



State of Idaho
Department of Environmental Quality
Board of Environmental Quality

Meeting Agenda
May 14, 2020

1410 North Hilton • Boise, ID 83706 • (208) 373-0502
www.deq.idaho.gov

Brad Little, Governor
John H. Tippetts, Director

MEMBERS OF THE BOARD

Beth Elroy, Chairman
P.O. Box 6
Mail Stop 01-602
Boise, ID 83707

Kermit V. Kiebert, Vice-Chairman
P.O. Box 970
Ponderay, ID 83852

Mark Bowen, Secretary
999 W. Main St.
Ste. 1200
Boise, ID 83702

L. Nicholas "Nick" Purdy
Box 686
Highway 20
Picabo, ID 83348

Dr. John R. MacMillan
P.O. Box 712
Buhl, ID 83316

Carol Mascareñas
5000 Baltimore Circle
Idaho Falls, ID 83401

Kevin C. Boling
5881 N. Ferdinand Court
Coeur d'Alene, ID 83814

LEGAL COUNSEL

Lisa J. Carlson
(208) 373-0455

BOARD ASSISTANT

Darika Barnes
(208) 373-0240

**The Idaho Board of Environmental Quality
convenes May 14, 2020, at 9:00 a.m. MDT**

To abide by Idaho's COVID-19 response, this meeting will be held in videoconference format with additional audio access via telephone.

To request access to this meeting via the internet and/or telephone, contact Darika Barnes via email at darika.barnes@deq.idaho.gov or by phone at (208) 373-0240.

To request an accommodation for language or disability, contact Darika Barnes no later than May 11, 2020, by emailing darika.barnes@deq.idaho.gov or calling (208) 373-0240.

AGENDA:

9:00 a.m. Call to Order and Roll Call

Public Comment Period: The board will allow up to 30 minutes for the public to address the board on issues **not specifically shown as agenda items**.

Board Business:

1. **Director's Update** **John Tippetts**
 - Legislative Update
 - Budget
 - COVID-19 Response
2. **Approval of Meeting Minutes** **Beth Elroy**
 - November 14, 2019 Board Meeting
 - February 13, 2020 Board Meeting
3. **Consideration of Hearing Officer Applications for Board Approval** **Paula Wilson**
 - a. David Lloyd, Boise
 - b. Dylan Lawrence, Boise
 - c. Edwin Litteneker, Boise
 - d. Chris Graham, Boise
 - e. David Nielsen, Boise

- | | | |
|-----|---|-----------------------------|
| 4. | Solid Waste Management Rules
<i>Docket No. 58-0106-1901</i>
Action Item – Pending rule adoption
Red Tape Reduction | Michael McCurdy |
| 5. | Rules for Administration of Wastewater Treatment Facility Grants
<i>Docket No. 58-0104-1901</i>
Action Item – Pending rule adoption (chapter repeal)
Red Tape Reduction | Jerri Henry
Tim Wendland |
| 6. | Rules for Administration of Planning Grants for Drinking Water Facilities
<i>Docket No. 58-0122-1901</i>
Action Item – Pending rule adoption
Red Tape Reduction | Jerri Henry
Tim Wendland |
| 7. | Rules for Administration of Drinking Water Loan Program
<i>Docket No. 58-0120-1901</i>
Action Item – Pending rule adoption (chapter repeal)
Red Tape Reduction | Jerri Henry
Tim Wendland |
| 8. | Rules for Administration of Water Pollution Control Loans
<i>Docket No. 58-0112-1901</i>
Action Item – Pending rule adoption
Red Tape Reduction | Jerri Henry
Tim Wendland |
| 9. | FY2021 Water Pollution Control State Revolving Fund Intended Use Plan and State Wastewater Loan Priority List
Action Item – Approval | Jerri Henry
Tim Wendland |
| 10. | FY2021 State Wastewater Planning Grant Priority List
Action Item - Approval | Jerri Henry
Tim Wendland |
| 11. | FY2021 Drinking Water State Revolving Fund Intended Use Plan and State Drinking Water Loan Priority List
Action Item - Approval | Jerri Henry
Tim Wendland |
| 12. | FY2021 State Drinking Water Planning Grant Priority List
Action Item – Approval | Jerri Henry
Tim Wendland |
| 13. | Contested Case and Rule Docket Status Report | Paula Wilson |
| 14. | Other Business | Beth Elroy |

Idaho Board of Environmental Quality May 14, 2020 Board Meeting

Agenda Item 1: Director's Update

Director John Tippetts will provide the board with a verbal update on the following topics:

- 2020 Legislative Update
- DEQ's FY 20-21 Budget
- COVID-19 Response

Idaho Board of Environmental Quality May 14, 2020 Board Meeting

Agenda Item 2: Approval of Meeting Minutes

- Idaho Board of Environmental Quality Meeting November 14, 2019
- Idaho Board of Environmental Quality Meeting February 13, 2020



State of Idaho
Department of Environmental Quality
Board of Environmental Quality

Meeting Minutes
November 14, 2019

1410 North Hilton • Boise, ID 83706 • (208) 373-0502
www.deq.idaho.gov

Brad Little, Governor
John H. Tippetts, Director

MEMBERS OF THE BOARD

Beth Elroy, Chairman
P.O. Box 6
Mail Stop 01-602
Boise, ID 83707

Kermit V. Kiebert, Vice-Chairman
P.O. Box 970
Ponderay, ID 83852

Mark Bowen, Secretary
999 W. Main St.
Ste. 1200
Boise, ID 83702

L. Nicholas "Nick" Purdy
Box 686
Highway 20
Picabo, ID 83348

Dr. John R. MacMillan
P.O. Box 712
Buhl, ID 83316

Carol Mascareñas
5000 Baltimore Circle
Idaho Falls, ID 83401

Kevin C. Boling
5881 N. Ferdinand Court
Coeur d'Alene, ID 83814

LEGAL COUNSEL

Lisa J. Carlson
(208) 373-0455

BOARD ASSISTANT

Darika Barnes
(208) 373-0240

Meeting Minutes (DRAFT)

Idaho Board of Environmental Quality

November 14, 2019, 9:00 AM

**DEQ State Office – Conference Room A/B
1410 N Hilton Street
Boise, Idaho**

Via Conference Phone: (208) 373-0101, opt. 1

Minutes are not final until approved by the board.

Beth Elroy, Chairman

Mark Bowen, Secretary

Darika Barnes, Assistant to the Board

Board Members Participating

Beth Elroy, Chairman

Kermit Kiebert, Vice Chairman (via conference phone)

Mark Bowen, Secretary

Kevin Boling, Member (via conference phone)

Dr. John R. "Randy" MacMillan, Member

Carol Mascareñas, Member

Nick Purdy, Member

Department of Environmental Quality Staff Present

Jess Byrne, Deputy Director

Lisa Carlson, Senior Deputy Attorney General-DEQ, Legal Counsel to the Board

Paula Wilson, Administrative Rules Coordinator

Darika Barnes, Executive Assistant to the Director and Board

Michael McCurdy, Waste Management and Remediation Division Administrator

Dana Swift, Remediation Bureau Chief

Natalie Creed, Hazardous Waste Bureau Chief

Tiffany Floyd, Air Quality Division Administrator

Carl Brown, Air Quality Rules & Policy Coordinator

Dr. Mary Anne Nelson, Surface and Waste Water Division Administrator

Jason Pappani, Surface Water Bureau Chief

Jerri Henry, Drinking Water Protection and Finance Division Administrator

Ed Hagan, Ground Water Bureau Chief

Caroline Moores, Hazardous Waste Rules & Policy Coordinator

Norka Paden, Toxicologist

Lisa O'Hara, Deputy Attorney General

Mark Cecchini-Beaver, Deputy Attorney General

Rick Grisel, Deputy Attorney General

Hannah Young, Deputy Attorney General

Rachel Aramburu, Student Extern

Others Present

Johanna Bell, Association of Idaho Cities

Brenda Tominaga, Idaho Water Policy Group and Idaho Rural Water Association

Via Conference Phone

No members of the public were present on the phone.

Note: Any attachments referenced in the minutes are permanent attachments to the minutes on file at the Idaho Department of Environmental Quality (DEQ).

Call to Order, Roll Call, and Public Comment

Chairman Beth Elroy called the meeting of the Idaho Board of Environmental Quality (board) to order at 9:00 a.m. Roll call was taken with five members present and two members, Kermit Kiebert and Kevin Boling, participating via conference phone.

Chairman Elroy opened the floor for the public to address the board on topics not specifically on the agenda. No members of the public present at the meeting or on the phone provided commentary.

Agenda Item No. 1: Approval of Meeting Minutes from October 7, 2019 (Action item)

The meeting minutes from the October 7, 2019 board meeting were presented for approval. There were no comments from the board or from members of the public.

- Motion: Dr. Randy MacMillan moved that the board approve the minutes of the October 7, 2019 board meeting.
- Second: Carol Mascareñas supported the motion.
- Voice Vote: The motion carried unanimously.

Director's Report

Deputy Director Jess Byrne provided an agency update on behalf of Director Tippetts about the following topics:

Overview of DEQ's Budget Request

DEQ's overall budget request for Fiscal Year 2021 is \$67.5 million, which is a 1.77% overall decrease from the budget request for Fiscal Year 2020. The reduction is composed of a small decrease in general funding and a larger increase in dedicated funding. After the Fiscal Year 2021 budget requests were submitted, the Governor announced a one-time holdback for FY 2020 in the amount of 1% of the general fund budget dollars. Going forward beginning in Fiscal Year 2021, there will be a permanent 2% base reduction (decrease) in general funds. Deputy Director Byrne provided more detail about DEQ's plan to handle changes to funds available from the general fund and other sources.

Update on the Red Tape Reduction Act

Deputy Director Byrne described DEQ's rulemaking activities in the past year, particularly with the expiration of all state rules. In this time the Governor also issued the Red Tape Reduction Act, which imposes additional requirements on DEQ to simplify, consolidate, and eliminate rules and rule language where appropriate. DEQ has so far eliminated 55 pages of regulations and allowed one rule chapter to expire that has never been utilized. DEQ will continue to make progress on the remainder of its rules throughout the next year.

Status Report on the Smoke Management Plan

DEQ is currently undertaking a rulemaking related to the Smoke Management Plan, which should come before the board in 2020 and before the Legislature in 2021. Deputy Director Byrne

discussed DEQ's Prescribed Burning Program and offered background information on how Idaho is managing both regulated and voluntary participation. The Air Quality Division has hosted a number of informational and negotiated rulemaking meetings to understand the relevant issues. DEQ will continue to accept ideas and address concerns. Negotiated rulemaking will recommence at the end of November.

Idaho Code § 39-107(D) was referenced during meeting presentations for agenda items 5, 6, 9, 10, and 11:

DEQ has a provision in Idaho Code § 39-107(D) requiring additional processes if rules are (1) more stringent, (2) broader in scope, or (3) regulating an activity not regulated by the federal government. If DEQ meets any of these three criteria, additional requirements take effect, including a statement in public notices and verification of the use of best-available, peer reviewed science. If there is a standard proposed, DEQ has to satisfy additional requirements, such as identifying the receptors of public health or environmental effects, and the expected risk of those receptors.

Agenda Item No. 2: Hazardous Waste Rules and Standards
(Action item) Docket No. 58-0105-1901

Waste Management and Remediation Division Administrator Michael McCurdy introduced the agenda item and provided opening remarks on rules and standards for hazardous waste. This rulemaking ensures state rules remain consistent and up to date with federal regulations and simplifies compliance for the regulated community by avoiding duplicative, overlapping, or conflicting regulatory systems. Adoption of federal regulations is necessary to retain program primacy, which allows DEQ to implement Idaho's Hazardous Waste Program in lieu of the US Environmental Protection Agency (EPA). A public rulemaking notice was published in the August 2019 Administrative Bulletin, and no public comments were received. Because this rule docket utilizes incorporation by reference, negotiated rulemaking meetings were not held by DEQ.

Hazardous Waste Rules and Policy Coordinator Caroline Moores provided specific information about the revised material being proposed for incorporation by reference, which was one new rule regarding the safe management of recalled airbags.

There was a brief board discussion clarifying the reason for exchanging minor words, such as "shall" with "is".

There were no further comments from the board or from members of the public.

- **Motion:** Nick Purdy moved that the Idaho Board of Environmental Quality adopt as pending rules the Rules and Standards for Hazardous Waste as presented in the final proposal under Docket No. 58-0105-1901, with the rules becoming final and effective, if approved by the Legislature, upon the adjournment sine die of the Second Regular Session of the Sixty-fifth Idaho Legislature.
- **Second:** Mark Bowen supported the motion.
- **Voice Vote:** The motion carried unanimously.

Agenda Item No. 3: Rules for the Control of Air Pollution in Idaho
(Action item) **Docket No. 58-0101-1903**

Air Quality Division Administrator Tiffany Floyd introduced the agenda item and provided background information on applying the Red Tape Reduction Act to this rule with recommended changes to delete rules that are duplicative, ineffective, or outdated. She specifically called out sections 590-591, 845-848, 855-858, and 859 as proposed for deletion, citing that each of these sections cover issues already incorporated by reference in IDAPA 58.01.01.107. DEQ held one rulemaking meeting where there was representation from industry, the Idaho Conservation League, consulting firms, and legal counsel. Overall comments throughout the rulemaking were supportive of deleting these sections. DEQ held a public comment period, but did not receive any comments.

Chairman Elroy asked whether facilities will need to seek Title V permit revisions as a result of the deletions. Floyd stated that all applicable federal requirements would be outlined in affected Title V permits and these would be reviewed and renewed on their existing schedules.

There were no further comments from the board or from members of the public.

- Motion: Carol Mascareñas moved that the Idaho Board of Environmental Quality adopt as pending rules the Rules for the Control of Air Pollution in Idaho as presented in the final proposal under Docket No. 58-0101-1903, with the rules becoming final and effective, if approved by the Legislature, upon the adjournment sine die of the Second Regular Session of the Sixty-fifth Idaho Legislature.
- Second: Dr. Randy MacMillan
- Voice Vote: The motion carried unanimously.

Agenda Item No. 4: Rules for the Control of Air Pollution in Idaho
(Action item) **Docket No. 58-0101-1905**

Air Quality Division Administrator Tiffany Floyd presented this rule docket to the board with a reminder that DEQ must annually incorporate by reference the federal regulations (revised as of July 1, 2019) in order for DEQ to continue as the state's implementing authority for the Clean Air Act. Incorporation also allows DEQ to ensure state rules are up to date with federal changes and simplifies compliance for the regulated community. Of the 24 changes, Floyd highlighted those that were most relevant to Idaho, with attention to State Implementation Plan (SIP) submittals and Air Quality permitting requirements around surface coating of wood building products.

DEQ did not conduct a rulemaking meeting for this rule docket. However, DEQ provided a public comment period and a public hearing. No comments were received.

Chairman Beth Elroy asked if there are any other pending SIP submittals for Idaho waiting for approval from EPA. Air Quality Rules Coordinator Dr. Carl Brown stated that DEQ recently submitted a redesignation request for the Cache Valley PM_{2.5} nonattainment area and is preparing a redesignation request for the Silver Valley PM_{2.5} nonattainment area.

There were no further comments from the board or from members of the public.

- Motion: Mark Bowen moved that the Idaho Board of Environmental Quality adopt as pending rules the Rules for the Control of Air Pollution in Idaho as presented in the final proposal under Docket No. 58-0101-1905, with the rules becoming

final and effective, if approved by the Legislature, upon the adjournment sine die of the Second Regular Session of the Sixty-fifth Idaho Legislature.

- Second: Carol Mascareñas supported the motion.
- Voice Vote: The motion carried unanimously.

Agenda Item No. 5: Rules for the Control of Air Pollution in Idaho
(Action item) **Docket No. 58-0101-1904**

Air Quality Division Administrator Tiffany Floyd introduced the rule docket to adopt and republish rules previously adopted by the board as temporary in May 2019. Two sections, Toxic Air Pollutants (TAPs) and fluoride emissions in feed and forage, were promulgated prior to Idaho Code § 39-107(D) and are subject to additional requirements under that section. These rules propose to regulate activities that are not currently regulated by the federal government. DEQ provided a 107(D) analysis in the Notice of Rulemaking – Proposed Rule for these two rules and confirmed they are adequately based on science. DEQ did not conduct a negotiated rulemaking, did not receive a request for a public hearing, and did not receive any comments from the public.

Chairman Elroy remembered that Idaho's TAPs rules were based upon an existing program in another state. Air Quality Rules Coordinator Dr. Carl Brown identified that state as New Mexico and was unsure if it still had an active program. Chairman Elroy requested information on whether New Mexico has maintained the program Idaho adopted from them.

Dr. Randy MacMillan asked whether the Food and Drug Administration (FDA) has anything to contribute to the scientific analysis on fluoride toxicosis. He suggested that the Association of American Feed Control Officials might be able to provide expertise on this subject as an additional reference.

Nick Purdy asked how parts per million is controlled, who measures this, and how it is regulated. Tiffany Floyd responded that the facilities creating the emissions do the sampling and reporting to ensure they are in compliance with set limits.

There were no further comments from the board or from members of the public.

- Motion: Nick Purdy moved that the Idaho Board of Environmental Quality adopt as pending rules the Rules for the Control of Air Pollution in Idaho as presented in the final proposal under Docket No. 58-0101-1904, with the rules becoming final and effective, if approved by the Legislature, upon the adjournment sine die of the Second Regular Session of the Sixty-fifth Idaho Legislature.
- Second: Mark Bowen
- Voice Vote: The motion carried unanimously.

Agenda Item No. 6: Ground Water Quality Rule
(Action item) **Docket No. 58-0111-1901**

Drinking Water Protection and Finance Division Administrator Jerri Henry introduced the docket and explained the history of the development of this rule in Idaho. The intent of the rule is to protect Idaho's ground water to satisfy existing and future beneficial uses consistent with EPA's national drinking water standards. This rule is the basis for the administration of programs that address ground water quality and is necessary for the ongoing maintenance and protection of

ground water. This rule does not create a permit program. The one fee item in the rule establishes points of compliance with mining operations.

No substantive changes were made to the rule; therefore, DEQ did not conduct a negotiated rulemaking. The proposed rule was published in the September 4, 2019 Administrative Bulletin, but DEQ did not receive any comments from the public. These rules were promulgated prior to Idaho Code § 39-107(D) and are subject to additional requirements under that section. DEQ provided a 107(D) analysis in the Notice of Rulemaking – Proposed Rule for these rules and confirmed they are adequately based on science.

Dr. Randy MacMillan described a Total Daily Maximum Load (TMDL) project he is participating in on the Middle Snake River. Monitoring in this region indicates that total phosphorus is exceeding its target. Although recharge and other activities are not violating state standards, some of these activities could be causing changes to the nutrient characteristics of that ground water, and Idaho does not seem well-prepared to simultaneously address the phosphorus issue while working on the TMDL. Ground Water Program Bureau Chief Ed Hagan responded that DEQ is somewhat constrained by the ground water quality rule. He acknowledged this is an emerging issue that needs to be addressed.

There were no further comments from the board or from members of the public.

- Motion: Dr. Randy MacMillan moved that the Idaho Board of Environmental Quality adopt as pending rules the Ground Water Quality Rules as presented in the final proposal under Docket No. 58-0111-1901, with the rules becoming final and effective, if approved by the Legislature, upon the adjournment sine die of the Second Regular Session of the Sixty-fifth Idaho Legislature.
- Second: Carol Mascareñas supported the motion.
- Voice Vote: The motion carried unanimously.

Agenda Item No. 7: Update on Negotiated Rulemaking Water Quality Standards, Docket No. 58-0102-1801
(Information item)

Surface and Wastewater Division Administrator Dr. Mary Anne Nelson presented an overview of Idaho's human health criteria for arsenic. In September of 2016, EPA disapproved Idaho's human health criteria of 10 micrograms per liter of arsenic for the consumption of fish only and the consumption of fish plus water as a result of a settlement agreement with Northwest Environmental Advocates. EPA has until 2023 to promulgate federal standards in the absence of state-adopted criteria. This negotiated rulemaking was initiated to enable Idaho to adopt human health criteria for arsenic under state rulemaking and prevent federal promulgation of criteria for Idaho by EPA.

Surface Water Bureau Chief Jason Pappani made a presentation to the board on the history of the issue of arsenic in Idaho and throughout the west, discussed the implementation of a monitoring program around the state, and provided an update on the progress of the arsenic rulemaking. DEQ plans to have a proposed rule ready for adoption by the board in 2022 and in front of the Legislature in 2023 for subsequent approval by EPA.

Mark Bowen inquired about permit issues in bordering states with different criteria and the impact to Idaho. Dr. Mary Anne Nelson responded that there will always be issues with interstate waters, especially when standards are not the same. States try to work together on downstream standards, and Idaho has to allow neighboring states to comment on a permit. However, Idaho

follows criteria standards written for Idaho. EPA has oversight of all permitting programs and could potentially intervene if a state does not meet the standards of its downstream neighbor. There were no further comments from the board or from members of the public.

Agenda Item No. 8: Water Quality Standards
(Action item) **Docket No. 58-0102-1901**

Surface and Wastewater Division Administrator Dr. Mary Anne Nelson explained the purpose for this rulemaking is to revise standards for consistency with EPA review of rule docket 58-0102-1701 and requested changes in the water quality standards by the approval and disapproval of certain aspects of Idaho's submitted selenium criteria for aquatic life. EPA approved rule 58-0102-1701, except for application of Subsection 287.03 to North Fork Sage and Pole Canyon Creeks and their tributaries. This proposed rule deletes the text and notations of 58-0102-1701 that are now obsolete due to EPA's review and action on that docket. These rules propose to regulate activities already regulated by the federal government and are not broader in scope or more stringent. DEQ did not conduct a negotiated rulemaking meeting for this rule docket. However, DEQ published the rule docket in the September 2019 Administrative Bulletin and provided a public comment period. No public hearing was requested and no comments were received.

