()

g. Maintaining records of ICP activities. ()

05. Additional Provisions by PHD. In conjunction with these Rules it is the intent of the PHD to provide, depending on project size and complexity and at the discretion of PHD: ()

a. Technical assistance and soil testing; ()

b. Health screening and intervention; ()

c. Readily available repositories for disposal of Contaminants; ()

d. Clean material to restore Barriers for Small Projects; ()

e. Disposal containers for Small Projects to assist in removal, transportation and disposal of contaminated soil; ()

f. Health and safety information and education to licensees and the public; ()

g. Sheet plastic, crushed aggregate and gravel, or other items as appropriate; ()

h. A database tracking system to assist the public, lenders, and prospective purchasers of property within the Institutional Controls Administrative Area; ()

i. Guidelines for managing Contaminants. ()

512. APPLICATION OF REGULATIONS; INSTITUTIONAL CONTROLS ADMINISTRATIVE AREA. These Rules apply to the Institutional Controls Administrative Area as defined in Subsection 511.05.s. of these rules. These Rules do not apply to the direct operations of the United States Environmental Protection Agency including directing, supervising, and inspecting project work or on lands owned or otherwise under the jurisdiction, custody and control of the Coeur d'Alene Tribe or the Federal Land Management Agencies such as the USDA Forest Service and the Bureau of Land Management. These Rules do not apply to the Union Pacific Railroad or its contractors when conducting activities within the Trail of the Coeur d'Alenes pursuant to the requirements of the Consent Degree entered August 25, 2000 by the United States District Court for the District of Idaho (Case Nos. 91-0342 and 99-606). ()

01. Standards Adopted. ()

a. Except as otherwise provided in Section 512 of these rules, contaminant management is required on all properties within the Institutional Controls Administrative Area including properties that have been remediated; properties tested and scheduled for remediation; properties not yet tested; and properties testing below action levels in the top eighteen (18) inches where Large or Small Projects may disturb Contaminants below eighteen (18) inches in excess of one thousand (1000) ppm lead or one hundred (100) ppm arsenic. Contaminant management may include testing of untested areas by the Applicant; testing of deep soils (below eighteen (18) inches) by the Applicant where a project may result in deep excavations; and replacement and repair of remediation Barriers in accordance with Subsection 512.02 of these rules; or other management activities. Contaminant Management on Residential Properties and Commercial Properties existing as of the date of promulgation of these Rules and requiring remediation, but not yet remediated will not require construction of final barriers in accordance with Subsection 512.02 of these rules, by the owner, but may require dust, erosion, health and safety and temporary cap controls to prevent further migration onto lands of others. Final barrier construction will be the responsibility of the state of Idaho and United States Environmental Protection Agency if needed. Applicant performed soil testing will be conducted consistent with sampling and analytic procedures developed by PHD. ()

b. Developed Recreation Areas with surface soil containing lead concentrations greater than seven

hundred (700) ppm lead and one hundred (100) ppm arsenic shall be capped pursuant to Subsection 512.02.c. of these rules. ()

c. Agricultural and undeveloped land within the Institutional Controls Administrative Area are exempt from these Rules unless excavation and grading activities such as soil transport off site or development by the owner or his/her agents on these lands is likely to result in the release or migration of Contaminants from these lands to adjacent non-agricultural or undeveloped areas. ()

d. All Barriers existing or hereinafter constructed shall be maintained and protected to original construction specifications. ()

e. No new PUD or subdivision containing concentrations of Contaminants exceeding one thousand (1000) ppm lead or one hundred (100) ppm arsenic shall be developed without Contaminant management. ()

f. No person may conduct, except in accordance with these Rules, any activity within the Institutional Controls Administrative Area which breaches a Barrier, may breach a Barrier, or disturbs the same, or otherwise results in a threat to public health or the environment from the migration of Contaminants through tracking on tires or vehicles, visible airborne dust, excavation, transport, disposal, renovation, demolition, or run-on or run-off from stormwater or in any other manner on properties tested and requiring remediation and on properties not yet tested within the Institutional Controls Administrative Area ()

02. Barriers; Construction and Maintenance. ()

a. The minimum Barrier construction requirements for Residential and Type I Commercial Properties are as follows: ()

i. All soil which contains lead equal to or in excess of one thousand (1000) ppm or arsenic equal to or in excess of one hundred (100) ppm and lies within twelve (12) inches of the final grade shall be removed and replaced with replacement material meeting the requirements of Subsection 512.02.d. of these rules. ()

ii. Any such property with unrestricted access to an adjacent property not meeting the requirements of Subsection 512.01.a. of these rules, shall restrict access to such adjacent property. ()

b. The minimum Barrier construction requirement for Type II Commercial Properties is a six (6) inch soil with vegetative cover barrier or six (6) inch crushed rock/gravel barrier or asphalt/Portland cement concrete cap. Excavation may be necessary for the installation of barriers to maintain grade or drainage requirements. ()

c. The minimum Barrier construction requirement for Developed Recreation Areas is a six (6) inch soil with vegetative cover barrier or six (6) inch crushed rock/gravel barrier or asphalt/Portland cement concrete cap. Excavation may be necessary for the installation of barriers to maintain grade or drainage requirements. ()

d. All twelve (12) inch deep Barriers of soil or crushed rock/gravel required pursuant to the ICP which overlay soils having concentrations of lead equal to or greater than one thousand (1000) ppm or arsenic concentrations equal to or greater than one hundred (100) ppm shall have an underlying visual delineator at the twelve (12) inch depth. Visual delineators are not required if the soil underlying the Barrier has tested under one thousand (1000) ppm lead and one hundred (100) ppm arsenic. Cap Barriers such as Portland cement and asphalt concrete do not require delineators. ()

e. Soil and crushed aggregate/gravel imported for barrier material shall contain less than one hundred (100) ppm lead, thirty five (35) ppm arsenic and five (5) ppm cadmium based on average of backfill sampling results. No single sample of replacement materials may exceed one hundred fifty (150) ppm lead or forty five (45) ppm arsenic. ()

f. Barriers needs to be maintained and repaired to original construction specifications. ()

g. Contaminated waste material generated in the construction, maintenance and repair of Barriers shall be disposed of in designated repositories or as directed by PHD. ()

03. ICP Permits. ()

a. Permits are required for Large Projects and Building Renovations. ()

b. A permit is required for a project which changes the use of a property containing Contaminants. A new Barrier or additional or more substantial Barrier may be required unless waived by the PHD. ()

c. A single annual permit covering a specific list of projects may be obtained from the PHD by entities eligible under Section 531 of these rules, at the beginning of each year's construction season. ()

513. -- 519. (RESERVED)

520. PERMIT APPLICATION AND ADMINISTRATION.

01. Application for ICP Permit. Application for an ICP Permit shall be made in writing at the Kellogg office of the District on forms provided by the District. ()

02. Applicant Information. All Applicants shall provide the following information when applying for an ICP Permit with the District: ()

a. Name, address and telephone number of the Applicant and the property owner. ()

b. Location of the work and whether the work is being done on private or public property, or both. ()

c. Description of work. The description must include methods of handling or storing, and transporting contaminated materials. A site plan may be required by the District if one has not been provided pursuant to the permit process. ()

d. Dates work will be started and completed. ()

e. Such other information as the District requires. ()

03. Use of Discretion on Requirements by District. The District may, at its own discretion, waive certain application requirements or information, or require additional or alternative actions or information, depending upon the type and extent of the project and conditions encountered. In no instance may a waiver violate the intent of this rule and/or the Record of Decision for the relevant Operable Unit. ()

04. Site Inspection or Waiver When Permit Required. Work requiring a permit may not commence until a site inspection has been made or waived by the District and a permit has been issued. ()

05. Other Inspections and Requirements. All permits granted pursuant to this Rule remain subject to such other inspections and requirements prescribed by state or local governments. ()

06. Work Involving Public Right-of-Way. If the permit involves work within any public right-of-way, the appropriate agencies must be notified of the work by the entity receiving the permit. ()

521. INSPECTION.

The Applicant shall notify the District by telephone when work is completed. Applicants shall call for inspection in accordance with the terms of the permit; forty-eight (48) hours notice (excluding weekends and holidays) to PHD needs to be provided. The inspector will note approval of the work in writing and enter same in the database tracking system, or note reasons for disapproval and steps which must be taken to complete the work. Upon completion of the work to the District's satisfaction, the District's final approval will be noted in the database tracking system. Such entry constitutes the Record of Compliance for such project. All work governed by these regulations is subject to inspection by the District or its designated agents and it is unlawful to obstruct or hinder any official, inspector or designated agent making an inspection. The District may obtain an inspection warrant if access to the property is

refused. The District reserves the right to waive the inspection requirement. ()

522. PERMIT REVOCATION OR STOP WORK ORDER.

Any Permit may be revoked or a Stop Work Order may be issued, without notice by the District, for non-compliance with or violation of any of the provisions of this chapter or any requirement or limitation of the Permit. If a Permit is revoked, the District may take such steps as are necessary to eliminate any danger from contamination, including completion of work by the District. The Applicant, contractor and/or Owner may be required to pay all costs and expenses for abatement of any danger and/or completion of the project, including legal fees incurred by the District to obtain compliance. The District will endeavor to provide written notice, but reserves the right to act summarily to protect public health and the environment. ()

523. RECORD OF COMPLIANCE.

A Record of Compliance for Small Projects which documents compliance with the performance standards established by these rules will be entered into the database tracking system based upon an inspection requested of PHD by the property owner or tenant. The Record signifies the property owner or tenant was informed of and provided with applicable performance standards and guidelines and materially complied with the same. ()

524. -- 529. (RESERVED)

530. CONTRACTOR LICENSING.

01. License Required. Any contractor performing Large Projects, Building Renovation or transportation or disposal of Contaminants within the Site or the Institutional Controls Administrative Area which is likely to expose the contractor, workers or others to Contaminants, must be licensed by the District. There will be no charge for a contractor's license. It is unlawful for a contractor to work on a project requiring an ICP permit without a current contractor's license issued by PHD. A contractor's license will not be required of an owner working on his or her own property. ()

02. Training. In order to obtain a contractor's license from the District, the Contractor must have those supervisors involved in activities dealing with Contaminants participate in training approved by the District and pass an annual examination focusing on the reasons for, and methods of, controlling Contaminants. The purpose of the examination is to assure that all of the Contractor's employees are aware of and observe the procedures and standards that will protect themselves and the public from the Contaminants. The District will create and administer the test. The trained supervisor must pass information on to employees as is necessary to protect their health and safety and assure compliance with these rules. The District will provide training which owners and employees may participate in. ()

03. Bonding. Any contractor whose license has been revoked by the District within the past three (3) years must, as a condition of reinstatement and maintaining the status of a licensed contractor, be bonded in the minimum amount of two-thousand dollars (\$2000). Said bond shall be at least five percent (5%) of the cost of any contract the contractor is engaged in whichever is greater, be in a form approved by the District, and must be suitable to insure payment for completion of Barrier work not completed by the Contractor. A cash deposit or other security acceptable to the District may be utilized in lieu of a bond. The District may establish a bonding program for all contractors, if deemed necessary to carry out these Rules. ()

04. Suspension or Revocation of License. ()

a. Upon a showing that a licensee has violated any provision of these Rules, or has violated any other health or building code within the boundaries of the Site or Institutional Controls Administrative Area, suspension or revocation of license may be imposed. Suspension may be made by any District health officer. Revocation may be made by the Director upon recommendation of the District health officer. Notification of suspension or revocation must be in writing. No suspension may be made for more than thirty (30) days without approval of the Director. Revocation of license may be made by the Director upon a showing of good cause. ()

b. Appeal. Suspension or revocation may be appealed by the licensee to the Board in writing within thirty (30) days of receipt of notice of suspension or revocation. Appeal stays the suspension or revocation unless the Director makes a finding that such stay is likely to present a health risk to a person or persons. ()

c. Any decision by the Board pertaining to a suspension or revocation of a license may be made only after a licensee has been accorded an opportunity for hearing at which the licensee has a right to appear and be heard, to be represented by counsel, to testify, to present evidence, to call witnesses and to rebut any evidence presented. A transcribable recording of all such hearings will be made and retained for at least six (6) months. Such hearing may be conducted by a hearing officer designated by the Board or by the Board itself. ()

d. If a license is revoked, the contractor may, upon payment of any cleanup or remediation costs related to past work, reapply for reinstatement of license after one (1) year, however, a contractor whose license has been revoked may not obtain a new license under a different corporate or partnership status until this provision is satisfied. ()

531. LICENSES FOR PUBLIC UTILITIES AND GOVERNMENT ENTITIES.

Upon a demonstration that supervisory employees of a public utility or government entity (city, county, special purpose district, or state of Idaho) have participated in an education program approved by, or provided by, the District, a utility company or government entity may receive an annual license which will allow their employees to perform excavation and grading operations without obtaining individual ICP permits. This license may be granted by the District and will require that the utility comply with performance standards and all other regulations contained herein or adopted by Resolution of the Board. All supervisory employees involved in and responsible for excavation and grading operations shall have participated in a District approved education program. The trained supervisor must pass information on to employees as is necessary to protect their health and safety and assure compliance with these rules. The District will provide training which owners and employees may participate in. Entities licensed under this section shall maintain a log of all excavations and grading operations on a form approved by the District. Such logs need to be forwarded to the District on a regular basis determined by the District. All licensees shall telephone the Shoshone or Kootenai County one-call locating service, as appropriate, prior to any excavation or grading operations. Licenses shall be renewed annually upon a showing that the utility or government entity has operated in compliance with this rule. This license may also be revoked as provided in Subsection 530.04. ()

532. -- 539. (RESERVED)

540. PERFORMANCE OF WORK.

01. Completion of Work. All work done pursuant to an ICP Permit shall be completed in a neat and workmanlike manner and so scheduled as to cause the minimum interference with traffic or public use (if applicable) and a minimum dispersal of Contaminants. ()

02. Work Delayed by Applicant. If the work is unduly delayed by the Applicant, and if the public interest reasonably so demands, the District has the authority, upon twenty-four (24) hours' written notice to the Applicant, to complete the work to the extent that the Barrier is restored and any hazardous material covered or removed. The actual cost of such work by the District (including legal fees), plus fifteen percent (15%) as an overhead charge, shall be charged to and paid by, the Applicant and/or the Owner. ()

541. PERFORMANCE STANDARDS.

The Board will adopt, and from time to time amend, performance standards by Resolution; said standards to ensure that work is performed in a safe and responsible manner and specify how work will be completed. Said standards shall be applicable to, but not be limited to, the following: materials handling; dust control; erosion/runoff control; disposal; transportation; barrier construction; demolition; renovation; grading; and subdivision development. Performance standards so adopted will not amend any standard adopted within these rules, and these rules apply should any conflict arise between a rule and a performance standard. ()

542. APPROVAL OF ALTERNATIVE STANDARDS.

Any person aggrieved by the substantive requirements of these rules or the performance standards, may appeal these requirements by providing a written request for approval of an alternative standard. The appeal shall be accompanied by an engineering report indicating why the appealing party should be relieved of the requirement for compliance or why the requested alternate standard is appropriate. At the Applicant's expense, the District may consult with its own engineer to confirm the applicability of these rules to the proposed project. The District health officer may approve an alternate standard where such approval does not jeopardize the public welfare or existing Barriers. The decision of

the District health officer will be in writing, stating the reasons therefor. ()

