

<p>Docket Number: <u>58-0111-1501</u> Effective Date: <u>2016 Sine die</u> Rules Title: <u>Ground Water Quality Rule</u> Agency Contact and Phone: <u>Barry Burnell, 373-0194</u></p>	<p style="text-align: right;">Public Notice</p> <p>Hearings: [] Yes [X] No Locations and Dates: N/A Written Comment Deadline: 7/3/15</p>
<p>Descriptive Summary of Rule as Initially Proposed: This rulemaking has been initiated to make revisions to the Ground Water Quality Rule, 58.01.11, for consistency with the 2015 revision to Idaho Code § 39-102 enacted under House Bill 197. House Bill 197 clarifies that degradation of ground water caused by mining activities is allowed at point of compliance as long as the mine operator uses best management practices to the maximum extent practical. This rule revises Sections 150, 301, 400, and 401.</p> <p>This rule was adopted as a temporary rule by the Board in May 2015 and is currently effective.</p> <p>DEQ recommends that the Board adopt the rule, as presented in the final proposal, as a pending rule with the final effective date coinciding with the adjournment <i>sine die</i> of the Second Regular Session of the Sixty-third Idaho Legislature. The rule is subject to review by the Legislature before becoming final and effective.</p>	<p>Negotiated Rule Making: [] Yes [X] No Negotiated rulemaking was not conducted. House Bill 197 includes an emergency clause which requires the Board of Environmental Quality to promulgate a rule with an effective date of June 1, 2015. With this deadline, there is no time to conduct negotiated rulemaking. DEQ determined that negotiated rulemaking was not feasible due to the statutory deadline and because DEQ has no discretion with respect to implementing Idaho Code provisions.</p> <p>Costs To the Agency: None anticipated Costs To the Regulated Community: None anticipated</p> <p>Relevant Statutes: Idaho Code §§ 39-105, 39-107, 39-120, and 39-126</p> <p>Idaho Code § 39-107D Statement: This rule does regulate an activity not regulated by the federal government. This rulemaking has been initiated as directed by the Idaho Legislature in House Bill 197.</p> <p>Fiscal Impact Statement: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.</p>

Temporary Rule	<input type="checkbox"/> Necessary to protect public health, safety or welfare <input type="checkbox"/> Compliance with deadlines in amendments to governing law or federal programs <input type="checkbox"/> Conferring a benefit
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Section	Section Title	Summary of Rule Changes Based on Public Comment
150.	Implementation	This section has not been changed. See attached response to comments.
301.	Management of Activities with the Potential to Degrade Aquifers.	This section has not been changed. See attached response to comments.
400.	Ground Water Contamination	This section has not been changed. See attached response to comments.
401.	Mining.	This section has not been changed. See attached response to comments.

DEQ's Response to Comments
Docket No. 58-0111-1501

Commenter 1 – Idaho Mining Association (IMA)
 Commenter 2 – Idaho Conservation League (ICL)
 Commenter 3 – Greater Yellowstone Coalition (GYC)

Rule Section	C o m m e n t e r	Comment	Response
	1	<p>IMA states that H. 197 was overwhelmingly approved by the legislature and that the bill required DEQ to adopt a temporary rule by June 1, 2015 to implement its provisions. The temporary rule proposed by DEQ and approved by the Board is consistent with both the intent and the substance of H. 197.</p> <p>IMA recommends that the language in the temporary rule be adopted.</p>	Thank you for your comment. No changes needed.
	2	<p>ICL participated extensively in the initial rulemaking in 2007 that created the mining related points of compliance framework in DEQ's rules. Upon review of the proposed edits, ICL believes that they are consistent with the intent that was expressed at prior rulemakings on this subject. That said, the new edits are not a pillar of clarity.</p> <p>The current proposed language fails to make clear that degradation and exceedance of ground water quality standards can occur between the mine and the point of compliance. But that the ground water quality standards must be achieved (and current and future beneficial uses protected) from the point of compliance onward.</p> <p>DEQ should more plainly state this to avoid any future confusion.</p>	Thank you for your comment. No changes needed. DEQ is preparing Points of Compliance Guidance that will identify where the ground water quality standards apply with respect to mining operations.
150.02	3	<p>Strike the addition of the language "to the maximum extent practical," which creates uncertainty and subjectivity in the rule.</p> <p>Amend the language to "to the maximum extent <i>possible</i>," which creates more certainty, allows for innovation and establishes intent for achievability and minimal interpretation.</p>	Thank you for your comment. No changes needed. The maximum extent practical language comes from Idaho Code § 39-102.
303	3	Reject and strike the addition of "except when a point of compliance is set pursuant to Section 401" for all sections.	Thank you for your comment. No changes needed. Language is necessary to avoid confusion as to which sections of the rule apply and when they apply.
400	3	Reject and strike the addition of "except when a point of compliance is set pursuant to Section 401" for all sections.	Thank you for your comment. No changes needed. Language is necessary to avoid confusion as to which sections of the rule apply and when they apply.

401.01	3	<p>GYC is concerned that the changes in this section have made the overall rule for groundwater quality weaker.</p> <p>The operative change from “must” to “shall” is disconcerting. The word “must” compels a legal obligation and validly expresses “mandatory.” It is reasonable for GYC to assume there was intent for changing “must” to “shall” and therefore making the protection of “current and projected future beneficial uses of the ground water” optional. Additionally, the striking of “Mining activities <i>must</i> [emphasis added] be managed using the level of protection appropriate for the aquifer category in accordance with Subsection 150.02 and Section 301” further weakens the rule.</p> <p>The addition of “Degradation of ground water is allowed at a point of compliance if the mine operator implements the level of protection during mining activities appropriate for the aquifer category as specified in Table 1 of Subsection 150.02” speaks to our overall concern that this infers it is acceptable for the polluter to continue to degrade ground water when a point of compliance is set and places the burden not on the polluter, but on DEQ.</p>	Thank you for your comment. No changes needed.
	3	GYC recommends that DEQ reject these proposed changes and if there is clear reason to amend IDAPA 58.01.11, then DEQ should engage in Negotiated Rulemaking.	Thank you for your comment. No changes needed.