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**IDAPA 16
TITLE 01
Chapter 16**

16.01.16 - RULES FOR NUTRIENT MANAGEMENT

000. LEGAL AUTHORITY.

Pursuant to Section 39-105(3)(o), Idaho Code, the Director of the Department of Health and Welfare is directed to recommend to the Board of Health and Welfare for adoption, rules setting forth procedures for development of a comprehensive state nutrient management plan for surface waters of the state, and rules for procedures to determine consistency of local nutrient management programs with the criteria set forth in that section. (12-28-94)

001. TITLE, SCOPE AND POLICY.

01. Title. These rules are to be known and cited as Idaho Department of Health and Welfare Rules, Title 01, Chapter 16, "Rules for Nutrient Management." (12-28-94)

02. Scope. These rules establish the procedures and requirements for the development of a comprehensive nutrient management plan for surface waters of the state, and the review of local nutrient management programs for consistency with the criteria established pursuant to the Nutrient Management Act, Section 39-105(3)(o), Idaho Code. (12-28-94)

03. Policy. The 1989 Idaho Legislature, in passing the Nutrient Management Act (House Bill No. 399), declared that the purposes of this Act are: to establish a comprehensive statewide nutrient management plan, to develop the plan on a hydrologic basin unit basis with a lake system emphasis, to affirm primary responsibility for nutrient management to the state to assure a consistent and effective program throughout the state, and to clearly express the legislature's intent that comprehensive basin planning is necessary to optimize management actions designed to achieve the desired water quality benefits. (7-9-90)

002. DEFINITIONS.

01. Administrator. The Administrator of the Division of Environmental Quality of the Idaho Department of Health and Welfare. (7-9-90)

02. Application. The material submitted by the local unit of government to the local Health District Board and the Division upon which to base a consistency determination. An application includes a written request for a consistency determination, the proposed local nutrient management program, findings, and any relevant supporting documentation. (7-9-90)

03. Beneficial Use. Any of the various uses which may be made of the water of Idaho including, but not limited to, domestic water supplies, industrial water supplies, agricultural water supplies, navigation, recreation in and on the water, wildlife habitat and aesthetics. Appropriateness of the beneficial use is dependent upon actual use, the ability of a water to support a nonexisting use either now or in the future, and its likelihood of being used in a given manner. The use of a water for the purpose of wastewater dilution or as a receiving water for a waste treatment facility effluent is not a beneficial use. (12-28-94)

04. Best Management Practice (BMP). Practices, techniques, or measures identified in the state water quality plan which are determined to be the most effective, practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals. (7-9-90)

05. Board. The Idaho State Board of Health and Welfare. (12-31-91)

06. Consistency Determination. The determination by the Division and the local Health District Board that a proposed local nutrient management program is consistent or inconsistent with the criteria defined in Section 39-105(3)(o), Idaho Code. (7-9-90)