543. OWNER AND APPLICANT RESPONSIBILITY FOR CLAIMS AND LIABILITIES.

Both the Owner and the Applicant are responsible to ensure that all rules contained herein are complied with. Applicant is responsible for all claims and liabilities arising out of work performed by the Applicant under the ICP Permit or arising out of the Applicant's failure to perform obligations with respect to these regulations. Owner is responsible for all claims and liabilities for work done by the Owner with or without a permit and for work done at the direction of the owner without a permit. Owner remains responsible to complete the project or restore the premises to a safe condition to the satisfaction of the District should the Applicant fail to complete or restore it. ()

544. -- 899. (RESERVED)

900. ADMINISTRATIVE PROCEDURES, EXCEPTIONS, PENALTIES.

01. Responsibility of Permit Applicant. It is the responsibility of any person applying for, or required to apply for, a permit by this Code, to show affirmatively, by all reasonable means, that his undertaking complies with this Code or with any related rules, statutes, or ordinances. ()

02. Permit Revocation. Any permit or permission, actual or implied, granted by the Health Officer or his predecessors may be revoked, for cause, by written notice sent to the permit holder or his agent. Any person, association, or corporation who continues to act under such permit or permission actual or implied, more than ten days after the sending or delivery of notice of revocation is presumed to be in violation of this code and subject to the penalties provided herein. ()

03. Variance Standards. A variance may be granted only upon an affirmative showing by an applicant that a unique and undue hardship is caused by a physical characteristic of a site that is not of the applicant's making and that approval of the variance would not be contrary to the public interest or to the purposes of the Code. ()

04. Variance Procedures. ()

a. An applicant for a variance shall obtain a Variance Application Form from Panhandle Health District 1 and, after completing the application form, return it to the Environmental Office. The Variance Application shall require the applicant to provide, in addition to information required by the application form itself, the following: ()

i. An accurate site plan showing development of the site in question, present and proposed, depicting all features relevant to the variance request. The Director, or his designee, shall identify information necessary to proper processing of the request if information other than that normally required needs to be supplied. The applicant shall describe the current and proposed use of the site in question. ()

ii. A narrative statement addressing the efforts, including consideration of design alternatives, which the applicant has undertaken to comply with the rule from which a variance is sought. ()

iii. A narrative statement explaining the nature of the hardship, if any, imposed by literal compliance with the rule in question. ()

iv. A narrative statement explaining the effects of the requested variance on the interests of adjoining landowners and/or of the public at large. ()

v. A narrative statement detailing what use could be made of the site in question if the requested variance were not granted. ()

b. The completed Variance Application shall be returned to the Environmental Office accompanied by an initial filing fee as established by the Board. The completed application shall be submitted to the Panhandle Health District 1 Hearing Officer who will determine whether, on its face, it sets forth a colorable claim for a variance from the Code. If the Hearing Officer determines that the application does not set forth a colorable claim for variance, he

will return the application to the applicant with a written explanation of the action taken. Said initial determination and the accompanying explanation will be forwarded to the Board which will act upon the Hearing Officer's initial determination by affirming it or remanding it to the Hearing Officer for further proceedings. ()

c. If the Hearing Officer determines that the application presents a colorable claim for a variance, he shall return the application to the Environmental Office with instructions to prepare a notice of public hearing concerning the requested variance. The applicant shall pay an additional processing fee if the Hearing Officer makes such a finding. Said fee may be adjusted as with all other Panhandle Health District 1 fees in accordance with a sliding scale coordinated with Federal poverty standards. ()

d. The Environmental Office staff will notify the applicant that his application has passed the initial screening and that the names and mailing addresses, on self-adhesive labels, of all owners of land located within three hundred (300) feet of the external boundaries of the site in question must be provided. Said names will be provided or checked by a land title company or other business whose commercial purpose it is to provide such information. The applicant is solely responsible for the accuracy of such information. ()

e. Using the mailing list provided by the applicant, notice of public hearing will be sent by first class mail and posted on the site in question in a conspicuous manner. The Environmental Office will maintain records verifying completion of the notification process. Mailing and posting shall be accomplished at least fifteen (15) days prior to the date of the hearing established by the Hearing Officer. ()

f. Upon the appointed date, the Hearing Officer shall conduct a public hearing concerning the variance request. The applicant, Panhandle Health District 1 staff, interested members of the public, and public agency representatives will be allowed to participate in such hearing. The Hearing Officer may establish time limits or other rules of procedure to expedite hearing of the request. The Hearing Officer shall establish a record of the hearing and see that a tape recording is made of the proceedings. Exhibits shall be identified in the record in order that they may be associated with the taped record of the hearing. ()

g. Upon completion of the hearing and compilation of the record in each application, the Hearing officer shall prepare a recommended decision which is transmitted to the Board for final action. The Hearing Officer may recommend that the application be approved, be approved with conditions, or that the application be disapproved. His recommendation shall set forth facts found relevant to the decision, legal principles applicable to the recommended ruling, and conclusions drawn from the hearing process. ()

h. At its next regular meeting, or as soon as the application can be placed upon its agenda, the Board will consider the record compiled and the Hearing Officer's recommendation and decide the request without further hearing by the Board. The Board may accept the recommendation of the Hearing Officer, may reverse the recommendation, or may modify the recommended decision for reasons to be found in the record. If the Board modifies or reverses the Hearing Officer's recommendation it shall set forth its reasons for doing so in writing with reference to parts of the compiled record or conclusions drawn therefrom. The Board may also elect to remand the request to the Hearing Officer for clarification or for further hearings to obtain information the Board deems essential. Confirmation of the Hearing Officer's recommendation may be accomplished by Board action adopting the Hearing Officer's decision as its own. Appeals from Board action may be taken in accord with provisions of Section 39-418, Idaho Code. ()

901. (RESERVED)

902. VIOLATION AND ENFORCEMENT.

Violation of any provision of these rules is subject to the following enforcement procedures: ()

01. Violation of Rules. Any person, association, or corporation, or the officers thereof, violating any of the provisions of these rules is deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding three hundred dollars (\$300), or by imprisonment in the county jail for a term not exceeding six (6) months, or by both such fine and imprisonment. ()

02. Liability of Violator. In addition to fine and imprisonment, any person, association, or corporation, or the officers thereof found to be in violation of these rules is liable, by civil action or restitution, for any expense

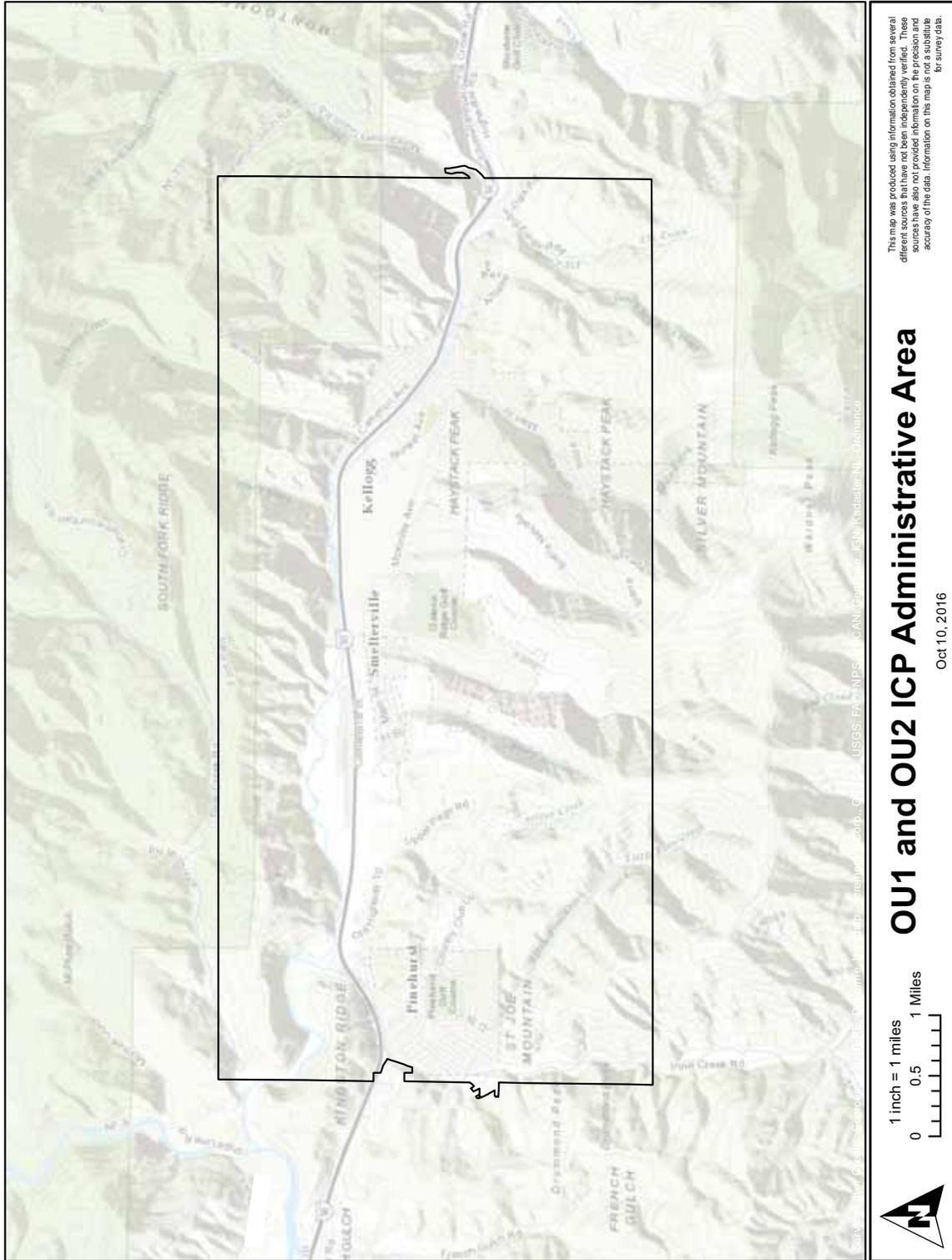
incurred by the District in enforcing this act, or in removing or terminating any nuisance or health hazard. ()

03. Other Action. Any person, association, or corporation, or the officers thereof is additionally subject to civil court action, including an injunction or restraining order, and to such penalties, costs, or fees as may be necessary to compel compliance. ()

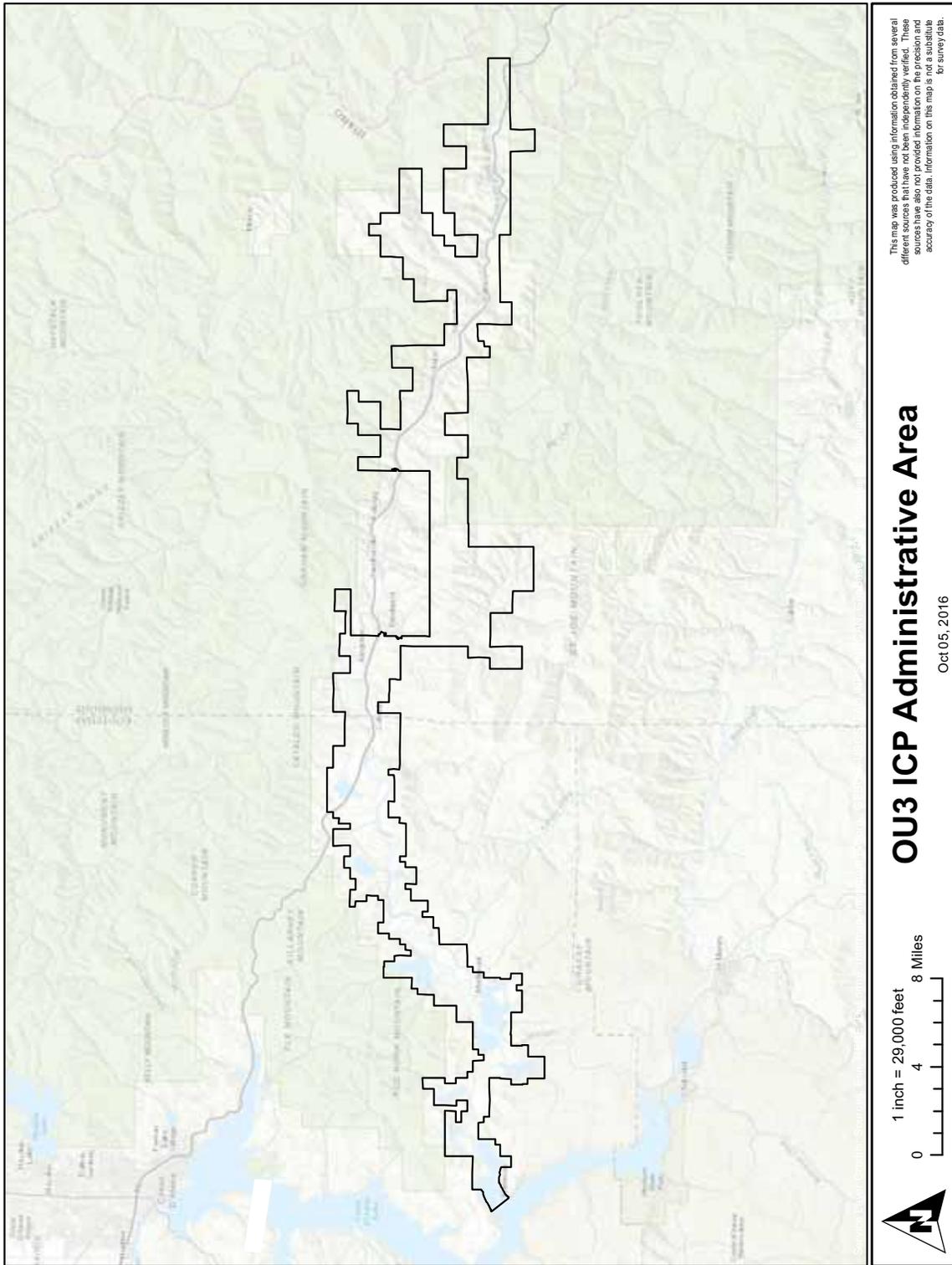
04. Successive Days in Violation. Each successive day in violation shall be considered a separate offense and be subject to individual penalties for each separate offense. ()

903. -- 999. (RESERVED)

APPENDIX 1



APPENDIX 2



APPENDIX 3

APPLICABILITY OF BARRIER TYPES TO SITE USE ACTIVITIES: RESIDENTIAL

SITE USE ACTIVITIES														
Barrier Type	Building Footprint		Landscaping		Commercial classification of vehicular areas is subject to vehicle weight by volume.						Active Public Use Areas			Open Areas
	Exposed	Sealed with Crawl Space	Flower/Shrub Bed	Lawn Areas	Parking/Loading Areas	Streets	Rural Roads	Alleys & Road Shoulders	Out-door Storage	Drive-ways	Walk-ways	Accessible to Children	Public Out-door Play Equipment	
12" Soil Cap	X		X	X							X	X		X
24" Soil Cap	X		X	X				X			X	X		X
12" Soil Cap with Sod & Grass	X		X	X							X	X		X
24" Soil Cap with Sod & Grass	X		X					X			X	X		X
6" Compacted Gravel with Restricted Access	X	X		X					X		X			X
12" Compacted Gravel	X	X							X			X		X
6" Clay Cap with Restricted Access	X	X												X
Synthetic Membranes, Tyvek & Plastic		X												
Chip Seal on 12" Compacted Gravel Base	X						X	X	X		X	X		X
Lignosite Spray on 12" Compacted Gravel Base	X						X	X	X		X	X		X
Asphaltic Concrete	X				X	X	X	X	X	X	X	X		X
Concrete	X	X			X	X	X	X	X	X	X	X		X
12" Sand Cap			X											

