



## **Extended Treatment Package System Subcommittee Meeting**

### **Minutes**

**January 17, 2013**

**Department of Environmental Quality  
Conference Room "C"  
1410 N. Hilton  
Boise, Idaho**

#### **TGC-ETPS ATTENDEES:**

Tyler Fortunati, R.E.H.S., On-Site Wastewater Coordinator, DEQ  
Bob Erickson, Senior Environmental Health Specialist, South Central Public Health District  
Ryan Spiers, Alternative Wastewater Systems, LLC  
David Loper, Environmental Health Director, Southwest District Health Department  
James Bell, Bio-Microbics, Inc.  
Raymond Keating, Eastern Idaho Public Health District (via telephone and GoToMeeting)  
Jay Loveland, Senior Environmental Health Specialist, Panhandle Health District (via telephone and GoToMeeting)  
Brent Gee, Effluent Technologies, Inc. (via telephone and GoToMeeting)

#### **GUESTS:**

Barry Burnell, Water Quality Division Administrator, DEQ  
Chas Ariss, P.E., Wastewater Engineering Manager, DEQ  
PaRee Godsill, Everlasting Extended Treatment, Inc.  
Steve Wielang, Bedrock Excavation  
Kellye Eager, Environmental Health Director, Eastern Idaho Public Health Department (via telephone and GoToMeeting)  
Janette Young, Administrative Assistant, DEQ  
George Miles, P.E., Advanced Wastewater Engineering (via telephone and GoToMeeting)

#### **CALL TO ORDER/ROLL CALL:**

Meeting called to order at 9:15 a.m.  
Committee members and guests introduced themselves.

#### **MEETING MINUTES:**

**December 12, 2012 Draft ETPS Subcommittee Minutes: Review, Amend, or Approve**

**Motion:** James Bell moved to accept minutes as presented.

**Second:** Ryan Spiers.



**Voice Vote:** Motion carried unanimously.

Minutes will post as final. See DEQ webpage and **Appendix A**.

**OPEN PUBLIC COMMENT PERIOD:** This section of the meeting is open to the public to present information to the ETPS subcommittee that is not on the agenda. The ETPS subcommittee is not taking action on the information presented.

No public comments were submitted during the allotted agenda timeframe.

**NEW BUSINESS:**

**Review of Homeowner, Realtor, and Title Company Educational Brochure on Septic Systems and Real Estate Transactions**

Review and discussion of the brochure content was held at this time. Ray Keating stated that Eastern Idaho Public Health District did not perform mortgage surveys anymore. Tyler Fortunati clarified that several health districts do provide this service but it is not required of the health districts from DEQ. David Loper stated that mortgage surveys are offered by some Health Districts when they are requested by underwriters/lenders on FHA loans. David Loper stated that he would like DEQ to deliver the brochure to Realtor and Title Company Associations upon its editing by DEQ technical publications staff. Tyler Fortunati agreed to deliver the brochure to these associations as well as post it to DEQ's website and provide the weblink to the health districts for posting on their own websites and for their printing of the document.

**Motion:** Bob Erikson moved that the Homeowner, Realtor, and Title Company educational brochure should be finalized and put on DEQ's and the health district's websites and sent to title and real estate associations.

**Second:** Ryan Spiers.

**Voice Vote:** Motion Carried unanimously. See **Appendix B**

**Subcommittee Update on Requested Information from December 12, 2012 Meeting**

See **Appendix C** for the presentation given for the three following areas.

- **Review of Secretary of State Determination of Administratively Dissolved Standing of Nonprofit Entities**

Tyler Fortunati presented an overview of Administratively Dissolved standings of a nonprofit entity. This occurs if the corporation fails to submit an annual report to the Secretary of State. The entity has 10 years to reinstate along with a \$30.00 fee and



paperwork. The entities do receive an annual reminder for submission of the annual report due date. The Secretary of State does not notify DEQ when a corporation has an Administratively Dissolved standing. The Administratively Dissolved status has no effect on the TGM requirements or the ability of the corporation to conduct business in the State of Idaho.

- **Review of Suspended Nonprofit O&M Entity Reporting, Testing, and Administration Status**

Tyler Fortunati presented the current status for suspended O& M Entities in relation to their submission of annual reports, performing annual testing of their membership, and their Secretary of State standing for administration status.

- **Review of Idaho Code 30-3 Important Points Related to Section 4.2 of the Technical Guidance Manual**

Tyler Fortunati presented an overview of Idaho Code 30-3. The information presented in this discussion was selected by Tyler based upon its relevance to current subcommittee discussions. Review of Idaho Code 30-3 was not a complete overview of the Code. Subcommittee members were provided with the web link to the entire Code for their review. Discussion surrounding several of the key points was held by the subcommittee.

### **Review Proposed Additions to Section 4.2 Nonprofit Corporations of the Technical Guidance Manual Addressing O&M Entity Creation**

Tyler Fortunati reminded the committee that the presented format of this document represents the format developed at the last ETPS Subcommittee meeting and not the current TGM format. The finished document will be presented to the full TGM committee showing all changes that are proposed by the ETPS Subcommittee in relation to the current TGM format for section 4.2. The Subcommittee reviewed changes to proposed sections 4.2.1, 4.2.2, and 4.2.3. Jim Bell requested clarification on whether the nonprofit O&M would send amendments to their Articles of Incorporation and/or Bylaws to DEQ before sending them the Secretary of State or the other way around. Tyler Fortunati clarified that the DEQ would review and issue a letter of approval. The amendments would then be provided to the Secretary of State along with the letter from DEQ approving the proposed changes. Some minor modifications were made to the document by the Subcommittee. See **Appendix D** for the changes made to this document.

10:50 Break

11:00 Meeting resumed.



## **Review Proposed Changes to Section 4.10 of the Technical Guidance Manual Addressing Extended Treatment Package Systems**

Tyler Fortunati presented proposed changes to the current format of this section of the TGM for easier reading/understanding of the requirements. Changes were also proposed that expanded on the requirements surrounding annual reports and O&M suspensions as currently handled but not described within this section of the TGM. Changes and additions are in red and items struck out in green were kept but moved to a different section. Future changes to this section will build off of the proposed format of the document that comes out of this meeting. Tyler reminded the subcommittee that these and any other changes still need to go to the full Technical Guidance Committee and these changes may or may not be what becomes final. Committee reviewed changes that were highlighted in red and made a few minor additional suggestions.

James Bell discussed sampling of effluent from an ETPS and will provide a copy of the Operator's sampling protocol that his service providers use. James Bell stated that there are a few common issues with sampling that may affect the results of the sample including:

1. Service providers do not get the sample bottles from the lab they are using so they do not have the necessary preservatives.
2. Samples are not delivered to the lab in a timely fashion.
3. The samples are not sufficiently covered in ice to maintain a 4° C temperature during transport to the lab.
4. Operators do not know where to collect the sample from the ETPS.

Discussion ensued that as stated in the proposed version of section 4.2 Non-Profit Corporations of the TGM, service providers should be trained and certified by manufacturer and yet there is not currently a mechanism in place to ensure this is the case. However, it is in the Service Provider and O&M Entity's best interest to be sure that they are properly trained to insure that proper service and testing procedures are being followed.

Bob Erickson questioned why DEQ would not want the annual report submitted to them from the O&M Entity. Tyler Fortunati clarified that currently the O&M Entities submit their annual reports to their local health district. The health district is the best location for this to occur due to the fact that DEQ does not maintain records of the septic permits associated with the annual reports. The health districts then report the status of the O&M Entities to DEQ after the review of the annual reports. If the O&M Entity results require suspension DEQ will issue the suspension to the O&M Entity and inform the health districts of the Entity's status. If an Entity is suspended, the annual reports should go to both the health district and DEQ. The health districts receive the annual reports and DEQ relies on the health districts to review the reports since they maintain the permit records and inform DEQ of the Entities' compliance status.



Discussion was held regarding the fact that when members do not pay their annual fees it leaves the O&M Entity without the money necessary to perform the annual maintenance and testing for everyone. Failure to perform maintenance and annual testing counts against the O&M Entity in the annual report and results in suspension if more than 10% do not pay. James Bell stated that O&M Entities need to set their fees annually, recognizing that they need to cover the costs of failed tests and re-testing fees and maintenance in addition to those that fail to pay their annual dues.

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The meeting was adjourned for lunch  
Lunch 12:00 - 1:00 p.m.

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### **Review Proposed Changes to Section 4.10 of the Technical Guidance Manual Addressing Extended Treatment Package Systems (Continued)**

George Miles addressed the subcommittee and would like the subcommittee to consider using operational permits as a possible alternative to the current nonprofit corporation structure. Tyler Fortunati explained that this would need legislative support and it would take roughly two years to go through the rule change process. In addition operational permits would not solve any of the issues surrounding the existing membership of the O&M Entities. David Loper stated that the ETPS Subcommittee had reviewed other possibilities in prior meetings and had made a decision to shore up the current nonprofit model and move forward rather than start all over. David Loper stressed that the health districts do not have the resources to be the administrative branch of the nonprofits in relation to tracking various service providers. In addition, the health districts do not want to be involved with homeowners not paying their O&M Entity and will not act as bill collectors for the O&M Entities. David Loper stated that the health districts are there for non-compliance, for example turning off blowers.