07. Department. The Idaho Department of Health and Welfare. (7-9-90)

08. Director. The Director of the Idaho Department of Health and Welfare or his designee. (12-31-91)
09. Division. The Division of Environmental Quality of the Idaho Department of Health and Welfare. (7-9-90)
10. Findings. The findings of fact of the local unit of government that support the local nutrient management program and evidence the consistency of the local nutrient management program with the criteria defined in Section 39-105(3)(o), Idaho Code. (7-9-90)
11. Governor. The Governor of the state of Idaho. (7-9-90)
12. Health District Board. Any one (1) of the district boards of health established in each of the seven (7) public health districts. (7-9-90)
13. Hydrologic Basin. Any of the six (6) major hydrologic basins defined in Idaho. These basins include the Bear, Clearwater, Panhandle, Salmon, Southwest and Upper Snake Basins. (7-9-90)
14. Local Nutrient Management Program. Any program including any rule, regulation or ordinance established by a local unit of government to control nutrient enrichment or overloading of surface waters with the primary purpose of preventing the overfeeding of aquatic plant life and a subsequent uncontrolled increase in the growth of algae or aquatic macrophytes. (7-9-90)
15. Local Unit of Government. Includes cities, counties, public health districts, irrigation districts, and any other substate governmental unit with the authority to establish programs to address surface water pollution abatement. (7-9-90)
16. Nonpoint Source Activities. Includes grazing, crop production, silviculture, log storage or rafting, construction, mining, recreation, septic tank disposal, and other activities not subject to regulation under the federal national pollutant discharge elimination system. (7-9-90)
17. Nonpoint Source Pollution. Water pollution that comes from many varied, nonspecific and diffused sources and can be categorized by the general land disturbing activity that causes the pollution. (7-9-90)
18. Nutrient. Any one (1) of the natural elements including, but not limited to, carbon, hydrogen, oxygen, nitrogen, potassium, phosphorus, magnesium, sulfur, calcium, sodium, iron, manganese, copper, zinc, molybdenum, vanadium, boron, chlorine, cobalt and silicon, that are essential to plant and animal growth. (7-9-90)
19. Nutrient Management Plan. The comprehensive state strategy formulated to manage nutrients and adopted by the Director pursuant to Section 39-105(3)(o), Idaho Code. (7-9-90)
20. Person. An individual, association, a corporation, partnership, municipality, commission, the state of Idaho, a political subdivision of the state, state agency, federal agency, special district, or interstate body. (7-9-90)
21. Point Source. Any discernable, 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 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. (7-9-90)
22. State. The state of Idaho. (7-9-90)
23. Stream Segment of Concern. A specific stream segment or body of water that has been identified pursuant to the provisions defined in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 01, Chapter 02, "Rules Governing Water Quality Standards and Wastewater Treatment Requirements." (12-28-94)
24. Surface Waters. All the accumulations of surface waters, natural and artificial, public or private, or parts thereof which are wholly or partially within, which flow through or border upon the state. (7-9-90)

003. -- 099. (RESERVED).

100. DEVELOPMENT OF THE STATE NUTRIENT MANAGEMENT PLAN.

01. Hydrologic Basin Unit Basis. The state nutrient management plan shall be developed and adopted by the Director on a hydrologic basin unit basis with a lake system emphasis. It shall be composed of the six (6) major hydrologic basin plans as they are completed. The Panhandle Basin plan shall be completed no later than July 1, 1995. The remaining basin plans shall be completed no later than January 1, 1995. (12-28-94)

02. Advisory Committees. (7-1-93)

a. Technical Advisory Committee. The Department will establish a Technical Advisory Committee (TAC) in each hydrologic basin to assist the Department in developing a nutrient management plan for that basin. The TAC may include, but is not limited to, the designated representatives of the local public health district; city and county planning or engineering departments; Department of Lands; Department of Fish and Game; Department of Parks and Recreation; Department of Water Resources; State Soil Conservation Commission; the United States Forest Service, Bureau of Land Management, Army Corps of Engineers, Soil Conservation Service, Agricultural Conservation and Stabilization Service, Environmental Protection Agency, and Geological Survey; and any one or more of said agencies and such representatives of agriculture, conservation, forest products, sportsmen, mining interests, or Indian tribes. Where appropriate and possible, the TACs shall utilize technical advisory committees established pursuant to any other relevant water quality management program or plan. Wherever existing advisory committees are used, care shall be taken to assure the committees are aware of their responsibilities under each program and that program expectations of the committees are not in conflict. (7-9-90)

b. Public Advisory Committee. The Department will establish a Public Advisory Committee (PAC) in each hydrologic basin to assist the Department in developing a nutrient management plan for that basin. The PAC may include, but is not limited to, representatives of any incorporated nonprofit membership lake association and any one or more of such representatives of agriculture, conservation, forest products, sportsmen, mining interests, Indian tribes, or the public-at-large. Where appropriate and possible, the PACs shall utilize public advisory committees established pursuant to any other relevant water quality management program or plan. Wherever existing advisory committees are used, care shall be taken to assure the committees are aware of their responsibilities under each program and that program expectations of the committees are not in conflict. (7-9-90)

