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**IDAPA 58
TITLE 01
CHAPTER 19**

58.01.19 - SMALL COMMUNITIES IMPROVEMENT PROGRAM RULES

000. LEGAL AUTHORITY.

The Idaho Legislature has given the Board of Environmental Quality the authority to promulgate rules pursuant to Sections 39-105, 39-107, and 39-129(4), Idaho Code. (3-23-98)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 58.01.19, Rules of the Idaho Department of Environmental Quality, IDAPA 58.01.19, "Small Communities Improvement Program Rules." (3-23-98)

02. Scope. These rules are applicable to eligible small communities that wish to enter into an agreement with the Department of Environmental Quality to come into compliance as expeditiously as practicable with federal environmental mandates. (3-23-98)

002. WRITTEN INTERPRETATIONS.

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 83706-1255. (3-23-98)

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (3-15-02)

004. -- 009. (RESERVED).

010. DEFINITIONS.

01. Cumulative Mandates. Multiple and cumulative requirements arising from statutes or regulations. (3-23-98)

02. Department. The Idaho Department of Environmental Quality. (3-23-98)

03. Environmental Priorities Plan. A plan submitted to the Department by a small community pursuant to these rules to demonstrate eligibility and provide the basis for the negotiation and execution of an Integrated Compliance Agreement. (3-23-98)

04. EPA. United States Environmental Protection Agency. (3-23-98)

05. Federal Environmental Mandates. Those requirements arising from federal statutes or subsequent regulations administered by the United States Environmental Protection Agency or by the Idaho Department of Environmental Quality as authorized by the United States Environmental Protection Agency. (3-23-98)

06. Integrated Compliance Agreement. A legally binding agreement entered into by the Department and one or more small communities under the provisions of these rules and Section 39-129, Idaho Code. An Integrated Compliance Agreement shall include a binding schedule enforceable under Section 39-129, Idaho Code, for the improvement, modification, construction, or other actions necessary in order for the small community to come into compliance as expeditiously as practicable with human health and environmental protection statutes stemming from federal environmental mandates. (3-23-98)

07. Small Community. A community generally comprised of two thousand five hundred (2,500) or fewer residents and represented by an incorporated city, or a county, which provides drinking water, municipal waste disposal, municipal sewage or wastewater disposal or treatment, or air pollution abatement services. (3-23-98)

011. PROHIBITIONS.

The provisions of these rules do not apply where prohibited by federal or state laws or rules for the protection of human health and the environment. (3-23-98)

012. DEPARTMENT ASSISTANCE IN PREPARING ENVIRONMENTAL PRIORITIES PLAN.

01. Identification of Noncompliance. When requested to do so by a small community, the Department shall help the small community identify: (3-23-98)

- a. Every environmental requirement to which the small community's operations are subject; and (3-23-98)
- b. The small community's current and anticipated future violations of those requirements. (3-23-98)

02. Imminent Threat. Where the Department review described in Subsection 012.01 above identifies any violations or circumstances which may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents a serious threat to, public health, welfare, or the environment, the small community shall immediately address the violation in a manner that abates the endangerment or harm and reduces the threat. (3-23-98)

03. Request for Assistance. When there is one or more federal environmental mandate applicable to drinking water, municipal waste disposal, municipal sewage or wastewater disposal or treatment, or air pollution abatement services provided by the small community and which poses an existing or future compliance problem for the small community, a small community may submit to the Department a resolution passed by the governing body of the small community requesting the Department's assistance in preparing an Environmental Priorities Plan. (3-23-98)

04. Scope of Assistance. To the extent possible based on available resources, and the number of current applicants, the Department's assistance to the small community, under Subsection 012.03, shall include helping the small community to: (3-23-98)

- a. Access available risk assessment resources; (3-23-98)
- b. Provide public information and education, obtain public involvement, and elicit input from community residents and other interested parties; (3-23-98)
- c. Coordinate with other agencies and local governments; and (3-23-98)
- d. Identify other available resources. (3-23-98)

05. Selection Among Communities. Where required by resource limitations, the Department's selection of small communities to which the Department will provide assistance in preparing an Environmental Priorities Plan will be based on the good faith demonstrated by the small communities. Good faith may be demonstrated by candor with the Department and efforts to comply with federal environmental mandates. Measures of a small community's efforts to comply may include: (3-23-98)