APPENDIX 4

APPLICABILITY OF BARRIER TYPES TO SITE USE ACTIVITIES: COMMERCIAL

SITE USE ACTIVITIES															
Barrier Type	Building Footprint		Landscaping		Commercial classification of vehicular areas is subject to vehicle weight by volume.							Active Public Use Areas			Open Areas
	Exposed	Sealed with Crawl Space	Flower/ Shrub Bed	Lawn Areas	Parking/ Loading Areas	Streets	Rural Roads	Alleys & Road Shoulders	Drive-ways	Out-door Storage	Walk-ways	Accessible to Children	Public Out-door Play Equipment	Vacant Lots	
12" Soil Cap	X		X	X								X	X	X	
24" Soil Cap	X		X	X								X	X	X	
12" Soil Cap with Sod & Grass	X		X	X								X	X	X	
24" Soil Cap with Sod & Grass	X		X	X								X	X	X	
6" Compacted Gravel with Restricted Access	X	X												X	
12" Compacted Gravel	X	X							X			X	X	X	
6" Clay Cap with Restricted Access	X													X	
Synthetic Membranes, Tyvek & Plastic		X													
Chip Seal on 12" Compacted Gravel Base	X						X					X	X	X	
Lignosite Spray on 12" Compacted Gravel Base	X						X						X	X	
Asphaltic Concrete	X				X	X	X	X	X	X	X	X	X	X	
Concrete	X				X	X	X	X	X	X	X	X	X	X	
12" Sand Cap			X												

APPENDIX 5

APPLICABILITY OF BARRIER TYPES TO SITE USE ACTIVITIES: INDUSTRIAL

SITE USE ACTIVITIES															
Barrier Type	Building Footprint		Landscaping		Commercial classification of vehicular areas is subject to vehicle weight by volume.							Active Public Use Areas			Open Areas
	Exposed	Sealed with Crawl Space	Flower/Shrub Bed	Lawn Areas	Parking/Loading Areas	Streets	Rural Roads	Alleys & Road Shoulders	Drive-ways	Out-door Storage	Walk-ways	Accessible to Children	Public Outdoor Play Equipment	Vacant Lots	
12" Soil Cap	X		X	X								X	X	X	
24" Soil Cap	X		X	X								X	X	X	
12" Soil Cap with Sod & Grass	X		X	X								X	X	X	
24" Soil Cap with Sod & Grass	X		X	X								X	X	X	
6" Compacted Gravel with Restricted Access	X	X												X	
12" Compacted Gravel	X	X					X		X	X	X	X	X	X	
6" Clay Cap with Restricted Access	X													X	
Synthetic Membranes, Tyvek & Plastic		X													
Chip Seal on 12" Compacted Gravel Base	X						X			X	X	X	X	X	
Lignosite Spray on 12" Compacted Gravel Base	X						X			X			X	X	
Asphaltic Concrete	X				X	X	X	X	X	X	X	X	X	X	
Concrete	X	X			X	X	X	X	X	X	X	X	X	X	
12" Sand Cap			X												

APPENDIX 6				
If the soil interval tests out equal to or greater than 1,000 ppm lead		The soil interval tests out less than 1,000 ppm lead		The minimum soil removal and replacement depth is
0 - 1"	AND	1 - 6", 6 - 12"	THEN	6"
1 - 6"		0 - 1", 6 - 12"		6"
6 - 12"		0 - 1", 1 - 6"		12"
12 - 18"		0 - 1", 1 - 6", 6 - 12"		No Action
0 - 1", 1 - 6"		6 - 12"		6"
0 - 1", 6 - 12"		1 - 6"		12"
1 - 6", 6 - 12"		0 - 1"		12"
None		0 - 1", 1 - 6", 6 - 12"		No Action

APPENDIX 7				
If the soil interval tests out equal to or greater than 1,000 ppm lead		The soil interval tests out less than 1,000 ppm lead		The minimum soil removal and replacement depth is
0 - 1"	AND	1 - 6"	THEN	6"
1 - 6"		0 - 1"		6"
6 - 12		0 - 1", 1 - 6"		No Action
None		0 - 1", 1 - 6"		No Action

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 – WATER QUALITY STANDARDS

DOCKET NO. 58-0102-2001

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Proposed Rule Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the Idaho Board of Environmental Quality (Board) and is now pending review by the 2021 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty-sixth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

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, September 2, 2020, [Vol. 20-9, pages 120 through 124](#).

After consideration of public comments, Subsection 251.02 has been revised. The remainder of the rule has been adopted as initially proposed. The board meeting documents can be obtained at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/water-quality-docket-no-58-0102-2001/> or by contacting the undersigned.

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 the undersigned.

Dated this 19th day of November, 2020.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706-1255
Phone: (208) 373-0418
Fax: (208) 373-0481
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 rulemaking action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

PUBLIC HEARING SCHEDULE: 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 September 18, 2020. If no such written request is received, a public hearing pursuant to Section 67-5222(2), Idaho Code, will not be held. Two public meetings were held during the negotiated rulemaking process. The public will have the opportunity to provide oral comments on the proposed rule during the meeting of the Idaho Board of Environmental Quality (Board) scheduled for November 2020. The meeting details are in the Notice of Meeting of the Idaho Board of Environmental Quality, Docket No. 58-0102-2001, published in the Idaho Administrative Bulletin on [September 2, 2020, Vol. 20-9](https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/water-quality-docket-no-58-0102-2001/), and available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/water-quality-docket-no-58-0102-2001/>.

DESCRIPTIVE SUMMARY: This rulemaking was initiated to: (1) revise water quality criteria based on stakeholder comments from the 2018 rulemaking and the 2019 legislative session regarding the implementation of the bacteria criteria; and (2) delete obsolete rule language contained in Subsection 260.02 as it is no longer needed due to disapproval of the standard by EPA.

Address Concerns Regarding Implementation of Bacteria Criteria

During 2019 legislative review of pending rule Docket No. 58-0102-1802, stakeholders raised concerns regarding the implementation of Idaho bacteria criteria as presented in the pending rule. On March 18, 2019, the House adopted House Concurrent Resolution No. 23 (HCR23) to reject Subsection 251.02, adopted as a pending rule under Docket No. 58-0102-1802. On March 19 2019, HCR23 was introduced in the Senate and referred to the Senate Health & Welfare Committee. HCR23 was not reported out of committee; the pending rule docket became final and effective on April 11, 2019. This rulemaking seeks to revise Idaho Water Quality Standards to address the stakeholders' unresolved concerns.

DEQ conducted another series of negotiations to better understand the stakeholder concerns regarding the recommended and subsequently proposed criteria. During these negotiations, DEQ agreed to include several provisions to help clarify the intent of the criteria and implementation of the criteria. DEQ has worked closely with the stakeholder groups who initially brought up the concerns and, due to their involvement in helping draft the proposed language, believes that the proposed language addresses their concerns. Specifically, language was included to address concerns regarding implementation of the statistical threshold value, increasing the time period used in calculating geometric mean values, and including a recommendation for public swimming beaches.

Delete Obsolete Rule Language

DEQ proposes to delete Subsection 260.02 including footnotes. Subsection 260.02, Variances from Water Quality Standards, Specific Variances, was adopted by the Board in 2000 and approved by the Idaho Legislature in 2001 (Docket No. 58-0102-0002). On May 29, 2003, DEQ submitted the final rule to EPA. On May 7, 2010, EPA disapproved the variance; therefore, Subsection 260.02 is not effective for Clean Water Act purposes and has been identified for deletion.

Idahoans that recreate in, drink from, or fish Idaho's surface waters, and any who discharge pollutants to those same waters, 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 in November 2020 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2021 legislative session if adopted by the Board and approved by the Legislature.

EFFECTIVE FOR CLEAN WATER ACT PURPOSES: Water quality standards adopted and submitted to EPA since May 30, 2000, are not effective for federal Clean Water Act (CWA) purposes until EPA approves them (see [40 CFR 131.21](https://www.ecfr.gov/current/title-40-chapter-131-subchapter-21-section-131.21)). This is known as the Alaska Rule. This rulemaking will be promulgated so that the existing rule

effective for CWA purposes remains in the Idaho Administrative Code until EPA approves the rule revisions. Notations explaining the effectiveness of the rule sections are also included. Upon EPA approval, the revised rule will become effective for CWA purposes and the previous rule and notations will be deleted from the Idaho Administrative Code. Information regarding the status of EPA review will be posted at deq.idaho.gov, EPA Actions on Proposed Standards.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not applicable.

NEGOTIATED RULEMAKING: On April 1, 2020, the notice of negotiated rulemaking was published in the Idaho Administrative Bulletin and posted on DEQ's website. A meeting was held on May 7, 2020. On June 8, 2020, a preliminary draft rule was posted on DEQ's website. One additional meeting was held on June 11, 2020. Stakeholders and members of the public participated by signing up for email notifications, attending the meetings, and submitting comments. Key information was posted on DEQ's website and distributed to persons who participated in the negotiated rulemaking.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions regarding the development of the rule. At the conclusion of the negotiated rulemaking process, DEQ submitted the draft rule to the Division of Financial Management to review for compliance with [Executive Order No. 2020-01, Zero-Based Regulation](#). Based on that review, DEQ has formatted the draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule drafts, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/water-quality-docket-no-58-0102-2001/>.

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.

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 when the pending rule will become effective: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this rulemaking, contact Michelle Dale at michelle.dale@deq.idaho.gov, (208) 373-0187.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments by mail, fax or email at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before October 2, 2020.

Dated this 2nd day of September, 2020.

Red italicized double underscored text indicates amendments between the proposed and pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-2001

251. SURFACE WATER QUALITY CRITERIA FOR RECREATION USE DESIGNATIONS.

Effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-~~4802~~2001 have been approved.

01. **E. Coli Bacteria.** Waters designated for recreation are not to contain *E. coli* bacteria, used as indicators of human pathogens, in concentrations exceeding: (4-11-06)

a. Geometric Mean Criterion. Waters designated for primary or secondary contact recreation are not to contain *E. coli* bacteria in concentrations exceeding a geometric mean of one hundred twenty-six (126) *E. coli* organisms per one hundred (100) mL based on a minimum of five (5) samples taken every three (3) to seven (7) days over a thirty (30) day period. (4-11-06)

b. Use of Single Sample Values. A water sample exceeding the *E. coli* single sample maximums below indicates likely exceedance of the geometric mean criterion, but is not alone a violation of water quality standards. If a single sample exceeds the maximums set forth in Subsections 251.01.b.i., 251.01.b.ii., and 251.01.b.iii., then additional samples must be taken as specified in Subsection 251.01.c.: (4-11-06)

i. For waters designated as secondary contact recreation, a single sample maximum of five hundred seventy-six (576) *E. coli* organisms per one hundred (100) mL; or (4-11-06)

ii. For waters designated as primary contact recreation, a single sample maximum of four hundred six (406) *E. coli* organisms per one hundred (100) mL; or (4-11-06)

iii. For areas within waters designated for primary contact recreation that are additionally specified as public swimming beaches, a single sample maximum of two hundred thirty-five (235) *E. coli* organisms per one hundred (100) mL. Single sample counts above this value should be used in considering beach closures. (4-11-06)

c. Additional Sampling. When a single sample maximum, as set forth in Subsections 251.01.b.i., 251.01.b.ii., and 251.01.b.iii., is exceeded, additional samples should be taken to assess compliance with the geometric mean *E. coli* criteria in Subsection 251.01.a. Sufficient additional samples should be taken by the Department to calculate a geometric mean in accordance with Subsection 251.01.a. This provision does not require additional ambient monitoring responsibilities for dischargers. (4-11-06)

251. SURFACE WATER QUALITY CRITERIA FOR RECREATION USE DESIGNATIONS.

Not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-~~4802~~2001 have been approved.

01. **Toxics Criteria.** Waters designated for recreation must meet the Fish Only water quality criteria set forth in Subsection 210.01.b. (4-11-19)

02. **Fecal Indicators.** Waters designated for recreation must meet criteria for indicator ~~organisms~~ **bacteria** of fecal contamination. Either of the following indicators ~~is~~ **is** sufficient for determining compliance with the fecal indicator criteria: (4-11-19)()

a. *E. Coli Bacteria.* ()

i. Waters designated for recreation are not to contain *E. coli* bacteria, used as indicators of human pathogens, in concentrations exceeding: (4-11-06)

~~i.~~ **(1)** ~~Geometric Mean Criterion. Not to contain *E. coli* in concentrations exceeding a~~ **A** geometric mean of one hundred twenty-six (126) *E. coli* counts per one hundred (100) mL based on a minimum of five (5) samples taken every three (3) to ~~seven eleven~~ **(7)11** days over a ~~thirty forty-five~~ **(30)45** day period; or (4-11-19)()

~~ii.~~(2) ~~SA statistical Threshold Value (STV). No greater than ten percent (10%) of valid samples collected over a thirty (30) day period are to contain E. coli bacteria in concentrations exceeding an STV~~ of four hundred and ten (410) *E. coli* counts per one hundred (100) mL. ~~or in more than ten percent (10%) of samples collected over a forty-five (45) day period. The Department will ensure samples collected represent the forty-five (45) day duration.~~ (4-11-19)()

ii. ~~For public swimming beaches, a single sample value of two hundred thirty-five (235) E. coli counts per one hundred (100) mL should be used in considering beach closures.~~ ()

b. Enterococci. Waters designated for recreation are not to contain enterococci bacteria, used as indicators of human pathogens, in concentrations exceeding: (4-11-19)

i. ~~Geometric Mean Criterion. Not to contain E. coli in concentrations exceeding a~~ geometric mean of thirty-five (35) enterococci counts per one hundred (100) mL based on a minimum of five (5) samples taken every three (3) to ~~seven eleven (711)~~ days over a ~~thirty forty-five (3045)~~ day period; or (4-11-19)()

ii. ~~SA statistical Threshold Value (STV). No greater than ten percent (10%) of valid samples collected over a thirty (30) day period are to contain enterococci bacteria in concentrations exceeding an STV~~ of one hundred and thirty (130) enterococci counts per one hundred (100) mL ~~in more than ten percent (10%) of samples collected over forty-five (45) day period. The Department will ensure samples collected represent the forty-five (45) day duration.~~ (4-11-19)()

c. ~~For comparing permit effluent bacteria samples to the criteria, the averaging period shall be thirty (30) days or less based on a minimum of five (5) samples.~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

260. VARIANCES FROM WATER QUALITY STANDARDS.

~~01.~~ ~~Variances.~~ Variances from meeting certain water quality standards may be granted by the Department provided they are consistent with the following requirements: (8-24-94)()

~~01.~~ ~~When granted by the Department, i~~ **Procedure.** Individual variances are to be pollutant and discharger specific, and shall be granted pursuant to the following ~~procedure~~: (3-15-02)()

~~a.~~ Prior to granting a variance, the Department ~~shall will~~ publish notice of the Department's tentative determination to grant a variance and ~~shall will~~ receive written comments for not less than thirty (30) days after the date the notice is published. The notice ~~shall will~~ contain a clear description of the impacts of the variance upon the receiving stream segment. The Department ~~shall will~~ also provide an opportunity for oral presentation of comments, if requested in writing within fourteen (14) days of the notice, by twenty-five (25) persons, a political subdivision, or an agency. (3-15-02)()

~~b.~~ The Department's final ~~variance~~ decision ~~with respect to a variance~~ may be appealed pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." The Department ~~shall will~~ maintain and make available to the public an updated list of variances. (3-15-02)()

~~b02.~~ ~~Attainability.~~ In order to obtain a variance from a water quality standard, the discharger must demonstrate that meeting the standard is unattainable based on one or more of the following grounds: (8-24-94)()

