

# **IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY PROCEDURES FOR RESPONDING TO ODOR COMPLAINTS**

## **Forward**

The Idaho Department of Environmental Quality (DEQ) Procedures for Responding to Odor Complaints (Procedures) set forth herein are intended solely as guidance for use by DEQ. These Procedures are not intended to, nor do they, constitute a rulemaking by DEQ. These Procedures do not create any rights or benefits, substantive or procedural, enforceable at law or in equity, by any person. Nothing in these Procedures shall be construed to constitute a valid defense by regulated parties in violation of any state or federal environmental statute, regulation or permit. DEQ reserves the right to be at variance with the contents of these Procedures and to change these Procedures at any time without public notice.

## **Statement of Purpose**

These Procedures specify the process DEQ will follow to resolve odor complaints received by DEQ and to ensure compliance with existing regulations. These Procedures also ensure odor complaints are referred to the appropriate public entity for action. These Procedures address odor complaints with appropriate and increasing DEQ intervention up to and including the filing of a civil action in appropriate circumstances.

## **Definitions**

The following definitions are relevant to these Procedures:

*Air pollution* is defined (IDAPA 58.01.01.006.05) as “[t]he presence in the outdoor atmosphere of any air pollutant or combination thereof in such quantity or such nature and duration and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property or to interfere unreasonably with the enjoyment of life or property.”

*Air pollutant/air contaminant* is defined (IDAPA 58.01.01.006.04) as “[a]ny substance, including but not limited to, dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon or particulate matter or any combination thereof.”

*Odor* is defined (IDAPA 58.01.01.006.64) as “[t]he sensation resulting from stimulation of the human sense of smell.”

*Valid Complaint*, as that term is used in these Procedures, is defined as any odor complaint received by DEQ and determined by DEQ pursuant to the Odor Determination Process outlined in these Procedures, to meet or exceed the level at which DEQ regulations applicable to the odor source provide DEQ with the authority to regulate the odors. DEQ will consider odor complaints arising from a single, short term odor-causing incident to be a single complaint. DEQ will consider odor complaints arising from distinct, independent odor causing incidents as separate complaints. DEQ staff shall have discretion to consider ongoing odor complaints arising from normal source operations as a single event, or as separate complaints, based on the timing of the complaints, responsiveness of the source, stage of implementation of an odor management plan, and on other relevant factors.

### **Relevant DEQ Authorities**

1. Rules for the Control of Air Pollution in Idaho. The purpose of Sections 775 through 776 is to control odorous emissions from all sources for which no gaseous emission control rules apply. IDAPA 58.01.01.776 states, “[n]o person shall allow, suffer, cause or permit the emission of odorous gases, liquids or solids into the atmosphere in such quantities as to cause air pollution.”

Specific rules providing restrictions on odorous emissions from rendering plants and associated processes (i.e., cookers, expellers, and plant air) are found at IDAPA 58.01.01.776.02 and IDAPA 58.01.835 through 839.

2. Wastewater Rules and Recycled Water Rules. The land application of wastewater or recharge water is subject to the Wastewater Rules, IDAPA 58.01.16.600.03 which states "Hazard or Nuisance Prohibited. Waste waters must not create a public health hazard or a nuisance condition." The land application/reuse of certain types of wastewater are required to obtain a permit pursuant to the Recycled Water Rules, IDAPA 58.01.17. The prohibition of public health hazard or nuisance conditions is reiterated as a standard condition in all Recycled Water Permits.

3. Rules Regulating Swine and Poultry Facilities. The Rules Regulating Swine and Poultry Facilities state, “The source or operations associated with the source shall not create a public health hazard or nuisance condition including odors.” IDAPA 58.01.09.400.03.c.

4. Solid Waste Management Regulations and Standards. The Solid Waste Management Regulations and Standards state, “Solid Wastes shall be managed such that they shall not cause or contribute to the pollution of air.” IDAPA 58.01.06.04.02(b)

### **Relevant Authorities of Other Public Entities**

1. Pursuant to the Interagency Agreement between Idaho State Department of Agriculture (ISDA) and DEQ addressing Animal Waste Management, DEQ will refer odor complaints specific to animal feeding operations to the ISDA.