03. Contents of the Comprehensive State Nutrient Management Plan. The comprehensive statewide nutrient management plan shall consist of the basin nutrient management plans developed for each of the six (6) hydrologic basins as they are completed and adopted by the Director. Each hydrologic basin plan shall contain the following information: (7-9-90)

a. Identification of nutrient sources. Each nutrient management plan shall include an evaluation of nutrient loadings, attributed to both point and nonpoint sources, to surface waters of the basin. (7-9-90)

i. The plan shall identify specific waterbodies, especially lakes, where nutrient enrichment or overloading results in or has the potential to result in the overfeeding of aquatic plant life and a subsequent uncontrolled increase in the growth of algae or aquatic macrophytes. (7-9-90)

ii. The plan shall identify the specific nutrient(s) and nutrient source(s) that result in or have the potential to result in the overfeeding of aquatic plant life and a subsequent uncontrolled increase in the growth of algae or aquatic macrophytes in receiving surface waters. (7-9-90)

b. Identification of the dynamics of nutrient removal, use and dispersal. Each nutrient management plan shall include an evaluation of the dynamics of nutrient removal, use and dispersal within surface waters of the basin. The evaluation shall focus on waterbodies, nutrients and nutrient sources as identified pursuant to Subsection 100.03.a. (12-31-91)

c. Identification of preventative or remedial actions. Each nutrient management plan shall include an identification of preventative and remedial actions where feasible and necessary to protect surface water quality, especially lakes, within the basin. The preventative or remedial actions identified shall be targeted at the waterbodies,

nutrients and nutrient sources as identified pursuant to Subsection 100.03.a. (12-31-91)

04. Additional Water Quality Studies. Where a lack of information limits the specificity of a basin nutrient management plan, additional water quality studies will be conducted and the plan appropriately revised. (7-9-90)

a. Prioritization of Waterbodies for Additional Water Quality Studies. The basin plans shall prioritize waterbodies for additional water quality studies (i.e., water quality studies for diagnosis and plan revision) when necessary. Where possible, the prioritization of waterbodies shall be consistent with existing state water quality management priorities. This includes, but is not limited to, priorities established pursuant to the state Nonpoint Source (Section 319) Management Program, the state Clean Lakes Act, and identified Stream Segments of Concern. (7-9-90)

b. Implementation of Additional Water Quality Studies. Water quality studies shall be conducted as soon as possible on the prioritized waterbodies and the resulting information shall be incorporated into the appropriate basin nutrient management plan. Water quality studies for nutrient management shall consider and, where possible, utilize existing water quality information. This includes, but is not limited to, water quality studies conducted pursuant to the state Nonpoint Source (Section 319) Management Program, the state Clean Lakes Act, and identified Stream Segments of Concern. (7-9-90)

05. Consideration of Existing Water Quality Management Plans and Programs. Existing federal, state and local water quality management plans and programs will be considered when developing each basin nutrient management plan. This includes, but is not limited to, the state Nonpoint Source (Section 319) Management Plan and Program, the state Agricultural Pollution Abatement Plan, the state Forest Practices Water Quality Management Plan, the state Municipal Facilities Construction Program, and lake management plans developed pursuant to the state Clean Lakes Act. (7-9-90)

06. Public Meetings. The Department will conduct at least one (1) public information meeting in each hydrologic basin to discuss the nutrient management plan developed for that basin. (7-9-90)

a. Public Notice. The Department shall provide notice at least thirty (30) days prior to the public meeting. At that time, the nutrient management plan developed for the basin will be made available to the public for review. (7-9-90)

b. Public Comment. Public comments on the basin nutrient management plan will be received by the Department at the public meeting. Written comments will also be accepted by the Department if received within thirty (30) days of a public meeting within the basin. Upon review of the public comments received, the Department may revise the basin nutrient management plan as appropriate. (7-9-90)

07. Public Hearing. A public hearing(s) shall be held on any basin nutrient management plan at the Director's discretion or if requested by the public. Public notice will be given if a hearing is held. (12-31-91)

08. Effective Date and Plan Certification. The nutrient management plan (i.e., each individual hydrologic basin nutrient management plan) shall become effective on the date of its adoption by the Director. The state nutrient management plan, or revisions thereto, shall be considered a component of the state water quality management plan. In accordance with 40 CFR Section 130.6(e), the nutrient management plan shall be submitted to the Governor and to the Region X Administrator of the United States Environmental Protection Agency for approval. (7-9-90)

09. Plan Utilization. The state nutrient management plan shall be used by the Department and other appropriate agencies including, but not limited to, soil conservation districts, public health districts, and local units of government in developing programs to manage nutrient inputs to surface waters. State and local units of government shall exercise their police powers in compliance with the plan. (7-9-90)

10. Revisions to the State Nutrient Management Plan. The state nutrient management plan will be updated and revised as necessary to reflect new information. The plan will be updated to include: (7-9-90)

- a. Any local nutrient management program that is developed in accordance with the state nutrient management plan; (7-9-90)
- b. Results of water quality studies completed pursuant to Subsection 100.04.b.; and (12-28-94)
- c. Any significant new technological or scientific information relevant to the nutrient management plan. (7-9-90)

101. -- 199. (RESERVED).