~~a.~~ Naturally occurring pollutant concentrations prevent the attainment of the standard; or (8-24-94)

~~b.~~ Natural, intermittent, or low flow conditions or water levels prevent the attainment of the standard; or (4-5-00)

~~iii~~c. Human caused conditions or sources of pollution prevent the attainment of the standard and cannot be remedied or would cause more environmental damage to correct than to leave in place; or (8-24-94)

~~iv~~d. Dams, diversions or other types of hydrologic modifications preclude the attainment of the standard, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in attainment of the standard; or (8-24-94)

~~v~~e. Physical conditions related to the natural features of the water body, unrelated to water quality, preclude attainment of the standard; or (8-24-94)

~~vi~~f. Controls more stringent than technology-based effluent limitations would result in substantial and widespread economic and social impact. (8-24-94)

~~e03~~. **Documentation.** The discharger must submit to the Department documentation that treatment more advanced than required by technology-based effluent limitations have been considered and that alternative effluent control strategies have been evaluated. (8-24-94)()

~~#04~~. **Effective Period.** Any variance granted by the Department will remain in effect for a period of five (5) years or the life of the permit. (8-24-94)()

~~ia~~. Upon expiration ~~of the five (5) year time period or permit~~, the discharger must either meet the standard or ~~must~~ re-apply for the variance in accordance with these rules. (8-24-94)()

~~iib~~. ~~In considering a re-application for a variance, the Department will require t~~The discharger ~~to must~~ demonstrate reasonable progress towards meeting the standard ~~when reapplying for a variance~~. (8-24-94)()

~~02-~~ ~~Specific Variances. In addition to any variances listed separately from these rules as described in Subsection 260.01.a.ii., the following variances have also been granted by the Department in accordance with Subsection 260.01:~~ (3-15-02)

~~a-~~ ~~The South Fork Coeur d'Alene River Sewer District (Page Wastewater Treatment Facility) is granted variances from meeting water quality standards in Section 250 for ammonia and chlorine, and Section 210 for cadmium, lead, and zinc, discharged to the West Page Swamp, located in T49N, R2E, S32, Boise Prime Meridian.~~ (3-30-01)

~~b-~~ ~~The variances provided in Subsection 260.02.a. are conditioned upon the discharges showing reasonable progress toward reducing their discharge of ammonia and chlorine. Reasonable progress shall be measured according to the terms of the state's certification of the discharges.~~ (3-30-01)

Note: Final rule submitted to EPA on May 29, 2003 (docket 58-0102-0002). This revision grants a variance to the South Fork Coeur d'Alene River Sewer District (Page Wastewater Treatment Facility) from meeting water quality standards for ammonia, chlorine, cadmium, lead, and zinc discharged to the West Page Swamp. On May 7, 2010, EPA disapproved the variance; therefore, Subsections 260.02.a. and b. are not effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.03 – INDIVIDUAL/SUBSURFACE SEWAGE DISPOSAL RULES AND RULES FOR CLEANING OF SEPTIC TANKS

DOCKET NO. 58-0103-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Proposed Rule Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the Idaho Board of Environmental Quality (Board) and is now pending review by the 2021 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty-sixth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The 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, September 2, 2020, [Vol. 20-9, pages 126 through 140](#). After consideration of public comments, Subsection 009.04.d.ii. has been revised. In addition, Sections 004, 006, and 009 have been revised to correct publication errors overlooked during review of the proof copy proposed rule. The remainder of the rule has been adopted as initially proposed. The board meeting documents can be obtained at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/individual-subsurface-sewage-disposal-docket-no-58-0103-1901/> or by contacting the undersigned.

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 Peter Adams at peter.adams@deq.idaho.gov or (208) 373-0464.

Dated this 19th day of November, 2020.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706-1255
Phone: (208) 373-0418
Fax: (208) 373-0481
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 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 September 16, 2020. If no such written request is received, a public hearing will not be held. Four public meetings were held during the negotiated rulemaking process.

DESCRIPTIVE SUMMARY: This rulemaking was initiated in response to challenges made in enforcing and updating portions of the [Technical Guidance Manual for Individual Subsurface Sewage Disposal Systems](#) (TGM). The rules currently only specify the requirements for standard individual/subsurface sewage disposal systems to be installed in Idaho, while leaving the majority of the requirements for alternative/proprietary systems in the TGM. Currently, if a standard system cannot be installed on a parcel, an alternative system may be permitted if it is approved by the Director and in accordance with the recommendations of the Technical Guidance Committee as documented in the TGM.

This proposed rule revises the Individual/Subsurface Sewage Disposal System Rules and Rules for Cleaning of Septic Tanks, IDAPA 58.01.03, by adding into the rules requirements applicable to facilitate the permitting, design, and construction activities for alternative and/or proprietary systems currently in the TGM. The proposed rule also clarifies the operation and maintenance requirements currently required for all systems as well as service provider responsibilities and provides the basis under which approved systems may be revoked or amended.

Health districts, subsurface sewage disposal system installers and manufacturers of subsurface sewage disposal systems as outlined in the TGM, conservation and environmental groups, counties, cities, and citizens of 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 Idaho Board of Environmental Quality (Board) in November 2020 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2021 legislative session if adopted by the Board and approved by the Legislature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not applicable.

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220. On May 31, 2019, DEQ posted notice of the negotiated rulemaking on its website. On June 5, 2019, the notice of negotiated rulemaking was published in the Idaho Administrative Bulletin, and a meeting was held on July 10, 2019. On September 4, 2019, a preliminary draft rule was posted on DEQ's website. Three additional meetings were held between September 2019 and April 2020. Stakeholders and members of the public participated by signing up for email notifications, attending the meetings, and submitting comments. Key information was posted on DEQ's website and distributed to persons who participated in the negotiated rulemaking.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions regarding the development of the rule. At the conclusion of the negotiated rulemaking process, DEQ submitted the draft rule to the Division of Financial Management to review for compliance with [Executive Order No. 2020-01, Zero-Based Regulation](#). Based on that review, DEQ has formatted the draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule drafts, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/individual-subsurface-sewage-disposal-docket-no-58-0103-1901/>.

IDAHO CODE SECTION 39-107D STATEMENT: This rule regulates an activity not regulated by the federal government. Chapters 1 and 36, Title 39, Idaho Code, grant authority to the Board to adopt rules and standards to protect the environment and health of the state of Idaho for the installation of cottage site sewage treatment facilities and for the issuance of pollution source permits.

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 Peter Adams at peter.adams@deq.idaho.gov or (208) 373-0464.

SUBMISSION OF WRITTEN COMMENTS: 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 30, 2020.

Dated this 2nd day of September, 2020.

Red italicized double underscored text indicates amendments between the proposed and pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0103-1901

~~000.~~ *(RESERVED)*

~~0070.~~ **LEGAL AUTHORITY.**

Title 39, Chapter 1 and Title 39, Chapter 36, Idaho Code, grants authority to the Board of Environmental Quality to adopt rules and standards to protect the environment and the health of the State, for the installation of cottage site sewage treatment facilities and for the issuance of pollution source permits. Title 39, Chapter 1, Idaho Code, grants to the Director the authority to issue pollution source permits; charges the Director to enforce all laws, rules, regulations, and standards relating to environmental protection and health, and those relating to the storage, handling and transportation of solids, liquids and gases which may cause or contribute to water pollution, and authorizes the Department of Environmental Quality to review for approval the plans and specifications for all proposed waste treatment facilities prior to their construction. (5-7-93)

~~0021.~~ **TITLE, SCOPE, CONFLICT AND RESPONSIBILITIES.**

01. Title. These rules are titled IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules and Rules for Cleaning of Septic Tanks." (3-20-20)

02. Scope. The provisions of these rules establish limitations on the construction and use of individual and subsurface sewage disposal systems and establish the requirements for obtaining an installation permit and an installer's registration permit. These rules apply to every individual and every subsurface blackwaste and wastewater treatment system in Idaho. These rules also establish general requirements for the handling, transportation and disposal of septic tank wastes and for obtaining a septic tank pumping permit. (3-20-20)

03. Conflict of Rules, Standards, and Ordinances. In any case where a provision of these rules is found to be in conflict with a provision of any state or local zoning, building, fire, safety, or health regulation, standard or ordinance, the provision that, in the judgment of the Director, establishes the higher standard for the promotion and protection of the health and safety of the people, shall prevail. (5-7-93)

04. Responsibilities. (7-1-93)

a. Every owner of real property is jointly and individually responsible for: (10-1-90)

- i. Storing, treating, and disposing of blackwaste and wastewater generated on that property. (10-1-90)
 - ii. Connecting all plumbing fixtures on that property that discharge wastewaters to an approved wastewater system or facility. (10-1-90)
 - iii. Obtaining necessary permits and approvals for installation of individual or subsurface blackwaste and wastewater disposal systems. (10-1-90)
 - iv. Abandonment of an individual or subsurface sewage disposal system. (10-1-90)
- b.** Each engineer, building contractor, individual or subsurface system installer, excavator, plumber, supplier, and every other person, who for compensation shall design, construct, abandon, or provide any system or part thereof, is jointly and individually responsible for compliance with each of these rules that are relevant to that service or product. (5-7-93)

002. REFERENCED MATERIAL.

01. NSF International. The NSF International (NSF) NSF/ANSI 40: Residential Onsite Systems and NSF/ANSI 245: Nitrogen Reduction are referenced in these rules. The NSF/ANSI 40 and NSF/ANSI 245 are available at www.nsf.org/services/by-industry/water-wastewater/onsite-wastewater. ()

02. Technical Guidance Manual for Individual Subsurface Sewage Disposal Systems (TGM). The TGM is referenced in these rules and available at the Idaho Department of Environmental Quality, Water Quality Division, 1410 N. Hilton, Boise, ID 83706-1255, <https://www.deq.idaho.gov>. ()

003. DEFINITIONS.

For the purposes of these rules, the following definitions apply. (5-7-93)

01. Abandoned System. A system which has ceased to receive blackwaste or wastewater due to diversion of those wastes to another treatment system or due to termination of waste flow. (10-1-90)

02. Alternative System. Any system for which the Department has issued design guidelines or which the Director judges to be a simple modification of a standard system. (10-1-90)

03. Authorized or Approved. The state of being sanctioned or acceptable to the Director as stated in a written document. (10-1-90)

04. Blackwaste. Human body waste, specifically excreta or urine. This includes toilet paper and other products used in the practice of personal hygiene. (10-1-90)

05. Blackwater. A wastewater whose principal pollutant is blackwaste; a combination of blackwaste and water. (10-1-90)

06. Board. Idaho State Board Of Environmental Quality. (10-1-90)

07. Building Sewer. The extension of the building drain beginning five (5) feet outside the inner face of the building wall. (10-1-90)

08. Central System. Any system which receives blackwaste or wastewater in volumes exceeding twenty-five hundred (2,500) gallons per day; any system which receives blackwaste or wastewater from more than two (2) dwelling units or more than two (2) buildings under separate ownership. (10-1-90)

09. Construct. To make, form, excavate, alter, expand, repair, or install a system, and, their derivations. (5-7-93)

10. Director. The Director of the Idaho Department of Environmental Quality or the Director's designee or authorized agent. (10-1-90)

11. **Existing System.** Any system which was installed prior to the effective date of these rules. (5-7-93)
12. **Expand.** To enlarge any nonfailing system. (10-1-90)
13. **Extended Treatment Package System (ETPS).** An advanced subsurface package sewage treatment product that provides secondary wastewater treatment and/or tertiary wastewater treatment to septic tank effluent. ()
- ~~134.~~ **Failing System.** Any system which exhibits one (1) or more of the following characteristics: (10-1-90)
- a. The system does not meet the intent of these rules as stated in Subsection 004.01. (5-7-93)
- b. The system fails to accept blackwaste and wastewater. (10-1-90)
- c. The system discharges blackwaste or wastewater into the waters of the State or onto the ground surface. (10-1-90)
- ~~145.~~ **Ground Water.** Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (5-7-93)
- ~~156.~~ **High Groundwater Level -- Normal, Seasonal.** High ground water level may be established by the presence of low chroma mottles, actual ground water monitoring or historic records. (5-7-93)
- a. The normal high groundwater level is the highest elevation of ground water that is maintained or exceeded for a continuous period of six (6) weeks a year. (5-7-93)
- b. The seasonal high groundwater level is the highest elevation of ground water that is maintained or exceeded for a continuous period of one (1) week a year. (5-7-93)
- ~~167.~~ **High Water Mark.** The line which the water impresses on the soil by covering it for sufficient periods of time to prevent the growth of terrestrial vegetation. (10-1-90)
- ~~178.~~ **Individual System.** Any standard, alternative or subsurface system which is not a central system. (10-1-90)
- ~~189.~~ **Install.** To excavate or to put in place a system or a component of a system. (10-1-90)
- ~~1920.~~ **Installer.** Any person, corporation, or firm engaged in the business of excavation for, or the construction of individual or subsurface sewage disposal systems in the State. (10-1-90)
- ~~201.~~ **Large Soil Absorption System.** A large soil absorption system is a subsurface sewage disposal system designed to receive two thousand five hundred (2,500) gallons of wastewater or more per day, including where the total wastewater flow from the entire proposed project exceeds two thousand five hundred (2,500) gallons per day but the flow is separated into absorption modules which receive less than two thousand five hundred (2,500) gallons per day. (5-7-93)
- ~~212.~~ **Limiting Layer.** A characteristic subsurface layer or material which will severely limit the capability of the soil to treat or absorb wastewater including, but not limited to, water tables, fractured bedrock, fissured bedrock, excessively permeable material and relatively impermeable material. (10-1-90)
23. **Manufactured Medium Sand.** Sand that meets the following gradation requirements:

<u>Manufactured medium sand allowable particle size percent composition.</u>	
<u>Sieve Size</u>	<u>Passing (%)</u>
<u>4</u>	<u>95-100</u>
<u>8</u>	<u>80-100</u>
<u>16</u>	<u>50-85</u>
<u>30</u>	<u>25-60</u>
<u>50</u>	<u>10-30</u>
<u>100</u>	<u>2-10</u>
<u>200</u>	<u><2</u>

()

224. Mottling. Irregular areas of different color in the soil that vary in contrast, density, number and size. Mottling generally indicates poor aeration and impeded drainage. (5-7-93)

235. New System. A system which is or might be authorized or approved on or after the effective date of these rules. (5-7-93)

246. Nondischarging System. Any system which is designed and constructed to prevent the discharge of blackwaste or wastewater. (10-1-90)

257. Permit. An individual or subsurface system installation permit or installer's registration permit. (10-1-90)

268. Pollutants. Any chemical, biological, or physical substance whether it be solid, liquid, gas, or a quality thereof, which if released into the environment can, by itself or in combination with other substances, create a public nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, agricultural, recreational, aesthetic, or other beneficial uses. (10-1-90)

29. Proprietary Wastewater System Technology. A manufactured product through which effluent flows and may be stored before infiltration. ()

30. Proprietary Wastewater Treatment System. A subsurface sewage treatment system that incorporates proprietary wastewater system technology to provide additional treatment to a septic tank effluent system. ()

2731. Public System. Any system owned by a county, city, special service district, or other governmental entity or Indian tribe having the authority to dispose of blackwaste or wastewater; a municipal wastewater treatment facility. (10-1-90)

2832. Repair. To remake, reform, replace, or enlarge a failing system or any component thereof as is necessary to restore proper operation. (10-1-90)

2933. Scarp. The side of a hill, canyon, ditch, river bank, roadcut or other geological feature characterized by a slope of forty-five (45) degrees or more from the horizontal. (10-1-90)