2. Pursuant to the MOU between DEQ and the Health Districts, DEQ will refer odor complaints specific to solid waste facilities to the Health District in which the source is located.
3. DEQ will refer odor complaints specific to pets or the presence of other livestock in residential areas to the appropriate city or county authority to check compliance with zoning regulations.

Note: Responsibility for determining compliance with ambient environmental criteria remains the responsibility of DEQ.

### **Odor Complaint Process**

DEQ will act as follows when an odor complaint is received:

1. Notification of Receipt of Odor Complaint. When received, DEQ will refer the complaint to the appropriate DEQ Regional Office. Through the course of the DEQ Regional Office's investigation, they may need to notify the alleged odor source, the County Commission in both the county in which the source is located, and the county in which the complainant resides of the complaint.
2. Complaints of Odor Sources Regulated Primarily by Other Public Entities. DEQ will refer to the appropriate public entity complaints specific to a source primarily regulated by another public entity. When referring such complaints to other public entities, DEQ will request that the other public entity provide DEQ with a written response outlining those actions taken by the public entity, and or the alleged odor source, with respect to the complaint.

The appropriate DEQ Regional Office may, upon receiving multiple complaints regarding a source regulated primarily by another public entity, investigate the source to determine compliance with air quality and water quality regulations. The DEQ investigation will include a file search for previous complaints, and may include a site visit. The DEQ Regional Office will prepare, and forward to the appropriate public entity, an Investigation Report. After considering information discovered during the investigation, and summarized in the Investigation Report, the DEQ Regional Office may forward an enforcement concurrence package to the DEQ State Office.

3. First Complaint of a Source Regulated Primarily by DEQ. When DEQ receives an odor complaint specific to a source regulated primarily by DEQ, and if the complainant(s) agree(s) to disclosure of his or her identity, the DEQ Regional Office will contact the source and, whenever practicable, encourage a meeting between the source, the complainant, and the DEQ Regional Office.

If the complainant(s) does not desire to meet, or is not satisfied with the outcome of the meeting, then the DEQ Regional Office will conduct an investigation of the source. As part of the investigation, the DEQ Regional Office will conduct a file search for previous complaints, will determine the validity of the complaint pursuant to the Odor Determination Process outlined in these Procedures, and will determine compliance with any existing source odor management plan<sup>1</sup>. The DEQ Regional Office will prepare an Investigation Report regarding the investigation into the complaint.

DEQ will act as follows with respect to a valid complaint:

A. For facilities with an odor management plan, and operating in compliance with the plan, the DEQ Regional Office will request the voluntary modification of the plan to specifically address the identified odor.

B For facilities with an existing odor management plan, but not operating in compliance with the plan, or otherwise in violation of a DEQ permit or authority, the DEQ Regional Office may forward an enforcement concurrence package to the DEQ State Office.

C. For facilities without an odor management plan, the DEQ Regional Office will request the voluntary development and implementation of an odor management plan.

Upon determining an odor complaint does not constitute a new valid complaint, DEQ will inform the alleged odor source and, whenever practicable, the complainant(s) of DEQ's determination.

4. Second Complaint of a Source Regulated Primarily by DEQ. If DEQ receives a second odor complaint with respect to the same source, the DEQ Regional Office will conduct an investigation of the source. As part of the investigation, the DEQ Regional Office will conduct a file search for previous complaints, will determine the presence of a second separate valid complaint pursuant to the Odor Determination Process outlined in these Procedures, and will determine compliance with any existing source odor management plan. As part of the Investigation, the DEQ Regional Office may issue an information order pursuant to IDAPA 58.01.01.122 to the alleged odor source for the purpose of determining whether the source is in violation of any Rules for the Control of Air Pollution in Idaho. The DEQ Regional Office will prepare an Investigation Report regarding the investigation into the complaint.