Ray Keating asked why annual reports for the O&M Entities are submitted in July or every year instead of December. Discussion ensued on the rationale behind the required date for submission of annual reports from the O&M Entities to the health districts. There was support for changing the reporting date back to December 31<sup>st</sup> of each year and support for maintaining it at the current July 31<sup>st</sup> date. Tyler Fortunati polled the members of the ETPS Committee on whether to keep the dates the same or change them back to December 31<sup>st</sup>. The subcommittee voted with 5 in favor of keeping the report date the same and 2 in support to change the date to December 31<sup>st</sup>. The date was left the same in the proposed revision based upon the poll results. Tyler Fortunati will make a note to have the TGC discuss the timelines for a final decision on the reporting date.

Discussion was held on how to handle medical waivers under the newly proposed section TGM section 4.10.4.2 Annual report Exemptions. There is no current verification process spelled out for this exemption. There was concern regarding the requirement of obtaining verification if someone is on long term medication that will prevent a unit from testing



correctly. Tyler Fortunati clarified the intent was simply to obtain acknowledgement from a medical professional that the individual residing in the home was on long term medical care and not to obtain the diagnosis or specific prescription. The subcommittee accepted this approach.

David Loper suggested that the date for report submission deadlines be adjusted to August 31<sup>st</sup>.

The subcommittee raised the issue of what prevents a suspended O&M Entity from forming a new O&M Entity to continue their business while leaving behind the suspended Entity. Tyler Fortunati stated that DEQ reviews all Articles of Incorporation and Bylaws for new O&M Entities so a mirror O&M Entity would be recognized and not approved. Tyler Fortunati pointed out that the new suggested requirement that a manufacturer representative must be on the board of the O&M Entity may not be able to be retroactively required with already approved O&M Entities. This will need to be discussed with the Attorney General's office.

There was discussion on whether there should be separate requirements for seasonal homes and full time residences. James Bell conveyed the procedures of startup, testing, and shutdown for seasonal homes in the Cape Cod area. Tyler Fortunati stated that Idaho does not view the two home types differently in relation to septic system permitting. Currently, there is no difference in the standards and requirements between seasonal homes and year-round homes with respect to ETPS.

The subcommittee discussed making sure the ETPS installed has a readily accessible sampling port. James Bell discussed a sampling system that allowed samples from the ETPS system to flow directly into the laboratory sample bottle. James Bell will forward some information from Ohio and Bio-Microbics to DEQ on the sampling port designs. David Loper suggested developing a figure to indicate where the sample port should be installed in the effluent line after the aerobic treatment unit. See **Appendix E** for proposed changes to section 4.10 of the TGM.

### **Discussion on How to Handle O&M Entity Members Refusing to Pay the Required Annual Dues to their O&M Entity**

Tyler Fortunati presented the following points regarding the current consequences to O&M Entity members that refuse to pay the annual dues assessed by their O&M Entity:

- O&M Entity Liens the Member's Property
- O&M Entity is still Responsible to Perform Annual Maintenance and Testing
  - If Maintenance and Testing is not Performed and Reported the Associated Property Counts Against the 10% Malfunctioning Rate of the Entity
- The Entity has the Option to:
  - Take the Member to Small Claims Court
    - May Result in the Following Consequences to Owner:
      - Pay Annual Dues



- Pay Interest
- Pay Court/Attorney Fees
- No Regulatory Action

James Bell added that the O&M has the option of using collection agencies. Brent Gee stated that collection agencies typically retain 33% of whatever is collected resulting in the Entity losing that money. Tyler Fortunati clarified that it is the responsibility of the O&M Entity to bill the O&M membership for services provided by the service provider. Service providers should not be directly billing homeowners under the current system.

James Bell described the situation in NC, MA and MN where there is one service provider servicing 80% of the units, and then the manufacturer needs to spend the rest of the time finding out who is servicing the remaining units. The manufacturer must attempt to contact the homeowners or utilize the health district to find out who is doing the servicing. If no service is being performed a letter from the Health District indicating non-compliance is sent by the health districts. However, enforcement is difficult.

Tyler Fortunati reminded the subcommittee of the original letters presented during the first meeting that attempted to gain voluntary compliance from homeowners which could lead to dues being paid. This was proposed as a three letter approach to encourage voluntary compliance. The first letter was meant to be informative and explains the requirements to the homeowner regarding having an ETPS and the need for annual sampling and servicing if it is not being performed. If the non-compliance through non-payment continues a second letter would be sent requesting that the homeowner comply with the service and testing requirements of their septic permit with information regarding legal issues if they do not comply, this letter would also contain a deadline for obtaining the necessary service and testing. A third letter in the form of a Notice of Violation (NOV) would follow after the deadline has passed and service and testing of the treatment unit has not occurred. These letters would be sent through the health districts assuming the health district had adequate information from the O&M Entity regarding the refusal to have the service and testing performed.

David Loper indicated that most O&M's were successful the first 2-3 years. After samples did not meet requirements and the O&M Entities and their members had additional costs of fixing them, they didn't want to pay. David Loper also conveyed that the health districts would not be comfortable taking any initial enforcement lead with homeowners or O&M Entities. Tyler Fortunati stated that DEQ understands this and DEQ will need to discuss any enforcement action structure with the Environmental Working Group and health districts.

Bob Erikson indicated that the Health Districts have very little power over the O&M Entities and homeowners. Some health districts have good relationships with the county prosecutor's office, but others do not. Without their support enforcement would be tough.

James Bell asked what to do if no one is talking care of the ETPS, including the manufacturer. James Bell asked if the health districts could issue a non-conforming



system variance. Tyler Fortunati stated that non-conforming permits are only issued for replacement systems and likely would not apply in this situation.

David Loper solicited input from the O&M Entity board members present at the meeting regarding what they felt would help gain compliance from their membership. George Miles, Brent Gee, and PaRee Godsill all provided input that some form of assistance from the health districts or DEQ would be beneficial. It was suggested that the letters discussed earlier would be a good start and would be appreciated by the O&M Entities.

The subcommittee tasked DEQ with developing draft letters to be utilized to gain compliance from homeowners. Three letters were asked for that included an informative letter discussing the required responsibilities of the homeowners and provided contact information, a second letter that provided a voluntary deadline for homeowners to comply with their permit requirements, and a third letter that is in the form of an NOV.

### **NEXT MEETING:**

The next ETPS subcommittee meeting is scheduled to be on February 21, 2013, 9:15 a.m. – 4:30 p.m., at the DEQ State Office building.

**Motion:** David Loper moved to adjourn the meeting.

**Second:** Bob Erikson.

**Voice Vote:** Motion carried unanimously.

Meeting adjourned at 4:06 p.m.

ETPS Parking Lot: This is an area reserved for subcommittee meeting topics for future agendas.

- O&M notice to homeowner and health district regarding service refusal
- Service refusal letter (health district to homeowners)
- Testing requirements (TSS, CBOD<sub>5</sub>, and Total Nitrogen)
- Variability of sampling results between labs
- Annual reporting exemptions



## **Appendix A**

### **Extended Treatment Package System Subcommittee Meeting**

#### **Minutes**

**December 12, 2012**

**Department of Environmental Quality  
Conference Room "C"  
1410 N. Hilton  
Boise, Idaho**

#### **TGC-ETPS ATTENDEES:**

Tyler Fortunati, R.E.H.S., On-Site Wastewater Coordinator, DEQ  
Bob Erickson, Senior Environmental Health Specialist, South Central Public Health District  
Ryan Spiers, Alternative Wastewater Systems, LLC  
David Loper, Environmental Health Director, Southwest District Health Department  
Jay Loveland, Senior Environmental Health Specialist, Panhandle Health District (via telephone and GoToMeeting)  
Brent Gee, Effluent Technologies, Inc. (via telephone and GoToMeeting)  
Raymond Keating, Eastern Idaho Public Health District (via telephone and GoToMeeting)  
James Bell, Bio-Microbics, Inc. (via telephone and GoToMeeting)  
Kim Walker, Simple Septic Solutions (via telephone and GoToMeeting)

#### **GUESTS:**

Chas Ariss, P.E., Wastewater Engineering Manager, DEQ  
Paul Wakagawa, P.E., Wastewater Technical Engineer, DEQ  
PaRee Godsill, Everlasting Extended Treatment, Inc.  
Kelley Eager, Eastern Idaho Public Health Department (via telephone and GoToMeeting)  
Nathan Taylor, Eastern Idaho Public Health Department (via telephone and GoToMeeting)  
Joe Canning, B&A Engineers  
Janette Young, Administrative Assistant, DEQ

#### **CALL TO ORDER/ROLL CALL:**

Meeting called to order at 9:15 a.m.  
Committee members and guests introduced themselves.

#### **MEETING MINUTES:**

**November 15, 2012 Draft ETPS Subcommittee Minutes: Review, Amend or Approve**



**Motion:** David Loper moved to accept minutes as presented.

**Second:** Bob Erickson.

**Voice Vote:** Motion carried unanimously.

Minutes will post as final. See DEQ webpage and Appendix A.