304. Service Provider. Any person, corporation, or firm engaged in the business of providing operation, maintenance, and monitoring of complex alternative systems in the state of Idaho. (7-1-17)

345. Sewage. Sewage has the same meaning as wastewater. (10-1-90)

- ~~326~~. **Soil Texture.** The relative proportion of sand, silt, and clay particles in a mass of soil. (10-1-90)
- ~~337~~. **Standard System.** Any system recognized by the Board through the adoption of design and construction regulations. (10-1-90)
- ~~348~~. **Subsurface System.** Any system with a point of discharge beneath the earth's surface. (10-1-90)
- ~~359~~. **Surface Water - Intermittent, Permanent, Temporary.** (7-1-93)
- a. Any waters of the State which flow or are contained in natural or man-made depressions in the earth's surface. This includes, but is not limited to, lakes, streams, canals, and ditches. (10-1-90)
- b. An intermittent surface water exists continuously for a period of more than two (2) months but not more than six (6) months a year. (10-1-90)
- c. A permanent surface water exists continuously for a period of more than six (6) months a year. (10-1-90)
- d. A temporary surface water exists continuously for a period of less than two (2) months a year. (10-1-90)
- ~~3640~~. **System.** Beginning at the point of entry physically connected piping, treatment devices, receptacles, structures, or areas of land designed, used or dedicated to convey, store, stabilize, neutralize, treat, or dispose of blackwaste or wastewater. (10-1-90)
- ~~3741~~. **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 groundwater, surface water, and storm water that may be present; liquid or water that is chemically, biologically, physically or rationally identifiable as containing blackwater, grey water or commercial or industrial pollutants; and sewage. (10-1-90)
- ~~3842~~. **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 of Idaho. (10-1-90)
- ~~3943~~. **Water Table.** The surface of an aquifer. (10-1-90)

004. GENERAL REQUIREMENTS.

- 01. Intent of Rules.** The Board, in order to protect the health, safety, and environment of the people of the state of Idaho establishes these rules governing the design, construction, siting and abandonment of individual and subsurface sewage disposal systems. These rules are intended to ensure that blackwastes and wastewater generated in the state of Idaho are safely contained and treated and that blackwaste and wastewater contained in or discharged from each system: ~~(5-7-93)~~()
- a. Are not accessible to insects, rodents, or other wild or domestic animals; (10-1-90)
- b. Are not accessible to individuals; (10-1-90)
- c. Do not give rise to a public nuisance due to odor or unsightly appearance; (10-1-90)
- d. Do not injure or interfere with existing or potential beneficial uses of the waters of the State. (10-1-90)
- 02. Compliance with Intent Required.** The Director shall not authorize or approve any system if, in the opinion of the Director, the system will not be (is not) in compliance with the intent of these rules. (5-7-93)

03. System Limitations. Cooling water, backwash or backflush water, hot tub or spa water, air conditioning water, water softener brine, groundwater, oil, or roof drainage cannot be discharged into any system unless that discharge is approved by the Director. (10-1-90)

04. Increased Flows. Unless authorized by the Director, no person shall provide for or connect additional blackwaste or wastewater sources to any system if the resulting flow or volume would exceed the design flow of the system. (10-1-90)

05. Failing System. The owner of any failing system shall obtain a permit and cause the failing system's repair: (10-1-90)

a. As soon as practical after the owner becomes aware of its failure; or (10-1-90)

b. As directed in proper notice from the Director. (10-1-90)

06. Subsurface System Replacement Area. An area of land which is suitable in all respects for the complete replacement of a new subsurface system disposal field shall be reserved as a replacement area. This area will be kept vacant, free of vehicular traffic and free of any soil modification which would negatively affect its use as a replacement disposal field construction site. (10-1-90)

07. Technical Guidance Committee (TGC). The Director shall appoint a ~~Technical Guidance Committee~~ **TGC** composed of three (3) representatives from the seven (7) Health Districts, one (1) representative from the Department of Environmental Quality, one (1) professional engineer licensed in the state of Idaho and one (1) licensed installer. Initially two (2) committee members shall be appointed to each of one (1), two (2) and three (3) year terms. Appointments to vacancies thereafter shall be to three (3) year terms. ~~(12-31-91)~~()

08. Duties of the ~~Technical Guidance Committee~~ TGC. The ~~Committee~~ **TGC** shall maintain a ~~technical guidance manual which shall~~ **the TGM** to be used in the design, construction, alteration, operation, and maintenance of conventional systems, their components, and alternatives. The **TGC** shall review variances **and commercially manufactured wastewater treatment components and systems** at the request of the Director and provide recommendations ~~on such variances~~. ~~(10-1-90)~~()

09. ~~Technical Guidance Manual for Individual and Subsurface Alternative Sewage Disposal~~ TGM. The ~~manual~~ **TGM** maintained by the ~~Technical Guidance Committee~~ **TGC** shall provide state-of-the-art technical guidance on alternative sewage disposal components and systems, soil type determination methodology and other information pertinent to the best management practices of individual and subsurface sewage disposal. ~~(10-1-90)~~()

10. Alternative System. If a standard system as described in these rules cannot be installed on a parcel of land, an alternative system may be permitted if that system is in accordance with the recommendations of the ~~Technical Guidance Committee~~ **TGC** and is approved by the Director **as set forth in Section 009**. ~~(5-7-93)~~()

005. PERMIT AND PERMIT APPLICATION.

01. Permit Required. Except as specified in Subsection 005.02 it shall be unlawful for any person to cause or to perform the modification, repair or construction of any individual or subsurface sewage disposal system within the state of Idaho unless there is a valid installation permit authorizing that activity. (12-31-91)

02. Exceptions to Permit Requirement. The activities listed in this subsection may be lawfully performed in the absence of a valid installation permit. They are, however, subject to all other relevant rules and regulations. (10-1-90)

a. Portable nondischarging systems may be installed where needed as temporary blackwaste or wastewater systems if they are properly maintained and if they are of a design which has been approved by the Director. (10-1-90)

b. Individual and subsurface systems may be repaired when needed as a result of clogged or broken

solid piping or of malfunctions in an electrical or mechanical system. Such repair may not expand the system unless authorized by the Director. (10-1-90)

03. Permit Application. The owner of the system or the owner's authorized representative shall make application to the Director in writing and in a manner or form prescribed by the Director. (10-1-90)

04. Contents of Application. A permit application will be used to help determine if the proposed construction will be in conformance with applicable rules and regulations. Information required in the application may include, but is not limited to: (10-1-90)

- a. The name and address of the owner of the system and of the applicant, if different; (10-1-90)
- b. The legal description of the parcel of land; (10-1-90)
- c. The type of establishment served; (10-1-90)
- d. The maximum number of persons served, number of bedrooms, or other appropriate measure of wastewater flow; (10-1-90)
- e. The type of system; (10-1-90)
- f. The construction activity (new construction, enlargement, repair); (10-1-90)
- g. A scaled or dimensioned plot plan including, if needed, adjacent properties illustrating: (10-1-90)
 - i. The location and size of all existing and proposed wastewater systems including disposal field replacement areas; (10-1-90)
 - ii. The location of all existing water supply system features; (10-1-90)
 - iii. The location of all surface waters; (10-1-90)
 - iv. The location of scarps, cuts, and rock outcrops; (10-1-90)
 - v. Land elevations, surface contours, and ground slopes between features of interest; (10-1-90)
 - vi. Property lines, easements, and rights-of-way; and (10-1-90)
 - vii. Location and size of buildings and structures. (7-1-93)
- h. The plans and specifications of the proposed system which include: (10-1-90)
 - i. Diagrams of all system facilities which are to be made or fabricated at the site; (10-1-90)
 - ii. The manufacturer's name and identification of any component approved pursuant to Sections 007 and 009; and (12-31-91)
 - iii. List of materials. (10-1-90)
- i. Soil description and profile, groundwater data, percolation or permeability test results and/or a site evaluation report; (10-1-90)
- j. The nature and quantity of blackwaste and wastewater which the system is to receive including the basis for that estimate; (10-1-90)
- k. Proposed operation, maintenance, and monitoring procedures to insure the system's performance and failure detection; (10-1-90)

- l.** Copies of legal documents relating to access and to responsibilities for operation, maintenance, and monitoring; (10-1-90)
- m.** A statement from the local zoning or building authority indicating that the proposed system would not be contrary to local ordinances; (10-1-90)
- n.** The signature of the owner of the proposed system and, if different, of the applicant; and (10-1-90)
- o.** Any other information, document, or condition that may be required by the Director to substantiate that the proposed system will comply with applicable rules and regulations. (10-1-90)
- 05. Basis for Permit Application Denial.** The Director may deny a permit application if in the Director's judgment: (10-1-90)
- a.** The application is incomplete, inaccurate, or misleading; (10-1-90)
- b.** The system as proposed is not in compliance with applicable rules and regulations; (10-1-90)
- c.** The system as proposed would, when put into use, be considered a failing system; (10-1-90)
- d.** The design and description of a public system was not made by a professional engineer; (10-1-90)
- e.** Public or central wastewater treatment facilities are reasonably accessible. (10-1-90)
- 06. Notice of Denial.** Upon denial of an application the Director shall notify the applicant of the reason for denial. (10-1-90)
- 07. Issuance of Permit.** When, in the opinion of the Director the system as proposed will be in conformance with applicable rules and regulations, the Director shall issue an "Individual and Subsurface System Installation Permit". (10-1-90)
- 08. Application and Permit Valid for One Year.** Unless otherwise stated on the application or permit, it shall become invalid if the authorized construction or activity is not completed and approved within one (1) year of the date of issuance. (10-1-90)
- 09. Permit Renewal.** At the discretion of the Director, a permit may be renewed one (1) or more times upon request by the applicant or owner provided that the request is received by the Director prior to the permit's date of expiration. (10-1-90)
- 10. Immediate Effect of the Permit.** A valid permit authorizes the construction of an individual or subsurface system and requires that the construction be conducted in compliance with plans, specifications, and conditions contained in the approved permit application. Any deviation from the plans, specifications, and conditions is prohibited unless it is approved in advance by the Director. (10-1-90)
- 11. Cottage Site Facility Certification.** A valid permit shall constitute certification and approval for the purposes of Section 39-3637, Idaho Code. (10-1-90)
- 12. Existing Installation Permits.** Individual and subsurface sewage disposal installation permits or other lot-specific approvals for systems issued prior to February 7, 1978, pursuant to Idaho Code Title 39, Chapter 1 and Title 39, Chapter 36, will become invalid one (1) year after written notice is given by the Director notifying the owner or holder of such a permit or approval that the permit or approval will no longer be valid unless construction or installation of the system provided for in the permit or approval is commenced within one (1) year after giving of the notice. This provision does not apply to certificates filed to satisfy a sanitary restriction pursuant to Section 50-1326, Idaho Code. (10-1-90)
- 13. Abandonment May Be Required.** The Director may require as a condition for issuing a permit

that the system be abandoned by a specified date or under specific predetermined circumstances. The date or circumstances will be established before the issuance of the permit and be contained in the permit application. These conditions may relate to a specific date, dwelling density, completion of a municipal system or other circumstances relative to the availability of central sewerage system services. (10-1-90)

14. Operation, Maintenance and Monitoring. ()

a. The Director may require as a condition of issuing a permit, that specific operation, maintenance, and monitoring procedures be observed. Those procedures will be contained in the installation permit application. (10-1-90) ()

b. All operation, maintenance, and monitoring requirements of installation permits including effluent sampling shall be perpetual unless: ()

i. The system is not installed; ()

ii. The system is removed, abandoned, or replaced; or ()

iii. The permit is amended or revoked by the Director. ()

c. If a system gains approval as described by the TGM, sampling requirements may be removed. ()

15. As-Built Plans and Specifications. The Director may require as a condition of issuing a permit, that complete and accurate record drawings and specifications depicting the actual construction be submitted to the Director within thirty (30) days after the completion of the construction. Alternately, if the construction proceeded in compliance with the approved plans and specifications, a statement to that effect may be submitted. (10-1-90)

16. Permit Fee. All applications shall be accompanied by payment of the fee specified in IDAPA 58.01.14, Section 110, "Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services". (5-7-93)

006. INSTALLER'S REGISTRATION PERMIT AND SERVICE PROVIDER CERTIFICATION.

01. Permit and Certification Required. Every installer and service provider shall secure from the Director an installer's registration permit. Service providers must also obtain a service provider's certification. Two (2) types of installer permits and one (1) type of service provider certification are available. (7-1-17)

a. A standard and basic alternative system installer's registration permit is required to install all individual systems not listed under Subsection 006.01.b. (5-7-93)

b. A complex alternative system installer's registration permit is required to install evapotranspiration systems, ~~extended treatment package systems~~ ETPSs, lagoon systems, large soil absorption systems, pressure distribution systems, proprietary wastewater treatment systems intermittent sand filters, sand mounds, or other systems as may be specified by the Director. (7-1-17) ()

c. A service provider certification is required to perform operation, maintenance, or monitoring of ~~complex alternative systems~~ ETPSs and any other Director-identified complex alternative systems. (7-1-17) ()

02. Examination. The initial issuance of the installer's permit and service provider certification shall be based on the completion of an examination, with a passing score of seventy percent (70%) or more, of the applicant's knowledge of the principles set forth in these rules and the applicable sections of the Technical Guidance Manual. The examinations will be prepared, administered and graded by the Director. The installer examination and service provider examination shall be separate exams. (7-1-17)

03. Permits and Certifications Required Annually. Registration permits and service provider certifications expire annually on the first (1st) day of January, and all permits and certifications issued thereafter will

be issued for the balance of the calendar year. Additionally, installers and service providers shall attend at least one (1) refresher course approved by the state of Idaho, Department of Environmental Quality, every three (3) years. Individuals holding both a complex installer registration permit and service provider certification shall attend one refresher course for the complex installer registration permit and another course for the service provider certification. Installer and service provider refresher courses are not interchangeable. (7-1-17)

04. Contents of Application. (7-1-17)

a. Applications for installer permits and service provider certifications shall: (7-1-17)

i. Be in writing: (7-1-17)

ii. Be signed by the applicant or by an officer or authorized agent of a corporation: (7-1-17)

iii. Contain the name and address of the applicant: and ~~(7-1-17)~~()

iv. Indicate whether the permit is to be for: ~~(7-1-17)~~()

(1) Installation of standard and basic alternative systems; (7-1-17)

(2) Installation of standard, basic and complex alternative systems; or (7-1-17)

(3) Installation of standard, basic and complex alternative systems and certification as a service provider; and (7-1-17)

v. Contain the expiration date of the bond required by Subsection 006.05. (7-1-17)

b. Additionally, for applicants seeking certification as a service provider, the application shall also contain annual documentation of manufacturer specific training, as required by Subsection 006.06.a. ~~(7-1-17)~~()

05. Bond Required. At the time of application, all applicants, including those seeking a service provider certification, shall deliver to the Director a bond in a form approved by the Director in the sum of five thousand dollars (\$5,000) for a standard and basic alternative system installer's registration permit, or in the sum of fifteen thousand dollars (\$15,000) for standard, basic and complex alternative system installer's registration permit. The bond will be executed by a surety company duly authorized to do business in the state of Idaho and must run concurrent with the installer's registration permit. The bond shall be approved by the Director and must guarantee the installer or service provider's faithful performance of all work undertaken under the provisions of the installer's registration permit or service provider certification, or both. Any person who suffers damage as the result of negligent or wrongful acts of the installer or service provider or by the installer or service provider's failure to competently perform any of the work agreed to be done under the terms of the registration permit or certification shall, in addition to other legal remedies, have a right of action on the bond for all damages not exceeding five thousand dollars (\$5,000) for standard and basic alternative systems or fifteen thousand dollars (\$15,000) for complex alternative systems or required operation, maintenance, or monitoring by certified service providers. The maximum liability of the surety and/or sureties on the bond, regardless of the number of claims filed against the bond, shall not exceed the sum of five thousand dollars (\$5,000) for standard and basic alternative systems or fifteen thousand dollars (\$15,000) for complex alternative systems or required operation, maintenance, or monitoring by certified service providers. (7-1-17)