Dr. Randy MacMillan asked why EPA rejected the site-specific criteria and whether there is a plan to revisit this analysis. Surface Water Bureau Chief Jason Pappani explained that the data sets were limited in those water bodies and consistent across different reaches of those bodies. Simplot informed DEQ it is planning to do additional research in the tributaries. They will come back to EPA in a year or two with a new proposal based on their new data.

Chairman Beth Elroy suggested consideration of removing incorporation by reference of guidance documents (specifically the Implementation Guidance for the Idaho Mercury Water Quality Criteria), both in light of the Governor's Red Tape Reduction Act and because these documents are not required to be approved by the board or be subject to public comment. Deputy Attorney General Lisa Carlson said she will investigate this issue, but suggested the board not remove the document at this time. Chairman Elroy requested that staff follow up on this topic and bring it back to the board at a future meeting.

There were no further comments from the board or from members of the public.

- Motion: Dr. Randy MacMillan moved that the Idaho Board of Environmental Quality adopt as pending rules the Water Quality Standards as presented in the final proposal under Docket No. 58-0102-1901, with the rules becoming final and effective, if approved by the Legislature, upon the adjournment sine die of the Second Regular Session of the Sixty-fifth Idaho Legislature.
- Second: Nick Purdy supported the motion.
- Voice Vote: The motion carried unanimously.

Agenda Item No. 9: Individual/Subsurface Sewage Disposal Rules
(Action item) **Docket No. 58-0103-1902**

Surface and Wastewater Division Administrator Dr. Mary Anne Nelson presented the rule docket with a recommendation to consolidate IDAPA 58.01.03 and IDAPA 58.01.15 into a single chapter per the Red Tape Reduction Act. The federal government does regulate subsurface

sewage under the safe drinking water act, but the proposed rules are broader in scope. The majority of these rules pre-date Idaho Code § 39-107(D) requirements. Specific sections updated in 2017 did provide a 107(D) statement during negotiated rulemaking and adoption. DEQ provided a 107(D) analysis in the Notice of Rulemaking – Proposed Rule for the rules now subject to 107D and confirmed they are adequately based on science. DEQ did not conduct a negotiated rulemaking meeting for this docket. However, DEQ published the rule docket in the September 2019 Administrative Bulletin and provided a public comment period. No public hearing was requested and no comments were received.

Mark Bowen asked for clarification of a specific provision regarding discharge to a public sewer. Dr. Nelson stated this provision is intended for septic haulers who take sewage to a public works treatment plant. Some collection systems will allow other alternative points of collection. Deputy Attorney General Lisa Carlson stated a permit is required for an appropriate point of discharge. Chairman Beth Elroy asked if DEQ has a count of how many permits would be issued and how DEQ communicates with users performing this function who are now required to operate under these new rules. Dr. Nelson informed the board that DEQ operates under a memorandum of understanding with various health districts who actually implement this section. DEQ works with these districts to ensure section changes are communicated to users.

There were no further comments from the board or from members of the public.

- Motion: Mark Bowen moved that the Idaho Board of Environmental Quality adopt as pending rules the Individual/Subsurface Sewage Disposal Rules as presented in the final proposal under Docket No. 58-0103-1902, with the rules becoming final and effective, if approved by the Legislature, upon the adjournment sine die of the Second Regular Session of the Sixty-fifth Idaho Legislature.
- Second: Carol Mascareñas supported the motion.
- Voice Vote: The motion carried unanimously.

Agenda Item No. 10: Rules Regulating Swine Facilities
(Action item) **Docket No. 58-0109-1901**

Surface and Wastewater Division Administrator Dr. Mary Anne Nelson introduced the rule docket to adopt and republish rules previously adopted by the board as temporary in May 2019. She explained which sections were subject to Idaho Code § 39-107(D), which sections were not, and how DEQ satisfied 107(D) requirements. DEQ provided a 107(D) analysis in the Notice of Rulemaking – Proposed Rule for the rules now subject to 107D and confirmed they are adequately based on science. DEQ did not conduct a negotiated rulemaking meeting for this rule docket. However, DEQ published the rule docket in the September 2019 Administrative Bulletin and provided a public comment period. No public hearing was requested and no comments were received.

Nick Purdy stated he is not aware of swine facilities in Idaho at this time and wondered if the Idaho State Department of Agriculture (ISDA) has rules regarding swine facilities. Dr. Nelson stated that ISDA does not have rules specifically for swine facilities. These rules came about when DEQ was transitioning from being a division of the Department of Health and Welfare to its own department. At that time, poultry rules moved to ISDA, but swine facility rules remained with DEQ.

There were no further comments from the board or from members of the public.

- **Motion:** Carol Mascareñas moved that the Idaho Board of Environmental Quality adopt as pending rules the Rules Regulating Swine Facilities as presented in the final proposal under Docket No. 58-0109-1901, with the rules becoming final and effective, if approved by the Legislature, upon the adjournment sine die of the Second Regular Session of the Sixty-fifth Idaho Legislature.
- **Second:** Dr. Randy MacMillan supported the motion.
- **Voice Vote:** The motion carried unanimously.

Agenda Item No. 11: Recycled Water Rules
(Action item) **Docket No. 58-0117-1901**

Surface and Wastewater Division Administrator Dr. Mary Anne Nelson introduced the rule docket to adopt and republish rules previously adopted by the board as temporary in May 2019. The intent of these rules is to promote and regulate as appropriate the re-use of recycled water. The federal government does not specifically address recycled water land application. Many of these rule sections were created after the implementation of Idaho Code § 39-107(D), and therefore, were addressed when those particular rule sections were adopted. The remaining provisions are not specific, science-based requirements or standards, but rather are procedural requirements for the department to follow in drafting or issuing re-use permits, or are construction-related requirements for land application. DEQ provided a 107(D) analysis in the Notice of Rulemaking – Proposed Rule for the rules now subject to 107D and confirmed they are adequately based on science. DEQ did not conduct a negotiated rulemaking. However, DEQ published the rule docket in the September 2019 Administrative Bulletin and provided a public comment period. No public hearing was requested and no comments were received.

There were no comments from the board or from members of the public.

- **Motion:** Dr. Randy MacMillan moved that the Idaho Board of Environmental Quality adopt as pending rules the Recycled Water Rules as presented in the final proposal under Docket No. 58-0117-1901, with the rules becoming final and effective, if approved by the Legislature, upon the adjournment sine die of the Second Regular Session of the Sixty-fifth Idaho Legislature.
- **Second:** Mark Bowen supported the motion.
- **Voice Vote:** The motion carried unanimously.

Agenda Item No. 12: Contested Case and Rule Docket Status Report
(Information item)

Administrative Rules Coordinator Paula Wilson discussed two contested case petitions filed with DEQ. The first case (Docket No. 0105-19-01) was recently closed when the hearing officer ruled in favor of DEQ's motion to dismiss and no parties petitioned to review. It became a final order on October 8, 2019. In the second case (Docket No. 0102-19-02), a second Stipulation to Stay was filed on October 9, 2019, and the parties have agreed to continue to discuss resolution.

There were no comments from the board or from members of the public.

Agenda Item No. 13: 2020 Board Meeting Schedule
(Information item)

Administrative Rules Coordinator Paula Wilson presented a calendar of potential dates for meetings of the Idaho Board of Environmental Quality in 2020. There was consensus among the board members to conduct 2020 meetings on May 13 and 14, and November 12 and 13. The May meeting location would be a traveling meeting. Chairman Elroy suggested the possibility of meeting in eastern Idaho near Pocatello or Soda Springs where DEQ has several regulated industries the board has not visited. Deputy Director Byrne stated that staff would review past meeting locations and propose an itinerary to the board.

Agenda Item No. 14: Election of Officers

(Action item)

Chairman Beth Elroy stated the board annually elects officers at the last board meeting of the year. Current presiding officers are Beth Elroy as Chairman, Kermit Kiebert as Vice Chair, and Mark Bowen as Secretary. The Chairman opened the floor for discussion. Dr. Randy MacMillan suggested following the tradition of officers serving for two years and consensus was voiced among the other members.

Paula Wilson reminded the board that newly reappointed members Nick Purdy, Kevin Boling, and Dr. Randy MacMillan will be required to go through Senate confirmation in 2020. Beth Elroy and Carol Mascareñas will have terms expiring July 1, 2020, and may choose to apply for reappointment at that time. Senate confirmation of new or reappointed members after July 1, 2020, will go through Senate confirmation in 2021. Management Assistant Darika Barnes will research the process of reapplication with the Governor's Office and communicate this information back to board members.

- Motion: Dr. Randy MacMillan moved that the Idaho Board of Environmental Quality retain the 2019 presiding officers for 2020.
- Second: Nick Purdy supported the motion.
- Voice Vote: The motion carried unanimously.

Local Reports from Board Members

There were no local reports from board members. There was no further business to conduct.

Adjournment

Chairman Beth Elroy declared the meeting adjourned at 11:35 A.M.



State of Idaho
Department of Environmental Quality
Board of Environmental Quality

Meeting Minutes
February 13, 2020

1410 North Hilton • Boise, ID 83706 • (208) 373-0502
www.deq.idaho.gov

Brad Little, Governor
John H. Tippetts, Director

MEMBERS OF THE BOARD

Beth Elroy, Chairman
P.O. Box 6
Mail Stop 01-602
Boise, ID 83707

Kermit V. Kiebert, Vice-Chairman
P.O. Box 970
Ponderay, ID 83852

Mark Bowen, Secretary
999 W. Main St.
Ste. 1200
Boise, ID 83702

L. Nicholas "Nick" Purdy
Box 686
Highway 20
Picabo, ID 83348

Dr. John R. MacMillan
1172 Hankins Rd. N
Twin Falls, ID 83301

Carol Mascareñas
5000 Baltimore Circle
Idaho Falls, ID 83401

Kevin C. Boling
5881 N. Ferdinand Court
Coeur d'Alene, ID 83814

LEGAL COUNSEL

Lisa J. Carlson
(208) 373-0455

BOARD ASSISTANT

Darika Barnes
(208) 373-0240

Meeting Minutes (DRAFT)

Idaho Board of Environmental Quality

February 13, 2:00 PM

**DEQ State Office – Conference Room A/B
1410 N Hilton Street
Boise, Idaho**

Via Conference Phone: (208) 373-0101, opt. 1

Minutes are not final until approved by the board.

Beth Elroy, Chairman

Mark Bowen, Secretary

Darika Barnes, Assistant to the Board

Board Members Participating

Beth Elroy, Chairman

Mark Bowen, Secretary

Kermit Kiebert, Vice Chairman (via conference phone)

Kevin Boling, Member (via conference phone)

Dr. John R. "Randy" MacMillan, Member (via conference phone)

Carol Mascareñas, Member (via conference phone)

Nick Purdy, Member (via conference phone)

Department of Environmental Quality Staff Present

John Tippetts, Director

Jess Byrne, Deputy Director

Darika Barnes, Executive Assistant to the Director and Board

Lisa Carlson, Senior Deputy Attorney General-DEQ, Legal Counsel to the Board

Paula Wilson, Administrative Rules Coordinator

Michael McCurdy, Waste Management and Remediation Division Administrator

Tiffany Floyd, Air Quality Division Administrator

Dr. Mary Anne Nelson, Surface and Waste Water Division Administrator

Jerri Henry, Drinking Water Protection and Finance Division Administrator

Anna McGeehan, Communications & Outreach Manager

Lisa O'Hara, Deputy Attorney General

Mark Cecchini-Beaver, Deputy Attorney General

Rick Grisel, Deputy Attorney General

Susan Hamlin, Deputy Attorney General

Hannah Young, Deputy Attorney General

Via Conference Phone

No members of the public were present on the phone.

Others Present

No members of the public were present in the conference room.

Note: Any attachments referenced in these minutes are permanent attachments to the minutes on file at the Idaho Department of Environmental Quality (DEQ).

Call to Order, Roll Call, and Public Comment

Chairman Beth Elroy called to order at 2:00 p.m. the meeting of the Idaho Board of Environmental Quality (board). Roll call was taken with a quorum of two members present and five members participating via conference phone.

Chairman Beth Elroy opened the floor for the public to address the board on topics not specifically on the agenda. There were no members of the public present at the meeting or on the phone to provide commentary.

Director John Tippetts provided a brief overview of why this extra meeting was called. All existing administrative rules expire July 1 of every year unless they are reauthorized for the next year by the Idaho Legislature. In 2019, the Idaho Legislature chose not to reapprove agency rules for the following year; therefore all rules were set to expire on July 1, 2019. However, all agencies were able to continue operations through the use of temporary rules. This year, all of DEQ's rules have been reviewed by the proper legislative committees, but the Legislature still needs to take certain actions before the end of session to ensure that DEQ will have rules in place for next year. However, there is a possibility this might not happen again this year, meaning DEQ's rules could expire at sine die.

The purpose of this board meeting is to ensure DEQ's rules will be enacted as temporary rules for the coming year in the event they are allowed by the Legislature to expire again this year. DEQ's request is that the board approves the rules, allowing DEQ to continue its work.

Mark Bowen asked for a clearer explanation of the intent of the rules not being approved. Director Tippetts said it was an intentional act. He explained that the current statute outlining the process for approving rules only requires that one legislative body does not reject the rule. The House of Representatives wants to change it so that both legislative bodies must approve the rule. The Governor's office has asked us to be prepared in the event that all administrative rules are not approved.

Chairman Beth Elroy asked what rules will be in effect if the board approves these two motions. Deputy Attorney General Lisa Carlson replied that these motions provide conditional approval for DEQ's rules to go into effect only if the legislature does not approve them before sine die 2020. The temporary rules would then be in effect until sine die 2021, and the pending rules would be heard during the next Legislative Session.

Agenda Item No. 1: Omnibus Rulemaking - Fee Rules (Action item) Docket No. 58-0000-2000F

Director John Tippetts introduced the agenda item, recommending the board adopt as temporary fee rules the previously approved and codified fee rule chapters under docket number 58-000-2000F. There were no comments from the board or from members of the public.

- Motion: Mark Bowen moved that the Idaho Board of Environmental Quality adopt as temporary fee rules the rules presented under Docket No. 58-0000-2000F. This action is for the temporary adoption of IDAPA 58 rule chapters as they were

presented in the pending rule dockets adopted by this board in 2019 and submitted to the Second Regular Session of the 65th Idaho Legislature for review (2019 pending rule dockets).

IDAPA 58 Rule Chapters:

- IDAPA 58.01.01
- IDAPA 58.01.05
- IDAPA 58.01.06
- IDAPA 58.01.07
- IDAPA 58.01.08
- IDAPA 58.01.09
- IDAPA 58.01.11
- IDAPA 58.01.12
- IDAPA 58.01.13
- IDAPA 58.01.14
- IDAPA 58.01.18
- IDAPA 58.01.20
- IDAPA 58.01.25

2019 Pending Rule Dockets:

- Docket No. 58-0000-1900F
- Docket No. 58-0101-1903
- Docket No. 58-0101-1904
- Docket No. 58-0101-1905
- Docket No. 58-0105-1901
- Docket No. 58-0109-1901
- Docket No. 58-0111-1901

Pursuant to Section 67-5226, Idaho Code, the Governor has found that temporary adoption of these rules is appropriate to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety, and welfare of the citizens of Idaho, and deprive them of the benefit intended by these rules.

The Governor has also found that the fees or charges being imposed are justified and necessary to avoid immediate danger to the agency's budget, to the state's budget, to necessary state functions and services, and to avoid immediate danger of a potential violation of Idaho's constitutional requirement that it balance its budget.

Therefore, we are adopting these temporary fee rules to be effective upon the adjournment sine die of the Second Regular Session of the Sixty-fifth Idaho Legislature. This adoption is conditional and will only become effective if the rule dockets are not otherwise approved or rejected by the Idaho Legislature and/or not extended pursuant to the Idaho Administrative Procedure Act, including Sections 67-5291 and 67-5292, Idaho Code, as amended.

- Second: The motion was seconded by Randy MacMillan.
- Vote: The motion carried unanimously.

Agenda Item No. 2: Omnibus Rulemaking – Non-Fee Rules
(Action item) **Docket No. 58-0000-2000**

Director John Tippetts introduced the agenda item, recommending the board adopt as temporary rules the previously approved and codified non-fee rule chapters under docket number 58-0000-2000. There were no comments from the board or from members of the public.

- Motion: Mark Bowen moved that the Idaho Board of Environmental Quality adopt as temporary rules the rules presented under Docket No. 58-0000-2000. This action is for the temporary adoption of IDAPA 58 rule chapters as they were presented in the pending rule dockets adopted by this board in 2019 and submitted to the Second Regular Session of the 65th Idaho Legislature for review (2019 pending rule dockets).

IDAPA 58 Rule Chapters:

- | | |
|------------------|------------------|
| - IDAPA 58.01.02 | - IDAPA 58.01.17 |
| - IDAPA 58.01.03 | - IDAPA 58.01.21 |
| - IDAPA 58.01.04 | - IDAPA 58.01.22 |
| - IDAPA 58.01.10 | - IDAPA 58.01.23 |
| - IDAPA 58.01.16 | - IDAPA 58.01.24 |

2019 Pending Rule Dockets:

- Docket No. 58-0000-1900
- Docket No. 58-0102-1901
- Docket No. 58-0103-1902
- Docket No. 58-0117-1901

Pursuant to Section 67-5226, Idaho Code, the Governor has found that temporary adoption of these rules is appropriate to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

Therefore, we are adopting these temporary fee rules to be effective upon the adjournment sine die of the Second Regular Session of the Sixty-fifth Idaho Legislature. This adoption is conditional and will only become effective if the rule dockets are not otherwise approved or rejected by the Idaho Legislature and/or not

extended pursuant to the Idaho Administrative Procedure Act, including Sections 67-5291 and 67-5292, Idaho Code.

- Second: Kevin Boling seconded the motion.
- Vote: The motion carried unanimously.

Other Business

There was no other business to conduct.

Adjournment

Chairman Beth Elroy declared the meeting adjourned at 2:24 P.M.

Idaho Board of Environmental Quality
May 14, 2020 Board Meeting

Agenda Item 3: Consideration of Hearing Officer Applications

- A. David Lloyd
- B. Dylan Lawrence
- C. Edwin Litteneker
- D. Christopher Graham
- E. David Nielsen

Agenda Item #3

Consideration of Hearing Officer Applications

I move that the Idaho Board of Environmental Quality approve the following applicants to be added to the hearing officer list:

David Lloyd

Dylan Lawrence

Edwin Litteneker

Christopher Graham

David Nielsen

DAVID W. LLOYD

E-mail: dwlesq@cableone.net; Tel: (208) 863-0765
6204 East Settlement Ct., Boise ID 83716

PROFESSIONAL SUMMARY

- Legal Counsel and Educator with a demonstrated history of success in administrative and civil litigation, legal research and analysis, discovery, legal briefing, oral argument and appellate practice.
 - Over 20 years of experience with litigation, administrative proceedings, and appellate practice in Idaho State and Federal Courts.
 - Strong commitment to education, ethics and pro-bono community service.
-

LEGAL EXPERIENCE

Attorney and Legal Counselor

January, 2003 - Present

- Practice focused on client representation, consultation and advisory work in all aspects of litigation before Idaho Administrative Agencies and in Idaho State, Federal and Appellate Courts.
- Practice includes extensive history of representing clients and resolving disputes in administrative and civil litigation in Idaho State and Federal Trial and Appellate Courts.

Adjunct Professor, Concordia University School of Law

January, 2018 - Present

- Serve as Adjunct Faculty Professor teaching the Alternative Dispute Resolution course at Concordia University School of Law in Boise, Idaho.
- Responsible for development of course syllabus, grading rubric, lesson plans, classroom presentation materials and teaching coursework.

Deputy Attorney General, State of Idaho

September, 1997 - January, 2003

- Served as Deputy Attorney General for the State of Idaho in the Divisions of Civil Litigation and Family and Children's Services.

- Responsibilities included administrative and civil litigation practice before Idaho State Agencies and in Idaho State and Federal courts as well as appellate representation in Idaho Appellate Courts.
- Responsibilities also included legal counseling and training for state agencies including preparing and presenting statewide training and education regarding administrative practices and procedures.

Law Clerk, Delaware Superior Court

September, 1994 - June, 1995

- Responsibilities included research and analysis of governing law, preparing legal memoranda and drafting judicial opinions for Delaware Superior Court.

Legal Intern, United Nations

June, 1993 - August, 1993

- Served as Legal Intern for the United Nations in Geneva, Switzerland. Responsibilities included research and analysis of International Administrative Law and drafting memoranda and administrative law decisions.

EDUCATION

Delaware Law School (Widener University)

J.D., May 1995

- Juris Doctorate awarded May, 1995.
- AmJur Award Recipient.

University of Delaware

B.A., June 1991

- Bachelor of Arts in History awarded June 1991.
- Honors Graduate; Dean's List; 1990 University of Delaware Humanities Scholar.

PROFESSIONAL ASSOCIATIONS

- Supreme Court of Idaho.
- United States District Court, District of Idaho.
- Ninth Circuit Court of Appeals.

EDUCATIONAL OUTREACH AND COMMUNITY SERVICE

Idaho State Bar Service Award

- Recipient of the Idaho State Bar Service Award for volunteer and community service.

Attorneys for Civic Education

- Serve as Co-Chair of Attorneys for Civic Education (ACE).
- Service includes promoting opportunities for civics education in Idaho schools to ensure that Idaho students have a solid understanding of our constitutional form of government.

Idaho State Bar Law Related Education Committee

- Served as Member of the Law Related Education Committee promoting legal education in Idaho schools and universities.
- Service included acting as Mentor, Advisor and Judge for the Idaho High School Mock Trial Program and teaching the Idaho Citizen's Law Academy.

Idaho Volunteer Lawyer's Program

- Serve as Pro Bono Attorney representing victims in cases of domestic violence, divorce, and child protection proceedings.

Ada County Board of Community Guardians

- Served two terms on the Ada County Board of Community Guardians serving as Board Chairperson during second term.