**OPEN PUBLIC COMMENT PERIOD:** This section of the meeting is open to the public to present information to the ETPS subcommittee that is not on the agenda. The ETPS subcommittee is not taking action on the information presented.

No public comments were submitted during the allotted agenda timeframe.

**OLD BUSINESS:**

**Service Reminder Letter (DEQ to O&M Entity):**

The subcommittee reviewed a draft copy of a service reminder letter that will be provided to O&M Entities by DEQ. This letter will be on DEQ letterhead and is for O&M Entities to include in their annual mailings. The letter describes what the ETPS program is and why the servicing and testing requirements are in place.

Jim Bell requested that the letter should stress that the annual servicing and testing are “required”. Tyler Fortunati clarified that this letter is an overview of the program and is to be sent out by the O&M non-profit entities to their membership to encourage voluntary participation by homeowners. Jim Bell suggested amending the letter to “is required for your systems overall functionality.” Bob Erikson suggested changing the last paragraph from “Please work with” to “You are required to work with”

**Motion:** Brent Gee moved to put the letter on hold and work on testing issues.

**No Second.**

Jim Bell wants to add “Required” and keep rest of letter informative with DEQ letterhead and signature and have O&M send this letter to their membership. Discussion on the process of when this letter will go out to O&Ms. This letter would be part of a package of recommendations that the ETPS subcommittee would present to the Technical Guidance Committee (TGC) for their approval.

**Motion:** Brent Gee moved to accept the changes as discussed today and to place the letter on hold for inclusion of other information at a later date if necessary as the ETPS subcommittee continues to work on the ETPS program.



**Second:** Jay Loveland.

**Voice Vote:** Motion carried unanimously. See Appendix B.

### **NEW BUSINESS:**

#### **O&M Entity Board Makeup for Existing Non-Profit O&M Entities**

Tyler Fortunati presented information from the Articles of Incorporation as filed with the Secretary of State on the Board of Director makeup of 11 O&M Non-Profit entities in Idaho. The status of two of these entities is Admin. Dissolved and the rest are in Goodstanding with the Secretary of State. This does not reflect their standing with the Idaho Department of Environmental Quality (DEQ). Tyler Fortunati clarified that according to TGM section 4.2 Non-Profit Corporations the O&M non-profit entities cannot be dissolved until they have been hooked up to public sewer or have merged with another approved non-profit corporation. All of the Boards are Idaho based, except Idaho Residential Wastewater Treatment Services, Inc. which includes manufacturer representatives based in Kansas. Bob Erikson noted that most have 2 or 3 family members on the Board.

David Loper noted that Homeowners often express they have no choice, the O&M Board members and the Service Providers/Registered Agent are the same people and are in charge of setting rates for the servicing and testing of their ETPS units.

Tyler Fortunati stressed that Homeowners need to understand the makeup of their O&M non-profit entities and use their voting rights. DEQ reviews the Articles of Incorporation and By-Laws prior to non-profit entity approval to make sure they are not in conflict with Section 4.2 of the TGM.

David Loper noted that District 3 is trying to get homeowners to take an active role in the O&M entity.

Bob Erikson's experience is that homeowners are busy and not interested in being involved with their ETPS and O&M non-profit entities. He was shocked at the number of systems reported in the November meeting that are under suspended entities. Nearly half of the 2000 systems installed are suspended. Is this due to testing failures, lack of annual reports and/or lack of annual tests?

Jim Bell has found that working with these systems and their requirements in all 50 States, the Idaho non-profit model is one of the best ones to work with. There will always be a problem with some homeowners not paying their share of servicing and testing. David Loper requested that DEQ look into the Admin. Dissolved status with the Secretary of State report because in Section 4.2 of the TGM items 18 & 19 restrict how the O&M Non-Profit Entity can be dissolved.



Tyler Fortunati stated that there should more accountability by the O&M non-profit entity and more DEQ involvement. Why are there no annual reports from the O&M? No reasons are presented to the Health Districts and DEQ other than homeowners not paying. How do we close loopholes and have more participation?

Jay Loveland is concerned that the voluntary nature of the program is not working. The only feasible solution for participation seems to be regulatory action based upon State Rules.

Brent Gee gave an example of an O&M annual meeting that 8 people showed up for the annual meeting and were not willing to elect new Board Members. The by-laws of Effluent Technologies state that if the corporation is unable to function then it reverts to the service provider. There is a lack of homeowner involvement at this O&M.

Ryan Spiers commented that in order for the O&M to be viable they need to have a manufacturer on the Board of the O&M non-profit entity.

David Loper asked Jim Bell to elaborate on why BioMicrobics O&M Non-Profit Entity is working well in Idaho.

Jim Bell stated that in order for it to work, it takes direct manufacturer involvement. State penalties need to apply to manufacturers that don't comply with service, testing and reporting requirements. In Massachusetts, manufacturers are required to provide training and certification of service providers. The problem is that you are dealing with 1 entity and 20 service providers versus in Idaho there is 1 entity and 1 service provider. Item 9 states that the organization should own the system(s) it intends to maintain. Clarify that the organization should contain the manufacturer. This would also help Brent's Effluent Technologies, Inc. O&M. If the manufacturers do not want to be involved in the O&M they should not be able to sell in the State.

Tyler Fortunati clarified that changes to TGM section 4.2 Non-Profit Corporations would need to be presented to the Technical Guidance Committee (TGC) and the Attorney General (AG). The language would be checked with the AG before going to the TGC to ensure the legality of the changes.

David Loper suggested that DEQ take a look at Item 9 and require the manufacturer be a part of the O&M. This might also appease homeowners that see that the O&M Non-Profit Entity Board and the service provider as the same person.

Discussion on whether any of the other states have models that are more successful or do we modify and strengthen what we currently have in place.

David Loper stated that there is reluctance within the health districts to take on regulating and tracking ETPS systems without a funding structure. The Non-Profit model seems to



solve this and place the tracking emphasis on the entity wanting to operate within the State.

Jim Bell commented that what works well from the manufacturer perspective is in Idaho it is simple to track who is operating and servicing the system. This prevents a rogue service provider providing a cheap deal with the homeowners which will not allow them to perform the service or file the reports with the O&M and State. In Idaho, Jim Bell receives a list of who has not been serviced and provides this to the certified operator and does not have to spend time finding out who is doing the servicing for a particular homeowner. The O&M contracts with the service provider based on geographic location. It makes sense to have a local service provider based on regions, different service provider in northern Idaho than in the south. Jim Bell also noted that Idaho has the lowest price based on monitoring and reporting requirements in the lower 48 states. The average cost for service and testing is about \$200. The biggest cost associated with this is lab costs, the second most is service provider costs, and third is producing and collecting bills. Massachusetts costs for BOD and TSS is \$400 /year and when you add Nitrates comes to ~\$600/year.

Ryan Spiers commented that service provider bills O&M and O&M bills homeowner.

Brent Gee discussed his situation where there is not an active O&M and as a service provider he takes over and is aware of who has paid and who doesn't. Without an O&M, if there is a problem with the system the service provider can fix it directly.

Tyler Fortunati cautioned that within the existing system the O&M should be doing the billing and payment of the servicing and testing. It is the O&M's responsibility. Service providers should be reporting service and costs to the O&M directly not to the homeowners.

David Loper suggested that there is a need to shore up the O&M non-profit entity as the local Health Districts are not interested in tracking these systems. Let's look at revising Item 9 to have the manufacturer to be on the O&M non-profit entity Board.

Ryan Spiers suggested that it be required that the manufacturer be on an O&M Board and make it retroactive.

Bob Erikson is concerned that if manufacturer hand picks service provider what is the benefit of the non-profit entity?

David Loper stated the O&M non-profit entity does the administrative tracking so that DEQ and the Health Districts are not doing the tracking. The service provider does not have control over the homeowner.



Tyler Fortunati clarified that the requirements of the service, testing and annual reports lies with the O&M non-profit entity. The annual reports must be compiled and submitted to the health districts by the non-profit and not the service provider.

Jim Bell stated that BioMicrobics has a service provider under the current system that is essentially an employee of BioMicrobics. In the states that have required BioMicrobics to certify the operators/service providers and where there is no non-profit entity, there is a loose relationship between the manufacturers and the service providers. The service providers can't be forced to perform to the manufacturer's standards. There is a memorandum of understanding between the service provider and manufacturer, but BioMicrobics doesn't have direct control over the service provider in a service provider only based system. When the O&M directly contracts with the service provider they have the ability to enforce their requirements.

Dave Loper would like to put the responsibility on the manufacturer to handle the service providers. The Health Districts and DEQ need the O&M non-profit entity to be the administrative arm.

Tyler Fortunati concerned that we still need to deal with the transitions of O&M entities if manufacturers go out of business. There is already a manufacturer in the State that is out of business. Jim Bell suggested that this be tabled for discussion when the subcommittee discusses transitions.