- a. Cooperativeness and inclusion of other units of local government in the process; (3-23-98)
- b. Attempts to comply or a request for compliance assistance prior to the initiation of an enforcement action; (3-23-98)
- c. Prompt correction of known violations; (3-23-98)
- d. Willingness to remediate harm to public health, welfare or the environment; (3-23-98)
- e. Readiness to enter into a written and enforceable compliance agreement and schedule; (3-23-98)
- f. Preparation of a community capital budget plan; (3-23-98)

g. Achievement of Gem Community Certification, as demonstrated by completion of: Gem Community Training; Community Profile; Long-Term Plan, including Infrastructure Improvement Plan, Business Retention/Expansion Plan, Economic Diversification Plan, and Organizational Plan; One-Year Action Plan; Community Visit Test; and written documentation verifying current certification as authorized by the Idaho Department of Commerce and Labor; (3-23-98)

h. Preparation of a comprehensive plan; (3-23-98)

i. Preparation of feasibility studies; (3-23-98)

j. Submittal of grant applications; or (3-23-98)

k. Holding of bond elections. (3-23-98)

06. IRDC Consultation. The Department encourages small communities to consult with the Idaho Rural Development Council (IRDC) for support and assistance in considering options and accessing resources to address cumulative mandates generally, and to prepare an Environmental Priorities Plan in particular. Where resource limitations require the Department's selection among small communities pursuant to Subsection 012.05, the Department or the communities may consult with the Board of the IRDC during the selection process. Also, the Department may consult with the IRDC on other program related matters. (3-23-98)

013. ENVIRONMENTAL PRIORITIES PLAN.

To establish its eligibility to enter into an Integrated Compliance Agreement with the Department pursuant to these rules and Section 39-129, Idaho Code, a small community shall submit to the Department an Environmental Priorities Plan prepared in accordance with these rules. (3-23-98)

01. Contents of Plan. The Environmental Priorities Plan shall: (3-23-98)

a. Identify all cumulative mandates which pose an existing or anticipated future compliance problem for the small community, including at least one (1) federal environmental mandate applicable to drinking water, municipal waste disposal, municipal sewage or wastewater disposal or treatment, or air pollution abatement services provided by the small community; (3-23-98)

b. Set forth a proposed ranking of priorities for correcting any identified violations of federal environmental mandates as expeditiously as practicable. The ranking of priorities shall demonstrate that the small community cannot meet its obligations for compliance with federal environmental mandate(s) in a timely and reasonable manner due to a lack of administrative, and/or technical, and/or financial capacity. The ranking of priorities shall take into account, in descending priority, the: (3-23-98)

i. Protection of public health; (3-23-98)

ii. Protection of the environment; (3-23-98)

iii. Current tax structure and rates as compared to other local governments; (3-23-98)

iv. Ability of the small community to pay for costs of compliance; (3-23-98)

v. Current fiscal obligations of the small community; and (3-23-98)

vi. The following other factors singularly represented or combined for analytic purposes in no particular order: (3-23-98)

(1) The Department's ability to assist in strengthening the small community's administrative, technical or financial capacity; (3-23-98)

(2) Number of small community staff and their responsibilities; (3-23-98)

- (3) Degree of isolation from other communities; (3-23-98)
- (4) Evaluation of existing infrastructure; (3-23-98)
- (5) Household income; (3-23-98)
- (6) Per capita income; (3-23-98)
- (7) The last decade's median housing values; (3-23-98)
- (8) Employment opportunities; (3-23-98)
- (9) Population projections; (3-23-98)
- (10) Population age representation; (3-23-98)
- (11) Revenue sources; (3-23-98)
- (12) Revenue generating capacity; (3-23-98)
- (13) The level of government that operates the utility systems; (3-23-98)
- (14) Current overlapping and community bonded indebtedness; (3-23-98)
- (15) An assessment of the impact of other cumulative mandates competing with federal environmental mandates for the community's resources; and (3-23-98)
- (16) Any other relevant factor presented by the community; (3-23-98)

c. Describe the actions proposed to be taken, anticipated expenditures required for such actions, and a proposed schedule that would result in compliance with federal environmental mandates as expeditiously as practicable, within an overall period not to exceed fifteen (15) years. The proposed actions may consider regionalization and restructuring as compliance alternatives; and (3-23-98)

d. Describe the steps taken by the small community to involve the public and to provide the public affected by its actions with a meaningful opportunity to participate in the preparation of the Environmental Priorities Plan through whatever combination of public meetings or hearings or opportunities most practical for the particular community. (3-23-98)

02. Certification. The preparation and analysis of any financial information considered in the Environmental Priorities Plan shall be in accordance with generally accepted and applicable principles and shall be conducted and certified by an accountant or other qualified person or entity, or derived from a source prepared by a certified accountant or other qualified person or entity. (3-23-98)

03. Supporting Information. Any supporting information and analysis of that information collected or developed in the preparation of the Environmental Priorities Plan shall be submitted to the Department, along with the Environmental Priorities Plan. (3-23-98)