PROFESSIONAL REFERENCES

The Honorable Ronald D. Schilling

Alternative Dispute Resolutions

P.O. Box 1251

Meridian, Idaho 83680

Telephone: (208) 898-0338

E-Mail: adresolutions@cablone.net

Mitch Toryanski

Telephone: (208) 860-5466

E-Mail: mitch@toryanski.com

Kim Toryanski

Telephone: (208) 407-4279

E-mail: kimtoryanski@icloud.com

Nicholas S. Marshall

Ahrens DeAngeli Law Group, LLP

250 S. Fifth Street, Suite 660

Boise, Idaho 83707-9500

Telephone: (208) 639-7799

E-Mail: nmarshall@adlawgroup.com

Mitch Toryanski

February 1, 2020

John H. Tippetts
Director
Idaho Director of Environmental Quality
1410 N. Hilton
Boise, Idaho. 83706

Re: Letter of Recommendation for David Lloyd

Dear Director Tippetts:

This letter is in support of David Lloyd's application to be a hearing officer for the Department of Environmental Quality (DEQ). I unreservedly endorse Mr. Lloyd's application and emphatically urge you to select him. He will be a tremendous asset to you and the department.

I have known David Lloyd for over 20 years. During that time, we have practiced together in the Idaho legal community where David has a well-deserved reputation as a skilled professional. As former legal counsel for the Idaho Bureau of Occupational Licenses and Deputy Attorney General serving the Department of Insurance, I have seen many administrative hearing officers in action. I know what it takes to be a good one and what is expected of hearing officers from the executive branch of government's perspective. I believe that David Lloyd would be among the very best. He is very smart, has great analytical skill and is a very good writer. He is hard-working, conscientious and prompt. He would be a very fair hearing officer with a calm and thoughtful judicial demeanor. His extraordinary competence and character would be a credit to DEQ and would inspire parties who appeal agency decisions with great confidence in the process.

Mr. Tippetts, I am confident that if you give David Lloyd an opportunity to handle one of your cases, you will be very pleased. Please feel free to contact me anytime about this matter.

Sincerely,

Mitch Toryanski

Mitch Toryanski

IN THE SUPREME COURT OF THE STATE OF IDAHO

DONNA SIMONO,

Plaintiff,

TURNER HOUSE, LARRY J. ROGERS,
CHERYL BARKER, AND DOES I through X,

Defendants-Third Party
Plaintiffs-Respondents

TURNER HOUSE, LARRY J. ROGERS,
CHERYL BARKER,

Third Party Plaintiffs-
Respondents

TREASURE VALLEY AREA OF NARCOTICS
ANONYMOUS, and NARCOTICS
ANONYMOUS LITERATURE,

Third Party Defendants-
Appellants

Supreme Court Docket No: 43191

APPELLANT'S BRIEF

Appeal from the District Court of the Fourth Judicial District in and for the County of Elmore.

THE HONORABLE LYNN G. NORTON, presiding.

Stanley J. Tharp
David M. Swartley
Eberle, Berlin, Kading, Turnbow
&McKlveen, Chartered
1111 W. Jefferson Street, Suite 530
Boise, ID 83701
Attorney for: Respondents,
Defendants – Third Party Plaintiffs

Sheli Fulcher Koontz
Law-Idaho PLLC
802 W. Bannock, Suite 101
Boise, ID 83702
Attorney for: Plaintiff, Donna Simono

E. Lee Schlender
Schlender Law Offices
2700 Holly Lynn Drive
Mountain Home, ID 83647
Attorney for: Plaintiff, Donna Simono

David W. Lloyd, Of Counsel
Saetrum Law Offices
3046 S. Bown Way
Boise, ID 83706
Attorney for Appellant, Treasure Valley
Area of Narcotics Anonymous and
Narcotics Anonymous Literature

TABLE OF CONTENTS

I. STATEMENT OF THE CASE..... i

 A. NATURE OF THE CASE.....1

 B. COURSE OF PROCEEDINGS.....2

 C. STATEMENT OF THE FACTS.....4

II. ISSUES PRESENTED ON APPEAL.....4

III. ARGUMENT.....4

IV. ATTORNEY FEES AND COSTS.....13

V. CONCLUSION.....13

TABLE OF CASES AND AUTHORITIES

Cases

<i>Brooks v. Gigray Ranches</i> , 128 Idaho 72, 78, 910 P.2d 744, 750	5
<i>Brower v. E.I. DuPont De Nemours & Co.</i> , 117 Idaho 780, 784, 792 P.2d 345, 349 (1990) 5,6,7,8	
<i>C&G Inc., v. Rule</i> , 135 Idaho 763, 769, 25 P.3d 76, 82 (2001).....	5,8
<i>Erickson v. Flynn</i> , 138 Idaho 430, 438 64 P.3d 959, 966 (Ct. App. 2002)	15
<i>Great Plains Equipment, Inc. v. Northwest Pipeline Corp.</i> , 136 Idaho 466, 471, 36 P.3d 218, 223 (2001)	5,12
<i>J.R. Simplot Co. v. Chemetics Int'l, Inc.</i> , 130 Idaho 255, 258, 939 P.2d 574, 577 (1997).....	15
<i>J.R. Simplot v. Rycair, Inc.</i> , 138 Idaho 557, 565, 67 P.3d 36, 44 (2003).....	5,6,7,8,9,10,11, 13

Statutes

I.C. § 12-120(3)	2,3,4,5,6,7,8,11,12
I.C. § 12-120	2

Rules

I.R.A 35 (a)(5), (b)(5) and 41	4, 13
I.R.A 35 (a)(5), (b)(5), 40 and 41	4,13
I.R.C.P. 14.....	8
I.R.C.P. 54(e)(1) 54(d)(1)	3

I. STATEMENT OF THE CASE.

A. NATURE OF THE CASE.

This case arises from the district court's denial of Third Party Defendants'/Appellants', Treasure Valley Area of Narcotics Anonymous' and Narcotics Anonymous Literature's (collectively "TVNA") request for attorney's fees for its successful defense of claims for liability based on duties arising under a commercial lease. The case was initiated when Plaintiff Donna Simono ("Simono") made claims for personal injury resulting from her fall on the stairs of the Turner House, a commercial building in Mountain Home, Idaho. At the time of Simono's fall, the Turner House building was owned and managed by Defendants/Third Party-Plaintiffs/Respondents, Turner House, Larry J. Rogers' and Cheryl Barker (collectively "Turner House"). R. Vol. I, pp. 33. TVNA were tenants leasing space on the third floor of the Turner House. *Id.* On March 5, 2013, Simono filed her Verified Complaint and Demand for Jury Trial against Turner House alleging that she fell on the stairs of the Turner House due to inadequate lighting between the second and third floors. R. Vol. I, pp. 19-23.

Turner House filed its Third Party Complaint against TVNA on November 4, 2013 alleging that TVNA was liable for Simono's injuries based on TVNA's failure to adequately maintain the meeting room it leased on the third floor of the Turner House under the terms of the commercial lease ("Lease") between Turner House and TVNA. R. Vol. I, pp. 32-38.¹ Simono's claims for personal injury and Turner House's claims for third party liability against TVNA were tried to a jury. The jury trial resulted in a verdict in favor of TVNA on the express question of "[w]as there a breach of contract on the part of" TVNA "which was a proximate cause of Plaintiffs' damages?" R. Vol. IV, p. 618.

¹ Although the Rental Agreement/Lease was supposedly attached to the Third Party Complaint as "Exhibit A" (R. Vol. 1, p. 8, ¶ 8) it was inadvertently omitted by Turner House when it filed the Third Party Complaint with the Court. A copy of the Rental Agreement/Lease can be found at R. Vol. 1, pp. 108-109.

Despite prevailing on each of Turner House's claims for liability based on the Lease, the district court denied TVNA's Motion for an award Attorney Fees from Turner House pursuant to Idaho Code §12-120(3) in response to TVNA's initial Motion for Costs and Fees and subsequent Motion for Reconsideration. This Appeal results from the district court's denial of TVNA's attorney fees request against Turner House under I.C. § 12-120(3).

B. COURSE OF PROCEEDINGS.

In their Third Party Complaint, Turner House alleged that TVNA was liable for Simono's injuries on the basis of four substantive causes of action: 1) Breach of Contract; 2) Breach of the Implied Covenant of Good Faith and Fair Dealing; 3) Indemnification; and 4) Negligence. R. Vol. I, pp. 35-37. Each of Turner House's claims for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing and Indemnification were expressly based on duties allegedly arising from the terms of the Lease. *Id.*, pp. 35-36. Turner House's cause of action for Negligence was based on a duty to exercise ordinary care in "maintaining the rental property leased from the Third Party Plaintiffs." *Id.*, p. 36. In its Third Party Complaint, Turner House also made a claim for attorney's fees against TVNA based, in part, on I.C. § 12-120. *Id.*, p. 37. TVNA's Answer and Demand for Jury Trial denying that Turner House was entitled to recovery on any of its claims was filed on December 9, 2013. R. Vol. I, pp. 42-48.

After the discovery process was completed, Simono's and Turner House's claims were tried to a jury between December 5 and 10, 2014. TVNA successfully defended Simono's underlying allegations as well as each of Turner House's third party claims at trial. R. Vol. IV, pp. 617-619. On December 16, 2014, the district court lodged its Final Judgment. R. Vol. IV, p. 620-621. In its Final Judgment, the district court acknowledged that all of Turner House's claims against TVNA had been

tried and dismissed. *Id.* Turner House's claim for Breach of the Implied Covenant of Good Faith and Fair Dealing against TVNA was dismissed with prejudice by the district court at the conclusion of evidence. *Id.*, p. 2. Turner House's claims for Breach of Contract, Indemnification and Negligence were each dismissed with prejudice as the result of the jury verdict. *Id.*

In response to the jury verdict and the district court's Final Judgment, TVNA filed its Motion for Costs and Fees and supporting Memorandum on December 30, 2014 requesting an award of attorney fees for its defense of Turner House's claims under I.C. § 12-120(3) and I.R.C.P. 54(e)(1) 54(d)(1). R. Vol. IV, pp. 630-674. Turner House filed its Objection to TVNA's Motion for Costs and Fees on January 12, 2015. R. Vol. IV, pp. 678-687. On January 27, 2015, the district court issued its Order Granting TVNA's Motion for Costs in Part but Denying Fees ("January 27, 2015 Order"). R. Vol. IV, pp. 688-695. In its January 27, 2015 Order, the district court found that TVNA was the prevailing party on the basis of the final judgment and acknowledged that TVNA obtained a judgment with regard to all claims made by Turner House, but denied TVNA's request for attorney fees. *Id.*, p. 690-695. Based on this Order, the district court entered its Second Amended Final Judgment on January 27, 2015. R. Vol. IV, pp. 697-699.

TVNA filed its Motion for Reconsideration of the district court's January 27, 2015 Order and to Alter or Amend the Second Amended Final Judgment on February 9, 2015 and supporting Memorandum on February 10, 2015. R. Vol. IV, pp. 700-711. In response, Turner House again objected to TVNA's request for attorney fees. R. Vol. IV, pp. 712-719. After TVNA filed its reply on March 4, 2015 (R. Vol. IV, pp. 720-726), the district court lodged its Order denying Reconsideration of Third-Party Defendant's Fees ("March 9, 2015 Order") on March 9, 2015. R. Vol. IV, pp. 727-738. TVNA filed its Notice of Appeal on April 20, 2015. R. Vol. IV, pp. 739-

743.

C. STATEMENT OF FACTS.

On the night of January 7, 2013, Simono attended a Narcotics Anonymous meeting held in the third floor room of the Turner House that TVNA leased from Turner House. The owner of the Turner House building, Defendant Larry Rogers, was in the process of remodeling the Turner House at that time. In addition to completing work on retail space on the first floor of the Turner House, Rogers was in the process of completing an apartment for his use on the second floor. Although there was a lighting fixture on the second floor, it had not yet been wired for electricity, and was, therefore, in-operational. When she left the meeting room on the third floor, Simono traversed the third floor landing and began descending the stairs leading to the second floor. At the bottom of the stairs between the third and second floors, Simono fell and seriously injured both of her ankles.

II. ISSUES PRESENTED ON APPEAL

- A. Whether the District Court Erred in Denying TVNA's Motion for Attorney Fees Pursuant to I.C. § 12-120(3) in its Order Granting Third Party Defendant's Motion for Costs in Part but Denying Fees.
- B. Whether Appellant TVNA is Entitled to an Award of Attorney Fees on Appeal Pursuant to I.C. § 12-120(3) and this Court's Authority to Grant Appellate Attorney Fees under I.A.R. 35 (a)(5), (b)(5) and 41.

III. ARGUMENT

- A. The District Court Erred in Denying TVNA's Motion for Attorney Fees Pursuant to I.C. § 12-120(3) in its Order Granting Third Party Defendant's Motion for Costs in Part but Denying Fees.

I.C. § 12-120(3) requires an award of attorney fees arising out of any "civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty or contract

relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction. In order for attorney fees to be awarded under the commercial transaction provision of I.C. § 12-120(3), 1) “there must be a commercial transaction that is integral to the claim,” and 2) “the commercial transaction must be the basis on which recovery is sought.” *Great Plains Equipment, Inc. v. Northwest Pipeline Corp.*, 136 Idaho 466, 471, 36 P.3d 218, 223 (2001) (quoting *Brooks v. Gigray Ranches*, 128 Idaho 72, 78, 910 P.2d 744, 750; *C&G Inc. v. Rule*, 135 Idaho 763, 769, 25 P.3d 76, 82 (2001) (quoting *Brower v. E.I. DuPont De Nemours & Co.*, 117 Idaho 780, 784, 793 P.2d 345, 349 (1990))).

In its January 27, 2015 Order, the district court determined that:

This is not an issue of a duty to defend or indemnification. The court is not aware that the Third Party Plaintiff ever made a request of the Third Party Defendant to defend the negligence claim under the terms of the rental agreement. Additionally, the Third Party Plaintiff was not determined to be negligent, by the jury therefore, there was no request for indemnification for any damages. The crux of the Third Party Complaint and the claims litigated at trial was that it was the Third Party Defendant’s negligence, if any, that caused the injuries to Ms. Simono. The rental agreement was not integral to the claim of negligence by Mrs. Simono. The main thrust of this lawsuit was clearly in tort. Therefore, attorney fees to the Third Party Defendant are not available for defending this claim.

R. Vol. IV, p. 694.

In its January 27, 2015 Order, the district court supported its decision to deny TVNA’s Motion for Costs and Fees requesting an award of attorney fees pursuant to I.C. § 12-120(3) on the basis that the case before the court “mirrors” *J.R. Simplot v. Rycair, Inc.*, 138 Idaho 557, 565, 67 P.3d 36, 44 (2003). R. Vol. IV. p. 694. In *J.R. Simplot v. Rycair*, Plaintiff Simplot and Defendant Rycair entered into a commercial lease whereby Rycair leased premises on Irving Street in Boise, known as the Kaiser building. The lease was executed on September 1, 1995 and the building was destroyed by fire approximately 16 months later. *Id.* at 38, 67 P.3d at 559. Simplot then filed suit

to recover its losses related to the destruction of the building and alleged claims both for breach of contract and negligence. *Id.* In response, Rycair filed a motion for partial summary judgment on the breach of contract claims, requesting that the district court find that Rycair was not required to purchase and keep in force first-party fire insurance on the building and that it was not required to indemnify Simplot for the property damage without proof of Rycair's negligence. *Id.* The district court granted Rycair's motion and dismissed Simplot's breach of contract claims against Rycair. *Id.*

After Simplot filed an amended complaint restating its breach of contract claims as well as adding other breach of contract theories, Rycair filed a second motion for partial summary judgment with regard to the new breach of contract theories. *Id.* The district court again granted Rycair's motion dismissing Simplot's breach of contract claims prior to trial. *Id.* At the conclusion of trial, the jury rendered a verdict that Rycair was not negligent and the district court awarded Rycair attorney fees and costs as a matter of right. *Id.* In awarding attorney fees to Rycair on both the contract claims which had been dismissed on summary judgment and on the negligence claim that was tried, the district court found that:

[T]he lease the parties entered into was for commercial use and therefore constituted a "commercial transaction" for purposes of I.C. § 12-120(3). The district court further determined that Simplot's "continuous references to the contract and attempts to inject contract claims or issues into the negligence claim ... shows that the commercial transaction was the basis upon which Simplot attempted to recover."

Id. at 565, 67 P.3d at 44.

Simplot then appealed the district court's grant of Rycair's motions for partial summary judgment and the award of attorney fees. On appeal, Simplot contended that the district court erred in awarding the portion of attorney fees to Rycair related to the negligence claim. *Id.* at 565, 67 P.3d at 44. In response, Rycair asserted that all of Simplot's allegations and action in the case were

based upon the lease and thus the defense presented by Rycair was based entirely upon the lease.

Id. Rycair asserted, therefore, that it was proper for the district court to award attorney fees pursuant to I.C. § 12-120(3). *Id.*

In reaching its decision in *J.R. Simplot v. Rycair*, this Court held that:

Idaho Code § 12-120(3) allows for the recovery of attorney fees by the prevailing party in a civil action to recover on any commercial transaction. The term "commercial transaction," as defined by I.C. § 12-120(3), includes all transactions except transactions for personal or household purposes. This Court has previously held that " '[a]ttorney fees are not appropriate under I.C. § 12-120(3) unless the commercial transaction is integral to the claim, and constitutes the basis upon which the party is attempting to recover.' " *C & G, Inc. v. Rule*, 135 Idaho 763, 769, 25 P.3d 76, 82 (2001) (quoting *Brower v. E.I. DuPont De Nemours & Co.*, 117 Idaho 780, 784, 792 P.2d 345, 349 (1990)).

Id. at 564, 67 P.3d at 43.

This Court in *J.R. Simplot v. Rycair* then held that I.C. § 12-120(3) provided for the award of attorney fees to Rycair as the prevailing party based on its defense of Simplot's claims for breach of contract based on the commercial lease. Specifically, this Court held that:

The commercial lease is integral to the contract claims and served as one of the theories upon which Simplot sought to recover. Attorney fees could be properly awarded by the district court under the lease and I.C. § 12-120(3) for claims relating to the lease. However, the lease and I.C. § 12-120(3) do not provide for fees on the claims relating to the negligence cause of action. Therefore, Rycair should not be awarded attorney fees for defending at trial the tort claim concerning negligence.

Id. at 565, 67 P.3d at 44.

This Court in *J.R. Simplot v. Rycair* then set aside the district court's award of attorney fees on the basis of both the contract and negligence claims. This Court remanded the case to the district court to allocate the attorney fees incurred by Rycair in defending against the breach of contract claims dismissed on summary judgment but not to include fees incurred in defending the negligence cause of action. *Id.*

In its March 9, 2015 Order, the district court found that Turner House's claims against TVNA were governed by I.R.C.P. 14:

[The Third-Party Claim] cannot simply be an independent or related claim but must be based upon Plaintiff's claim against Defendant. The crucial characteristic of a Rule 14 claim is that Defendant is attempting to transfer to the Third-Party Defendant the liability asserted against him by the original Plaintiff. The fact that the alleged Third-Party Claim arises from the same transaction or set of facts as the original claim is not enough.

R. Vol. IV., p. 735.

The district court then found that, "the only valid contract claims against Third-Party Defendant were those which were based on indemnification." R. Vol. IV., p. 735. The district court then restated its earlier finding from its January 27, 2015 Order stating: "[t]hird-Party Plaintiffs essentially withdrew any contract claims at trial, leaving the sole issue for determination that of indemnification." *Id.* The district court then found in its March 9, 2015 Order that:

At its heart, this case was about negligence, and Third-Party Defendant was as interested in showing its non-negligence as were Third-Party Plaintiffs/Defendants. The issues of contractual indemnification or the contract were in the background, and were never, "the substantial point or essence of the claim, grievance, or complaint." GRAVAMEN, Black's Law Dictionary (10th Ed. 2014).

R. Vol. IV., p. 736.

As noted above, this Court found an award of attorney's fees to Rycair in the *J.R. Simplot v. Rycair* case proper under I.C. 12-120(3) where Simplot had made "continuous references to the contract" and attempted "to inject contract claims or issues into the negligence claim...." showing "that the commercial transaction was the basis upon which Simplot attempted to recover." *Id.* at 565, 67 P.3d at 44. While the holding in *J.R. Simplot v. Rycair* establishes that TVNA was entitled to an award of attorney fees for its defense of Turner House's claims based on the Lease even had the claims been dismissed prior to trial, the record clearly shows that Turner House did not

“essentially” withdraw its “contract claims at trial.” This finding by the district court was error.

In this case, as in *J.R. Simplot v. Rycair*, Turner House made continuous references to the Lease in support of its contract claims and also injected contract claims and issues into the negligence claim throughout trial. The Lease served as the basis for Turner House’s claims against TVNA from opening statement through the final jury verdict. In its opening, Turner House told the jurors that Ms. Rogers would testify that the Lease was in place at the time of Simono’s injuries. Tr. Vol. I, p. 41, LL. 13-18. Specifically, Turner House asserted during its opening statement that, “[a]s part of the terms of that lease, Narcotics Anonymous was responsible for the upkeep of the maintenance of the stairs from the bottom to the third floor, because they were the only ones using it on a daily basis.” Id., LL. 19-23. During Ms. Rogers’s initial testimony in Simono’s case in chief, Ms. Rogers identified the Lease and it was admitted into evidence as Turner House’s Exhibit B. Tr. Vol. I, p. 153, L. 3-p. 158, L. 14. Turner House then elicited testimony from Ms. Rogers attempting to support its claims against TVNA not only with the written terms of the Lease, but also with additional terms under what Ms. Rogers claimed was a “verbal lease.” Tr. Vol. I, p. 158, L. 20-p. 166, L. 6.