10:50 Break

11:00 Meeting Resumed

Tyler Fortunati stated that the previous discussion had been on the current O&M non-profit entity structure. It seems as though the subcommittee is at a point where it needs to decide whether we revise the existing O&M entity requirements either by shoring it up or developing a different model.

Kim Walker stated there is a necessary connection between the homeowner and the non-profit O&M entity. The letter discussed earlier, informs the homeowner of the requirements and recommends that we revise the requirements for O&M non-profit entities.

Group consensus was taken and the subcommittee decided in favor of shoring up the current O&M non-profit entity requirements.

**Review of the 25 Non-Profit O&M Requirements from Section 4.2 of the Technical Guidance Manual**



These are the items approved by the TGC and originally put into the TGM in 1985, the last revision appears to have occurred on November 21, 2000.

Tyler Fortunati clarified that the changes that are being discussed will need to be amended and reviewed by the Attorney General to make sure they are legally viable. Tyler will check with the AG to develop a time frame for the availability of the AG's time. Tyler provided an overview of the approval process when an individual wants to start an O&M entity. First they contact DEQ and submit their draft Articles of Incorporation and By-Laws which DEQ reviews against the current 25 item list in section 4.2 of the TGM to make sure they are not in conflict with any of the 25 items. Once DEQ provides approval they are then filed with the Secretary of the State. The proposed O&M Entity will also submit the treatment system technology information, including the NSF and EPA testing results for the treatment technology that the Non-Profit O&M entity plans to use. DEQ reviews this information and determines what level of treatment the technology is capable of and will be approved for. He also clarified that the Article of Incorporation are shorter and define what the corporation does and the By-Laws are longer and have more details on how they will carry out the non-profit's purpose.

Review of each of the 25 items in TGM section 4.2 ensued. The subcommittee made several amendments and additions to this document. Discussion on this topic did not end prior to lunch and was suspended until after the lunch break.

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The meeting was adjourned for lunch  
Lunch 12:00 - 1:00 p.m.

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### **Review of the 25 Non-Profit O&M Requirements From Section 4.2 of the Technical Guidance Manual (continued)**

Review and discussion of the 25 points continued. Several more amendments and additions were made to this document.

**Motion:** Bob Erickson moved that the ETPS Subcommittee approve 4.2 Non-Profit Corporations as proposed and table the document subject to future revision by the Subcommittee pending further review of the ETPS program.

**Second:** Ryan Spiers

**Voice Vote:** Motion carried unanimously. See Appendix C.

### **Review of Member Agreement Language from the 11 O&M Entities**

Based on conversations Dave Loper had with title companies and realtors, it is important to include words like Liens and Easement in the title of the membership agreements so that during property transfers and searches of the recorded documents tied to the property



will be flagged. Existing membership agreements are very similar to one another in relation to language surrounding liens on the members' property as can be seen in the agreements in Appendix D.

Jim Bell stated if the O&M entity is responsible for the treatment system and the testing and servicing is done right, then the O&M entity will make sure the service provider is the best one available to them. Does the State want to define that service providers are required to be licensed? Certified? Licensing of the operator and the associated system treatment level will determine the class of the operator. For example if testing for BOD and TSS need a Class II license and if testing for Nitrates need a Class III operator. Tyler Fortunati stated that any licensing requirements of service providers would likely require a Rule change.

There was a discussion on Proxy voting and how it is important to keep the O&M entity functioning.

Tyler Fortunati brought up the question of whether it is feasible for DEQ to provide training to service providers and if that should be required. The subcommittee thought this would be best handled through the manufacturer and O&M entity due to differences in technology.

Tyler Fortunati stated that it was tasked by the TGC for the ETPS Subcommittee to develop an educational piece that DEQ and the health districts could provide to title companies. Tyler asked the subcommittee what they thought this could look like. Discussion on the current ETP brochure developed by DEQ ensued. It was noted that the brochure does not highlight the requirements for testing and servicing. David Loper posed that the educational piece could be a brochure that discussed the sale of properties with septic systems and section of this could include ETPS member agreements recorded to properties. This would be posted to DEQ and health district webpages and could be delivered to Land Title Associations and Realtor Associations within the State of Idaho. Tyler stated that DEQ could develop the brochure through the On-Site Wastewater Program and DEQ's Technical Publications department.

### **ACTION ITEMS:**

- DEQ Tech Pubs and Tyler Fortunati will develop a draft brochure to educate Title companies and Realtor Associations.
  - David Loper will send Tyler Fortunati the Public Health graphic for brochure development.
- Tyler Fortunati will review and present important points to the ETPS Subcommittee of Idaho Code 30-3.
- Tyler Fortunati will check with the Secretary of State to determine the meaning of what their status of Admin. Dissolved means.



- David Loper requested information from DEQ on the status of the various O&M Non-Profit Entities in relation to which ones are dissolved, out of business, inactive, not sampling, or not reporting.

### **NEXT MEETING:**

The next ETPS subcommittee meeting is scheduled to be on January 17, 2013, 9:15 a.m. – 4:30 p.m., at the DEQ State Office building.

**Motion:** Ryan Spiers moved to adjourn the meeting.

**Second:** David Loper.

**Voice Vote:** Motion carried unanimously.

Meeting adjourned at 4:07 p.m.

**ETPS PARKING LOT:** This is an area reserved for subcommittee meeting topics for future agendas.

- Annual reporting exemptions
- Variability of sampling results between labs
- Testing requirements (TSS, CBOD<sub>5</sub>, and Total Nitrogen)
- Service Refusal Letter (health district to homeowners)
- How to handle members refusing to pay the required annual dues to their O&M Entity
- O&M Entity transitions (i.e., new ownerships, service provider changes, etc.)



## Appendix B

### Septic Systems and Real Estate

All developed properties have a utility for the disposal of wastewater generated within the buildings on the property. The most common options for disposal of wastewater are a municipal wastewater system or an individual septic system. Septic systems are most often located in rural areas but can also be found in cities of any size.

It is the responsibility of the homeowner to know what type of wastewater disposal system is utilized on their property. Real estate professionals will want to verify this information prior to listing any developed property for sale. If a property has a septic system the real estate professional will want to verify what type of system is installed and any regulatory requirements associated with the septic system.

Records of septic system installations for individual properties can be obtained from the local health district that has jurisdiction over the county the system is installed in. Along with the records of installation the homeowner and real estate professional will want to verify any regulatory requirements that are conditions of the septic permit.

### Health District Contact Information

**Panhandle Health District**  
 8500 N. Atlas Rd.  
 Hayden, ID 83835  
 (208) 415-5100

Serving: Benewah, Bonner, Boundary, Kootenai, and Shoshone Counties

**Public Health - Idaho North Central District**  
 215 10<sup>th</sup> St.  
 Lewiston, ID 83501  
 (208) 799-3100

Serving: Clearwater, Idaho, Latah, Lewis, and Nez Perce Counties

**Southwest District Health Department**  
 13307 Miami Ln.  
 Caldwell, ID 83607  
 (208) 455-5300

Serving: Adams, Canyon, Gem, Owyhee, Payette, and Washington Counties

**Central District Health Department**  
 707 N. Armstrong Ln.  
 Boise, ID 83704  
 (208) 375-5211

Serving: Ada, Boise, Elmore, and Valley Counties

**South Central Public Health District**  
 1020 Washington St. N.  
 Twin Falls, ID 83301  
 (208) 737-5900

Serving: Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls Counties

**Southeastern Idaho Public Health**  
 1901 Alvin Ricken Dr.  
 Pocatello, ID 83201  
 (208) 233-9080

Serving: Bannock, Bear Lake, Bingham, Butte, Caribou, Franklin, Oneida, and Power Counties

**Eastern Idaho Public Health District**  
 1250 Hollipark Dr.  
 Idaho Falls, ID 83401  
 (208) 522-0310

Serving: Bonneville, Clark, Custer, Fremont, Jefferson, Lemhi, Madison, and Teton Counties

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## REAL ESTATE TRANSACTIONS

### And Septic Systems



A RESOURCE FOR  
 HOMEOWNERS, REAL ESTATE  
 PROFESSIONALS, AND TITLE  
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**Public Health**  
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A Cooperative Publication

DEQ State Office  
 1410 N. Hilton Dr.  
 Boise, ID 83706  
 (208) 373-0502  
 www.deq.idaho.gov



## Real Estate Transactions and Septic Systems

### Types of Septic Systems

There are several types of septic systems approved for installation in Idaho. The system types are determined based upon site conditions and regulatory requirements. System types can vary in their annual maintenance and regulatory requirements. The system types are grouped into three main areas:

- Basic Septic System
- Basic Alternative Septic System
- Complex Alternative Septic System

Several of the complex alternative septic systems require annual maintenance of varying degrees. Annual maintenance requirements for these systems should be described in an Operation and Maintenance manual developed by the system's design engineer or manufacturer. Copies of these manuals should be available through the health district that issued the installation permit.

One category of complex alternative systems includes annual regulatory requirements as a condition of their installation permit. These are referred to as Extended Treatment Package Systems (ETPS) or Advanced Treatment Units (ATU). These systems have impacts on real estate transactions.