06. Service Provider Responsibilities. All certified service providers who provide operation, maintenance, or monitoring for any complex alternative system are responsible for compliance with each of these rules that are relevant to those services. Additionally, each certified service provider shall: (7-1-17)

a. Obtain documentation of the completed manufacturer-specific training of each manufactured and packaged treatment system for which the service provider intends to provide operation, maintenance, or monitoring. Proper documentation includes a certificate or letter of training completion provided by the manufacturer and an expiration date of the manufacturer's certification. If a system manufacturer is no longer in business, that manufacturer-specific training is not required: ~~(7-1-17)~~()

b. Maintain a comprehensive list of real property owners who contracted with the certified service provider. ~~The list shall include~~ing the current real property owner name, service property address, real property owner contact address, and subsurface sewage disposal permit number. This list shall be provided to the Director as part of the annual operation, maintenance, and monitoring reports for individual real property owners; ~~and (7-1-17)~~()

c. Notify the system owner in writing of any improper system function that cannot be remedied during the time of operation, maintenance, and monitoring services; and ()

d. Submit all operation, maintenance, and monitoring records in the form of an annual report for each individual real property owner ~~with for~~ whom the service provider ~~contracts~~ agrees to fulfill the real property owner's operation, maintenance, or monitoring responsibilities required ~~through the real property owner's subsurface sewage disposal installation permit as allowed~~ in Subsection ~~005.14~~ 009.03. The annual reports ~~shall~~ are to be provided to the Director by the timeframe specified in the ~~Technical Guidance Manual~~ TGM for the specific complex alternative system for which operation, maintenance, or monitoring is required. (7-1-17)()

07. **Exemption.** An installer's permit shall not be required for: (10-1-90)

a. Any person, corporation, or firm constructing a central or municipal subsurface sewage disposal system if that person, corporation, or firm is a licensed public works contractor as provided in Title 54, Chapter 19, Idaho Code, is experienced in the type of system to be installed and is under the direction of a professional engineer licensed in the state of Idaho; or (5-7-93)

b. Owners installing their own standard or basic alternative systems. (7-1-17)

08. **Application Fee.** All applications shall be accompanied by payment of the fee specified in IDAPA 58.01.14, Section 120, "Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services". (5-7-93)

09. **Grounds for Revocation.** Failure to comply with these rules shall be grounds for revocation of the permit or the certification, or both. (7-1-17)

10. **Transfer from Non-Profit Operation and Maintenance Entity to Certified Service Provider.** (7-1-17)

a. Real property owners who want to install ETPSs must retain a permitted installer and certified service provider. An easement granting general access to a non-profit operation and maintenance entity is no longer required for ETPS installation permits. (7-1-17)

b. Beginning July 1, 2017, real property owners who had ETPSs installed are not required to be members of non-profit operation and maintenance entities. To meet the operation, maintenance, and monitoring requirements of their ETPSs, real property owners shall retain a certified service provider for their existing ETPSs. (7-1-17)

(BREAK IN CONTINUITY OF SECTIONS)

009. OTHER COMPONENTS.

01. **Design Approval Required.** Commercially manufactured ~~blackwaste and~~ wastewater treatment ~~and storage~~ components ~~may~~ and systems ~~must~~ not be used in the construction of a subsurface sewage system unless their design is approved by the Director through the recommendation of the TGC as directed in Section 004. The Department has developed recommended standards and guidance for these systems in the TGM. Approval may be limited to those locations or conditions for which achievement of standards has been demonstrated. Commercially manufactured wastewater treatment components and systems may include but are not limited to: (10-1-90)()

- a. ETPSs (e.g., aerobic treatment systems); ()
- b. Proprietary wastewater treatment systems (e.g., proprietary wastewater system technology with specified sand); ()
- c. Proprietary wastewater system technology (e.g., gravelless distribution products); and ()
- d. Proprietary non-discharging systems (e.g., individual wastewater incinerators, composting toilets, or vault toilets). ()

02. Plan and Specification Submittal. Plans and specifications for all commercially manufactured ~~individual and subsurface~~ wastewater treatment ~~and storage~~ components and systems will be submitted to the Director for approval. Plans and specifications will ~~show or~~ include ~~as requested by the Director;~~ detailed construction drawings, capacities, structural calculations, lists of materials, evidence of stability and durability, performance standards, manufacturers' installation, operation and maintenance instructions, an installation inspection checklist, a list of all prior approvals from other states including any review or compliance related issues, and any other relevant information as requested by the Director. (10-1-99) ()

03. ETPSs. ()

a. In addition to the items listed in Subsection 009.02, ETPS plan and specification submittals must include; ()

- i. A plan for training and certifying system installers and service providers under Section 006; ()
- ii. An operation and maintenance manual which contains all operation and maintenance specified by the design engineer or manufacturer and the Department; and ()
- iii. A quality assurance project plan which documents how sampling will occur if sampling is required by the Director for product approval and continued monitoring. ()

b. Manufacturers seeking approval of these systems for reducing total suspended solids (TSS) and carbonaceous biological oxygen demand 5-day (CBOD5) when used with residential strength wastewater must submit NSF/ANSI 40: Residential Onsite Systems approvals, reports, and associated data or equivalent third-party standards. ()

c. Manufacturers seeking approval for reduction of total nitrogen (TN) must submit NSF/ANSI 245: Nitrogen Reduction approvals, reports, and associated data or equivalent third-party standards. ()

d. Design and installation of these systems must meet the following: ()

- i. The effluent is discharged to a drainfield meeting the requirements of a standard drainfield as directed in Section 008 or a Director-approved alternative. ()
- ii. Separation between the bottom of the trench or bed to limiting layers protects ground water quality if the distance deviates from the table in Subsection 008.02.c. ()
- iii. The distribution laterals within the trench or bed meet the requirements of Section 008 or a Director-approved alternative. ()
- iv. Tank access lids are to grade or above with a sealed riser and fitted with a secured lid for monitoring and maintenance. ()
- v. If vertical separation distances are reduced from the distances defined in the table in Subsection 008.02.c., a sampling port has to be installed to provide a representative sample of the effluent from the system. ()

e. Within thirty (30) days of completing installation of an ETPS, the property owner shall provide certification to the health district from a representative approved by the manufacturer that the system has been installed and will operate in accordance with the manufacturer's recommendations. The health district shall not finalize the subsurface sewage disposal permit until the certification of proper installation and operation is received and includes information on the manufacturer, product, model number, and serial number of the ETPS installed. ()

f. Property owners with an ETPS installed on their property must have all operation, maintenance, and monitoring requirements specified in the permit completed by June 30th each year by a certified service provider in accordance with Section 006, including effluent monitoring if required by the permit. The certified service provider who completed operation, maintenance, and monitoring for the system as specified in the TGM must submit an annual report by July 31st of each calendar year demonstrating that the system is working as designed. ()

g. Permit requirements for ETPSs transfer with ownership changes. Before transferring ownership of a property with an ETPS, the system owner must notify all transferees of the ETPS operation, maintenance, and monitoring requirements. Within thirty (30) days of transferring ownership of a property with an ETPS, the transferee must notify the health district of the new owner of the property. ()

04. Proprietary Wastewater Treatment Systems. ()

a. Manufacturers seeking approval for these systems for reducing total suspended solids (TSS) and carbonaceous biological oxygen demand 5-day (CBOD5) when used with residential strength wastewater must submit NSF/ANSI 40: Residential Onsite Systems approvals, reports, and associated data or equivalent third-party standards. ()

b. Manufacturers seeking approval for reduction of total nitrogen (TN) must submit NSF/ANSI 245: Nitrogen Reduction approvals, reports, and associated data or equivalent third-party standards. ()

c. Proprietary wastewater system media utilized with a proprietary wastewater treatment system must: ()

i. Be constructed or manufactured from materials that are non-decaying and non-deteriorating and do not leach unacceptable chemicals when exposed to sewage and the subsurface soil environment; ()

ii. Support the distribution pipe and provide suitable effluent distribution and infiltration rate to the absorption area at the soil interface; and ()

iii. Maintain the integrity of the trench or bed. The material used, by its nature and manufacturer-prescribed installation procedure, needs to withstand the physical forces of the soil sidewalls, soil backfill, and weight of equipment used in the backfilling. ()

d. Design and installation of these systems must meet the following: ()

i. The effluent is discharged to a drainfield that meets the required effective soil depth for standard drainfields as directed in Section 008. ()

ii. Separation between the bottom of the manufactured medium sand component of the *proprietary wastewater treatment system* to limiting layers protects ground water quality if the distance deviates from the table in Subsection 008.02.c. ()

iii. The distribution laterals within the trench or bed meet the requirements of Section 008 or a Director-approved alternative. ()

iv. Drainfields sized based on the manufacturer's recommended minimum sizing requirement or the maximum daily flow of effluent divided by the hydraulic application rate for the applicable soil design subgroup, whichever is greater. ()

v. Pressure distribution, when used with a proprietary wastewater treatment product, is designed by an Idaho licensed professional engineer. ()

e. A proprietary wastewater treatment system may be required to follow the same operation, maintenance, monitoring, and reporting requirements described in Subsection 009.03.f. due to factors such as product complexity and/or site specific constituent reduction requirements. ()

f. Permit requirements for these systems transfer with ownership changes. Before transferring ownership of a property with this system, the system owner must notify all transferees of the system operation, maintenance, and monitoring requirements. Within thirty (30) days of transferring ownership of a property with the system, the transferee must notify the health district of the new owner of the property. ()

035. Effect of Design Approval. The Director may condition a design approval by specifying circumstances under which the component must be installed, used, operated, maintained, or monitored. (7-1-17)

a. The Director shall specify the complex alternative systems that must undergo professionally managed operation, maintenance, service, or effluent testing. (7-1-17)

b. Manufacturers shall provide training to a reasonable number of service providers to perform required operation, maintenance, or monitoring as specified by the Director. (7-1-17)

c. Manufacturers may enter into agreements with certified service providers trained in their technology but shall not limit the service providers from being trained in the technology of other manufacturers. (7-1-17)

046. Notice of Design Disapproval. If the Director is satisfied that the component described in the submittal may not be in compliance with or may not consistently function in compliance with these rules, or that the manufacturer of the proposed system failed to comply with Subsection 009.03, the Director will disapprove the design as submitted. The manufacturer or distributor submitting the design for approval will be notified in writing of the disapproval and the reason for that action. (7-1-17)

07. Amendments or Revocations. The Director may amend or revoke any permit or system approved by the Department if: ()

a. Approval was based on false or misleading information; ()

b. The material, technology, or design no longer achieves performance standards for which it was approved or does not meet the intent of the rules; or ()

c. The manufacturer is not meeting the requirements of these rules or conditions of the approval. ()

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.04 – RULES FOR ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS

DOCKET NO. 58-0104-1901 (CHAPTER REPEAL)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Proposed Rule Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the Idaho Board of Environmental Quality (Board) and is now pending review by the 2021 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty- sixth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

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 repealing the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, November 6, 2019, [Vol. 19-11, page 310](#). DEQ received no public comments, and the rule has been repealed as initially proposed. More information regarding this rule docket is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/wastewater-facility-grants-docket-no-58-0104-1901/>.

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 questions concerning the rulemaking, contact the undersigned.

Dated this 1st day of July, 2020.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706-1255
Phone: (208)373-0418
Fax No. (208)373-0481
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 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 November 20, 2019. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: DEQ initiated this rulemaking in response to **Executive Order No. 2019-02**, Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two facility planning grant rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.04, Rules for Administration of Wastewater Treatment Facility Grants, and merge necessary and relevant sections of IDAPA 58.01.04 with IDAPA 58.01.22, Rules for Administration of Planning Grants for Public Drinking Water Facilities. DEQ has initiated a separate rulemaking for the revisions to IDAPA 58.01.22 (Docket No. 58-0122-1901).

Prospective grant and loan recipients, consulting engineers, grant and loan administrators, other funding agencies, public officials representing various counties and cities, and the public at large may be interested in commenting on this proposed rule.

After consideration of public comments, DEQ intends to present the final proposal to the Idaho Board of Environmental Quality (Board) in 2020 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2021 legislative session if adopted by the Board and approved by the Legislature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220. On August 1, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the August 2019 issue of the Idaho Administrative Bulletin, **Vol. 19-8, pages 145–146**, and a meeting was held on August 27, 2019. Key information was posted on the DEQ website and distributed to the public. No comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule draft, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/wastewater-facility-grants-docket-no-58-0104-1901/>.

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.

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 Tim Wendland at tim.wendland@deq.idaho.gov or (208) 373-0439.

SUBMISSION OF WRITTEN COMMENTS: 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 4, 2019.

Dated this 6th day of November, 2019.

IDAPA 58.01.04 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

**58.01.22 – RULES FOR ADMINISTRATION OF PLANNING GRANTS
FOR DRINKING WATER FACILITIES**

DOCKET NO. 58-0122-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Proposed Rule Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the Idaho Board of Environmental Quality (Board) and is now pending review by the 2021 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty- sixth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

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, November 6, 2019, [Vol. 19-11, pages 366 through 381](#). DEQ received no public comments, and the rule has been adopted as initially proposed. More information regarding this rule docket is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/drinking-water-facility-planning-grants-docket-no-58-0122-1901/>.

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 questions concerning the rulemaking, contact the undersigned.

Dated this 1st day of July, 2020.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706-1255
Phone: (208)373-0418
Fax No. (208)373-0481
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 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 November 20, 2019. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: DEQ initiated this rulemaking in response to **Executive Order No. 2019-02**, Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two facility planning grant rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.04, Rules for Administration of Wastewater Treatment Facility Grants, and merge necessary and relevant sections of IDAPA 58.01.04 with IDAPA 58.01.22, Rules for Administration of Planning Grants for Public Drinking Water Facilities. DEQ has initiated a separate rulemaking for the deletion of IDAPA 58.01.04 (Docket No. 58-0104-1901).

Prospective grant and loan recipients, consulting engineers, grant and loan administrators, other funding agencies, public officials representing various counties and cities, and the public at large 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 Idaho Board of Environmental Quality (Board) in 2020 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2021 legislative session if adopted by the Board and approved by the Legislature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220. On August 1, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the August 2019 issue of the Idaho Administrative Bulletin, **Vol. 19-8, pages 160–161** and a meeting was held on August 27, 2019. Key information was posted on the DEQ website and distributed to the public. No comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule draft, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/drinking-water-facility-planning-grants-docket-no-58-0122-1901/>.

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.

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 Tim Wendland at tim.wendland@deq.idaho.gov or (208) 373-0439.

SUBMISSION OF WRITTEN COMMENTS: 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 4, 2019.

Dated this 6th day of November, 2019.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0122-2001

**58.01.22 – RULES FOR ADMINISTRATION OF PLANNING GRANTS
FOR DRINKING WATER AND WASTEWATER FACILITIES**

000. LEGAL AUTHORITY.

The Idaho State Board of Environmental Quality, pursuant to authority granted in Chapters 1 and 36, Title 39, Idaho Code, adopted the following rules for the administration of ~~a~~ Drinking Water and Wastewater Planning Grant Programs in Idaho. (5-3-03)()

001. TITLE AND SCOPE.

01. Title. These rules will be known and cited as Rules of the Idaho Department of Environmental Quality, IDAPA 58.01.22, “Rules for Administration of Planning Grants for Drinking Water and Wastewater Facilities.” (3-30-01)()

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering a state grant program providing financial assistance to qualifying entities to prepare a drinking water or wastewater facility planning document. (3-29-12)()

002. WRITTEN INTERPRETATIONS (RESERVED)

As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.