DEQ will act as follows with respect to a second separate valid complaint:

A. For DEQ-permitted facilities with an existing odor management plan, and operating in compliance with the plan, the DEQ Regional Office will require the modification of the plan to specifically address the identified odor.

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<sup>1</sup> Odor management plans will contain practices and procedures developed to minimize odors to the extent practicable. DEQ recognizes that odor management plans may not eliminate odors entirely.

B. For DEQ-permitted facilities with an existing odor management plan, but not operating in compliance with the plan, or otherwise in violation of a DEQ permit or authority, the DEQ Regional Office may forward an enforcement concurrence package to the DEQ State Office.

C. For DEQ-permitted facilities without an existing odor management plan, DEQ will require the source to develop and submit for DEQ approval an appropriate odor management plan to be incorporated into the source's DEQ permit.

D. For facilities not subject to a DEQ permit, and for which no odor management plan exists, DEQ will request the voluntary development and implementation of an odor management plan.

Upon determining an odor complaint does not constitute a second separate valid complaint, DEQ will inform the alleged odor source and, whenever practicable, the complainant(s) of DEQ's determination, and of any action taken by DEQ following the second valid complaint.

5. Third Complaint of a Source Regulated Primarily by DEQ. Upon receipt of a third odor complaint with respect to the same source, the DEQ Regional Office will conduct an investigation of the source. In conducting the investigation, the DEQ Regional Office will conduct a file search for previous complaints, will determine the presence of a third separate valid complaint pursuant to the Odor Determination Process outlined in these Procedures, and will determine compliance with any existing source odor management plan. As part of the Investigation, the DEQ Regional Office may issue an information order pursuant to IDAPA 58.01.01.122 to the alleged odor source for the purpose of determining whether the source is in violation of any Rules for the Control of Air Pollution in Idaho. The DEQ Regional Office will prepare an Investigation Report regarding the investigation into the complaint.

DEQ will act as follows with respect to a third separate valid complaint:

A. For DEQ-permitted facilities with an existing odor management plan, and operating in compliance with the plan, the DEQ Regional Office will require the modification of the plan to specifically address the identified odor.

B. For DEQ-permitted facilities with an existing odor management plan, but not operating in compliance with the plan, or otherwise in violation of a DEQ permit or authority, the DEQ Regional Office may forward an enforcement concurrence package to the DEQ State Office.

C. For facilities not subject to a DEQ-issued permit, and for which no odor management plan exists, DEQ will request the development and implementation of an odor management plan. If a source fails to develop and implement an odor management plan, the DEQ Regional Office may forward an enforcement concurrence package to the DEQ State office.

Upon determining a complaint does not constitute a third separate valid complaint, DEQ will inform the alleged odor source and, whenever practicable, the complainant(s) of DEQ's determination, and of any action taken by DEQ following the second valid complaint.

6. Enforcement Referral to the State Office. The DEQ State Office will review all enforcement concurrence packages to determine an appropriate response. An appropriate response may include, but is not limited to, meeting with the source, issuing a Notice to Comply or Notice of Violation, entering into a Consent Order, or the filing of a civil suit. In determining the appropriate response, the DEQ State Office will consider several factors, including, but not limited to, the scope, frequency and duration of the odors, the effect on human health and the environment, and ongoing source efforts to address odors. When the DEQ State Office receives an enforcement concurrence package, the DEQ State Office will, very early in the process, consult with the Office of the Attorney General regarding the facts of the given odor concern.

### **Odor Determination Process**

1. Two members of the DEQ compliance staff trained in odor detection will jointly make an odor determination.
2. The two DEQ compliance staff members will determine if the detected odor is specific to the alleged odor source by conducting odor detection at a location upwind, or at any other relevant location, of the alleged odor source.
3. Utilizing their odor detection training, the two DEQ compliance staff members will determine if, at the downwind source property boundary or beyond, odor levels meet or exceed the level at which regulations applicable to the odor source provide DEQ with authority to regulate odors.
4. The two DEQ compliance staff members will document their determinations, and the means by which the determinations are made, together with all other relevant information, in an odor determination report.