### ETPS/ATU Impacts on Real Estate Transactions

Prior to the issuance of the septic system installation permit for the ETPS/ATU type septic systems the permit applicant is required to sign a member agreement with a Non-Profit Operation and Maintenance Entity (O&M). This agreement is recorded to the property with the county recorder and is transferred with the property upon its sale to the new owner. It is the responsibility of the real estate professional and the title company to inform any new buyer of this member agreement.

Member agreements impact the homeowner or buyer in the following ways:

- Grants the Non-Profit O&M Entity an easement to access the property for annual service, maintenance, and testing requirements.
- Requires the homeowner to pay annual dues to the Non-Profit O&M Entity to perform the services listed within the agreement as well as the Entities By-Laws.

Homeowners that do not pay the annual dues may be subject to liens on their property or legal action as pursued by the Non-Profit O&M Entity. There may also be additional legal consequences from the regulatory authority for failure to test effluent quality for compliance with septic permit requirements.

### Real Estate and Title Company Responsibilities

- Verify the type of wastewater disposal system that serves a listed property.
- Obtain records of the septic system installed on the property.
- Determine if there are any maintenance requirements that the homeowner must follow and provide these to potential buyers.
- If there is a recorded member agreement on the property the information and associated requirements must be conveyed to any potential buyer.

### Health District Services for Real Estate Professionals

- Provide records of septic permits and installations.
- Provide information on annual maintenance requirements for septic installations.
- Mortgage Surveys
  - Well water testing
  - Septic system surveys



## Appendix C

### ETPS Subcommittee Update on Requested Information

SOS Admin. Dissolved Consequence, Reasons Behind Current Suspensions of O&M Entities, Overview of Idaho Code 30-3

### Reasons Behind O&M Suspensions

| Suspended Entity                                       | Admin. Dissolved | Sampling | Reporting |
|--|------------------|----------|-----------|
| Southeast Idaho Environmental Treatment Services, Inc. |                  |          |           |
| Tricounty Wastewater Management, Inc.                  |                  |          |           |
| Valley Environmental Protection, Inc.                  |                  | X*       | X*        |
| Northern Extended Treatment Systems, Inc.              | X                |          |           |
| Septic Systems, Inc.                                   |                  |          |           |
| Effluent Technologies, Inc.                            |                  |          |           |
| Everlasting Extended Treatment, Inc.                   |                  | X**      | X**       |

\*One service provider has sampled and reported but the second has not which pushes the entire entity over the 10% out of compliance level.  
 \*\*The member units were sampled and reported but the submitted results had more than 10% of the member units out of compliance.

### SOS Admin. Dissolved Information

- ▶ Corporation is designated as Admin. Dissolved for failure to submit their annual report to the SOS office by the due date.
  - The annual report simply updates the officers and directors of the corporation.
  - Annual report does not include financial information.
- ▶ There are no consequences from the SOS office if the corporation is listed as Admin. Dissolved.

### Idaho Code 30-3 Overview

- ▶ Title 30 of Idaho Code covers corporations
  - Chapter 3 is specific to the Idaho Nonprofit Corporation Act
- ▶ This is the Code that DEQ requires O&M Entities to incorporate under
- ▶ Can currently be viewed at:
  - <http://legislature.idaho.gov/idstat/Title30/T30CH3.htm>

### SOS Admin. Dissolved Information

- ▶ Corporation has up to 10 years to reinstate with the SOS office after being designated as Admin. Dissolved.
  - Is done with a \$30 fee and simple paperwork.
- ▶ If the 10 years passes the corporation must re-file all of their Articles of Incorporation, etc. to reinstate.
  - Essentially restart from the beginning.
- ▶ This status has no effect upon DEQ requirements for the entity.

### Idaho Code 30-3 Overview

- ▶ 30-3-14 Judicial Relief
  - If a meeting of the members, delegates, or directors is not possible as prescribed by the articles or bylaws then any director, officer, delegate, or member may petition the district court to order such a meeting.
- ▶ 30-3-46 Annual and Regular Meetings
  - At the annual meeting: The president and chief financial officer shall report on the activities and financial condition of the corporation.



## Idaho Code 30-3 Overview

- ▶ 30-3-48 Court-Ordered Meetings
  - The district court may summarily order a meeting to be held on application of any member or other person entitled to participate in the annual meeting if the meeting was not held within 6 months of the end of the corporations fiscal year or 15 months after its last annual meeting.
  - The court may order the corporation to pay the member's costs, including attorney fees, incurred to obtain the order.



## Idaho Code 30-3 Overview

- ▶ 30-3-54 Member's List for Meeting
  - The corporation shall prepare an alphabetical list of member names of all members entitled to notice of the annual meeting including names and addresses.
  - The list will be available for inspection by members 2 business days after notice of the meeting.



## Idaho Code 30-3 Overview

- ▶ 30-3-56 Quorum Requirements
  - Unless this act, the articles or bylaws provide for a higher or lower quorum 10% of the votes entitled to be cast on a matter must be represented in person, by proxy, by mailed written ballot or by absentee ballot at a meeting of the members to constitute a quorum.
  - A bylaw amendment to decrease the quorum for member action may be approved by the members or board unless prohibited by the bylaws.
  - A bylaw amendment to increase the quorum must be approved by the members.



## Idaho Code 30-3 Overview

- ▶ 30-3-64 Qualifications of Directors
  - The articles or bylaws may prescribe other qualifications for directors in addition to being members of the corporation.
- ▶ 30-3-65 Number of Directors
  - The board must consist of 3 or more individuals.



## Idaho Code 30-3 Overview

- ▶ 30-3-66 Election, Designation and Appointment of Directors
  - All directors shall be elected at the first annual meeting of members and every meeting thereafter unless the articles or bylaws provide some other time or method of election, or provide that some of the directors are appointed by some other person or designated.



## Idaho Code 30-3 Overview

- ▶ 30-3-67 Terms of Directors Generally
  - The articles or bylaws must specify the terms of directors except for designated or appointed directors.
- ▶ 30-3-71 Removal of Designated or Appointed Directors
  - A designated director may be removed by an amendment to the articles or bylaws deleting or changing the designation.





## Idaho Code 30-3 Overview

- ▶ 30-3-91 Amendment of Articles by Directors and Members
  - An amendment to a corporations articles must be approved in writing by any person or persons whose approval is required by a provision of the articles authorized in this section.
- ▶ 30-3-93 Articles of Amendment
  - A corporation amending its articles shall deliver to the SOS articles of amendment setting forth a statement that the approval of the amendment of the outside individual was obtained.



## Idaho Code 30-3 Overview

- ▶ 30-3-94 Restated Articles of Incorporation
  - If the restatement includes an amendment requiring approval the board must submit the restatement for such approval.
  - The corporation must deliver to the SOS whether the restatement contains amendments to the articles requiring approval by any other person other than the board of directors.



## Idaho Code 30-3 Overview

- ▶ 30-3-131 Inspection of Records by Members
  - A member is entitled to inspect and copy any of the records of the corporation described in section 30-3-130 if the member gives the corporation written notice at least 15 days prior to inspecting the records.



## Idaho Code 30-3 Overview

- ▶ 30-3-99 Approval by Third Persons
  - The articles may require an amendment to the articles or bylaws to be approved in writing by a specified person or persons other than the board.
  - An article provision may only be amended with the approval in writing of such person or persons.
- ▶ 30-3-130 Corporate Records
  - A corporation shall maintain appropriate accounting records.
  - A corporation shall maintain a record of its members.





## Appendix D

### 4.2 Nonprofit Corporations

Revision: [January 17, 2013](#)

Entities to manage large soil absorption systems, extended treatment or experimental systems, clustered systems, or other more complex systems must guarantee that they will be responsible for the system and be available to provide operation and maintenance (O&M). The following guidance provides for a nonprofit corporation which can do that:

#### 4.2.1 Required Incorporation Elements

The following elements must be included within the Entity's Articles of Incorporation or Bylaws:

1. The Non-profit Entity should be incorporated according to Idaho Code 30-3
2. The Articles of Incorporation shall include a requirement that any changes to the Entity's Articles of Incorporation or Bylaws shall be approved by the Department of Environmental Quality's Water Quality Division Administrator (Director) or his/her designee per Idaho Code 30-3-99.
  - a. The Director shall provide the Nonprofit Entity approval in writing of any changes to the Articles of Incorporation or Bylaws that are not in conflict with section 4.2 of the Technical Guidance Manual.
23. Membership should be limited to property owners only.
34. Voting should be limited to one parcel/one full membership/one vote.
45. Voting rights should be restricted to members with improved property.
56. Voting rights should not be cancelled.
  - a. Exception to this is allowed in the event that an extended treatment package system is disconnected and removed from the property as approved by the Director.
67. Purposes of the Non-profit Entity should be clearly defined in the Articles of Incorporation.
78. The Non-profit Entity should hold an annual meeting of the membership.
89. Funds generated are to operate specific functions and should be restricted for use to the specific purpose. Those purposes should be defined in the Bylaws or associated Membership Agreement.