01. Incorporation by Reference. These rules do not contain documents incorporated by reference. (4-2-08)

02. Availability of Referenced Material. The “Drinking Water Loan Handbook of Procedures” and “Clean Water Loan Handbook of Procedures” (Handbook) is available at the Idaho Department of Environmental Quality, Water Quality Division Loan Program, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502, or www.deq.idaho.gov. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

006. POLICY.

It is the policy of the Idaho Board of Environmental Quality, through the Idaho Department of Environmental Quality, to administer the Drinking Water and Wastewater Grant Programs. The Drinking Water and Wastewater Grant Programs provides assistance to eligible public drinking water and wastewater systems for the planning of facilities to help ensure safe and adequate supplies of drinking water and appropriate processing and disposal of wastewater. It is ~~also~~ the intent of the Idaho Board of Environmental Quality to assign a priority rating to those projects ~~which shall~~ to facilitate the compliance of any eligible public drinking water system with national primary

drinking water regulations applicable to the system, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq., and to administer the Wastewater Treatment Facility Grant Program to protect and enhance the quality and value of the water resources of the state of Idaho by financially assisting in the prevention, control and abatement of water pollution in accordance with IDAPA 58.01.16, Wastewater Rules. (4-2-08)()

007. SYSTEM ELIGIBILITY.

01. Eligible Drinking Water Systems. Community water systems and nonprofit noncommunity water systems. (3-30-01)()

02. Eligible Wastewater Systems. Any county, city, special service district, nonprofit corporation, or other governmental entity, or a combination thereof, having authority to collect, treat or dispose of wastewater. ()

023. Systems Not Eligible. The following public drinking water systems will not be considered eligible for project planning grants: (3-30-01)()

a. Systems that do not have the financial capability to pay their non-grant share of a planning project. (3-30-01)

b. Systems delinquent in payment of the annual state drinking water fee, Idaho Pollutant Discharge Elimination System (IPDES) permit assessments or state revolving fund loan repayments. (3-30-01)()

008. -- 009. (RESERVED)

010. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (3-30-01)

01. Applicant. Any qualifying entity making application for planning grant funds. (3-30-01)

02. Board. The Idaho Board of Environmental Quality. (4-2-08)

03. Categorical Exclusion (CE). Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental information document nor an environmental impact statement is required. (4-2-08)

04. Collector Sewer. That portion of the wastewater treatment facility whose primary purpose is to receive sewage from individual residences and other individual public or private structures and which is intended to convey wastewater to an interceptor sewer or a treatment plant. ()

045. Community Water System. A public drinking water system that: (3-30-01)

a. Serves at least fifteen (15) service connections used by year round residents of the area served by the system; or (3-30-01)

b. Regularly serves at least twenty-five (25) year-round residents. (3-30-01)

056. Contaminant. Any physical, chemical, biological, or radiological substance or matter in water. (3-30-01)

067. Department. The Idaho Department of Environmental Quality. (3-30-01)

078. Director. The Director of the Idaho Department of Environmental Quality or the Director's designee. (4-2-08)

089. Distribution System. Any combination of pipes, tanks, pumps, and other equipment which

delivers water from the source(s), treatment facility(ies), or a combination of source(s) and treatment facility(ies) to the consumer. Chlorination may be considered as a function of a distribution system. (3-29-12)

~~10.~~ **Domestic Wastewater.** Wastewater derived from public or private residences, business buildings or institutions and similar establishments and which contains water and human body wastes, specifically excreta and urine, along with such products designed to come in contact with excreta and urine in the practice of personal hygiene. ()

~~11.~~ **Eligible Costs.** Costs which are necessary for planning ~~public drinking water systems~~. To be eligible, costs must also be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 032. (5-3-03)()

~~12.~~ **Environmental Impact Statement (EIS).** A document prepared by the applicant when the Department determines that the proposed drinking water project will significantly affect the environment. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. The Environmental Review Procedures contained in Chapter 5 of the Handbook may be used as guidance when preparing the EIS. (4-2-08)

~~13.~~ **Environmental Information Document (EID).** Any written environmental assessment prepared by the applicant describing the environmental impacts of a proposed drinking water construction project. This document will be of sufficient scope to enable the Department to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (3-29-12)

~~14.~~ **Financial Capability.** The ability to raise and manage funds to provide the necessary resources for proper operation of the system. (3-30-01)()

~~15.~~ **Finding of No Significant Impact (FONSI).** A document prepared by the Department presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement (EIS) will not be prepared. It shall include the environmental information document or a summary of it and ~~shall~~ note any other environmental documents related to it. (3-29-12)()

~~16.~~ **Grant Recipient.** An applicant who has been awarded a grant. (3-29-12)

~~17.~~ **Handbook.** "Drinking Water Loan and Wastewater Loan Handbook ~~of Procedures~~." (4-2-08)()

~~18.~~ **Idaho Pollutant Discharge Elimination System.** Point source permitting program established pursuant to Section 402 of the federal Clean Water Act (33 U.S.C. Section 1342). ()

~~19.~~ **Ineligible Costs.** Costs which are not eligible for funding pursuant to these rules. (3-29-12)

~~20.~~ **Interceptor Sewer.** That portion of the wastewater treatment facility whose primary purpose is to transport domestic sewage or nondomestic wastewater from collector sewers to a treatment plant. ()

~~21.~~ **Maximum Contaminant Level (MCL).** The maximum permissible level of a contaminant in water which is delivered to any user of a public drinking water system. (3-30-01)

~~22.~~ **Managerial Capability.** The capabilities of the qualified entity to support the proper financial management and technical operation of the system. (3-30-01)

~~23.~~ **Noncommunity Water System.** A public water system that is not a community water system. (5-3-03)

~~24.~~ **Nondomestic Wastewater.** Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. ()

~~25.~~ **Nonprofit Noncommunity Water System.** A public drinking water system that is not a

community water system and is governed by Section 501 of the Internal Revenue Code and includes, but is not limited to, state agencies, municipalities and nonprofit organizations such as churches and schools. (5-3-03)

~~266.~~ **Nontransient Noncommunity Water System.** A public drinking water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year. (4-2-08)

~~27.~~ **Operation and Maintenance Manual.** A guidance and training manual delineating the optimum operation and maintenance of the facility or its components. ()

~~228.~~ **Person.** An individual, corporation, company, association, partnership, state agency, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, state agency, municipality, or federal agency). (5-3-03)

~~239.~~ **Planning Document.** A document which describes the condition of a public drinking water or wastewater system and presents a cost effective and environmentally sound alternative to achieve or maintain regulatory compliance. Engineering reports and facility plans are examples of such planning documents. The planning documents shall be prepared by or under the responsible charge of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Requirements for planning documents prepared using grant funds are provided in Section 030 of these rules and in the Handbook. (~~3-29-12~~)()

~~30.~~ **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. 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. ()

~~31.~~ **Pollutant.** Any chemical, biological, or physical substance whether it be solid, liquid, gas, or a quality thereof, which if released into the environment can, by itself or in combination with other substances, create a nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other beneficial uses. ()

~~2432.~~ **Priority List.** A list of proposed projects rated by severity of a risk to public health, the necessity to ensure compliance with, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C., Sections 300f et seq., population affected, the need on a household basis for protection of Idaho's public drinking water supplies, and as otherwise as described in Section 020. (~~4-2-08~~)()

~~2533.~~ **Public Drinking Water System/Public Water System/Water System.** A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any "special irrigation district." A public water system is either a "community water system" or a "noncommunity water system." (4-2-08)

~~2634.~~ **Qualifying Entity.** Any county, city, special service district, nonprofit or investor-owned corporation, or other governmental entity, or a combination thereof, which owns or operates a public drinking water system ~~or~~, irrigation system, or wastewater system. (~~4-2-08~~)()

~~2735.~~ **Rehabilitation.** The repair or replacement of segments of drinking water facilities. (3-30-01)

~~2836.~~ **Reserve Capacity.** That portion of the system in the planned facilities to handle future drinking water demand. (3-30-01)

~~37.~~ **Sewer Use Ordinance/Sewer Use Resolution.** An ordinance or resolution which requires new

sewers and connections to be properly designed and constructed, prohibits extraneous sources of inflow and prohibits introduction of wastes into the sewer in an amount that endangers the public safety or the physical or operational integrity of the wastewater treatment facility. ()

~~2938.~~ **State.** The state of Idaho. (3-30-01)

~~309.~~ **Suspension.** An action by the Director to suspend a grant contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (3-30-01)

~~3140.~~ **Sustainability.** Sustainability will include efforts for energy and water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement. (3-29-12)

~~3241.~~ **Technical Capability.** The ability of the public drinking water or wastewater system to comply with existing and expected ~~drinking water~~ rules. ~~(3-30-01)~~()

~~3342.~~ **Termination.** An action by the Director to permanently terminate a grant contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (3-30-01)

43. User Charge System. A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required, and which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the wastewater treatment facility. ()

44. Wastewater. A combination of the liquid and water-carried wastes from dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water and storm water that may be present; liquid and water that is physically, chemically, biologically, or rationally identifiable as containing excreta, urine, pollutants or domestic or commercial wastes; sewage. ()

45. Wastewater Treatment Facility. Any facility, including land, equipment, furnishings and appurtenances thereof, for the purpose of collecting, treating, neutralizing or stabilizing wastewater and removing pollutants from wastewater including the treatment plant, collectors, interceptors, outfall and outlet sewers, pumping stations, sludge treatment and handling systems and land disposal systems. ()

~~3446.~~ **Water Treatment Plant.** That portion of the public drinking water system whose primary purpose is to remove contaminants. (3-30-01)

011. -- 019. (RESERVED)

020. PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. ~~Information is also received from the Department and consulting engineers.~~ Grant funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health, sustainability, and water quality criteria and condition of the existing system. ~~(3-29-12)~~()

01. Purpose. A priority rating system shall be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance in accordance with these rules. (4-2-08)

02. Priority Rating for Drinking Water Systems. The priority rating system shall be based on a numerical point system. Priority criteria shall contain the following points: ~~(3-29-12)~~()

a. Public Health Hazard. Any condition which creates, or may create, a danger to the consumer's health, which may include any one (1) or more of the following, may be awarded a maximum of one hundred (100) points: (3-29-12)

i. Documented unresolved violations of the primary drinking water standards including maximum contaminant levels, action levels, and treatment techniques (to include maximum contaminant levels for acute and

- chronic contaminates); (3-29-12)
- ii. Documented unresolved violations of pressure requirements; (3-29-12)
 - iii. Documented reduction in source capacity that impacts the system's ability to reliably serve water; ~~(3-29-12)~~ ()
 - iv. Documented significant deficiencies (e.g., documented in a sanitary survey) in the physical system that is causing the system to not be able to reliably serve safe drinking water. (3-29-12)
 - v. Documented unregulated contaminants that have been shown to be a hazard to public health. ()
- b. General Conditions of Existing Facilities. Points shall be given based on deficiencies (which would not constitute a public health hazard) for pumping, treating, storing, and delivering drinking water - up to sixty (60) points. (3-29-12)
- c. Sustainability Efforts (e.g., prospective efforts at energy conservation, water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement) - up to fifty (50) points. (3-29-12)
- d. Consent Order, Compliance Agreement Schedule, or Court Order. Points shall be given if the system is operating under and in compliance with a Consent Order, Compliance Agreement Schedule, or Court Order and the proposed construction project will address the Consent Order, Compliance Agreement Schedule, or Court Order - up to thirty (30) points. (3-29-12)
- e. Incentives. Bonus points shall be awarded to systems that promote source water protection, conservation, economy, proper operation maintenance, and monitoring - up to ten (10) points. (3-29-12)
- f. Affordability. Points shall be given when current system user charges exceed state affordability guidelines - ten (10) points. (3-30-01)

03. Priority Rating for Wastewater Systems. The priority rating system shall be based on a numerical point system. Priority criteria shall contain the following points. ()

- a. Public health emergency or hazard certified by the Idaho Board of Environmental Quality, the Department, a District Health Department, or by a District Board of Health - one hundred fifty (150) points. ()
- b. Regulatory compliance issues (e.g., noncompliance and resulting legal actions relating to infrastructure deficiencies at a wastewater facility) – up to one hundred (100) points. ()
- c. Watershed restoration (e.g., implementation of best management practices or initiation of construction at wastewater collection and treatment facilities as part of an approved total maximum daily load plan, implementation of nonpoint source management actions in protection of a threatened water, or is part of a special water quality effort) – up to one hundred (100) points. ()
- d. Watershed protection from impacts (e.g., improvement of beneficial use(s) in a given water body, evidence of community support, or recognition of the special status of the affected water body) – up to one hundred (100) points. ()
- e. Preventing impacts to uses (nonpoint source pollution projects) – up to one hundred (100) points. ()
- f. Sustainability efforts (e.g., prospective efforts at energy conservation, water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement) – up to fifty (50) points. ()

g. Affordability (current system user charges exceed state affordability guidelines) – ten (10) points.
()

034. **Rating Forms.** Rating criteria for Subsections 020.02 and 020.03 is set forth in a rating form that is available *in the Handbook* at www.deq.idaho.gov. (3-29-12)()

045. **Priority List.** A list shall be developed from projects rated according to the priority rating system. *Such list shall be*, submitted for public review and comment, and *shall thereafter be* submitted to the Board for approval and adoption. (3-29-12)()

a. **Priority Reevaluation.** Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for or scope of any project, a reevaluation of that priority rating will be conducted. (3-30-01)

b. **Priority Target Date.** An eligible applicant whose project is on the approved priority list, and for which funding is available, will be contacted by the Department and a target date for submission of a completed grant application will be established. (3-29-12)

c. **Project Bypass.** A project that does not or will not meet the project target date or a Department schedule that allows for timely utilization of grant funds may be bypassed, substituting in its place the next highest ranking project that is ready to proceed. An eligible applicant that is bypassed will be notified in writing of the reasons for being bypassed. (3-29-12)

056. **Amendment of Priority List.** The Director may amend the Priority List as set forth in Section 080 of these rules. (3-29-12)

021. -- 029. (RESERVED)

030. PROJECT SCOPE AND FUNDING.

Grant funds awarded under this program will be used entirely to prepare a *drinking water facility planning document*. The planning document *will to* identify the cost effective and environmentally sound alternative to achieve or maintain compliance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq.; or, maintain compliance with IDAPA 58.01.16, Wastewater Rules, and the federal Clean Water Act, 33 U.S.C. Sections 1381 et seq. The planning document must be approved by the Department. (3-29-12)()

01. Planning Document. (3-29-12)

a. A planning document shall include all items required by IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 503.03 or 502.04 or IDAPA 58.01.16, "Wastewater Rules," Subsection 411.03 or 410.04. Should the grant recipient proceed to construction using federal funds (e.g., a state revolving fund loan), then the items listed in Subsection 030.01.b. of these rules *shall will* be required prior to construction. (3-29-12)()

b. A planning document that is prepared anticipating the use of federal funds shall include an environmental review that will require the Department approval of both a draft and final planning document. (3-29-12)

i. The draft planning document shall include all items required by IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 502.04 or 503.03, as well as the following: or 58.01.16, "Wastewater Rules," Subsection 411.03 or 410.04 (3-29-12)()