200. CONSISTENCY REVIEW OF LOCAL NUTRIENT MANAGEMENT PROGRAMS ESTABLISHED PRIOR TO THE DEVELOPMENT OF THE STATE NUTRIENT MANAGEMENT PLAN.

- 01. Responsibilities. (7-1-93)
 - a. Local Units of Government. Any local unit of government that develops a nutrient management program prior to the development of the appropriate basin nutrient management plan shall submit an application for a consistency determination to the local Health District Board and the Division. Local units of government that have enacted nutrient management programs prior to the effective date of these rules shall submit an application for a consistency determination to the local Health District Board and the Division within thirty (30) days of the effective date of these rules. (12-28-94)
 - b. Health District Board. The local Health District Board is responsible, with the Division, for providing an evaluation of the findings and making a consistency determination within ninety (90) days of receipt of a complete application from the local unit of government. The local Health District Board is also responsible, with the Division, for reconsidering final consistency determinations as necessary. (7-9-90)
 - c. Division. The Division is responsible, with the local Health District Board, for providing an evaluation of the findings and making a consistency determination within ninety (90) days of receipt of a complete application from the local unit of government. The Division is also responsible, with the local Health District Board, for reconsidering final consistency determinations as necessary. (7-9-90)
- 02. Review and Evaluation of Local Nutrient Management Programs and Findings of Fact. (7-9-90)
 - a. Submission of Application. The local unit of government shall submit to the local Health District Board and the Division an application for consistency determination which shall consist of a written request for a consistency determination, a complete copy of the proposed nutrient management program, and the findings together with supporting documentation. (7-9-90)
 - b. Criteria for a Local Nutrient Management Program. Any local nutrient management program shall be consistent with the criteria for nutrient management plans as required in Section 39-105(3)(o), Idaho Code. The program shall: (7-9-90)
 - i. Be based upon the examination of the scientific evidence identifying nutrients and nutrient sources that have the potential to result in the overfeeding of aquatic plant life and a subsequent uncontrolled increase in the growth of algae or aquatic macrophytes; (7-9-90)
 - ii. Be based upon a consideration of the dynamics of nutrient removal, use and dispersal in the identified receiving waters; and (7-9-90)
 - iii. Include an evaluation of preventative or remedial actions and include such actions as are feasible and necessary to protect the receiving surface waters. (7-9-90)
 - c. Basis for Evaluation. A determination of inconsistency shall be based upon a finding that a local nutrient management program does not have a rational basis addressing a legitimate local nutrient management concern pursuant to and consistent with the criteria set forth in Subsection 200.02.b. and available scientific evidence. The basis for evaluation of a local nutrient management program shall include, but is not limited to, consideration of

the adequacy of the findings with regard to the following items: (12-31-91)

i. Identification of Nutrient Sources. The findings shall identify nutrient(s), nutrient source(s) and receiving surface waters of concern. The findings shall include an evaluation of the effect the identified nutrient(s) and nutrient source(s) have or have the potential to have on the water quality of the identified receiving surface waters. (7-9-90)

ii. Identification of the Dynamics of Nutrient Removal, Use and Dispersal. The findings shall include an evaluation of the dynamics of nutrient removal, use and dispersal in the identified receiving surface waters. (7-9-90)

iii. Identification of Preventative or Remedial Actions. The findings shall include an evaluation of the feasibility and necessity of any preventative or remedial actions, and their need for protecting identified receiving surface waters. (7-9-90)

iv. Best Management Practices. Any local nutrient management program that is a Best Management Practice (BMP) or the equivalent insofar as it addresses nonpoint sources of nutrients shall be compatible with any approved BMP defined in Idaho Department of Health and Welfare Rules, Title 01, Chapter 02, "Rules Governing Water Quality Standards and Wastewater Treatment Requirements" or any other BMP developed pursuant to the state Nonpoint Source (Section 319) Management Program, the state Agricultural Pollution Abatement Plan, or the state Forest Practices Water Quality Management Plan. (12-31-91)