- a. Annual financial reports should be made available to the membership upon request by individual members and through the annual membership meeting.
- 910. Multiple-purpose Non-pProfit Entity funds generated are to be separately maintained, and funds from one account should not be available for another account's use.
- 1011. The Non-pProfit Entity should either own the system(s) it intends to maintain or have an access easement in place.
  - a. Access easements for extended treatment package systems should be executed through a membership agreement as outlined in section 4.2.3.
- 1112. Membership (and shares) in the Non-pProfit Entity must run with the land, and successive owners must acquire the preceding owner's membership or voting share(s).
- 1213. The purchaser and any new member should be provided by the Non-pProfit Entity with a copy of the Articles of Incorporation, By-Laws, Covenants, and Contracts with the Entity.
- 1314. There should be no provisions restricting ownership of improved property.
- 1415. The Non-pProfit Entity should be capable of raising revenue by setting and collecting user charges.
- 1516. Board of Director Requirements:
  - a. For Extended Treatment Package System Nonprofit Operation and Maintenance Entities the Board of Directors should contain one permanent position required to be filled by a corporate officer, general partner, or owner of the manufacturer of the treatment technology.
    - i. The only exemption to this requirement shall be for cases where manufacturers are no longer in business. In this case the existing Board Members and associated membership shall vote in a new Board Member to ensure that item 15.b is fulfilled.
  - b. The Board of Directors should include a minimum of three Board Member positions.
- 1617. The Board of Directors should be able to raise revenue for emergency operation and maintenance of community owned systems without majority vote.



1718. The Nonp-~~P~~rofit Entity must be capable of suing and of being sued, maintain the capability to impose liens on those members (shareholders) who become delinquent in user charges, and suspend services, providing such suspension will not jeopardize other members' use.
1819. The Nonp-~~P~~rofit Entity should provide an operation and maintenance manual that shall be approved by the Director.
- a. The operation and maintenance manual should be provided to all new members for extended treatment package systems and shall include the monitoring requirements as outlined in the Section 4.10.2 "Extended Treatment Package System" Operation, Maintenance and Monitoring Conditions for Approval.
1920. Conditions for dissolution of the organization should be specified. Dissolution should be limited to connection to a municipal wastewater treatment facility or merger with another approved nonprofit corporation having management capability.
2021. Except as provided in item 19, the Nonp-~~P~~rofit Entity should not be able to vote itself out of existence.
2122. For Nonp-~~P~~rofit Entities a third party (i.e., maintenance entity, service provider, etc.) should be identified to execute the specified operation and maintenance functions.
- a. Service providers for Nonp-~~P~~rofit Entities overseeing extended treatment package systems should be certified in writing by the manufacturer for the servicing of their technology. The certification should be provided to the Director prior to approval.
2223. The Nonp-~~P~~rofit Entity should be able to plan and control how and at what time additional service functions will be extended or added.
2324. The Articles of Incorporation and/or By~~l~~-laws should provide for proxy voting.
2425. Proxies should not be binding on new purchasers.
2526. For community systems the developer of the project should be required to contribute to the operation and maintenance until such time as the nonprofit corporation is self-sustaining. Consider either a specified period of time or when a specified number of lots ~~has~~have been sold.
2627. The Nonp-~~P~~rofit Entity should have a defined service area boundary.

#### [4.2.2 Articles of Incorporation or By~~l~~-Law Changes Notification Requirements](#)



**The Nonprofit Entity shall notify the Director for any of the following reasons:**

1. Any content changes that occur to the Articles of Incorporation, Bylaws, or Membership Agreements that occur after initial approval by the Director shall be provided to the Director for review and approval prior to their implementation. Any changes that conflict with any portion of section 4.2.1 should not be approved.
2. Changes occur to Board of Directors.~~and~~
- ~~1-3. \_\_\_\_\_ Service provider(s) shall be forwarded to the Director.~~are changed.

**4.2.3 Membership Agreements for Extended Treatment Package Systems**

The membership agreement is separate from the Article of Incorporation and By-Laws for the Nonp-~~Profit~~ Corporation but is a required element for membership in the Nonp-~~Profit~~ Corporation. Membership agreements should contain the following elements:

1. Title of the membership agreement should include the words lien and access easement.
2. The agreement should describe the exact services that are and are not included within the agreement (i.e., service, maintenance, annual testing, repairs, etc.).
3. The access easement language should be included.
4. A description of the lien process should be included.
5. The legal description of the property should be included.
- ~~4-6. \_\_\_\_\_~~ A requirement that upon each sale of the property the buyer will sign an acknowledgement that they have reviewed the membership agreement and understand its requirements.



## Appendix E

### 4.10 Extended Treatment Package System

Revision: January ~~4, 2011~~17, 2013

#### 4.10.1 Description

Manufactured and *packaged* mechanical treatment devices that provide additional biological treatment to septic tank effluent. Such units may use extended aeration, contact stabilization, rotating biological contact, trickling filters, or other approved methods to achieve enhanced treatment after primary clarification occurs in an appropriately sized ~~primary clarifier (septic tank)~~. These systems provide secondary wastewater treatment capable of yielding high-quality effluent suitable for discharge in environmentally sensitive areas.

#### 4.10.2 ~~Operation, Maintenance, and Monitoring~~ Conditions for Approval

~~Procedures relating to operation, maintenance, and monitoring are required by IDAPA 58.01.03 (section 8.1) or may be required as a condition of issuing a permit, per IDAPA 58.01.03.005.14 (section 8.1) to ensure protection of public health and the environment.~~

1. A maintenance entity will be available to provide continued device operation and maintenance (O&M). Approval of the O&M entity will be made by the Director ~~before~~ prior to the issuance of a permit. Approvable entities may include the following:

- a. Municipal wastewater treatment departments
- b. Water or sewer districts
- c. Nonprofit Corporations

An O&M member agreement and an accompanying general access easement should be entered into between the property owner and the nonprofit O&M entity, as a necessary condition ~~for~~ prior to issuing an installation permit. This agreement and the easement will be recorded with the County as a condition for issuing an installation permit.

2. Extended Treatment Package Systems (ETPS) may be used for single-family dwellings without an approved maintenance entity **only under all of the following conditions:**
  - a. The site is acceptable for a standard system. All separation distances from ground water and surface waters, limiting layers, and soil types shall be met.
  - b. Enough land is available, and suitable, for two full-size drainfields. One complete full-size drainfield shall be installed.
  - ~~c. A state approved effluent filter shall be used at the outlet of the package treatment system and before the drainfield.~~



3. Final effluent disposal will meet the following criteria:

a. Surface discharge:-

- i. System owner will apply for a National Pollution Discharge Elimination System Permit (NPDES) from the United States Environmental Protection Agency (EPA).
- ii. Effluent quality will meet the applicable requirements of the “Water Quality Standards” (IDAPA 58.01.02), “Wastewater Treatment Requirements” (IDAPA 58.01.16), and all other applicable regulations.

b. Ground water discharge:-

- i. Effluent quality will meet the applicable requirements of the “Ground Water Quality Rule” (IDAPA 58.01.11), “Wastewater Rules” (IDAPA 58.01.16), and all other applicable regulations.
- ii. Total Nitrogen discharge shall not exceed that specified in the development’s Nutrient–Pathogen (NP) [Study Evaluation](#) in order to prevent the ground water from exceeding the “Ground Water Quality Standard” for nitrates (IDAPA 58.01.11.200.01.a) and to maintain and protect the existing and projected future beneficial ground water uses (IDAPA 58.01.11.006.02).

c. Subsurface discharge:-

- i. If an 85% reduction or better in Carbonaceous Biological Oxygen Demand (CBOD<sub>5</sub>) and Total Suspended Solids (TSS) can be achieved, then the effluent may be discharged to a drainfield satisfying the Intermittent Sand Filter (section 4.23.5) ~~or the Recirculating Gravel Filter Gravity Disposal Trenches (section 4.22.5)~~ application rate criteria.
    1. Otherwise, the effluent must be discharged to a standard drainfield, sized as directed in IDAPA 58.01.03.008 (section 8.1).
  - ii. Additional drainfield reduction granted for use of gravelless trench products is not allowed. ~~The 85% reduction is a qualitative criterion.~~
    1. The 85% reduction will be accepted as being met if the effluent exhibits a quantitative value obtained from laboratory analysis not to exceed 40 milligrams per liter (mg/L) (40 parts per million [ppm]) CBOD<sub>5</sub> and 45 mg/L (45 ppm) TSS.
4. ~~If the system is experimental, the system owner will provide a waiver of liability absolving the Department and the health districts of any liability arising from operation or malfunction of the system.~~

4.10.3 Operation, Maintenance, and Monitoring



Procedures relating to operation, maintenance, and monitoring are required by IDAPA 58.01.03 (section 8.1) or may be required as a condition of issuing a permit, per IDAPA 58.01.03.005.14 (section 8.1) to ensure protection of public health and the environment.

## 1. Operation and Maintenance

a. Annual maintenance shall be performed on the ETPS unit as described in the ETPS manufacturer's operation and maintenance manual for the ETPS model.

b. Additional maintenance not specified in the operation and maintenance manual may be required to ensure the ETPS functions properly.