014. DEPARTMENT REVIEW AND APPROVAL OF ENVIRONMENTAL PRIORITIES PLAN.

01. Approval. To be eligible to enter into an Integrated Compliance Agreement with the Department, pursuant to these rules and Section 39-129, Idaho Code, a small community must obtain the Department's approval of an Environmental Priorities Plan. (3-23-98)

02. Review Procedure. Within sixty (60) days of the Department's receipt of an Environmental Priorities Plan, the Department shall notify the small community submitting the plan in writing that the

Environmental Priorities Plan is approved, disapproved, or that the Department needs additional time to prepare a response. If the Department does not provide such notification to the small community within sixty (60) days of the submittal of an Environmental Priorities Plan, the plan shall be deemed approved. If the Department disapproves the proposed Environmental Priorities Plan, the Department shall provide the small community with a description of all revisions and modifications required to make the plan approvable. (3-23-98)

03. Requirements and Criteria. An Environmental Priorities Plan submitted to the Department shall be approved if the plan meets the requirements and criteria set forth in these rules. (3-23-98)

015. INTEGRATED COMPLIANCE AGREEMENTS.

01. Generally. If an Environmental Priorities Plan submitted to the Department meets the requirements of these rules and is approved by the Department, the Environmental Priorities Plan shall be the basis for negotiation of an Integrated Compliance Agreement pursuant to these rules and Section 39-129, Idaho Code. The Integrated Compliance Agreement shall identify the specific actions to be taken by the small community, including a schedule with interim milestones or reporting requirements, that will result in compliance with any applicable federal environmental mandates as expeditiously as practicable, within an overall period not to exceed fifteen (15) years. The Integrated Compliance Agreement shall describe how the Department provides support to and monitors the progress of the community via interim milestones as identified in the Integrated Compliance Agreement. (3-23-98)

02. Provisions. Any Integrated Compliance Agreement shall contain provisions: (3-23-98)

a. To ensure continued compliance with all federal environmental mandates with which the community is in compliance at the time the agreement is entered into; (3-23-98)

b. To ensure future compliance with any additional already promulgated federal environmental mandates that will become effective after the agreement is signed; (3-23-98)

c. Directing that the agreement will become invalid upon the failure of the community to secure necessary financing, including that which requires voter approval, to pay the costs of scheduled improvements, modifications, construction or other actions which must be taken for the small community to come into compliance as negotiated in the Integrated Compliance Agreement; and (3-23-98)

d. Stating that the agreement is enforceable pursuant to the provisions of Title 39, Chapter 1, Idaho Code. (3-23-98)

03. Excluded Violations. An Integrated Compliance Agreement shall not be the basis for allowing a small community additional time beyond deadlines set in the mandate for correcting easily or quickly corrected violations of environmental mandates, or taking any actions necessary to abate an imminent and substantial endangerment to, or reduce a serious threat to, public health, welfare or the environment. (3-23-98)

04. Signature. All Integrated Compliance Agreements must be signed by the Director of the Department or his designee and the mayor or the governing board of the small community. (3-23-98)

05. Timeliness. The Department and the small community shall make every effort to enter into and begin implementing an Integrated Compliance Agreement within one hundred eighty (180) days of the Department's commencement of assistance to the small community in preparing an Environmental Priorities Plan. (3-23-98)

06. Modification. The Integrated Compliance Agreement may be modified by written agreement of the parties. If the modified agreement requires compliance with any additional federal environmental mandate, compliance shall be required to be achieved as expeditiously as practicable, within an overall period not to exceed fifteen (15) years from the date of the modification. The deadline for any requirement addressed in the original agreement may be extended as a part of the modification of the agreement, but the deadline may not be extended beyond fifteen (15) years after the date of the original agreement. (3-23-98)

016. COORDINATION WITH U.S. ENVIRONMENTAL PROTECTION AGENCY.

01. List of Participants. The Department shall provide EPA with a quarterly list of those small communities: (3-23-98)

- a.** Which have requested Department assistance in preparing an Environmental Priorities Plan; (3-23-98)
- b.** To which the Department is providing assistance in preparing an Environmental Priorities Plan; (3-23-98)
- c.** With which the Department is negotiating an Integrated Compliance Agreement; and (3-23-98)
- d.** Which are parties to an existing Integrated Compliance Agreement with the Department. (3-23-98)

02. Consultation and Notification. The Department shall forward EPA a copy of any approved Environmental Priorities Plan, shall consult with EPA during the drafting of any Integrated Compliance Agreement, and shall forward a copy of each agreement to EPA once the agreement is made final and effective. (3-23-98)

03. Notification of Imminent Threats. The Department shall immediately notify EPA upon discovery of a violation or circumstance involving a small community listed in Subsection 016.01 above that may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents serious threats to, public health, welfare, or the environment. (3-23-98)

017. -- 999. (RESERVED).

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