Mr. Rogers, the owner of the Turner House, also testified during Simono’s case in chief and provided testimony not only about the terms of the written lease, but also about additional alleged verbal lease agreements for the maintenance of the stairwell. Tr. Vol. III, p. 92, L. 24-p. 95, L. 4. In response, TVNA was required to cross-examine Mr. Rogers to elicit his testimony that there was nothing in the written terms of the Lease that would have required TVNA to maintain the stairwell and that the Lease required additional terms be in writing. Tr. Vol. III, p. 102, L. 15-p. 107, L. 18.

During the interim jury instruction conference on December 10, 2014, Turner House then indicated that it was still pursuing its claim for Indemnification based on the Lease but that indemnification was a question of law for the court to determine after the jury reached its verdict. Tr. Vol. II, p. 252, L. 19-p. 254, L. 23. In addition, the district court then stated that jury instructions on Turner House's Breach of Contract Claim and the issue of good faith and the covenant of fair dealing would still be required before the case could be submitted to the jurors. Id., p. 253, L. 24-p. 254, L. 9.

Subsequently, TVNA moved for a directed verdict dismissal of Turner House's claims based on lack of evidence. Tr. Vol. III, p. 321, L. 19-p. 326, L. 17. In response, the district court denied TVNA's motion on the Breach of Contract Claim but granted its Motion dismissing Turner House's claim for Breach of the Implied Covenant of Good Faith and Fair Dealing under the Lease. Tr. Vol. III, p. 326, L. 18-p. 332, L. 5. During the next jury instruction conference, the district court granted Turner House's request for a jury instruction related to a burden of proof on breach of contract under the terms of the Lease against TVNA. Tr. Vol. III, p. 373, LL. 9-23. This determination resulted in the district court charging the jury with "Question No. 4" which asked the jurors to determine was there a breach of contract on the part of TVNA which was a proximate cause of Plaintiff's damages. Tr. Vol. III, p. 430, L. 22-p. 431, L. 5; R. Vol. IV, p. 618. After deliberations, the jury found that there was no breach of the Lease by TVNA that was a proximate cause of Plaintiff's damages. R. Vol. IV, p. 618.

The *J.R. Simplot v. Rycair* case involved similar legal issues regarding an award of attorney's fees in case involving both claims for breach of contract based on a commercial lease and a separate claim for negligence. *J.R. Simplot v. Rycair*, therefore, supported TVNA's request

for attorney fees under I.C. § 12-120(3) in an apportioned amount based on its defense of Turner House's claims for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing and Indemnification. Where more than one claim is pled, there can be more than one gravamen, and attorney fees can still be awarded for a specific claim if the claim is the type governed by I.C. § 12-120(3). *Great Plains Equipment, Inc.* at 472, 36 P.3d at 224. TVNA prevailed at trial on each of Turner House's claims, obtaining dismissal with prejudice on each of these claims in the Second Amended Final Judgment.

The Lease clearly constituted a commercial transaction under I.C. § 12-120(3) which defines commercial transactions as including all transactions except transactions for personal or household purposes. As the Third Party Complaint alleged, Turner House's causes of action for Breach of Contract and Breach of the Implied Covenant of Good Faith and Fair Dealing were entirely based on the terms and provisions of the Lease. R. Vol. IV., p. 35. Not only was TVNA forced to defend itself through trial based on alleged duties arising from the written terms of the Lease, Turner House alleged at trial that the Lease had been amended by additional verbal terms creating additional duties. Throughout trial, Turner House attempted to introduce parol evidence to support its claim that subsequent verbal agreements not found in the written terms of the Lease had created additional contractual duties that were breached by TVNA. Tr. Vol. I, p. 160, L. 16-p. 166, L. 6.

Turner House's cause of action for Indemnification was based on both the written terms of the Lease and/or the common law of indemnification arising from the commercial transaction between the parties. *Id.*, p. 36. The basis for each of Turner House's contract claims was the terms and provisions of the Lease and the Lease clearly constituted the basis upon which Turner House attempted to recover against TVNA. While TVNA was also forced to defend itself at trial against

Simono's underlying negligence claim due to the Third Party Complaint, the Lease was integral to Turner House's third party contract claims and constituted the basis for Turner House's attempt to recover against TVNA. TVNA should have been awarded its attorney fees for the defense of each of Turner House's Contract claims under I.C. § 12-120(3).

In addition, Turner House's cause of action for negligence was based on the existence of a commercial transaction between the parties. As alleged by Turner House, TVNA had a duty to exercise ordinary care in "maintaining the rental property leased from the Third Party Plaintiffs." Tr. Vol. I, p. 36. While the Simono's claim for negligence against Turner House was based on common law theories of premises liability, Turner House's claim for negligence against TVNA was entirely based on the alleged duties of TVNA arising from the Lease and purported oral amendments. In the absence of any alleged duty to maintain the premises in the Lease, Turner House would have had no support for the duty and breach elements of its claim for negligence against TVNA.

As noted above, "[A]ttorney fees can still be awarded for a specific claim if the claim is of the type covered by I.C. § 12-120(3) even when the claim is covered by other theories that would not trigger application of the statute. *Great Plains Equipment, Inc.* at 472, 36 P.3d at 224. In this case, the Lease was the sole basis for the duty and breach elements of Turner House's negligence claim against TVNA and constituted at least part of the basis for its effort to recover against TVNA on this claim. TVNA should also have been awarded its attorneys fees under I.C. § 12-120(3), in whole or in part, for the defense of Turner House's negligence claim because the Lease was integral to the creation of TVNA's alleged duty and constituted the basis on which Turner House sought recovery against TVNA for its alleged breach.

- B. Appellant TVNA is Entitled to an Award of Attorney Fees on Appeal Pursuant to I.C. § 12-120(3) and this Courts' Authority to Grant Appellate Attorney Fees under I.A.R. 35 (a)(5), (b)(5) and 41.

Pursuant to I.C. § 12-120(3) and this Courts' authority to grant Appellate costs and attorney fees under I.R.A 35 (a)(5), (b)(5), 40 and 41, TVNA requests an award of its costs and reasonable attorney fees on Appeal. If this Court determines that TVNA was entitled to an award of its attorney's fees in the district court action pursuant to I.C. § 12-120(3) and determines that TVNA is the prevailing party here on Appeal, I.C. § 12-120(3) mandates an award of attorney fees on appeal as well as in the trial court. *Erickson v. Flynn*, 138 Idaho 430, 438 64 P.3d 959, 966 (Ct. App. 2002) (citing *J.R. Simplot Co. v. Chemetics Int'l, Inc.*, 130 Idaho 255, 258, 939 P.2d 574, 577 (1997)).

IV. ATTORNEY FEES AND COSTS

Pursuant to I.C. § 12-120(3) and I.R.A 35 (a)(5), (b)(5), 40 and 41, TVNA requests an award of its costs and reasonable attorney fees on Appeal.

V. CONCLUSION

Turner House's third party claims against TVNA centered upon the Lease and alleged verbal amendments to the Lease, both of which constituted Commercial Transactions pursuant to I. C. § 12-120(3). But for the Lease, TVNA would not have been involved in the underlying litigation and is, therefore, entitled to an award of its attorney fees for its successful defense of Turner House's claims at trial and as well as here on Appeal.

Respectfully submitted this ____ day of _____.

SAETRUM LAW OFFICES

By _____
David W. Lloyd, Of Counsel



242 N. 8TH STREET, SUITE 220
P.O. BOX 1676
BOISE, IDAHO 83701
P: 208.345.6021
F: 1.866.717.1758
VARINWARDWELL.COM

DYLAN B. LAWRENCE
DYLANLAWRENCE@VARINWARDWELL.COM

February 24, 2020

VIA E-MAIL

Paula Wilson
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706
paula.wilson@deq.idaho.gov

Re: Hearing Officer for DEQ Contested Cases

Dear Ms. Wilson:

I am writing to express my interest in serving as a hearing officer on behalf of the Idaho Board of Environmental Quality. As requested in the online posting, I have enclosed a résumé, a list of references, a letter of recommendation from District Judge Peter G. Barton, and a writing sample. If I may, I would like to briefly highlight a few aspects of my application packet in this letter.

First, as my résumé reflects, I have extensive experience in both environmental law and administrative litigation. I have participated in two contested air permit matters before the Board, and have also handled administrative litigation before the Idaho Department of Water Resources (IDWR) and the Idaho State Police, Alcohol Beverage Control. Indeed, the writing sample I have included here is a post-hearing brief I drafted after conducting an administrative trial before IDWR.

Second, while I have extensive experience in environmental law, my current firm does not have long-term, institutional clients with matters regularly pending before the Board or DEQ. Instead, my representations involving environmental law since I joined my current firm six years ago have been discrete, one-time representations. This helps to avoid any actual, perceived, or potential conflicts of interest if I were to serve as a hearing officer.

Finally, please note that my list of references includes a brief summary of my experience with each individual reference. If you need more information or additional references altogether, please let me know. And, of course, if you and the Board need anything else from me in order to evaluate this submission, please do not hesitate to contact me.

Paula Wilson
February 24, 2020
Page 2

Thank you for your attention to this matter.

Sincerely,

VARIN WARDWELL, LLC

A handwritten signature in blue ink that reads "Dylan Lawrence". The signature is written in a cursive style with a long horizontal flourish at the end.

Dylan B. Lawrence

Enclosures (4)

Dylan Lawrence

242 N. 8th Street, Ste. 220, Boise, Idaho 83702

Phone: (208) 345-6021 E-Mail: dylanlawrence@varinwardwell.com

Web: <https://tinyurl.com/yc2khtjs> LinkedIn: <https://tinyurl.com/ya6ovgbt>

Objective

I am an attorney with broad experience in environmental law, natural resources, and civil and administrative litigation, seeking to serve as a hearing officer in state contested administrative proceedings.

Relevant Experience

- *Clean Air Act permitting; administrative litigation.* Defended air permit to construct issued to fertilizer manufacturing plant from third party challenge which alleged myriad errors by state in issuing permit. Successfully litigated majority of claims, and negotiated settlement of remaining claims in order to obtain final, non-appealable permit. *ConAgra Foods Lamb Weston, Inc. v. IDEQ* (BEQ Dckt. No. 0101-14-01).
- *Water rights; administrative litigation.* Represented downstream water user in opposition to water right transfer by upstream irrigation district, in an administrative trial conducted before an IDWR hearing officer. *In the Matter of Transfer No. 81482 in the Name of Little Willow Irr. Dist.* (June 7, 2018).
- *Clean Air Act permitting; administrative litigation.* Represented renewable energy producer in contested air permit proceedings, challenging ambient air boundaries used to establish emissions limitations. *Hidden Hollow Energy LLC v. IDEQ* (BEQ Dckt. No. 0101-12-02).
- *Hazardous waste; enforcement.* Defended solid waste recycling facility and timber treatment facility in state enforcement action over releases of hazardous substances and alleged hazardous waste and used oil management violations. Negotiated consent orders and environmental covenant with state to settle and allow continued operations.
- *Environmental compliance.* Designed and implemented multimedia environmental auditing program at large, multi-facility oil & gas pipeline company, industrial gas manufacturer, and cement manufacturer, assessing compliance with Clean Air Act, Clean Water Act, RCRA, EPCRA, the Oil Pollution Act, and the SPCC program.

Affiliations

- Named a named a Mountain States “Super Lawyer” in Environmental Law and a “rising star” by Chambers USA in the areas of natural resources and environmental law
- Chairperson, Environmental & Natural Resources Section, Idaho State Bar, 2015-2018
- Idaho Academy of Leadership for Lawyers, 2017-2018

Employment

- Varin Wardwell, LLC. Boise, ID - Partner March 2014 - Present
- Moffatt Thomas Barrett Rock & Fields, Chtd. Boise, ID - Associate, Partner March 2006 – March 2014
- Hawley Troxell Ennis & Hawley, LLP. Boise, ID - Associate May 2005 – March 2006
- Bracewell LLP. Houston, TX - Associate October 2002 – November 2004

Education

- University of Texas, Austin, TX. J.D., with honors, Best 1L Memo Award May 2002
- University of Texas, Austin, TX. B.B.A., in Finance. May 1997

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
STATE OF IDAHO



PETER G. BARTON
DISTRICT JUDGE
TELEPHONE (208) 287-7524
EMAIL: pbarton@adaweb.net

ADA COUNTY COURTHOUSE
200 W. FRONT STREET
BOISE, ID 83702-7300

February 19, 2020

Ms. Paula Wilson
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706

Ms. Wilson:

Dylan Lawrence is applying to be a hearing officer for DEQ contested cases. I recommend him. I have known Dylan for over ten years. He was an environmental and natural resources attorney at Moffatt Thomas before joining Varin Wardwell and so we practiced in the same area of law. He has long participated in, and for several years led, the Environmental & Natural Resources Law Section of the Idaho State Bar, including giving CLEs and sharing his knowledge. Over the many years I have known him, he has shown himself to be a person of high integrity and ability. He is considerate, capable, knowledgeable, and effective. Parties who would appear before him as a DEQ hearing officer will be the better for having someone of his experience and character handling their case.

Sincerely,

A handwritten signature in blue ink, appearing to read "P. Barton", written over a horizontal line.

Peter G. Barton
Idaho District Judge

PGB:lca

Dylan Lawrence

242 N. 8th Street, Ste. 220, Boise, Idaho 83702

Phone: (208) 345-6021 E-Mail: dylanlawrence@varinwardwell.com

Web: <https://tinyurl.com/yc2khtjs> LinkedIn: <https://tinyurl.com/ya6ovggt>

References

Lisa J. Carlson

Office of the Attorney General

1410 N. Hilton, 2nd Floor

Boise, Idaho 83706

Phone: (208) 373-0494

Email: lisa.carlson@deq.idaho.gov

Ms. Carlson and I have worked together on two contested air permit matters.

Hon. Andrea Lynn Courtney

Third District Court

1115 Albany Street

Caldwell, Idaho 83605

Phone: (208) 454-7370

Email: jdgalc@canyonco.org

Judge Courtney and I have worked together on water resource matters and as part of the Idaho Academy of Leadership for Lawyers program.

Hon. Gregory Morton Culet (Ret.)

P.O. Box 3436

Nampa, Idaho 83653

Phone: (208) 454-7375

Email: jdggmc@canyonco.org

I regularly appeared before Judge Culet in district court litigation involving stormwater discharges to irrigation facilities, and have worked with him as part of the Idaho Academy of Leadership for Lawyers program and Lawyer Assistance Program.

Angela Schaer Kaufmann

Office of the Attorney General

P.O. Box 83720

Boise, Idaho 83720-0010

Phone: (208) 334-4120

Email: angela.kaufmann@ag.idaho.gov

Ms. Kaufmann and I worked together at Moffatt Thomas, and I have recently worked with her on matters involving the Idaho Dept. of Lands and Idaho Board of Land Commissioners.

RECEIVED

MAR 01 2018

DEPARTMENT OF
WATER RESOURCES

Eben T. Masingill, ISB # 9970
MASINGILL LAW, P.A.
P.O. Box 467
25 West Commercial St.
Weiser, Idaho 83672
Telephone: (208) 414-0665
Facsimile: (208) 414-0490
Email: eben@masingilllaw.com

Dylan B. Lawrence, ISB # 7136
VARIN WARDWELL LLC
242 N. 8th Street, Suite 220
P.O. Box 1676
Boise, Idaho 83701-1676
Telephone: (208) 922-7060
Facsimile: (866) 717-1758
Email: dylanlawrence@varinwardwell.com

Attorneys for Protestants Thomas G. Roland, et al

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER NO.) **PROTESTANTS' POST-HEARING**
81482 IN THE NAME OF LITTLE WILLOW) **BRIEF**
IRRIGATION DISTRICT)

Thomas Roland ("Roland" or the "Protestant"), through undersigned counsel of record, hereby files this post-hearing brief pursuant to Department Rule of Procedure 564 and the Hearing Officer's instructions at the February 15, 2018 hearing.

I. INTRODUCTION

This matter involves an application for transfer (the "Application") filed by the Little Willow Irrigation District (the "District" or the "Applicant"), timely protested by Roland. (See Exs. 1, 2, 101, 102.) At the conclusion of the February 15, 2018 hearing, the Applicant suggested the parties each submit one post-hearing brief within fourteen days to address specific legal issues, which the Hearing Officer approved. This post-hearing brief addresses injury, enlarge-

ment, reuse of waste water, and fiduciary duties, and based upon instructions at the hearing, is limited to ten pages.

II. LEGAL ARGUMENT

A. Injury

1. Law of Injury Generally

The Department may approve a transfer “*provided no other water rights are injured thereby...*” IDAHO CODE § 42-222(1) (emphasis added). The applicant “necessarily bears the burden of providing the Department with sufficient information to show non-injury to other water rights....” *Barron v. Idaho Dept. of Water Resources*, 135 Idaho 414, 418 (2001). For new water rights, the Department defines injury to include situations in which:

The amount of water available under an existing water right will be reduced below the amount recorded by permit, license, decree or valid claim or the historical amount beneficially used by the water right holder under such recorded rights, whichever is less.

Water Appropriation Rule 045.01(a)(i).

It was and still is the view of a majority of the court that the prior appropriator of the waters of a stream will not be permitted to change his point of diversion, if such change will injuriously affect the rights of subsequent appropriators as they existed at the time such subsequent appropriations were made; *for a subsequent appropriator has a vested right to a continuance of conditions as they existed when he made his appropriation.*

Crockett v. Jones, 42 Idaho 652 (1926) (emphasis added).

2. Discussion of Evidence Relevant to Injury

The Application proposes to add a point of diversion from Little Willow Creek (the “Creek”), upstream of water rights 65-2240 and 65-5773 (the “Roland Rights”). (See Exs. 112, 113 (partial decrees).) District representatives have suggested the Roland Rights are not entitled to protection because they are located outside of the District. (See Ex. 120, p. 2 (Board minutes).) However, they are conflating two bodies of law. The District may not owe duties as

an irrigation district to the Roland Rights under Title 43 of the Idaho Code, but the Roland Rights are still entitled to the injury analysis required by Section 42-222(1).

Because the Application proposes to add (not replace) a new point of diversion and there are no records of the District's historical diversions from the Creek, the District cannot prove it will not divert more water from the Creek than it has in the past. (See Ex. 117, p. 2 (Shaw report).) Mr. Roland testified regarding the historical challenges irrigating with the Roland Rights, (see also Ex. 125 (C. Roland letter of 4/22/92)), and regarding how the effect on the Roland Rights was evident when a pump was placed in the Creek upstream in 1992. (See also Exs. 122 (J. Simpson letter of 7/22/92), 123 (D. Tuthill letter of 8/5/92).) According to expert witness David Shaw, "[r]educing the water supply available to [the Roland Rights], in this water short basin, will result in injury...." (Ex. 117, p. 1 (Shaw report).)

There was testimony that the District's Wilson diversion diverts the entire flow of the Creek. Even if this is true all of the time,¹ injury will still occur to the Roland Rights if the new point of diversion diverts additional water from the Creek. This is because the Wilson canal discharges water back to Little Willow Creek above the Roland Rights. The new point of diversion will result in less water reaching the Wilson diversion. Regardless of if and when the Wilson diverts the entire flow of the Creek, ultimately, the new point of diversion will reduce water in the Creek available to the Roland Rights. This is injury.

The Department has denied transfer applications in similar circumstances. In *Telford Lands*, the Department denied a transfer application based on the applicant's failure to prove non-injury, even though the protestant "raise[d] concerns" regarding (but did not affirmatively prove) injury. *In the Matter of Application for Transfer No. 76286 in the Name of Telford Lands*,

¹ There is evidence this is not necessarily always the case. (See Ex. 117, p. 1 ("Photo 4 is the control structure on the Wilson Ditch showing water continuing in the Wilson Ditch and water returning to Little Willow Creek")) (Shaw report.)

LLC, Amended Preliminary Order Denying Application, at pp. 16, 19 (July 20, 2011), *available at* <https://tinyurl.com/ya8plhjj> (last visited Feb. 24, 2018).

B. Enlargement

1. Law of Enlargement Generally

The Department may approve a transfer “*provided...the change does not constitute an enlargement in use of the original right...*” IDAHO CODE § 42-222(1) (emphasis added).

Again, the Applicant bears the burden. *Barron*, 135 Idaho at 420. The Department “may consider consumptive use” in its enlargement analysis. IDAHO CODE §§ 42-202B, 42-222(1).

When a water right is enlarged, “[i]n effect, a separate water right is being created.” *Rangen, Inc. v. Idaho Dept. of Water Resources*, Memorandum Decision, at p. 9, Case No. CV-2015-1130 (5th Dist. Oct. 8, 2015), *available at* <https://tinyurl.com/ycp54le6> (last visited Feb. 24, 2018) (“*Rangen*”). “This not only causes injury to junior appropriators, but also runs afoul of the prior appropriation doctrine if the proposed enlarged portion of the original right is accorded the same priority date as the original right.” *Id.* “Enlargement includes increasing the amount of water *diverted or consumed* to accomplish the beneficial use.” *Barron*, 135 Idaho at 420 (emphasis added). Accordingly, one form of enlargement is when the “transfer would result in the use of water at a time when it was historically unavailable....” *Id.*

Sections 42-108 and 42-222(1) authorize a “change” in the point of diversion, but do not contemplate adding a new point of diversion through a transfer. The necessary implication is that, in order to add a new point of diversion, there must be a commensurate reduction of diversions from an existing point of diversion. Otherwise, enlargement occurs. This is the same reason a transfer cannot add a new beneficial use – even a non-consumptive one – without a commensurate reduction of existing uses:

Adding a new beneficial use to a water right without reducing the authorized amounts under existing beneficial uses constitutes an enlargement of the water rights. For example, even though “hydropower” is a non-consumptive beneficial use, “hydropower” cannot be added to an irrigation right unless the irrigation portion of the right is reduced proportionately.

In the Matter of Application for Transfer No. 79037 in the Name of P4 Production, Preliminary Order Approving Transfer, at p. 9 (Aug. 4, 2015), available at <https://tinyurl.com/ybqugcox> (last visited Feb. 24, 2018) (emphasis added).