03. Consistency Determination. (7-9-90)

a. Public Decision. The local nutrient management program will be reviewed by both the local Health District Board and the Division. A report on the consistency of the local nutrient program and recommendations will be provided jointly by the local Health District Board and the Division at a public meeting. The final consistency determination will be decided by a vote, in public, of the local Health District Board and the Administrator; each having one (1) vote. A tie vote will result in a determination of inconsistency. (7-9-90)

b. Notification of Consistency Determination. The Division shall provide written notification of the final consistency determination to the applicant and any other interested person requesting notification. (7-9-90)

c. Determination of Inconsistency. Any local nutrient management program found not to meet the criteria for inclusion in the comprehensive state nutrient management plan as enumerated in Subsection 200.02.b. shall be declared inconsistent. (12-31-91)

i. Reasons for a determination of inconsistency will be provided with the Division's notification of the final consistency determination. (7-9-90)

ii. A determination of inconsistency does not preclude or limit the applicant from reapplying for another consistency determination when the deficiencies in the local nutrient management program or the findings are resolved. (7-9-90)

d. Reconsideration of a Final Consistency Determination. Within thirty (30) days of receipt of a notification of consistency determination, the applicant or any interested person may petition jointly the local Health District Board and the Division to reconsider the final consistency determination in accordance with this section. (7-9-90)

i. Petition for Reconsideration. Any petition for reconsideration shall be in writing and state the reasons supporting the reconsideration. (7-9-90)

ii. Evaluation of a Petition for Reconsideration. A contested case hearing in accordance with Idaho Department of Health and Welfare Rules, Title 05, Chapter 03, "Rules Governing Contested Cases and Declaratory Rulings," will be held within sixty (60) days of the filing of a petition for reconsideration. A public meeting will be held within forty-five (45) days of the receipt of the hearing officer's report by the Division and local Health District Board for the purpose of reconsidering the final consistency determination. A vote, in public, will decide if the final

consistency determination should be reversed. The public meeting will be held in accordance with Subsection 200.05.c. and the public vote taken in accordance with Subsection 200.03.a. (12-28-94)

04. Nutrient Management Program Modifications. Any modification to an existing local nutrient management program, prior to the completion of the basin nutrient management plan, shall be deemed a new nutrient management program and require a consistency review. (7-9-90)

05. Public Participation. (7-9-90)

a. Publication of Receipt of Application. Within fifteen (15) days of receipt of an application for a consistency determination, the local Health District Board and the Division shall jointly give public notice of the application by the following methods: (7-9-90)

i. By publishing notice of receipt of the application together with a summary of the application in a daily or weekly major newspaper of general circulation in the area affected by the local nutrient management program. (7-9-90)

ii. By mail to those persons on a mailing list who request to be notified. (7-9-90)

iii. By any other reasonable method needed to give actual notice of the application to the persons potentially affected, including radio or television notices. (7-9-90)

b. Availability of Application. Copies of the application including the local nutrient management program together with the findings shall be made available at a public office within the area affected by the local nutrient management program. (7-9-90)

c. Public Meetings and Comments. A public meeting(s) shall be held in the hydrologic basin of concern jointly by the local Health District Board and the Division to facilitate consistency determinations of local nutrient management programs and, as appropriate, reconsideration of final consistency determinations. The proceedings of the public meetings shall be transcribed and deemed part of the record for review. A public notice will be given for all public meetings. (7-9-90)

i. Comments germane to the local nutrient management program or, as appropriate, the final consistency determination, may be submitted by any person at or prior to the public meeting. (7-9-90)

ii. A public vote of the local Health District Board and the Administrator will be taken at a public meeting to determine the final consistency determination. If substantial comments are received at the initial public meeting, the public vote may take place at a subsequent public meeting. If an additional public meeting is necessary, written comments will be accepted if received within fifteen (15) days of the first public meeting. (7-9-90)

201. -- 995. (RESERVED).

996. ADMINISTRATIVE PROVISIONS.

Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, Title 05, Chapter 03, Subsections 000, et seq., "Rules Governing Contested Cases and Declaratory." (12-28-94)

997. CONFIDENTIALITY OF RECORDS.

Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, Title 05, Chapter 01, "Rules Governing the Protection and Disclosure of Department Records." (12-28-94)

998. -- 999. (RESERVED).