## 1.2. Monitoring

a. Annual effluent monitoring will be required for all ETPS that discharge to a reduced size drainfield, to a drainfield with a reduced separation distance to ground water, and/or to a drainfield located in an environmentally sensitive area (area of concern).

i. Annual monitoring included in the Annual Report must occur within the reporting period.

b. Monitoring samples provided to a laboratory will analytically quantify that the units are operating in compliance, provided samples do not exceed 40 mg/L (40 ppm) for CBOD<sub>5</sub> and 45 mg/L (45 ppm) for TSS.

i. Results for CBOD<sub>5</sub> and TSS that exceed these levels indicate the pretreatment device ETPS is not achieving the required reduction levels. ~~CBOD<sub>5</sub> monitoring will replace Biological Oxygen Demand (BOD<sub>5</sub>) monitoring effective January 1, 2008.~~

c. For those systems installed in areas of concern, including nitrogen sensitive areas, or are used to fulfill NP Study Evaluation results and requirements, the following additional constituents may be monitored as stipulated on the permit:

Ai.) Total Kjeldahl Nitrogen (TKN)

Bii.) Nitrate-Nitrite nitrogen (NO<sub>3</sub>+NO<sub>2</sub>-N)

eiii.) Results for Total Nitrogen (TN = TKN + [NO<sub>3</sub>+NO<sub>2</sub>-N]) that exceed the levels stipulated on the installation permit, in the subdivision approval for sanitary restrictions release, or the approved NP Study, indicate that the device is failing to achieve the required reductions

d. ~~Laboratory results that exceed the numerical Total Nitrogen values specified in the Total Nitrate column of Table 8-1 (section 8.6) indicate that the treatment device is not achieving the required percent nitrogen reduction, specified in the Total Nitrate Reduction (%) column of Table 8-1.~~



e.d. Samples will be collected, stored, transported, and analyzed according to the latest version of Standard Methods for the Examination of Water and Wastewater (Rice et al 2012) and other acceptable procedures.

i. Each sample will have a Chain-of-Custody sheet, identifying, at a minimum, the sample's source (street address or installation permit number), date and time of collection, and the person who extracted the sample(s).

ii. The Chain-of-Custody sheet should also specify the laboratory analyses to be performed on the sample(s).

i-iii. Sample storage and transport will take place in appropriate containers under appropriate temperature control.

f.e. Samples will be required to be analyzed by a certified laboratory, and the monitoring results will be submitted as part of the Annual Report to the local health district. ~~The annual report shall be submitted no later than July 31 of each year for the preceding 12-month period. Reporting period is from July 1 of the preceding year through June 30 of the reporting year.~~

f. Samples failing to achieve the required effluent constituent levels shall require:

i. Additional operations and maintenance ~~will be required~~ for devices that fail to achieve the above reductions.

ii. Additional sampling ~~will be required~~ to demonstrate the operation and maintenance performed successfully restored the treatment system to proper operation.

a. Sample extraction and analysis should occur within 30 days after servicing the system.

a-b. A maximum of three ~~servicing and subsequent monitoring sampling~~ events, within 90 days, will be allowed to return the system to proper operation. Failure to correct the system within this time frame will result in the system being classified as a *failing system* (Figure 4-8).

#### 4.10.4 Annual Report

~~The annual report shall be submitted no later than July 31 of each year for the preceding 12-month period. The r~~Reporting period is from July 1 of the preceding year through June 30 of the reporting year (discuss report submission date at TGC level). The Nonprofit O&M Entity shall meet the following annual reporting requirements for each member of the Entity:

1. The Annual Report shall include the following items for each member of the Entity:

a. A copy of all service records for the reporting period.

b. A copy of all certified laboratory records for effluent sampling.



- c. A copy of each Chain-of-Custody record associated with each effluent sample.
  - d. A current list of all members of the Nonprofit O&M Entity within the health district to which the Annual Report was submitted.
    - i. The member list shall clearly identify the status of each member in regards to completion of Annual Reporting requirements.
    - ii. If Annual Reporting requirements are not complete for any given member an explanation shall be included with that member's records within the Annual Report.
2. Annual Report Exemptions:
- a. A member may be exempt from effluent testing based on extreme medical conditions.
    - i. The member's record in the Annual Report must include a doctor's note indicating that a resident of the property has been prescribed medication for the reporting period that will prevent the ETPS unit from testing correctly.
    - ii. Annual service and maintenance on the member's ETPS unit shall not be exempt due to medical conditions and record of annual service and maintenance shall still be submitted with the Annual Report.
3. The annual reporting process:
- a. The Annual Report shall be submitted by the Nonprofit O&M Entity no later than July 31 of each year for the preceding 12-month period to the local health district.
    - i. The Nonprofit O&M Entity shall submit Annual Reports to each local health district that the Entity has member agreements within which shall only include reporting records for the member agreements within the local health district jurisdiction.
  - b. The local health district shall provide the Nonprofit O&M Entity a written response within 30 days of receipt of the Annual Report detailing the Entity's compliance or non-compliance with their member's septic permit requirements.
    - i. All correspondence from the health districts to the Nonprofit O&M Entity regarding the Annual Report shall be copied to DEQ.
4. Delinquent Annual Reports:
- a. If the Nonprofit O&M Entity does not submit the Annual Report by July 31 of the reporting year the local health district shall send the Entity a reminder letter providing a secondary deadline for report submission of August 21<sup>st</sup> of the reporting year detailing the report requirements and that failure to submit the Annual Report by this date will result in the district forwarding a notice of non-report to DEQ for the suspension of the Nonprofit O&M Entity.
    - i. All correspondence from the health district to the Nonprofit O&M Entity regarding delinquent Annual Reports shall be copied to DEQ.



#### 4.10.5 Nonprofit O&M Entity Suspension

Nonprofit O&M Entities may be suspended by DEQ. Suspensions will be detailed in writing and sent to both the Nonprofit Entity and the health districts. ~~Suspension will only prevent the Nonprofit O&M Entity from issuing additional O&M agreements. Upon suspension the health districts shall not issue septic system permits for ETPS systems from the suspended Nonprofit O&M Entity. Existing system monitoring, reporting, and servicing requirements will not be affected by a suspension~~ (Figure 4-9). Suspensions of Nonprofit O&M Entities may be issued, but may not be limited to, the following reasons:

1. Failure to submit an Annual Report by the secondary deadline of August 21<sup>st</sup>.
2. If an O&M Entity's Annual Report identifies malfunctioning system rates of 10% or more.
  - a. Malfunctioning systems are defined as any system that fails to receive annual maintenance or exceeds the effluent reduction levels for any constituent required as part of the septic permit (i.e., TSS, CBOD<sub>5</sub>, or TN).

~~If an O&M Entity's Annual Report identifies malfunctioning system rates of 10% or more, Upon suspension DEQ will suspend the O&M Entity and require that the Nonprofit O&M Entity, affected member homeowners, and approved service provider, in cooperation with the local health district, enter into a Corrective Action Plan (CAP). The CAP should establish the time frame to return the noncomplying systems to proper operation or a time frame for the submission of a complete Annual Report. The suspension will remain in effect until the malfunctioning system rate is below 10% or the Annual Report is received and approved. Suspension will only prevent issuing additional O&M agreements. Existing system monitoring, reporting, and servicing requirements will not be affected by a suspension (Figure 4-9).~~

~~If the system is experimental, the system owner will provide a waiver of liability absolving the Department and the health districts of any liability arising from operation or malfunction of the system.~~

#### 4.10.6 Design

Procedures relating to design are required by IDAPA 53.01.03 (section 8.1) or may be required as permit conditions, as appropriate, to ensure protection of public health and the environment.

1. All materials will be durable, corrosion resistant, and designed for the intended use.
2. All electrical connections completed on site shall comply with the National Fire Protection Association (NFPA) Standard NFPA 70, National Electrical Code, as required by the Idaho Division of Building Safety, Electrical Bureau.
3. Design for each specific application should be provided by a Professional Engineer (PE) licensed in the State of Idaho specializing in environmental or sanitary engineering.



4. The system's aerobic treatment section will be preceded by an appropriately sized septic tank-primary clarifier. The primary clarifier-septic tank may be either a separate septic tank, a volume integral with the system's package, or a combination of internal clarifier volume coupled with an external tank. The primary clarifier-septic tank shall provide the minimum tank capacity for residential facilities as specified in IDAPA 58.01.03.007.07.a, or for nonresidential facilities a minimum of 2-days hydraulic residence time (HRT) as stipulated in IDAPA 58.01.03.007.07.b. Timed dosing from the clarifier-septic tank to the aerobic treatment unit is preferred, and highly recommended, to maintain a constant source of nutrients for the system's aerobic microbes.
- 4.5. A Sample port will be installed in the effluent line after the aerobic treatment unit (develop figure).
- 5.6. Manufactured and *packaged* mechanical treatment devices will be required to prove that the specified equipment model:
  - a. Has successfully completed National Sanitary Foundation (NSF) standard 40 testing, or
  - b. Has successfully completed an EPA sanctioned Environmental Technology Verification (ETV) test, or
  - c. Was designed by a PE licensed in the State of Idaho specializing in sanitary or environmental engineering.