2. Discussion of Evidence Relevant to Enlargement

Without historical diversion data from the Creek, the District cannot prove it will not increase historical diversions from the Creek. While the District may not intend to irrigate additional acres, this is not the only form of enlargement. Again, “increasing the amount of water *diverted or consumed*” is also enlargement. *Barron*, 135 Idaho at 420 (emphasis added). The intent of the application is to capture “up to 200 inches” of “excess water” that bypasses the Nelson diversion and instead “goes to the Wilson or into the river.” (Exs. 119, 120 (Board minutes).) According to expert witness David Shaw:

Basing the diversion rate for the new point of diversion on the average water supply available indicates the intent to divert all water available at the new point of diversion during periods of average or lower flows in [the] Creek. Without records of historical diversions by the Applicant it will not be possible to determine if other diversions will be reduced to compensate for the additional diversion of water at the proposed new point of diversion.

(Ex. 117, p. 2 (Shaw report).)

C. Waste Water Reuse

There was testimony suggesting the District diverts the entire flow of the Creek at multiple locations upstream of the Roland Rights. Presumably, the District believes the Creek downstream of these diversions consists entirely of irrigation return flow and, therefore, that this limits Protestant’s rights. A careful reading of prior judicial opinions demonstrates this is not the case.

1. The Roland Rights Are Decreed Water Rights

Even if the Roland Rights have historically diverted water already used for irrigation as a *factual* matter, this does not weaken the Roland Rights as a *legal* matter. “The moment the [canal] company permits water to go into that natural channel for the purpose of merely letting it run into Snake river, such water becomes public property, subject to appropriation.” *Twin Falls Canal Co. v. Damman*, 277 F. 331, 332 (D. Idaho 1920).

The Roland Rights are partial decrees for diversions of water from the Creek, with priority dates in 1920 and 1948. (Exs. 112, 113 (partial decrees).) They are diverted outside of the District and downstream of all of its points of diversion. The composition of the Creek at the Roland Rights is irrelevant, because they are diversions of water that is “public property, subject to appropriation” at the Roland points of diversion.

U.S. v. Haga, 276 F. 41 (D. Idaho 1921), does not change this conclusion. *Haga* was a priority dispute over water diverted by the defendant from Eight Mile Creek, a tributary to the Boise River fed by irrigation seepage derived from plaintiff’s upstream Boise River diversions. *Id.* at 41-42. *Haga* specifically relied upon the fact that the waters in Eight Mile Creek were no longer “flowing in their natural channels” (*i.e.*, the Boise River) to hold they were not subject to appropriation by defendant under Idaho statute. *Id.* at 44. In addition, the plaintiff had Boise River diversions and patrons to serve downstream of defendant’s Eight Mile Creek diversions. *Id.* at 42, 44.

Neither of these important aspects of *Haga* characterizes this case. Water diverted from the Creek under the Roland Rights is still diverted from its “natural channel,” and the District has no patrons to serve downstream of the Roland Rights. Given that *Haga* is not even a transfer case to begin with, it does not inform the Department’s evaluation of the Application.

2. The Right to Recapture Waste Water Does Not Vitate Injury and Enlargement

The Protestant does not dispute the general right of the District to recapture and re-use waste water through its existing points of diversion. *See, e.g., Hidden Springs Trout Ranch, Inc. v. Hagerman Water Users, Inc.* 101 Idaho 677, 680 (1980). Instead, he challenges the addition of a new point of diversion intended to divert more water than the District has historically diverted. The question here is, Does the general right to recapture waste water vitiate the statutory criteria in Section 42-222? According to Idaho courts, the answer is, “no.”

In *Colthrop v. Mountain Home Irr. Dist.*, the plaintiff alleged it relied on defendant’s waste water, and was therefore damaged when defendant ceased irrigating its ranch. 66 Idaho 173, 175 (1945). The plaintiff sued for monetary damages and for an injunction requiring the defendant to resume irrigating its ranch. *Id.* at 175-77. Critically, in addition to utilizing the defendant’s waste water, the plaintiff had its own decreed water rights. *Id.* at 175. The Idaho Supreme Court stated:

The injury which [plaintiff] urges against the right of [defendants] to change the point of diversion and place of use of the [defendant’s] water is not the kind of an injury that will prevent the making of the change. *To prevent a change in the point of diversion and place of use of water, the injury, if any, must be to a water right.* In the case at bar, it must be kept in mind, [plaintiff] does not plead that a change in the point of diversion and place of use of the [defendant’s] water would in any way injure the water or the right to use the water, *decreed* to the [plaintiff’s] ranch. *Undoubtedly, if a change of the point of diversion and place of use of the [plaintiff’s] water actually injured [plaintiff’s] use or right to use the water decreed to the [defendant’s] ranch, the change could not be made.*

Colthrop, 66 Idaho at 180-81 (emphasis added); *see also A&B Irr. Dist. v. Aberdeen-American Falls Ground Water Dist.*, 141 Idaho 746 (2005) (affirming subordination of enlargement diversions of waste water to junior rights).

The Roland Rights are “decreed” water rights. (Exs. 112, 113 (partial decrees).) Under *Colthrop*, they are therefore entitled to protection from injury in a transfer proceeding.

The Idaho Supreme Court's subsequent decision in *Application of Boyer*, 73 Idaho 152 (1952), does not change this outcome. In *Boyer*, a water right owner sought to move its water rights "approximately 18 or 20 miles down river." *Id.* at 155. The Big Lost River Irrigation District opposed the transfer, "portraying the repetitious horrendous effect upon the water table, urging that if this application be granted, others will follow suit...." *Id.* at 160-61. According to the District, "there would be no injury to any particular individual, but there would be general injury and damage because...there would be a tendency to lower the water table...." *Id.* at 161-62.

The protestant's "general" concerns in *Boyer* are not the type of injury analysis contemplated by Section 42-222(1), and *Boyer* therefore does not stand for a broader proposition limiting the Department's analysis of the Application. "Where, as here, a transfer results in the diminishment of return flow to a water source due to the consumptive use of that return flow by downstream water users, an affected junior appropriator *may appropriately complain of injury, not enlargement.*"² *Rangen*, at 9.

There is another critical distinction between *Boyer* and the Application: Even if *Boyer* extends to transfers adding a point of diversion, *Boyer* only addresses injury, not enlargement. Indeed, the enlargement criterion was added to Section 42-222(1) in 1969, after *Boyer* was decided. *See* S.L. 1969, ch. 303, § 2, p. 905.

Other cases recognizing the general right to recapture waste water do not involve transfers and are therefore not relevant. *See, e.g., Hidden Springs Trout Ranch, Inc. v. Hagerman*

² The "not enlargement" language does not affect the evaluation of enlargement here. A critical distinction between *Rangen* and this case is that, in *Rangen*, it was "undisputed that the transfer will not result in an increase in the rate of diversion or duration of diversion of the original right." *Id.* at 7. The narrow "enlargement" question in *Rangen* was whether consumptive use of return flows by other water right owners after the transfer constituted enlargement. *Id.* at 9. The *Rangen* court held that because Section 42-222(1) prohibits enlargement of "the original right," it does not prohibit additional consumptive use of return flows by water users with separate water rights. *Id.* at 9-10. Here, consumptive use will increase under the District's "original" rights, because District patrons do not own separate water rights.

Water Users, Inc., 101 Idaho 677 (1980) (piping of ditch); *Reynolds Irr. Dist. v. Sproat*, 70 Idaho 217 (1950) (priority dispute over water diverted from drainage ditch); *Sebern v. Moore*, 44 Idaho 410 (1927) (priority dispute); *U.S. v. Haga*, 276 F. 41 (D. Idaho 1921) (priority dispute).

D. Fiduciary Duties

The fiduciary duty issue raised by the District is irrelevant to the criteria in Section 42-222(1). Roland will address this issue if and when it is raised in the appropriate forum.

III. CONCLUSION

The Application proposes to add a new point of diversion for the express purpose of diverting more water than the District has historically diverted, in order to prevent that water from remaining in the Creek or reaching the Wilson diversion. This will result in enlargement of the District's water rights and injury to the Roland Rights. The District's general right to recapture waste water does not limit the injury and enlargement criteria in a transfer. Therefore, the Protestant respectfully requests the Department deny the Application.

DATED THIS 1st day of March, 2018.

Varin Wardwell LLC



Dylan B. Lawrence
Attorneys for Thomas G. Roland, et al

DATED THIS 1st day of March, 2018.

Masingill Law, P.A.



Eben T. Masingill
Attorneys for Thomas G. Roland, et al

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of March, 2018, I caused the original of this document to be filed with the state office of the Idaho Department of Water Resources via hand delivery and a true and correct copy of the foregoing to be served by the method indicated below, and addressed to the following:

Albert P. Barker
Barker Rosholt & Simpson LLP
PO Box 2139
Boise, Idaho 83701-2139
apb@idahowaters.com

U.S. Mail
 E-Mail
 Hand Delivery
 Fax

Eben T. Masingill
MASINGILL LAW, P.A.
P.O. Box 467
25 West Commercial St.
Weiser, Idaho 83672
eben@masingilllaw.com

U.S. Mail
 E-Mail
 Hand Delivery
 Fax (208) 414-0490


Dylan B. Lawrence

RESUME
OF
EDWIN L. LITTENEKER

SUMMARY

Legal experience includes private, municipal, and association practice.

Teaching experience in Business Law, Business Ethics, Human Resource Management, Labor Relations, Speech Communications, Negotiation and Alternative Dispute Resolution.

Experience in alternative dispute settlement programs, including arbitration, mediation, meeting facilitation and dispute resolution skills training.

Service as a hearing officer in rule making, licensure, and contested cases under the Idaho Administrative Procedures Act and providing private hearing officer, complaint investigation and grievance resolution services.

Retired from the active practice of law, Senior status in the State of Idaho.

LEGAL EXPERIENCE

- | | |
|--------------------------------|---|
| January 1995 – October 2017 | Attorney at Law, Sole practitioner, Lewiston, Idaho. General practice with emphasis in litigation, local government, state and local administrative law, general business, and estate planning and probate.

Special Deputy Attorney General-Department of Transportation-Administrative License Suspensions, Department of Health and Welfare-Child Support and Paternity Establishment. |
| September 1988 - December 1994 | Brown & Litteneker, Attorney at Law, Partner, Lewiston, Idaho. General practice with emphasis in real estate, construction, domestic relations and employment law. |
| October 1987 – September 1988 | Attorney at Law, Solo practitioner, Lewiston, Idaho. General practice with emphasis in real estate, labor relations and personnel law. |

October 1983 – September 1987 City of Lewiston, Lewiston, Idaho, City Attorney. Contracted with the City Council. Responsibilities included all aspects of municipal law and specifically labor relations and personnel. Served as chief spokesman for the City in negotiations with three separate unions. Supervised misdemeanor prosecution and code enforcement.

Preparation of legal opinions at the request of the City Council and City staff. Preparation of ordinances, resolutions, contracts, deeds, leases, and easements as requested.

January 1982 – September 1983 City of Lewiston, Lewiston, Idaho, Assistant City Attorney. Reported to the city attorney, responsible for misdemeanor criminal prosecutions, including representing the city on motions and court and jury trials on misdemeanors and infractions. Responsible for planning and zoning and code enforcement.

June 1980 – December 1981 Idaho State Home Builders Association. Served as Staff Attorney and then Executive Director of the Idaho Home Builders Association. Association members included residential contractors and suppliers. Administrative officer of the Association and responsible for all association programs. As staff attorney responsibilities included practice before the Public Utilities Commission, prepare and present testimony before city councils and county commissions on land use and planning and zoning issues, lobbied on behalf of the Association in the Idaho legislature.

July 1978 – June 1980 Roos and Litteneker, Boise, Idaho. Attorney. General practice of law with emphasis in domestic relations, criminal and contract law. Contracted with the Ada County as Juvenile Public Defender.

APPROPRIATE DISPUTE RESOLUTION

October 2017- December 2018 Special Education Dispute Resolution Coordinator. Idaho Department of Education. Administer IEP Team Meeting facilitation, Mediation, Complaint Investigation Due Process Hearing programs and processes.

January 1986 – August 1993

Executive Director of Idaho Arbitration Services (IAS). IAS provided arbitration and mediation services and training programs. Responsibilities included marketing of IAS services as well as conducting arbitration, mediations, and training programs. Business was sold.

August 1993 – October 2017

Mediation practice in personal injury, employment, domestic relations, business dissolution, special education, public policy, land use cases and Individual Education Plan team meeting facilitation.

Mediation panel membership, Federal Court, and Idaho Supreme Court Civil Mediator.

Certified Idaho Small Lawsuit Resolution Evaluator.

OTHER PROFESSIONAL EXPERIENCE

December 1986 to October 2017

Hearing officer:

Department of Health & Welfare, Professional license and benefit cases.

Department of Law Enforcement, Professional license and Alcohol Beverage Control cases.

Department of Transportation, right of way and condemnation disputes.

Personnel Commission, Public employee discipline and termination cases.

Department of Education, IDEA Due Process Lead Hearing Officer, Complaint investigator, facilitator and mediator.

Nez Perce Tribe employment grievance hearings.

Idaho Board of Medicine Medical Malpractice Prehearing Screening Panel Chair

August 1983 – December 2005

Adjunct faculty: Lewis-Clark State College, Lewiston, Idaho. Instructor in Business Law, Wills, Estates & Trusts, Labor Relations, with emphasis in

negotiation. Human Resource Management. & Business Ethics. Designed and taught On-line Business Law Classes. Designed and taught Weekend Business Law classes. Introductory speech & speech communications.

June 2000 – October 2017

Prepare presentation materials & conduct training programs in workplace issues including discrimination, harassment and drug and alcohol policy implementation; IDEA special education issues; Facilitation of IDEA-IEP team meetings; training elected and appointed government officials; organizational decision making, mental health professionals ethics and not for profit board of director training.

August 2014-December 2017

University of Idaho College of Law-Adjunct Instructor-Negotiation and Alternative Dispute Resolution.

EDUCATION

J.D. University of Idaho College of Law. 1978

B.A. University of Idaho 1974 Cum Laude, Political Science.
Speech and sociology minor areas of study.

CONTACT INFORMATION

3320 E Front Runner Lane
Boise, Idaho 83716
Phone: (208) 790-1550
E-mail: litteneker2017@gmail.com

3-16-2020

This is a letter of recommendation on behalf of Edwin Litteneker who I understand has applied to serve as a hearing officer for the Division of Environmental Quality, Idaho Department of Health and Welfare.

Ed served as the Dispute Resolution Coordinator, Division of Special Education for 15 months after his retirement from the active practice of law. In that capacity, he was responsible for the supervision of the SDE, Dispute Resolution Contractors, including the Hearing Officers and Complaint Investigators. Since he left the employment of the SDE, Ed has contracted with the SDE as a Dispute Resolution Contractor including conducting complaint investigations and Requests for Due Process Hearings. He has also facilitated IEP Team Meetings and conducted mediations addressing issues of the provision of special education as required by state and federal law.

Though I cannot write this recommendation letter as a state employee, I can whole heartedly endorse Ed, the quality and completeness of his work is thorough and addresses the issues raised.

Please favorably consider his application to provide Hearing Officer services for the Division of Environmental Quality. If you have any questions, please call on me.

Jeff Brandt
Dispute Resolution Coordinator
Special Education
State of Idaho

jbrandt@sde.idaho.gov
208-332-6914

RECEIVED
SEP 08 2016
DEQ Hearings Coordinator
DOCKET NO. _____

BEFORE THE BOARD OF ENVIRONMENTAL QUALITY

STATE OF IDAHO

IN THE MATTER OF FINAL § 401 WATER)
QUALITY CERTIFICATION MEADOW CREEK)
SIDING SNYDER CREEK; NWW-2016-077)

Docket No. 0102-16-01

DICK MARTINDALE,)
Petitioner)

**ORDER DISMISSING
A CONTESTED CASE**

v.)

IDAHO DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
Respondent.)

and)
UNION PACIFIC RAILROAD COMPANY,)
Intervenor.)

This is an Order permitting the Withdrawal of a Petition To Initiate a Contested Case and resolving request to Intervene.

On July 26, 2016 Dick Martindale filed a Petition to Initiate a Contested Case with the Board of Environmental Quality captioned Final § 401 Water Quality Certification Meadow Creek Siding Snyder Creek NWW-2016-077.

The Union Pacific Railroad Company (UPRR) Petitioned to Intervene on August 15, 2016. UPRR is the project proponent concerning the construction of the Meadow Creek Siding Project. UPRR's Petition to Intervene was granted by an Order of the Presiding Officer on August 23, 2016.

The Department of Environmental Quality filed its response to the Petition for a Contested Case on August 22, 2016.

A variety of Petitions to Intervene were filed by individuals pro se claiming to have a direct and substantial interest in the contested case as property owners adjacent to the proposed UPRR Meadow Creek Siding or in the immediate vicinity of the proposed Meadow Creek Siding. Petitions to Intervene were filed by Linda Corson, Barbara Nagel, Fred Gabourie and Sharon Gabourie, Denis and Cindy Johnson, Edward Adamchak, Lawrence Keister, Brad Lowther and Ginger Collins. There has been no ruling thus far on the Petitions to Intervene.

Mr. Martindale is entitled to file a Notice of Withdrawal and has properly served all of the parties with a copy of the Withdrawal of the Petition for a Contested Case pursuant to IDAPA 58.01.23.304.

The Withdrawal of the Petition for a Contested Case is granted and the Petition for a Contested Case is hereby dismissed.

Subsequent to the withdrawal of the Petition for a Contested Case Fred Gabourie and Sharon Gabourie withdrew their Petition to Intervene on August 30, 2016. This Petition to Withdraw the Request to Intervene is granted. Edward Adamchak withdrew his Petition to Intervene on September 6, 2016. This Petition withdrawing the Request to Intervene is also granted.

All of the Intervenors appeared pro se without the assistance of counsel.

In Idaho pro se litigants are to be held at the same standard as attorneys. As the Presiding Officer I am not permitted to provide the potential pro se litigants with special treatment because the pro se litigants may not be familiar with all of the requirements of the DEQ's Rules of Administrative Procedure and the Attorney General Rules of the Administrative Procedure.

The expectation of a pro se litigant in the contested case setting is that they understand the proper form and content of pleadings to be presented to the Presiding Officer, participate appropriately in conducting discovery and are entitled to martial evidence and engage in cross examination at depositions or hearings as well as prepare written legal briefing and be familiar with administrative motion practice. This unfortunately can become a daunting task particularly given the potential complexity of the issues that may have been presented here.

The variety of issues raised by the pro se proposed intervenors are substantially similar if not identical to the issues raised by the Petitioner and the pro se intervenors participation in this matter would have made the administrative process more cumbersome particularly because each of the proposed intervenors would have been expected to attend and participate in discovery, motions hearings, telephone conferences and similar proceedings.

I was prepared to conditionally deny the Petitions to Intervene. However, the filing of the withdrawal of the Petition for a contested case by Mr. Martindale makes the Petitions to Intervene moot. Upon the dismissal of the Petition for a Contested Case based upon Mr. Martindale's withdrawal of the Petition, the pro se parties requesting intervention no longer have a direct and substantial interest in a contested case.

The Petitions to Intervene of Linda Corson, Barbara Nagel, Denis and Cindy Johnson, Lawrence Keister, Brad Lowther and Ginger Collins are hereby denied as being moot since there is no underlying contested case in which to Intervene.

IT IS THEREFORE ORDERED:

That the Petition for a Contested Case is hereby dismissed without prejudice.

The Petitions to Intervene of Gabourie and Adamchak are withdrawn and are hereby dismissed.

The remaining Petitions to Intervene are denied and hereby dismissed.

DATED this 8 day of September, 2016.



Edwin L. Litteneker
Presiding Officer

Notice of a Preliminary Order

This is a Preliminary Order which become a final order of the Board unless reviewed by the Board pursuant to I.C. § 67-5245. This Preliminary Order can and will become final without further action of the Board unless any party appeals to the Board by filing with the Hearing Coordinator a Petition for Review of the Preliminary Order be within 14 days of the service date of this Preliminary Order any party may take exceptions to any part of this Preliminary Order by filing with the Hearing Coordinator a Petition for Review of the Preliminary Order unless this Preliminary Order will become a final order of the Board. The basis for review must be stated in the Petition. The Board may review the Preliminary Order on its own motion, see if any party files a Petition for Review of the Preliminary Order the Board shall allow all parties an opportunity to file briefs in support of or taking exceptions to the Preliminary Order and may schedule oral argument in the matter before issuing a final order. The Hearing Coordinator shall issue a notice setting out the briefing schedule and date and time for oral argument. The Board will issue a final order within 56 days of the receipt of written briefs or oral argument, whichever is later unless waiver extended by the parties or for good cause shown. The Board may hold additional hearings or may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

Pursuant to I.C. §§ 67-5270 and 67-5272, if this Preliminary Order becomes final any party aggrieved by the final order or order previously issued in this case may appeal the final order and all previously issued orders in this case to District Court by filing a Petition for Judicial Review in the County in which 1) a hearing was held, 2) the final agency action was taken, 3) the parties seeking review of the order resides or operates it principal place of business in Idaho or 4) the real or personal property that was subject to the agency action as located, e) the petition for judicial review must be filed within 28 days of this Preliminary Order becoming final.

I.C. § 67-5273, a petition for judicial review in district court does not stay the effectiveness or enforcement of the order under review. Motions for reconsideration of any preliminary order shall not be reconsidered, IDAPA 58.01.23.73o.

BEFORE THE BOARD OF ENVIRONMENTAL QUALITY
STATE OF IDAHO

IN THE MATTER OF FINAL § 401 WATER
QUALITY CERTIFICATION MEADOW CREEK
SIDING SNYDER CREEK; NWW-2016-077

)
)
) Docket No. 0102-16-01
)

DICK MARTINDALE,
Petitioner

)
) CERTIFICATE OF SERVICE
)

v.