- (1) Description of existing conditions for the proposed project area; (3-30-01)
- (2) Description of future conditions for the proposed project area; (3-30-01)
- (3) Development and initial screening of alternatives; (3-30-01)

- (4) Development of an environmental review specified by the Department as described in Section 040. (3-29-12)
- ii. The final planning document shall include all items required of the draft planning document as well as the following: (3-29-12)
- (1) Final screening of principal alternatives and plan adoption; (3-30-01)
- (2) Selected plan description and implementation arrangements; and (3-29-12)
- (3) Relevant engineering data supporting the final alternative. (3-29-12)
- (4) Assessment of the cost and effectiveness, to the maximum extent practicable, of efficient water use, reuse, recapture and conservation, and energy conservation, with cost including construction, operation and maintenance, and replacement. ()
- iii. The grant recipient shall provide an opportunity for the public to comment on the draft planning document. The public comment period shall be held after alternatives have been developed and the Department has approved the draft planning document. The grant recipient shall provide written notice of the public comment period and hold at least one (1) public meeting within the jurisdiction of the grant recipient during the public comment period. At the public meeting, the grant recipient shall present the draft planning document ~~shall be presented by the grant recipient~~ with an explanation of the alternatives identified. The cost effective and environmentally sound alternative selected shall consider public comments received from those affected by the proposed project. After the public meeting and public comment period, the final alternative will be selected and the Environmental Information Document may be prepared. (3-29-12)()
- c. The draft and final planning document shall bear the imprint of an Idaho licensed professional engineer's seal that is both signed and dated by the engineer. (3-29-12)
- d. The draft and final planning documents must be reviewed and approved by the Department. (3-29-12)
- e. The planning period shall be twenty (20) years for all facilities except for distribution and transmission systems which may be forty (40) years. (4-2-08)
- 02. Limitation on Funding Assistance.** The maximum grant funding provided in a state planning grant award shall not exceed fifty percent (50%) of the total eligible costs for grants awarded. (3-30-01)
- 031. REVIEW AND EVALUATION OF GRANT APPLICATIONS.**
- 01. Submission of Application.** Those eligible systems which received high priority ranking shall be invited to submit an application. The applicant shall submit to the Department, a completed application in a form prescribed by the Department. (3-30-01)
- 02. Application Requirements.** Applications shall contain the following documentation, as applicable: (5-3-03)
- a. An authorizing resolution passed by a majority of the governing body authorizing an elected official or officer of the qualifying entity to commit funding; and (5-3-03)
- b. Contracts for engineering services or other technical services and the description of costs and tasks set forth therein shall be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 032; and (3-29-12)
- c. A plan of study describing the work tasks to be performed in the planning document, a schedule for completion of the work tasks and an estimate of staff hours and costs to complete the work tasks; and (3-29-12)

d. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)

~~i. Be procured through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and (5-3-03)~~

ii. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and (5-3-03)

iii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)

~~iv.~~ Be covered by professional liability insurance in accordance with Subsection 050.05.d. A certification of liability insurance shall be included in the application; and (5-3-03)

e. A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 032; and (3-29-12)

f. A demonstration that the obligation to pay the costs for which funding is requested, is the result or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code; and (4-2-08)

g. A statement regarding how the non-grant portion of the project will be funded; and (5-3-03)

h. For incorporated nonprofit applicants only, Articles of Incorporation and/or Bylaws showing nonprofit and incorporated status according to Chapter 3, Title 30, Idaho Code. (3-30-01)

03. Determination of Completeness of Application. Applications will be reviewed to determine whether they contain all of the information required by Subsection 031.02. (3-29-12)

04. Notification Regarding Incompleteness of Application. Written notification if an application is incomplete, including an explanation of missing documentation, will be sent to the applicant. ~~The applicant may provide the missing documentation. (5-3-03)()~~

05. Reapplication for Grant. The action of disapproving, recalling, or terminating a grant in no way precludes or limits the former applicant from reapplying for another grant when the project deficiencies are resolved and project readiness is secured. (5-3-03)

032. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department ~~shall~~ will review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. (5-3-03)()

01. Eligible Costs. Eligible costs are those determined by the Department to be: (5-3-03)

a. Necessary costs; (3-29-12)

b. Reasonable costs; and (3-29-12)

c. Costs that are not ineligible as described in Subsection 032.05. (3-29-12)

02. Necessary Costs. The Department ~~shall~~ will determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the plan of study for the planning document. (3-29-12)()

03. Reasonable Costs. Costs ~~shall~~ will be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code. ~~(4-2-08)~~()

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable and not ineligible costs include: (5-3-03)

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary expenses such as salaries and expenses of a mayor; city council members; board; or a city, district or board attorney; (4-2-08)

b. Professional and consulting services ~~utilizing a lump sum contract~~, specifying costs of individual tasks. ~~(5-3-03)~~()

c. Engineering costs ~~pursuant to a lump sum contract~~, specifying costs of individual tasks, directly related to the planning of ~~public drinking water treatment, storage and distribution~~ facilities including but not limited to the preparation of a planning document and environmental review report; ~~(3-29-12)~~()

d. Financial, technical and management capability analysis; (5-3-03)

e. Public participation for alternative selection; (5-3-03)

f. Certain direct and other costs as determined eligible by the Department; and (5-3-03)

g. ~~Site acquisition services which could include legal fees, appraisals and surveys for land associated with the cost effective alternative in the report and for purchase from a willing seller~~ Legal costs necessary to allow for the completion of the facility plan. ~~(3-29-12)~~()

05. Ineligible Project Costs. Costs which are ineligible for funding include, but are not limited to: (5-3-03)

a. ~~Basin or area wide p~~Planning not directly related to the project; ~~(5-3-03)~~()

b. Personal injury compensation or damages arising out of the project; (5-3-03)

c. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)

d. Costs outside the scope of the approved project; (5-3-03)

e. Ordinary operating expenses such as salaries and expenses of a mayor, city council members, city attorney, district or association personnel costs, and acquiring project funding; (4-2-08)

f. Preparation of a grant application; (5-3-03)

g. All costs related to assessment, defense and settlement of disputes, unless such costs are integral to the completion of the project; ~~(5-3-03)~~()

h. Costs of supplying required permits or waivers; and ~~(5-3-03)~~()

i. Costs incurred prior to award of the grant unless specifically approved in writing as eligible pre-award costs by the Department; (5-3-03)

~~j. Engineering costs incurred prior to approval of the engineering contract or those costs in excess of the contract ceiling unless preapproval has been given in writing by the Department; and~~ (5-3-03)

06. Notification Regarding Ineligible Costs. Prior to providing a grant offer, the Department *shall will* notify the applicant that certain costs are not eligible for funding and the reasons for the Department's determination. If such costs are included in the engineering contract, the Department *shall will* also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. ~~(5-3-03)~~()

07. Eligible Costs and the Grant Offer. The grant offer *shall will* reflect those costs determined by the Department to be eligible costs. The grant offer, however, may include estimates of some eligible costs that have not yet been set. Actual eligible costs may differ from such estimated costs set forth in the grant offer. In addition, grant disbursements may be increased or decreased if eligible costs are modified. ~~(4-2-08)~~()

033. -- 039. (RESERVED)

040. ENVIRONMENTAL REVIEW.

01. Environmental Documentation. The grant recipient may complete an environmental review as part of and in conjunction with a planning document. Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. If the grant recipient prepares an environmental review, then the Department *shall will* be consulted at an early stage in the preparation of the planning document to determine the required level of environmental review. Based on review of existing information and assessment of environmental impacts, the grant recipient may complete at least one (1) of the following: ~~(3-29-12)~~()

a. Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (4-2-08)

or
b. Prepare an Environmental Information Document (EID) in a format specified by the Department; (4-2-08)

c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (4-2-08)

02. Categorical Exclusions. If the grant recipient requests a CE, the Department *shall will* review the request and, based upon the supporting documentation, take one (1) of the following actions: ~~(3-29-12)~~()

a. Determine if an action is consistent with categories eligible for exclusion whereupon the Department *shall will* issue a notice of CE from further substantive environmental review. Once the CE is granted for the selected alternative, the Department will publish a notice of CE in a local newspaper, following which the planning document can be approved; or ~~(3-29-12)~~()

b. Determine if an action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If issuance of a CE is not appropriate, the Department *shall will* notify the grant recipient of the need to prepare an EID. ~~(3-29-12)~~()

03. Environmental Information Document Requirements. When an EID is required, the grant recipient shall prepare the EID in accordance with the following Department procedures: (3-29-12)

a. Various laws and executive orders related to environmentally sensitive resources shall be considered as the EID is prepared. Appropriate state and federal agencies shall be consulted regarding these laws and executive orders. (4-2-08)

b. A full range of relevant impacts, both direct and indirect, of the proposed project shall be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that shall cause irreversible or irretrievable commitment of resources. (4-2-08)

c. The Department *shall will* review the draft EID and either request additional information about one (1) or more potential impacts, or *shall will* draft a "finding of no significant impact" (FONSI). ~~(4-2-08)~~()

04. Final Finding of No Significant Impact. The Department ~~shall~~ will publish the draft FONSI in a newspaper of general circulation in the geographical area of the proposed project and shall allow a minimum thirty (30) day public comment period. Following the required period of public review and comment, and after any public concerns about project impacts are addressed, the FONSI shall become final. The Department ~~shall~~ will assess the effectiveness and feasibility of the mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the planning document. ~~(3-29-12)~~()

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the grant recipient shall: (3-29-12)

a. Contact all affected state agencies, and other interested parties, to determine the required scope of the document; (4-2-08)

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (4-2-08)

c. Conduct a public meeting which may be held in conjunction with a planning document meeting; and (3-29-12)

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. (4-2-08)

06. Final EIS. Upon completion of the EIS by the grant recipient and approval by the Department of all requirements listed in Subsection 040.05, the Department ~~shall~~ will issue a record of decision, documenting the mitigative measures ~~which shall to~~ be required of the grant recipient. The planning document can be completed once the final EIS has been approved by the Department. ~~(3-29-12)~~()

07. Use of Environmental Reviews Conducted by Other Agencies. If an environmental review for the project has been conducted by another state, federal, or local agency, the Department may, at its discretion, issue its own determination by adopting the document and public notification process of the other agency. (4-2-08)

08. Validity of Review. Environmental reviews, once completed by the Department, are valid for five (5) years from the date of completion. If a grant application is received for a project with an environmental review which is more than five (5) years old, the Department ~~shall~~ will reevaluate the project, environmental conditions, and public comments and ~~shall~~ will: ~~(3-29-12)~~()

a. Reaffirm the earlier decision; or (3-30-01)

b. Require supplemental information to the earlier Environmental Impact Statement, Environmental Information Document, or request for Categorical Exclusion. Based upon a review of the updated document, the Department ~~shall~~ will issue and distribute a revised notice of Categorical Exclusion, finding of no significant impact, or record of decision. ~~(3-30-01)~~()

041. -- 049. (RESERVED)

050. GRANT OFFER AND ACCEPTANCE.

01. Grant Offer. Grant offers will be delivered by certified mail to applicants who received high priority ranking, were invited to submit an application, and provided a complete application. (3-30-01)

02. Acceptance of Grant Offer. Applicants have sixty (60) days in which to officially accept the grant offer on prescribed forms furnished by the State. The sixty (60) day acceptance period commences from the date indicated on the grant offer notice. If the applicant does not accept the grant offer within the sixty (60) day period, the grant funds may be offered to the next project of priority. (3-30-01)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director or the Director's

designee as the grantor, and upon signature by the authorized representative of the qualifying entity, as the grant recipient, the grant offer ~~shall~~ **will** become a grant contract agreement. The disbursement of funds pursuant to an agreement is subject to a finding by the Director that the grant recipient has complied with all agreement conditions and has prudently managed the project. The Director may, as a condition of payment, require that a grant recipient vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with grant funds or transfer its claim against such third parties to the Department. Grant contract agreements shall be interpreted according to the law of grants in aid. No third party shall acquire any rights against the State or its employees from a grant contract agreement. ~~(3-29-12)~~()

04. Estimate of Reasonable Cost. Each grant project contract will include the eligible cost of conducting the planning study. Some eligible costs may be estimated and payments may be increased or decreased as provided in Section 060. (3-3-03)

05. Terms of Agreement. The grant offer shall contain terms of agreement as prescribed by the Department including, but not limited to special conditions as determined necessary by the Department for the successful planning of the project. (3-30-01)

a. Terms consistent with these rules and consistent with the scope of the grant project; and (3-29-12)

b. Special clauses as determined necessary by the Department for the successful investigation and management of the project; and (5-3-03)

c. Terms consistent with applicable state ~~and federal laws~~ pertaining to planning documents; and ~~(3-29-12)~~()

d. Requirement for the prime engineering firm(s) retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project steps, whether or not such services or steps are state funded, until the certification of project performance is accepted by the Department. (4-2-08)

051. -- 059. (RESERVED)

060. PAYMENTS.

01. Eligibility Determination. Grant funds will only be provided for eligible costs as defined at Section 010 and determined in accordance with Section 032. (3-29-12)

02. Payments for State Grants. Requests for payment shall be submitted to the Department on a form provided by the Department. The Department ~~shall~~ **will** pay for those costs that are determined to be eligible. ~~(3-30-01)~~()

03. Grant Increases. Grant amendment increase requests as a result of an increase in eligible project costs will be considered, provided funds are available. Documentation and justification supporting the unavoidable need for a grant increase must be submitted to the Department for approval prior to incurring any costs above the approved eligible cost ceiling. (3-30-01)

04. Grant Decreases. If the actual eligible cost is determined to be lower than the estimated eligible cost the grant amount will be reduced proportionately. (3-30-01)

05. Final Project Review to Determine Actual Eligible Costs. The Department may conduct a final project review to determine the actual eligible costs. The financial records of the grant recipient may be reviewed by the Department. (3-29-12)

06. Final Payment. The final payment consisting of five percent (5%) of the total state grant will not be made until the requirements contained in the grant agreement have been satisfied. (3-29-12)

061. -- 069. (RESERVED)

070. SUSPENSION OR TERMINATION OF GRANT.

01. Causes. The Director may suspend or terminate any grant for failure by the grantee or its agents, including his engineering firm(s), contractor(s) or subcontractor(s) to perform. A grant may be suspended or terminated for good cause including, but not limited to, the following: (3-30-01)

a. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; or (3-30-01)

b. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years imprisonment or any crime involving or affecting the project; or (3-30-01)

c. Violation(s) of any term of agreement of the grant offer or contract agreement; or (3-30-01)

d. Any willful or serious failure to perform within the scope of the project; or (4-2-08)

e. Debarment of an engineering firm, contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (3-30-01)

02. Notice. The Director will notify the grantee in writing and by certified mail of the intent to suspend or terminate the grant. The notice of intent shall state: (3-30-01)

a. Specific acts or omissions which form the basis for suspension or termination; and (3-30-01)

b. That the grantee may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (3-15-02)

03. Determination. A determination will be made by the Board pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (3-15-02)

04. Reinstatement of Suspended Grant. Upon written request by the grantee and evidence that the cause(s) for suspension no longer exist, the Director may, if funds are available reinstate the grant. (3-30-01)

05. Reinstatement of Terminated Grant. No terminated grant shall be reinstated. (3-30-01)

071. -- 079. (RESERVED)

080. WAIVERS.

Waivers from the requirements of these rules may be granted by the Department on a case-by-case basis upon full demonstration that a significant public health ~~emergency~~ hazard exists. ~~(3-30-01)~~()

081. -- 999. (RESERVED)