#### **4.10.7 Construction**

Procedures relating to construction are required by IDAPA 58.01.03 (section 8.1) or may be required as permit conditions, as appropriate, to ensure the protection of public health and the environment.

1. Installation
  - a. The system shall be installed by an appropriately qualified installer. IDAPA 58.01.03.003.35 defines system as "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." Consequently, the system includes the drainfield.
  - b. A licensed complex system installer shall be required to install ETPS (IDAPA 58.01.03.006.01.b).
  - c. A public works contractor may install an ETPS if they are under the direct supervision of a PE licensed in the State of Idaho.



- d. Licensed plumbers and electricians will be required to install specific devices and components for proper system operation. If the device requires any on-site fabrication or component assembly, a public works contractor should be used.
2. The design or certifying engineer should provide a written statement, within 90 days of completing the installation that the system has been installed and is operating in accordance with design and/or the manufacturer's recommendations.

*Note:* If a health district has questions regarding application of this guidance document to a proposed system, contact DEQ. Figure 4-8 shows the ETPS sampling process for an individual system, and Figure 4-9 shows the reporting process for an O&M Entity.

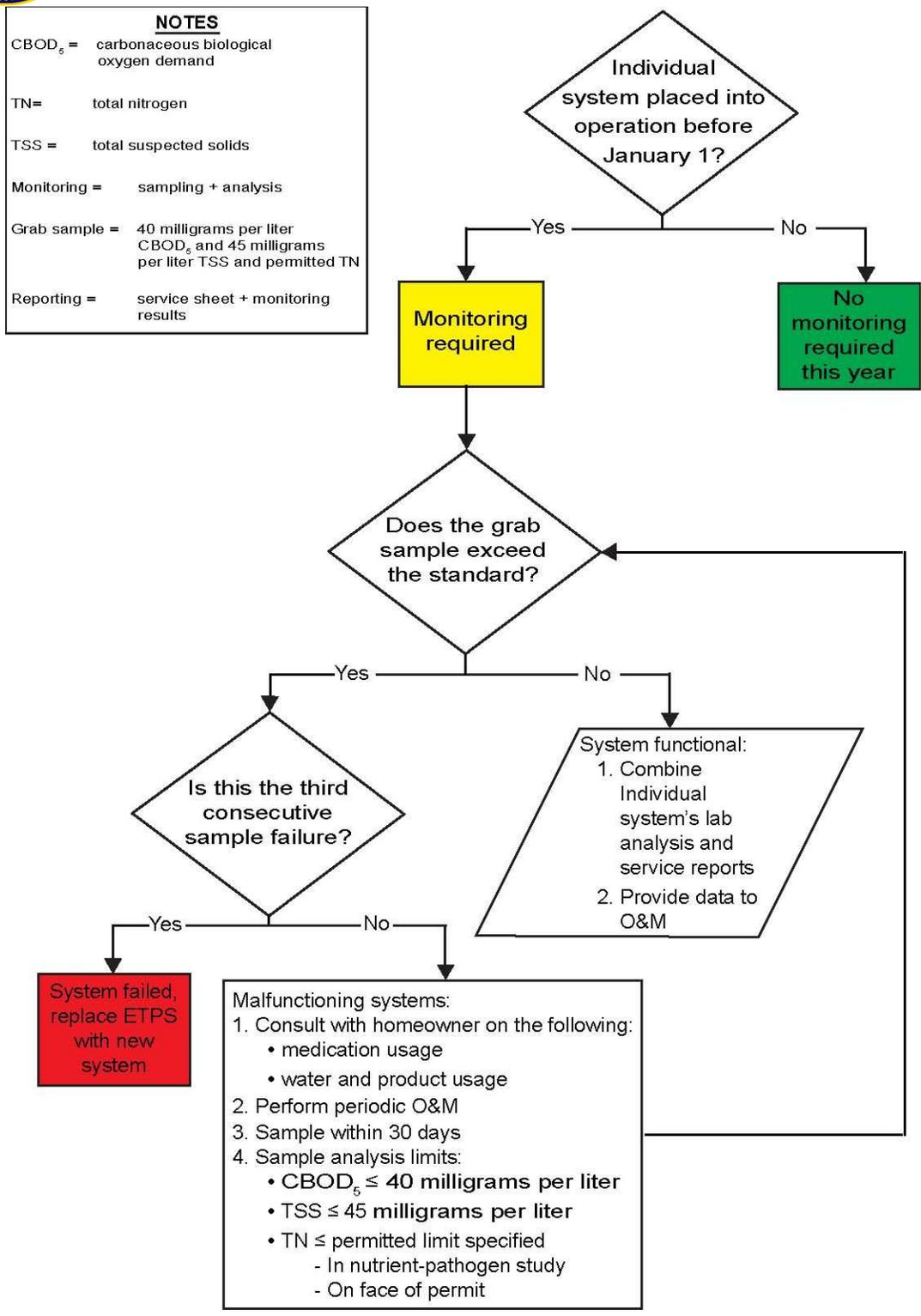


Figure 4-8. Extended treatment package system individual system sampling process.

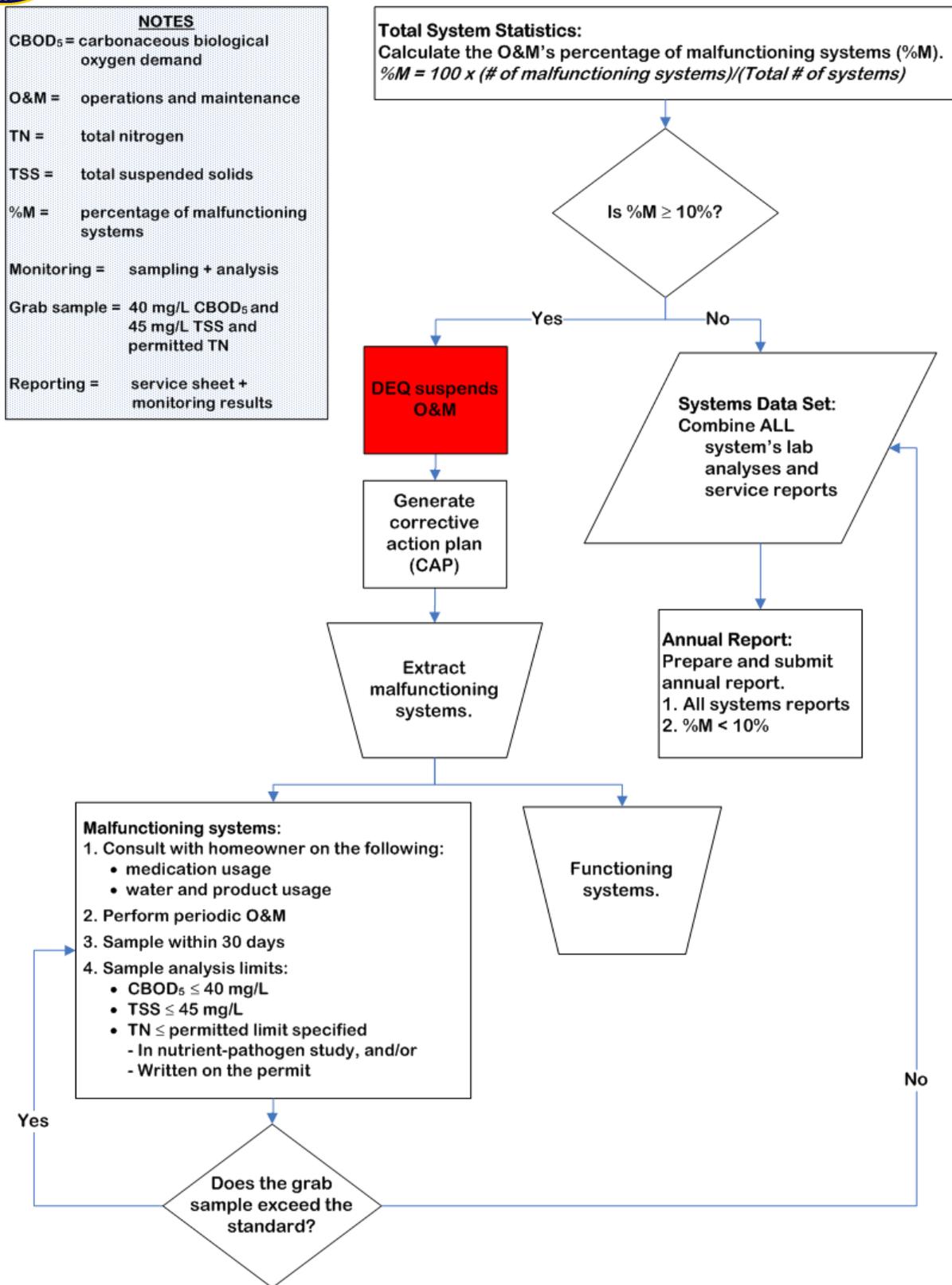


Figure 4-9. Operations and maintenance entity reporting process.