IDAHO DEPARTMENT OF ENVIRONMENTAL
QUALITY,
Respondent,

)
)
)
)
)
)

and

UNION PACIFIC RAILROAD COMPANY,
Intervenor.

)
)
)
)
)
)

I hereby certify that on this 8th day of September, 2016, a true and correct copy of the **Order Dismissing a Contested Case** was served on the following:

Dick Martindale
P.O. Box 189
Eastport ID 83826
EMAIL 4martindale@gmail.com

Douglas M Conde
Deputy Attorney General
Department of Environmental Quality
1410 N. Hilton
Boise ID 83706
HAND-DELIVERY

Robert C. Bylsma
Law Department
Union Pacific Railroad Company
10031 Foothills Blvd Suite 200
Roseville CA 95747-7101
EMAIL rcbylsma@up.com

Ausey H Robnett III
Attorney at Law
Lake City Law
435 W Hanley Ave Ste 101
Coeur d'Alene ID 83815
EMAIL arobnett@lclattorneys.com

Linda Corson
93 Inner Way
Bonners Ferry ID 83805
FIRST CLASS U.S. MAIL

Barbara Nagel
5917 Moyie River Road
Bonners Ferry ID 83805
FIRST CLASS U.S. MAIL

Fred Gabourie
PO Box 2529
Post Falls ID 83877
EMAIL idahoosprey@gmail.com

Brad Lowther
4830 Moyie River Road
Bonners Ferry ID 83805
FIRST CLASS U.S. MAIL

Denis and Cindy Johnson
4397 Moyie River Road
Bonners Ferry ID 83805
EMAIL cindylee423@hotmail.com

Edward R Adamchak Jr
719 S Greensferry Road
Post Falls ID 83854
EMAIL eadamchak@sd273.com

Lawrence Keister
5412 Moyie River Road
Bonners Ferry ID 83805
FIRST CLASS U.S. MAIL

Ginger Collins
6168 Moyie River Road
Bonners Ferry ID 83805
FIRST CLASS U.S. MAIL



Paula J Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N Hilton, Boise ID 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

CHRISTOPHER P. GRAHAM

4688 S. Morning Light Place, Boise, ID 83716 | (208) 861-2941 | cpg@brassey.net

SUMMARY

Innovative and successful attorney; Detail oriented and conscientious, with twenty (20) years of experience providing sound legal advice and obtaining favorable results in a variety of cases and contexts involving insurance defense and coverage, commercial litigation, and construction law; Able to communicate clearly and concisely with individuals of diverse backgrounds and levels of authority; Exceptional knowledge of the rules of civil procedure, the rules of evidence, trial and appellate practices, and alternative dispute resolution practices

ACCOMPLISHMENTS

- “AV” Peer Review Rated Attorney by Martindale Hubbell
- Mountain States Super Lawyer

EXPERIENCE

BRASSEY CRAWFORD, PLLC

PARTNER: 2019 – PRESENT

- Active private law practice involving insurance defense and coverage, commercial litigation, employment law, business law, construction law, alternative dispute resolution, and personal injury litigation
- Experience in all aspects of civil law practice, including significant first chair jury trial experience and appeals
- Experience as Small Lawsuit Resolution Act evaluator/civil case mediator in more than one hundred (150) cases
- Experience as mediator in more than one hundred (100) civil cases involving personal injury, medical malpractice, and various commercial/construction claims
- Experience as umpire in disputed appraisal matters

JONES GLEDHILL FUHRMAN GOURLEY, P.A. – BOISE, IDAHO

PARTNER: 2008 – 2019

- Practice consisted of insurance defense and coverage, commercial litigation, employment law, business law, construction law, alternative dispute resolution, and personal injury litigation

BRASSEY WETHERELL & CRAWFORD LLP – BOISE, IDAHO

ASSOCIATE: 2004 – 2007

- Practice consisted of insurance defense and coverage, employment law, and medical malpractice defense

HOLLAND & HART LLP – BOISE, IDAHO

ASSOCIATE: 2001 – 2004

- Practice consisted of commercial litigation, personal injury litigation, employment law, and Federal Indian Law

IDAHO SUPREME COURT – BOISE, IDAHO

LAW CLERK FOR JUSTICE JESSE R. WALTERS: 2000 – 2001

- Researched and drafted appellate opinions involving a variety of civil, criminal, and constitutional law issues

EDUCATION

UNIVERSITY OF IDAHO COLLEGE OF LAW – MOSCOW, IDAHO, 1997-2000

J.D., *CUM LAUDE*, MAY 2000

- Editor-in-Chief, *Idaho Law Review* 1999-2000
- Dean’s List

BOISE STATE UNIVERSITY – BOISE, IDAHO, 1990-1995

B.A., HISTORY, DECEMBER 1995

- Phi Alpha Theta History Honor Society
- Dean’s List

MEMBERSHIPS

- Admitted to practice before U.S. Court of Appeals, 9th and 10th Circuits, U.S. District Court for the District of Idaho, and all courts in the State of Idaho
- Idaho State Bar Association (Litigation, Employment Law, ADR, and Appellate sections); Governing Council – Appellate Section (2017 – present)
- Idaho Association of Defense Counsel
- Bencher – Richard C. Fields American Inns of Court

References for Christopher P. Graham

Warren W. Dowdle
MONTGOMERY DOWDLE
13965 W. Chinden Blvd., Ste. 115
Boise, Idaho 83713
(208) 378-8882
wwd@montgomerydowdle.com

John M. Howell
POWERS FARLEY
702 W. Idaho Street, Suite 700
Boise, Idaho 83702
(208) 577-5100
jmh@powersfarley.com

Todd Winegar
JONES WILLIAMS FUHRMAN GOURLEY, P.A.
225 N. 9th Street, Suite 810
Boise, Idaho 83701
(208) 331-1170
twinegar@idalaw.com

From: [Warren Dowdle](#)
To: [Paula Wilson](#)
Subject: Chris Graham
Date: Monday, March 9, 2020 10:57:57 AM

Chris Graham has asked that I provide a letter of reference for him as he intends to submit his name to be an evaluator with the Department of Environmental Quality.

I have known and worked with and against Chris Graham for 20 years. Both of us became involved with Civil Litigation in the 1999-2000 time period. Since that time, I have used Chris as a mediator and/or evaluator with the Idaho Small Lawsuit Resolution Arbitrations on several dozen cases. Chris is always quick and efficient with his decisions. However, these decisions and awards are well crafted and are supported by the legal authorities in place.

I would highly recommend Chris to be an evaluator within the Department. If you have any questions, please contact me at your convenience and I would be happy to discuss this more with you. Thanks.

Warren W. Dowdle

MONTGOMERY | DOWDLE

13965 W. Chinden Blvd., Ste. 115

Boise, Idaho 83713

T: 208-378-8882, F: 866-991-4344

E-mail: wwd@montgomerydowdle.com

MONTGOMERY | DOWDLE

Sent from [Mail](#) for Windows 10



DATE DOWNLOADED: Mon Mar 9 13:37:37 2020
SOURCE: Content Downloaded from [HeinOnline](#)

Citations:

Bluebook 20th ed.

Christopher P. Graham, Free Speech and the Sedition Act of 1918, 61 Advocate 27 (2018).

ALWD 6th ed.

Christopher P. Graham, Free Speech and the Sedition Act of 1918, 61 Advocate 27 (2018).

APA 6th ed.

Graham, C. P. (2018). Free speech and the sedition act of 1918. Advocate (Idaho State Bar), 61(11-12), 27-29.

Chicago 7th ed.

Christopher P. Graham, "Free Speech and the Sedition Act of 1918," Advocate (Idaho State Bar) 61, no. 11-12 (November/December 2018): 27-29

McGill Guide 9th ed.

Christopher P Graham, "Free Speech and the Sedition Act of 1918" (2018) 61:11-12 Advocate (Idaho) 27.

MLA 8th ed.

Graham, Christopher P. "Free Speech and the Sedition Act of 1918." Advocate (Idaho State Bar), vol. 61, no. 11-12, November/December 2018, p. 27-29. HeinOnline.

OSCOLA 4th ed.

Christopher P Graham, 'Free Speech and the Sedition Act of 1918' (2018) 61 Advocate 27

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at

<https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your license, please use:

[Copyright Information](#)

Free Speech and the Sedition Act of 1918

Christopher P. Graham

The year 2018 marks the 100th anniversary of many noteworthy events in United States history, including the armistice that ended World War I. Historians, free speech proponents and legal scholars, however, also lament that 2018 marks the 100 year anniversary of the Sedition Act.¹ A historical review of the Sedition Act is a useful reminder of its importance in free speech jurisprudence.

Passed a little over a year after the United States' entry into World War I, the Sedition Act of 1918 made it a crime to: (1) willfully utter, print, write or publish any disloyal, profane, scurrilous or abusive language about the government, military or flag of the United States; (2) use any language intended to bring the government, military or flag of the United States into contempt, scorn, contumely or disrepute; or (3) willfully display the flag of any foreign enemy, advocate the curtailment of war production or advocate, teach, defend or suggest doing any of these; or by word or act support the enemy or oppose the United States.²

The United States government prosecuted more than 2,000 individuals under the Sedition Act and its predecessor counterpart, the Espionage Act of 1917.³ Between 1919 and 1920, the Sedition Act, along with other similar laws, resulted in at least 877 convictions,⁴ many of which imposed lengthy prison terms. One of the most notable prosecutions under the Sedition Act was of renowned socialist and perennial Presidential candidate Eugene Debs. After his unsuccessful run for President in 1912, Debs had been ill, depressed and isolated from other socialists.⁵ America's entry into World War I, however, provided Debs with a chance to reassert himself as the "fa-

The United States government prosecuted more than 2,000 individuals under the Sedition Act and its predecessor counterpart, the Espionage Act of 1917.³ Between 1919 and 1920, the Sedition Act, along with other similar laws, resulted in at least 877 convictions,⁴ many of which imposed lengthy prison terms.

ther" of American socialism through a series of anti-war speeches. In June of 1918, Debs set out on a speaking tour "designed in part to taunt federal officials and bait them into arresting him."⁶ His plan worked. On June 16, 1918, Debs gave a passionate anti-war speech in Canton, Ohio. In the audience were stenographers dispatched by E.S. Wertz, the United States Attorney for the Northern District of Ohio, who believed that he could prosecute Debs under the newly enacted Sedition Act.⁷ When Debs arrived in Cleveland a week later, federal authorities arrested Debs and charged him with attempting to: (1) "cause and incite insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States;" and (2) "obstruct the recruiting and enlistment service of the United States...."⁸

Debs' trial took place four months later. The jury convicted Debs and the judge sentenced him to ten years in prison. In 1919, in an opinion authored by Justice Oliver Wendell Holmes, the United States Supreme Court upheld Debs' conviction, holding that Debs' speech was not protected under the First Amendment.⁹ After his failed appeal, Debs served two years in fed-

eral prisons in West Virginia and Georgia before having his sentence commuted by President Warren G. Harding.¹⁰ Debs' health never recovered and he died five years later. To some historians, Debs' trial and conviction "functioned as a religious ritual that anointed him as the savior of American liberty."¹¹

Another noteworthy prosecution under the Sedition Act involved a female physician living in the Pacific Northwest. Marie Equi was born in 1872 to working class Irish and Italian immigrant parents in New Bedford, Massachusetts. Although she was a good student, Equi dropped out of school to help her family by working in the textile mills. Life was not easy. Three of Equi's siblings died of childhood diseases.¹²

In 1892, Equi left home with her girlfriend to forge a new life in Oregon. From there, Equi moved to San Francisco to attend medical school, a unique goal among working-class women in the West. In 1903, Equi finished medical school at the University of Oregon as one of five women in her class, settled in Portland and set up a family practice specializing in the treatment of women and children. Equi's medical practice was not without controversy,

however, as she performed abortions and advocated for birth control. She also championed numerous other Progressive Era causes such as prison reform and higher education.¹³

A vicious clash with the police during a 1913 cannery worker strike in Portland radicalized Equi. Equi had come to support the women workers, who were seeking better wages, when the strike turned violent. Equi was clubbed by a mounted policeman and observed a pregnant woman forcibly taken to jail after being beaten by another police officer. Deciding that measured political reform could not achieve justice for the working class, Equi subsequently declared herself a socialist, espoused anarchism and began supporting the radical labor union Industrial Workers of the World (IWW). Days after the strike incident, Equi reportedly climbed onto a chair in the middle of Portland's city hall and, allegedly producing a poisoned hat pin certain to cause a "slow and lingering death," threatened to spill blood if anyone stood in the way of her cause.¹⁴

Staunchly opposed to America's involvement in World War I, Equi gave a fiery anti-war speech at the IWW hall in Portland on June 27, 1918. She was subsequently arrested and charged under the Sedition Act for: (1) stating that she and all of her fellow IWW workers were not fighting for the flag containing the red, white and blue, nor the British flag, nor for a flag of any country, but that the fellow workers and the IWW platform stood for the industrial flag, the red banner that symbolized the blood of the Industrial Workers; (2) stating that the ruling class had been in power long enough, with the law and the Army and Navy behind them, and that the IWW knew there were fellow workers pulled into the Army against their will and were placed in the trenches to fight their own brothers and relatives; and (3)

stating it was against the IWW platform to injure or kill another fellow worker, but if it was necessary to do this, to gain their rights, that she for one, and every man or woman packing a red card (an IWW membership card) would be willing to sacrifice all they had, their lives, if need be, for the cause of industrial freedom.¹⁵

A jury convicted Equi of five of the eight counts against her and the presiding judge sentenced Equi to three years in federal prison. On October 27, 1919, the Ninth Circuit Court of Appeals, in part relying on the Supreme Court's decision in

In a trilogy of opinions,²² including *Debs v. United States*, the United States Supreme Court first articulated the "clear and present danger" test to uphold convictions against a challenge under the First Amendment.²³ In doing so, however, the Supreme Court also laid the groundwork "that later served to provide more protection for speech."

Debs v. United States, upheld Equi's conviction and Equi was sent to San Quentin California State Prison to serve out her sentence.¹⁶ She served ten months before being released for good behavior. Many years later, on December 24, 1933, President Franklin Delano Roosevelt pardoned Equi, who continued to be an activist for the working class for the remainder of her life.¹⁷

Roughly three years after its passage, Congress repealed the Sedition Act, and although the Act is the subject of broad castigation by

many legal scholars and historians, others believe it should instead be remembered today for the "honorable, if misguided reasons why some in Congress supported [its] enactment."¹⁸ For example, when debating the Act's passage, Idaho Senator William Borah is reported to have stated: "I know this is a drastic law and I would not support it . . . unless I believed it necessary to prevent things far worse."¹⁹ Thus, while most legislators supported the act to put down anti-war dissent, Senator Borah and others felt as though the law "was needed to preempt mob violence against dissenters."²⁰

World War I therefore marked the first time "in which the courts played a significant role in relation to the restrictions imposed on freedom of expression."²¹ As demonstrated by the decisions involving Debs and Equi, courts throughout the country generally affirmed the restrictions. In a trilogy of opinions,²² including *Debs v. United States*, the United States Supreme Court first articulated the "clear and present danger" test to uphold convictions against a challenge under the First Amendment.²³ In doing so, however, the Supreme Court also laid the groundwork "that later served to provide more protection for speech." In 1918, the United States Supreme Court upheld the constitutionality of the Sedition Act in *Abrams v. United States*.²⁴ In *Abrams*, the Court affirmed the convictions of Russian immigrants under the Sedition Act for tossing leaflets from the tops of buildings in Manhattan for – among other things – a strike to protest American operations in Russia after the Russian Revolution.²⁵ Justice Oliver Wendell Holmes, who earlier authored the opinion creating the "clear and present danger" test, dissented in *Abrams*, in what legal scholars have described as "sonorous language that set the terms for our modern interpretation of the First Amendment."²⁶

Viewed as a well-meaning but unsound attempt to suppress free speech in a time of war, the Sedition Act of 1918 thus serves as a cautious reminder regarding the resiliency of the First Amendment. Although the Act was short-lived and it seems unlikely that similar legislation would be considered constitutional today, large portions of the Act's precursor, the Espionage Act of 1917, remain part of United States law. Consequently, it is prudent to keep the Sedition Act of 1918 in mind as – one hundred years later – our country continues to work through the myriad of complex issues surrounding the limits of free speech.

Endnotes

1. See Andrew P. Napolitano, *A Legal History of National Security Law and Individual Rights in the United States the Unconstitutional Expansion of Executive Power*, 8 NYU J.L. & Liberty 396, 472 (2014) (“The Sedition Act of 1918 represents one of the most constitutionally-repugnant laws ever enacted.”); Geoffrey R. Stone, *War Fever*, 69 Mo. L. Rev. 1131, 1140 (2004) (“This is a dreary record of legislative achievement.”); cf. *Arar v. Ashcroft*, 585 F.3d 559, 615 (2d Cir. 2009) (“The Supreme Court’s decisions upholding convictions under the Sedition Act of 1918 are regarded as indefensible today.”).
2. Sedition Act of May 16, 1918, ch. 75, § 1, 40 Stat. 553, 553 (1918).
3. See Nancy Murray and Sarah Wunsch, *Civil Liberties in Times of Crisis: Lessons From History*, 87 Mass. L. Rev. 72, 76 (2002).
4. The Sedition Act of 1918 From the United States Statutes at Large, v. 40 (April 1917-March 1919), at https://www.thirteen.org/wnet/supremecourt/capitalism/sources_document1.html
5. See Kathleen Kennedy, *Manhood and Subversion During World War I: The Cases of Eugene Debs and Alexander Berkman*, 82 N.C.L. Rev. 1661, 1687 (2004).
6. *Id.* at 1688.
7. See David Forte, *Righting a Wrong: Woodrow Wilson, Warren G. Harding, and the Espionage Act Prosecutions*, 68 Case W. Res. L. Rev. 1097, 1107 (2018).

Although the Act was short-lived and it seems unlikely that similar legislation would be considered constitutional today, large portions of the Act's precursor, the Espionage Act of 1917, remain part of United States law.

8. *Debs v. United States*, 249 U.S. 211, 212 (1919).
9. *Id.* at 217.
10. See Kennedy, *supra* note 5, at 1688.
11. *Id.* (citing NICK SALVATORE, EUGENE V. DEBS: SOCIALIST AND CITIZEN 294 (1982)).
12. See Marie Qui, at <http://historicsouthcoast.org/marie-equi/>; Marie Qui (1872-1952), at https://oregonencyclopedia.org/articles/equi_marie_1872_1952/#.W5wfAeSWyUk; an out lesbian and abortion rights activist, Marie Qui got locked up for espionage, at <https://timeline.com/marie-equi-abortion-activist-b712c6ef2656>.
13. *Id.*
14. *Id.*
15. See *Equi v. United States*, 261 F. 53, 54 (9th Cir. 1919).
16. *Id.* at 56-57.
17. See *supra* note 12. For more information on Equi's life and activism, see MICHAEL HELQUIST, MARIE EQUI: RADICAL POLITICS AND OUTLAW PASSIONS (2105).
18. Eric B. Eaton, *A Grim Anniversary: The*

- Sedition Act of 1918*, at: <https://uwpress.wisc.edu/blog/?p=3209>
19. *Id.* (citing GEOFFREY STONE, *PERILOUS TIMES* (2004)).
 20. *Id.*
 21. Murray and Wunsch, *supra* note 3 at 77.
 22. See *Schenk v. United States*, 249 U.S. 47 (1919); *Frohwerk v. United States*, 249 U.S. 204 (1919); *Debs*, 249 U.S. 211.
 23. See *Schenk*, 249 U.S. at 52 (“The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.”).
 24. 250 U.S. 616 (1919).
 25. For a thorough analysis of the background and decision in *Abrams*, see Frederick M. Lawrence, *The Coastwise Voyager and the First Amendment: The Fighting Faiths of the Abrams Five*, 69 B.U. L. Rev. 897, 905 (1989).
 26. See Wyatt Kozinski, *Our Proudest Boast*, 53 Tulsa L. Rev. 523, 529 (2018).

Christopher P. Graham is a partner at Jones Gledhill Fuhrman Gourley, P.A. He grew up on a family farm in New Plymouth, Idaho. He graduated with a B.A. in history from Boise State University in 1995 and received his J.D., cum laude, from the University of Idaho College of Law in 2000, where he was Editor-in-Chief of the Idaho Law Review. He is a member of the Idaho Legal History Society.



DAVID V. NIELSEN
ATTORNEY AT LAW
2537 W. State St, Suite 220
Post Office Box 1192
Boise, Idaho 83701

**LEGAL
EXPERIENCE**

David V. Nielsen, Attorney at law, Boise, Idaho (October 2002- present)

Bowen & Bailey, Boise, Idaho (October 1999-September 2002)

Evans Keane LLP, Boise, Idaho (January 1997-September 1999)

Quane, Smith, Howard & Hall, Boise, Idaho (October 1989-December 1996)

Idaho Court of Appeals (September 1987 to September 1989)
Law Clerk for Roger Swanstrom, Judge

Idaho Supreme Court (February 1987 to July 1987)
Law Clerk for Stephen Bistline, Justice

**PRACTICE
EMPHASIS**

Civil litigation, Workman's Compensation, Commercial Transactions,
Entity Formation, Estate Planning/Probate.

Hearing Officer- Idaho Department of Insurance 2010 to present;
- Idaho Department of Finance 2017 to present.

Member Idaho and Oregon State Bar Associations.

Admitted to Practice before the United States Supreme Court, Ninth
Circuit, Federal District and State Courts of Idaho and Oregon.

EDUCATION

University of Idaho College of Law
Moscow, Idaho
Juris Doctor (1986)

Michigan State University
East Lansing, Michigan
B.A. in Philosophy (1983)

DAVID V. NIELSEN
ATTORNEY AT LAW
P.O. Box 1192
BOISE, IDAHO 83701
TELEPHONE: (208) 336-5525
FACSIMILE: (208) 336-8848

March 19, 2020

Attn: Paula Wilson

References:

Robert W. Talboy
Attorney
P. O. Box 856
Boise, ID 83701
208-901-8669

Paul Augustine
Augustine Law Offices, PLLC
P.O. Box 1521
Boise, ID 83701
208-367-9400



March 19, 2020

To Whom It May Concern:

It is my privilege to recommend David Nielsen for the position as hearing officer for the Idaho Department of Environmental Quality.

It has been my pleasure to be associated with David, both professionally and personally, for over 25 years. David and I have worked together in both a large insurance defense law firm and in a smaller general practice setting. He is a wonderful colleague and very conscientious about his work as an advocate. David is always been well prepared for the task at hand, whether it be a deposition, hearing or trial. He is very detailed oriented, has exceptional writing skills, and is capable of identifying nuances of the law overlooked by others. These attributes make him well suited for the role as a hearing officer.

Due to his extensive experience as an attorney and current role as an administrative hearing officer with other agencies, David is clearly qualified to review, interpret, and adhere to your agency's laws, policies, and procedures and to conduct fair and efficient administrative hearings and drafted concise and well-reasoned decisions.

I highly recommend David to the IDEQ. I believe he will exceed your expectations should you choose to offer him the position. I would be happy to speak with you further regarding his qualifications or answer any questions you may have. Please feel free to contact me.

Very truly yours,


Michael E. Kelly
mek@ktslawoffice.com

MEK/ts

COPY

DAVID V. NIELSEN, ISB NO. 3607
P. O. Box 1192
Boise, Idaho 83701
Telephone: (208) 336-5525
Facsimile: (208) 336-8848

BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE

STATE OF IDAHO

In re Mortgage Loan Originator
License Application of:

BRENT PETERSON,
NMLS ID No. 156879,

Applicant

Docket No. 2019-16-04

**HEARING OFFICER'S FINDINGS
OF FACT, CONCLUSIONS OF LAW
AND PRELIMINARY ORDER**

This matter came before the hearing officer on an evidentiary hearing on April 24, 2019, at 9:00 a.m.. Brian Nicholas, Deputy Attorney General appeared on behalf of the Department of Finance. Brent Peterson appeared representing himself. Mr. Peterson by agreement of the parties appeared telephonically.

FINDINGS OF FACT

1. Mr. Peterson filed a 2018 application for a Mortgage Loan Originator License (Form MU4) with the Department of Finance (hereinafter the Department). Exhibit 1; Hearing Transcript Pg 9, Lines 10-13; Pg 10, Ln 2-6. (hereinafter Hrg Tr Pg/Ln).
2. In Section 6 of the application the applicant is to provide responses to a series of questions regarding the applicant's background and current status. These questions concern the applicant's financial status, history, criminal record and litigation activity. Exhibit 1.

HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND PRELIMINARY ORDER

3. The Department as part of the application process and review of an applicant conducted a background investigation and review of public records concerning Mr. Peterson. Hrg Tr Pg 11, Ln 23-25; Pg 12, Ln 1-5.
4. This check revealed the existence of outstanding tax liens filed against Mr. Peterson. Exhibit 2; Hrg Tr Pg 12, Ln 8-17; Pg 13, Ln 14-23.
5. Follow up contact with the Utah State Tax Commission confirmed the filing of two tax liens and their status as current and unsatisfied. Exhibits 3 and 4; Hrg Tr Pg 14, Ln 1-25; Pg 15, Ln 1-25.
6. The Department in the investigation also obtained copies of the filing record for these liens and corresponding judgments with the Third District Court for the State of Utah. Exhibits 5 and 6; Hrg Tr Pg 16, Ln 11-24; Pg 17, Ln 9-16.
7. In the license application Disclosure question (D) asks: “Do you have any unsatisfied judgments or liens against you?” Exhibit 1; Hrg Tr Pg 11, Ln 17-20.
8. On his application, Mr. Peterson in response to Disclosure question (D), answered “No”. Exhibit 1; Hrg Tr Pg 11, Ln 18-22.
9. Mr. Peterson had received notification of the filing of the tax liens. Hrg Tr Pg 23, Ln 14-17.
10. The liens remained outstanding as of the time of the application and hearing in this matter. Hrg Tr Pg 24, Ln 18-25.

CONCLUSIONS OF LAW

1. Pursuant to Idaho Code §26-31-306(1)(d) the Director shall not issue a mortgage loan originator license unless the Director first makes, among other requirements, a finding that the applicant has demonstrated:

financial responsibility, character and general fitness sufficient to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this part.

2. As found in the language of Idaho Code §26-31-313(b), the Director may decline to issue a license when an applicant withholds information or makes a material misstatement of fact in an application. Idaho Code §26-31-313(b).

3. Further:

A determination that an individual has not shown financial responsibility may include, but is not limited to, consideration of the following: (i) A current outstanding judgment, except a judgment issued solely as a result of medical expenses (ii) A current outstanding tax lien or other government lien or filing; (iii) A foreclosure within the past three (3) years; or (iv) A pattern of delinquent accounts within the past three (3) years.

Idaho Code §26-31-306(1)(d).

4. The information requested in the application disclosure section generates data pertinent to the applicant's financial responsibility, character and fitness for licensing.

5. The Department asserts that the existence of the liens and judgments, and the failure to disclose, represent withholding information and a material misstatement on an application. The Department also focuses upon the Notices (Exhibits 3 and 4) sent to Mr. Peterson to establish his awareness of the information concerning the liens.

6. Mr. Peterson at the hearing claimed that he was unaware of the lien status when he filed his application. He did, however, acknowledge that he had received the Notices from the State of Utah regarding the outstanding amounts due, but claims he was not

aware that the debts had become formal liens or judgments.

6. This dispute raises the issue as to the necessity of establishing a showing of intent or knowledge on the part of an applicant in order for the Department to find that an applicant withheld information or made a material misstatement. That is, whether mere inadvertence will suffice, or is showing of scienter or knowledge necessary. See, e.g. *Brown v. Iowa Beef Processors*, 107 Idaho 558, 691 P. 2d 1173 (Idaho 1984); *Wroble v. Bonners Ferry Ranger Station*, 97 Idaho 900, 556 P. 2d 859 (Idaho 1976).

7. This evidence in this matter, does not, however, illustrate a situation where a claimed lack of understanding or ignorance of the true nature of a pending claim somehow equates with an inadvertent omission or insufficient knowledge to accurately fill out the required disclosure information requested in the Mortgage Loan Originator License application (Form MU4).

8. It is noteworthy that the notices sent to Mr. Peterson (Exhibits 3 and 4) contain language which reads “Intent to Lien” rather than simply “Lien” or similarly “Statement of Lien” or the equivalent. They were nonetheless, sent to Mr. Peterson in July and September of 2018 and clearly indicate the consequence of the failure to pay the outstanding obligations by a date certain, namely the filing of a lien.

9. Further, the Court records (Exhibits 5 and 6) indicate that liens were filed and entered as judgments in September of 2018. This is several months before the subject application made by Mr. Peterson in December of 2018. Mr. Peterson had knowledge of the outstanding obligations and was aware that the State of Utah would pursue a claim and file a lien in the event of a failure to pay. This knowledge was present well before the application for the License was submitted.

10. To assert that the precise nature of the status of the debt, whether formalized as a lien or not, was unknown at the time of the application, is not sufficient to constitute mere inadvertence or lack of knowledge without intent. Instead it illustrates an indifference to a known potential consequence, one stated in an official notice received from the Utah State Tax Commission. Mr. Peterson may have subsequently ignored the notice and the corresponding result, but this itself was not shown to be accidental or without intent.

11. When later asked in the application of the existence of liens or judgments, Mr. Peterson cannot claim ignorance of their exact status as a defense for the lack of accuracy in the responses provided to the disclosure questions. He himself failed to follow up and ascertain the outcome of the notices. Inaction on his part does not constitute a defense to the claim that he omitted and misstated information. At a minimum, in order to answer the question on the application in a truthful and complete manner, he should have ascertained the status of his tax obligations in light of the previous notices he received. Failing to make inquiry and claiming lack of knowledge as a result of that failure, does not satisfy the disclosure requirements. Not in the circumstances of this matter.

12. The filing of the liens is pertinent to the determination by the Department of the character and the fitness of an applicant. An applicant is under a duty to answer questions in a diligent and accurate manner to the best of their knowledge. Inadvertence or unintentional omission may be a sufficient excuse under different facts. Here though, the timeline of events and facts regarding the notification by the State of Utah do not support a conclusion that the omission or misstatement was excusable.

13. The failure to accurately disclose this information constitutes an omission and

misstatement which is material to the necessary information gathered by the Department in consideration of the applicant's qualifications. Not only does this concern character and fitness but also impacts the question of financial responsibility under Idaho Code §26-31-306(1)(d).

14. The evidence establishes that the Director can conclude that Mr. Peterson withheld information and made a material misstatement of fact in his application and the existence of an outstanding lien. This provides grounds to the Director to deny the application pursuant to Idaho Code §26-31-306(1)(h) and (1)(d).

PRELIMINARY ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that the Department's Notice of Intent to Issue Order of Denial of Mortgage Loan Originator License Application of Mr. Peterson dated February 20, 2019, should be AFFIRMED.

NOTIFICATION OF RIGHTS

This is a preliminary order of the Hearing Officer. It can and will become final without further action of the Department of Finance unless any party petitions for reconsideration before the Hearing Officer or appeals to the Director for the Department of Finance (or the designee of the Director). Any party may file a motion for reconsideration of this preliminary order with the Hearing Officer within fourteen (14) days of the service date of this order. The Hearing Officer will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Idaho Code §67-5243(3).

Within fourteen (14) days after (a) the service date of this preliminary order, (b) the service date of the denial of a petition for reconsideration of this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration of this preliminary order, any party may in writing appeal or take exception to any part of the preliminary order and file briefs in support of the party's position on any issue in the proceeding to the Director of the Department of Finance (or the designee of the Director.) Otherwise, this preliminary order will become a final order of the Department of Finance.

If any party appeals or takes exception to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal within the Department of Finance. Written briefs in support of or taking exception to the preliminary order shall be filed with the Director of the Department of Finance (or the designee of the Director). The Director may review the preliminary order on his own motion.

If the Director of the Department of Finance (or his designee) grants a petition to review the preliminary order, the Director (or his designee) will allow all parties an opportunity to file briefs in support of or taking exception to the preliminary order and may schedule oral argument in the matter before issuing a final order. The Director (or his designee) will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties for good cause shown. The Director (or his designee) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

Pursuant to Idaho Code §§ 67-5270 and 67-5272, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this

case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (1) the hearing was held, (2) the final agency action was taken, (3) the party seeking review of the order resides, or operates its principal place of business in Idaho, or (4) the real property or personal property that was the subject of the Department's action is located.

This appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. *See* Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

DATED this 10~~th~~ day of May, 2019.

By: David V. Nielsen
David V. Nielsen
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of May 2019, I served a true and correct copy of the foregoing by delivering the same to each of the following party, by the method indicated below, addressed as follows:

Brian D. Nicholas Deputy Attorney General State of Idaho Department of Finance P.O. Box 83720 Boise, Idaho 83720-0031	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand-Delivered <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile
Brent Peterson 13276 S Wilburton Dr. Draper, UT 84020	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand-Delivered <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile



David V. Nielsen

Idaho Board of Environmental Quality
May 14, 2020 Board Meeting

Agenda Item 4: Solid Waste Management Rules

Docket No. 58-0106-1901

Agenda Item #4

Solid Waste Management Rules, Docket No. 58-0106-1901

I move that the Idaho Board of Environmental Quality adopt as pending rules the Solid Waste Management Rules as presented in the final proposal under Docket No. 58-0106-1901, with the rules becoming final and effective, if approved by the Legislature, upon the adjournment sine die of the First Regular Session of the Sixty-sixth Idaho Legislature.

<p>Docket Number: <u>58-0106-1901</u> Effective Date: <u>2021 Sine die</u> Rules Title: <u>IDAPA 58.01.06, Solid Waste Management Rules</u> Agency Contact and Phone: <u>Michael McCurdy (208)373-0188</u></p>	<p style="text-align: center;"><u>Public Participation</u></p> <p>Negotiated Rule Making? <input checked="" type="checkbox"/> Yes [] No Negotiated Rulemaking Summary attached</p> <p>Proposed Rule: 11/6/19 Idaho Administrative Bulletin</p> <p>Public Hearings? [] Yes <input checked="" type="checkbox"/> No Locations and Dates: N/A</p> <p>Written Comment Deadline: 12/4/19</p> <p>Public Comments Received? [] Yes <input checked="" type="checkbox"/> No</p>
<p><u>Overview of Rulemaking</u></p> <p>DEQ initiated this rulemaking in response to Executive Order No. 2019-02, Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that certain rules are outdated, unnecessary, or redundant. Various sections throughout IDAPA 58.01.06, Solid Waste Management Rules, have been identified for deletion, simplification, or consolidation with other sections.</p>	<p><u>Interim Legislative Review of Proposed Rule Pursuant to Idaho Code § 67-5223</u></p> <p>Meetings Held? [] Yes <input checked="" type="checkbox"/> No Objections Filed? [] Yes <input checked="" type="checkbox"/> No</p> <p>Documentation from Legislative Services Office (LSO) attached: 11/18/19 Memo from LSO to Germane Joint Subcommittees 12/6/19 Letter from LSO to DEQ</p>
<p><u>DEQ's Recommendation for Adoption</u></p> <p>DEQ recommends that the Board adopt the rule, as presented in the final proposal, as a pending rule.</p>	<p><u>Costs To the Agency:</u> No additional costs to the agency.</p> <p><u>Costs To the Regulated Community:</u> No additional costs to the regulated community.</p>

**Department of Environmental Quality
Solid Waste Management Rules
IDAPA 58.01.06**

Docket No. 58-0106-1901

**Negotiated Rulemaking Summary
Idaho Code § 67-5220(3)(f)**

This rulemaking has been initiated in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019.

On August 1, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the August 2019 issue of the Idaho Administrative Bulletin, and a meeting was held on August 29, 2019. Key information was posted on the DEQ website and distributed to the public. Members of the public participated in the negotiated rulemaking process by attending the meeting. No comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule in the Idaho Administrative Bulletin. The negotiated rulemaking record, which includes the negotiated rule draft and documents distributed during the negotiated rulemaking process, is available at www.deq.idaho.gov/58-0106-1901.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Environment, Energy & Technology Committee

FROM: Deputy Division Manager - Katharine Gerrity

DATE: November 18, 2019

SUBJECT: Department of Environmental Quality

IDAPA 58.01.06 - Solid Waste Management Rules - Proposed Rule (Docket No. 58-0106-1901)

Summary and Stated Reasons for the Rule

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.06 - Solid Waste Management Rules. The department states that it initiated this rulemaking in response to the Red Tape Reduction Act. The department states that it determined that certain rules are outdated, unnecessary, or redundant and that various sections have been identified for deletion, simplification, or consolidation with other sections.

The department states that the rules regulate activities that are not specifically regulated by the federal government and are broader in scope than federal regulations. The department notes that the federal government does provide criteria for municipal solid waste landfills; however, the federal regulations do not regulate non-municipal solid waste landfill in Idaho. The department adds that the rules address non-municipal solid waste landfills and that this rulemaking is administrative in nature and does not set a standard based on science.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted.

Statutory Authority

The rulemaking appears to be authorized pursuant to Sections 39-105 and 39-107, Idaho Code.

cc: Department of Environmental Quality
Paula J. Wilson

*** PLEASE NOTE ***

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology



Eric Milstead
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

December 06, 2019

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Id 83706-1255

Dear Paula J. Wilson:

The Senate and House Subcommittees for review of administrative rules have reviewed the proposed changes to the Department of Environmental Quality rules:

IDAPA 58.01.06 - Solid Waste Management Rules - Proposed Rule - Docket No. 58-0106-1901

No meeting will be held, and we are pleased to report that no objections will be filed.

Sincerely yours,

A handwritten signature in black ink that reads "Katharine J. Gerrity". The signature is fluid and cursive.

Katharine Gerrity
Deputy Division Manager

KAG/jk

cc:

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
www.legislature.idaho.gov

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.06 – SOLID WASTE MANAGEMENT RULES

DOCKET NO. 58-0106-1901

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Sections 39-105 and 39-107, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before November 20, 2019. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: DEQ initiated this rulemaking in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that certain rules are outdated, unnecessary, or redundant. Various sections throughout IDAPA 58.01.06, Solid Waste Management Rules, have been identified for deletion, simplification, or consolidation with other sections.

Public and private solid waste facility owners and operators, environmental professionals and consultants, special interest groups including industry associations and conservation and environmental groups, public officials representing various counties and cities, and the public at large may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Idaho Board of Environmental Quality (Board) in 2020 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2021 legislative session if adopted by the Board and approved by the Legislature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220. On August 1, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the August 2019 issue of the Idaho Administrative Bulletin, [Vol. 19-8, pages 154–155](#), and a meeting was held on August 29, 2019. Key information was posted on the DEQ website and distributed to the public. Members of the public participated in the negotiated rulemaking process by attending the meeting. No comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule draft, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0106-1901.

IDAHO CODE SECTION 39-107D STATEMENT: IDAPA 58.01.06, Solid Waste Management Rules, regulate activities that are not specifically regulated by the federal government and are broader in scope than federal regulations. The federal government does provide criteria for municipal solid waste landfills; however, the federal regulations do not regulate non-municipal solid waste landfill in Idaho. These rules address non-municipal solid waste landfills. This rulemaking is administrative in nature and does not set a standard based on science.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Matt Beater at matthew.beater@deq.idaho.gov or (208) 373-0121.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before December 4, 2019.

Dated this 6th day of November, 2019.

Paula J. Wilson
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706
Phone: (208) 373-0418
Fax: (208) 373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0106-1901
(Only Those Sections With Amendments Are Shown.)

001. TITLE AND SCOPE.

- 01. Title.** These rules are titled IDAPA 58.01.06, "Solid Waste Management Rules." (4-2-03)
- 02. Scope.** These rules establish requirements applicable to all solid waste and solid waste management facilities in Idaho, except as specifically provided in Subsections 001.03 and 001.04. (4-2-03)
- 03. Wastes Not Regulated Under These Rules.** (4-2-03)
- a.** These rules do not apply to the following solid wastes: (4-2-03)
- i. Liquid wastes when the discharge or potential discharge of the liquid waste is regulated under a federal, state or local water pollution discharge or wastewater land application permit, including management of any solids if management of the solids are addressed in a permit term or condition; (4-2-03)
- ii. Hazardous wastes regulated by the Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code, and the rules adopted thereunder; (4-2-03)
- iii. Polychlorinated biphenyl (PCB) waste regulated under the Toxic Substance Control Act, 15 U.S.C. 2601, et seq., ~~with the exception that the PCB Waste Disposal Act, Chapter 62, Title 39, Idaho Code,~~ and these rules ~~shall~~ apply to PCB waste authorized by federal law to be disposed of at a nonhazardous waste landfill that is permitted, licensed or registered under Idaho Law; ~~(4-2-03)~~ ()
- iv. Slash or slashing areas resulting from the harvesting of timber and the disposal of which is managed pursuant to Chapter 1, Title 38, Idaho Code or log landings or sorting sites; (4-2-03)
- v. Wastes used, managed, stored and disposed in accordance with The Wood and Mill Yard Debris Technical Guidance Manual, as amended, published by the Department and developed pursuant to Sections 39-171 through 39-174, Idaho Code; (4-2-03)
- vi. Clean soils and clean dredge spoils as regulated under Section 404 of the federal Clean Water Act provided that they are not hazardous wastes regulated by the Hazardous Waste Management Act, Chapter 44, Title

DEPARTMENT OF ENVIRONMENTAL QUALITY
Solid Waste Management Rules

Docket No. 58-0106-1901
Proposed Rulemaking

39, Idaho Code and the rules adopted thereunder; (4-2-03)

vii. Septage taken to a sewage treatment plant permitted by either the U.S. Environmental Protection Agency or the Department pursuant to IDAPA 58.01.15, "Rules Governing the Cleaning of Septic Tanks"; (4-2-03)

viii. All radioactive waste and radioactive materials regulated pursuant to Section 39-4405(9), Idaho Code and rules adopted thereunder and radioactive waste and materials regulated under the authority of the Atomic Energy Act of 1954, as amended.; (4-2-03)

ix. Petroleum Contaminated Soils (PCS) from a leaking petroleum storage tank system managed as a one (1) time remediation pursuant to IDAPA 58.01.02, "Water Quality Standards"; or (4-2-03)

x. Asbestos as regulated by the Toxic Substances Control Act, as amended, 15 U.S.C. Sections 2601, et seq., or asbestos as regulated by the Clean Air Act, as amended, 42 U.S.C. Section 7412. (4-2-03)

xi. Nonhazardous wastes disposed in a permitted hazardous waste treatment, storage and disposal unit regulated by the Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code, and rules adopted thereunder; (4-2-03)

xii. Waste otherwise regulated under Department authorities. (4-2-03)

b. These rules do not apply to the following solid waste unless these wastes are mixed with more than incidental quantities of regulated waste; (4-2-03)

i. Inert wastes; (4-2-03)

ii. Manures and crop (plant) residues ultimately returned to the soils at agronomic rates; (4-2-03)

iii. Any agricultural solid waste which is managed and regulated pursuant to rules adopted by the Idaho Department of Agriculture. The Department reserves the right to use existing authorities to regulate agricultural waste that impacts human health or the environment; (4-2-03)

iv. Overburden, waste dumps, low-grade stockpiles, tailings and other materials uniquely associated with mineral extraction, beneficiation or processing operations; (4-2-03)

v. Slag from the production of elemental phosphorus; (4-2-03)

vi. Phospho-gypsum from the production of phosphate fertilizers, which includes the production of phosphoric acid; and (4-2-03)

vii. Wood waste used for ornamental, animal bedding, mulch and plant bedding, or road building purposes. (4-2-03)

04. Solid Waste Management Facilities Not Regulated Under These Rules. These Rules do not apply to the following solid waste management facilities: (4-2-03)

a. Solid waste management facilities accepting only solid waste excluded by Subsection 001.03; (4-2-03)

b. Recycling centers; or (4-2-03)

c. Backyard composting sites. (4-2-03)

~~**d.** Facilities which cease accepting solid waste prior to April 26, 2002 shall be required to only comply with applicable cover, seeding, grading and closure requirements of the former Solid Waste Management Rules and Standards, as follows: (4-2-03)~~

**DEPARTMENT OF ENVIRONMENTAL QUALITY
Solid Waste Management Rules**

**Docket No. 58-0106-1901
Proposed Rulemaking**

~~i. Grading. The entire site, including the landfill surfaces, shall be graded and provided with drainage facilities to minimize runoff onto and into the sanitary landfill to prevent erosion or washing and to prevent the collection of standing water. The grading of the final surface of the fill area must provide a slope of not less than one percent (1%), but not exceeding fifteen percent (15%), except as approved by the Department or as required in Section 39-7415(3), Idaho Code. (4-2-03)~~

~~ii. Seeding. Seeding to promote stabilization of the final soil cover shall be done as soon as weather permits seed bed preparation and planting operations and when seasonal conditions are suitable for the type of vegetation to be used. Re-seeding is mandatory until adequate vegetative cover is established to prevent erosion. (4-2-03)~~

~~iii. Site Closure. An inspection of the entire site of the completed sanitary landfill, or other solid waste management site that is to be vacated, shall be made by a representative of the District before earth moving equipment or other equipment vital to disposal of solid waste is removed from the site or used on other projects. Any necessary corrective work shall be performed before the operation is accepted as completed. (4-2-03)~~

~~(1) An official notice of closure of the site shall be sent to the District at the time the site is closed. (4-2-03)~~

~~(2) Arrangements shall be made for the repair of all cracked, eroded, and uneven areas in the final cover during the year following completion of fill operations. (4-2-03)~~

002. WRITTEN INTERPRETATIONS. (RESERVED)

~~The Department of Environmental Quality may have written statements that pertain to the interpretation of the rules in this chapter. Any such written statements are available for review at the Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255. (4-2-03)~~

(BREAK IN CONTINUITY OF SECTIONS)

004. APPLICABILITY.

These rules apply to all solid waste unless excluded by Subsection 001.03 and to all ~~existing, new or modified~~ solid waste management sites in Idaho ~~identified in Subsection 004.01 and 004.02~~, unless excluded by Subsection 001.04. Compliance with these rules ~~shall~~ **does** not relieve owners and operators from the obligation to comply with other applicable state or federal laws, including but not limited to the IDAPA 58.01.02, "Water Quality Standards," IDAPA 58.01.11, "Ground Water Quality Rule," and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho." (4-2-03)()

01. Solid Waste Facility Other Than Municipal Solid Waste Landfills (MSWLF) Applicability. Sections 000 through 060 and Section 999 apply to all solid waste facilities other than MSWLF, as specified therein. (4-2-03)

02. Municipal Solid Waste Landfill Applicability. Sections 000 through 007, and Sections 994 through 999 apply to all MSWLFs, as specified therein. (4-2-03)

005. DEFINITIONS.

01. Active Portion. That part of a ~~new or existing facility or~~ unit where waste had been, or may be, disposed of, treated, or otherwise managed, and that has not been closed in accordance with applicable rules. (4-2-03)()

02. Backyard Composting. Composting operations used only by the owner or person in control of a residential dwelling unit to process garbage and yard waste generated at that dwelling unit. (4-2-03)

03. Beneficial Use. Various uses of ground water in Idaho including, but not limited to, domestic water supplies, ~~industrial water supplies~~, industrial water supplies and agricultural water supplies. A beneficial use is defined as actual current and projected future uses of ground water. (4-2-03)()

04. Commercial Solid Waste Facility. A MSWLF owned and operated as an enterprise conducted with the intent of making a profit by any individual, association, firm, or partnership for the disposal of solid waste, but excluding a MSWLF owned or operated by a political subdivision, state or federal agency or, municipality or a MSWLF owned or operated by any individual, association, firm, or partnership exclusively for the disposal of solid waste generated by such individual, association, firm, or partnership. (4-2-03)

05. Composting Facility. See definition of Processing Facility. (4-2-03)

06. ~~Conditionally Exempt~~ Very Small Quantity Generator (~~CEV~~SQG) Hazardous Waste. As defined in 40 CFR Part ~~261.5~~ 260.10. (4-2-03)()

07. ~~Conditionally Exempt~~ Very Small Quantity Generator (~~CEV~~SQG) Management Facility. A facility or portion thereof where household hazardous waste or ~~CEV~~SQG wastes are transferred from a vehicle or container and subsequently transported to another facility. A ~~CEV~~SQG management facility does not include temporary drop off locations or other facilities where individuals or businesses are authorized to store waste for ultimate collection and disposal. (4-2-03)()

08. Contamination. The introduction of a substance into the surface or ground water causing: (4-2-03)

a. At or beyond the point of compliance, the concentration of that substance in ground water to result in significant degradation, as determined pursuant to Subsection 400.02.b of ~~IDAPA 58.01.11, the Idaho~~ "Ground Water Quality Rule," or in an exceedance of the maximum contamination level (MCL) specified in the ~~Idaho~~ Ground Water Quality Rule; (4-2-03)()

b. The concentration of that substance in surface water exceeds a numerical criteria or fails to protect designated beneficial uses specified in the ~~Idaho~~ "Water Quality Standards," IDAPA 58.01.02; (4-2-03)()

c. A statistically significant increase in the concentration of that substance in the ground water at or beyond the point of compliance, or in surface water, where the existing concentration of that substance exceeds the contamination level specified in Subsections 005.08.a. or 005.08.b. of this rule; or (4-2-03)

d. A statistically significant increase in the concentration of that substance in ground water at the point of compliance, or in surface water, above background of a substance which; (4-2-03)

i. Is not specified in Subsections 005.08.a. or 005.08.b. of this rule; and (4-2-03)

ii. Is a result of the disposal of solid waste; and (4-2-03)

iii. Has been determined by the department to present a substantial risk to human health or the environment in the concentrations found in the ground water at the point of compliance, or in surface water. (4-2-03)

09. Degradation. The lowering of ground water quality as measured in a statistically significant and reproducible manner. (4-2-03)

10. Department. The Idaho Department of Environmental Quality. (4-2-03)

11. Director. The Director of the Idaho Department of Environmental Quality. (4-2-03)

12. Disposal. Discharge, deposit, injection, dumping, spilling, leaking, leaching, migration or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water. (4-2-03)

13. ~~Existing Facility.~~ ~~A facility operating and receiving solid waste on or before April 26, 2002.~~ (4-2-03)

143. Facility. Any area used for any solid waste management activity, including, but not limited to,

**DEPARTMENT OF ENVIRONMENTAL QUALITY
Solid Waste Management Rules**

**Docket No. 58-0106-1901
Proposed Rulemaking**

~~storage, transfer, processing, separation, incineration, treatment, salvaging, or disposal of solid waste.~~ (4-2-03)()

- ~~a. Storage;~~ (4-2-03)
- ~~b. Transfer;~~ (4-2-03)
- ~~c. Processing;~~ (4-2-03)
- ~~d. Separation;~~ (4-2-03)
- ~~e. Incineration;~~ (4-2-03)
- ~~f. Treatment;~~ (4-2-03)
- ~~g. Salvaging; or~~ (4-2-03)
- ~~h. Disposal of solid waste.~~ (4-2-03)

154. Garbage. Any waste consisting of putrescible animal and vegetable materials resulting from the handling, preparation, cooking and consumption of food, including wastes materials from households, markets, storage facilities, handling and sale of produce and other food products. (4-2-03)

165. Ground Water. Any water of the state that occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (4-2-03)

176. Household Waste. Any solid waste, including kitchen wastes, trash and sanitary waste in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas. (4-2-03)

187. Incinerator. Any source consisting of a furnace and all appurtenances thereto designed for the destruction of solid waste by burning. "Open Burning" is not considered incineration. (4-2-03)

198. Inert Waste. Noncombustible, nonhazardous, and non-putrescible solid wastes that are likely to retain their physical and chemical structure and have a de minimis potential to generate leachate under expected conditions of disposal, which includes resistance to biological attack. "Inert waste" includes, but is not limited to, rock, concrete, cured asphaltic concrete, masonry block, brick, gravel, dirt, inert coal combustion by-products, inert precipitated calcium carbonate and inert component mixture of wood or mill yard debris. (4-2-03)

2019. Landfill. An area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well or waste pile, as those terms are defined under 40 CFR 257.2. (4-2-03)

210. Leachate. A liquid that has passed through or emerged from waste and contains soluble, suspended, or miscible materials removed from such waste. (4-2-03)

221. Lift. A vertical rise of compacted solid waste that is complete when it is no longer practical to add additional height without the addition of a cover layer to provide structural stability. (4-2-03)

232. Modification. Any change in the physical characteristics, waste types managed, method of operation, or lateral expansion beyond the boundaries of a site. The following ~~shall~~ **is** not ~~be~~ considered a modification: (4-2-03)()

- a. Repair and replacement of existing equipment; (4-2-03)
- b. Increase in production rate that does not exceed the Tier level criteria or approved facility capacity; (4-2-03)

c. An increase in hours of operation if more restrictive hours of operation are not specified in an approved operating plan; and (4-2-03)

d. Acquisition of property that is not to be used for the processing or disposal of solid waste. (4-2-03)

243. **Municipal Solid Waste Landfill Unit (MSWLF).** As regulated under Chapter 74, Title 39, Idaho Code, a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 CFR 257.2. A MSWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, ~~conditionally exempt small quantity generator~~ **VSOQ** waste and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. (4-2-03)()

254. **Non-Municipal Solid Waste (NMSW).** A solid waste that is: (4-2-03)

a. Not mixed with household waste; or (4-2-03)

b. Not excluded from these rules by Subsection 001.03. (4-2-03)

265. **Non-Municipal Solid Waste Landfill (NMSWLF).** A landfill that accepts only non-municipal solid waste. (4-2-03)

276. **Open Burning.** The combustion of solid waste without: (4-2-03)

a. Control of combustion air to maintain adequate temperature for efficient combustion; (4-2-03)

b. Containment of the combustion reaction in an enclosed device so as to provide sufficient residence time and mixing for complete combustion; and (4-2-03)

c. Control of the emission of the combustion products. (4-2-03)

287. **Operator.** The person(s) responsible for the overall operation of all or part of a site or facility. (4-2-03)

298. **Owner.** The person(s) who owns land or a portion of the land on which a site or facility is located. (4-2-03)

3029. **Person.** Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal government department, agency, or instrumentality, municipality, industry, or any other legal entity which is recognized by law as the subject of rights and duties. (4-2-03)

340. **Point of Compliance.** A vertical surface located no more than one hundred fifty (150) yards hydraulically down gradient from the active portion of a facility or site, located at the facility boundary down gradient of the land area, or located at the point of diversion of an identified beneficial use within the site, whichever is the smallest distance from the active portion. (4-2-03)

321. **Processing Facility.** A facility that uses biological or chemical decomposition to prepare solid waste for reuse, excluding waste handling at transfer stations or recycling centers. (4-2-03)

332. **Projected Waste Volume.** The total actual or potential solid waste volume measured in tons per day, cubic yards per day, or an equivalent measurement, proposed to be received or processed at a solid waste facility. (4-2-03)

343. **Pumpable Waste.** Wastes, including non-domestic septage, sludge, wastewater and non-municipal solid wastes, which are pumped from a holding area or container into a watertight tank truck or equivalent and transported for processing or disposal. (4-2-03)

354. Qualified Professional. Qualified professional means a licensed professional geologist or licensed professional engineer, as appropriate, holding current professional registration in good standing and in compliance with applicable provisions of Chapter 12, Title 54, Idaho Code. (4-2-03)

365. Recyclables. Used, end, or waste products with useful properties that can be reused. (4-2-03)

376. Recycling. The reclamation of solid waste and its subsequent introduction into an industrial process by which the materials are transformed into a new product in such a manner that the original identity as a product is lost. (4-2-03)

387. Recycling Center. A materials recovery facility that receives recyclables, then sorts, bales, loads, or physically alters the material and transports the commodities to markets. (4-2-03)

398. Salvage. The reclamation of solid waste at a disposal site. (4-2-03)

4039. Scavenge. The unauthorized removal of materials from a facility. (4-2-03)

410. Septage. A semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a septic tank system. (4-2-03)

421. Site. Any contiguous geographic area with one (1) or more facilities owned or operated by the same person ~~for any of the following activities:~~ used for any solid waste management activity, including, but not limited to, storage, transfer, processing, separation, incineration, treatment, salvaging, or disposal of solid waste. (4-2-03)()

~~a. Storage; (4-2-03)~~

~~b. Transfer; (4-2-03)~~

~~c. Processing; (4-2-03)~~

~~d. Separation; (4-2-03)~~

~~e. Incineration; (4-2-03)~~

~~f. Treatment; (4-2-03)~~

~~g. Salvaging; or (4-2-03)~~

~~h. Disposal of solid waste. (4-2-03)~~

432. Site Size. The sum in acres of all proposed or existing facilities. (4-2-03)

443. Solid Waste. Any garbage or refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923). (4-2-03)

454. Speculative Accumulation. Stock piles of materials or recyclables to be processed for reuse or disposal when fifty percent (50%) of the material is not reused or disposed by the end of the following calendar year after the date of first receipt by the facility, and which may create a nuisance or public health impact. (4-2-03)

465. Storm Water. Accumulation of water from natural precipitation, including snow melt. (4-2-03)

DEPARTMENT OF ENVIRONMENTAL QUALITY
Solid Waste Management Rules

Docket No. 58-0106-1901
Proposed Rulemaking

476. Surface Water. All surface accumulations of water, natural or artificial, public or private, or parts thereof which are wholly or partially within, which flow through or border upon the state, unless such waters are an integral part of the facility's operation for storm water control and or leachate management. (4-2-03)

487. Tipping Floor. An area at a transfer station, processing facility, ~~CEVSQ~~ management facility or incinerator that receives and contains all waste materials. (4-2-03)()

498. Toxic Leachate or Gas. Concentrations of leachate or gas that will cause contamination, as defined by these rules, or that will exceed standards in the IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho." (4-2-03)

5049. Transfer Station. A facility or portion thereof where solid wastes are transferred from a vehicle or container and subsequently transported off-site to another facility. A transfer station does not include an authorized rural drop-box or other facilities where persons are authorized to store individual waste for ultimate collection and disposal, or any other facility that stores solid waste generated at the facility for collection and disposal off-site. ~~A transfer station shall include waste tire collection sites as defined in Section 39-6501, Idaho Code.~~ (4-2-03)()

510. Wood or Mill Yard Debris Facility. A facility that manages exclusively, solid wood, bark, or wood fiber generated from the process of manufacturing wood products that may include ash from the burning of wood waste in amounts and in conformity with the requirements of the Wood & Mill Yard Technical Guidance Manual, components of soil, rock, or moisture. (4-2-03)

521. Yard Waste. Weeds, straw, leaves, grass clippings, brush, wood, and other natural, organic, materials typically derived from general landscape maintenance activities. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

008. ~~OFFICE OFFICE HOURS MAILING ADDRESS AND STREET ADDRESS. (RESERVED)~~
The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, telephone number (208) 373-0502. The office hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. (4-2-03)

009. SOLID WASTE MANAGEMENT FACILITY CLASSIFICATION.

01. BRC Facilities. A facility is below regulatory concern (BRC) provided it is a processing facility that does not manage PCS or pumpable waste, and the cumulative volume of solid waste at the facility at any one (1) time is less than or equal to three hundred (300) cubic yards. (4-2-03)

02. Tier I Facilities. Tier I facilities shall comply with the requirements identified in Section 011. A facility shall be classified as a Tier I facility if the Department determines the facility is: (4-2-03)

a. A landfill that only accepts for disposal materials that are not likely to produce leachate including, but not limited to, glass, plastic, cardboard, wood, composition roofing material, roofing paper, or ceramics, and which has a total disposal capacity of less than or equal to two thousand (2000) cubic yards. (4-2-03)

b. A processing facility that only processes wastes including, but not limited to, untreated or unpainted wood, yard waste, sheet rock, clean paper products, animal manures, plant or crop residues, or garbage without meats or animal fats, and the cumulative volume of wastes at the facility at any one time is less than or equal to six hundred (600) cubic yards. (4-2-03)

c. A processing facility that only manages PCS not excluded under Subsection 001.03.a.ix. or pumpable wastes and the cumulative volume of material at the facility at any one (1) time is less than or equal to two hundred (200) cubic yards; or (4-2-03)

d. An emergency solid waste management facility that only accepts debris resulting from a natural disaster. (4-2-03)

03. Tier II Facility. Tier II facilities shall comply with the Tier II general siting, operational and closure requirements and any applicable Tier II facility specific requirements. Tier II facilities are not required to install ground water monitoring wells, leachate collection systems or liners. Facilities shall be classified as a Tier II facility if the Department determines the facility is not: (1) landfilling or disposing of ~~CEV~~VSQG hazardous waste; (2) landfilling or disposing of materials with a high human pathogenic potential; (3) managing solid waste in a manner or volume that will form toxic leachate or gas; or (4) managing solid waste in a manner or volume that is likely to pose a substantial risk to human health or the environment. A Tier II facility is one that meets the four (4) above criteria and is identified below: ~~(4-2-03)~~()

a. A NMSW landfill which has a total disposal capacity greater than two thousand (2000) cubic yards; or
(4-2-03)

b. A processing facility or incinerator that has a cumulative volume of wastes at the facility at any one time that is greater than six hundred (600) cubic yards; or
(4-2-03)

c. A processing facility that only manages PCS not excluded under Subsection 001.03.a.ix or pumpable wastes and the cumulative volume of material at the facility at any one (1) time is greater than two hundred (200) cubic yards; or
(4-2-03)

d. A transfer station or ~~CEV~~VSQG waste management facility. ~~(4-2-03)~~()

04. Tier III Facility. Tier III facilities shall comply with the Tier III general siting, operating and closure requirements, ground water monitoring requirements, install leachate collection systems, liners, air contaminant control systems and any applicable Tier III facility specific requirements. Facilities shall be classified as a Tier III facility if the Department determines the facility is: (1) a facility landfilling or disposing of ~~CEV~~VSQG hazardous waste; (2) a facility landfilling or disposing of materials with a high human pathogenic potential; (3) a facility managing solid waste in a manner or volume that will form toxic leachate or gas; or (4) a facility managing solid waste in a manner or volume that is likely to pose a substantial risk to human health or the environment. ~~(4-2-03)~~()

05. Wood or Mill Yard Debris Facilities. ~~For the period of one (1) year after April 1, 2003, all Wood or Mill Yard Debris Facilities that are not exempt from these Rules as provided in Section 001.03 shall be regulated as Tier I Facilities. Thereafter, a~~All Wood and Mill Yard Debris Facilities that are not exempt from these Rules as provided in Section 001.03 shall be regulated as Tier I Facilities unless, based on site-specific criteria including but not limited to site geology, site soils, groundwater characteristics, distance to surface waters, and site climatic data, the Department determines the facility is more appropriately regulated under a different tier classification. Facilities not regulated as a Tier I Facility shall be regulated as a Tier II Facility unless the Department determines the facility manages waste in a manner that will form toxic leachate or gas. ~~(4-2-03)~~()

06. Site Specific Classification. An owner or operator of a facility classified as a Tier I, Tier II or Tier III facility may request to be regulated pursuant to the requirements of a lower classification. An owner or operator requesting site specific classification must submit information demonstrating to the Department that, when in compliance with the requirements of a lower classification, the facility would not cause contamination, toxic leachate or gas, or concentrations of a substance that exceed standards in the IDAPA 58.01.01 "Rules for the Control of Air Pollution in Idaho." The information included in any request under this subsection shall include: (4-2-03)

a. Characterization of waste and expected quantities of waste; (4-2-03)

b. Site characterization including; (4-2-03)

i. Site geology report; (4-2-03)

ii. Site soils report; (4-2-03)

iii. Ground water report; (4-2-03)

**DEPARTMENT OF ENVIRONMENTAL QUALITY
Solid Waste Management Rules**

**Docket No. 58-0106-1901
Proposed Rulemaking**

- iv. Site climatic data; (4-2-03)
- c. Facility Design Plan; (4-2-03)
- d. Operating Plan; and (4-2-03)
- e. Closure Plan. (4-2-03)

07. General and Site Specific Classification Process. The Department's review of a request for a site specific classification shall be conducted pursuant to the process set forth in Section 032. (4-2-03)

010. BELOW REGULATORY CONCERN FACILITIES.

01. Applicable Requirements. The owner and operator of a *new* BRC facility shall comply with the following requirements prior to accepting waste. ~~The owner and operator of an existing BRC facility shall comply with the following requirements within two (2) years from April 26, 2002. During the two-year period from April 26, 2002, existing facilities shall operate in compliance with their approved operating plan and 40 CFR 257.1 through 257.3.~~ (4-2-03)()

- a. Prohibited Activities. The following activities are prohibited: (4-2-03)
 - i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. "Regulated waste" and "decontaminated" for the purpose of Section 010 ~~shall~~ will have the same meaning as defined at 29 CFR 1910.1030; (4-2-03)()
 - ii. Speculative accumulation, unless otherwise approved by the Department in writing; and (4-2-03)
 - iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code, and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended. (4-2-03)
- b. Nuisance Control. The owner and operator shall control nuisances, including but not limited to: (4-2-03)
 - i. Disease or discomfort. Operations at any facility shall not provide sustenance to rodents or insects that cause human disease or discomfort; (4-2-03)
 - ii. Vector. Vector control procedures shall prevent or control vectors that may cause health hazards or nuisances; (4-2-03)
 - iii. Odor. The facility shall be operated to control malodorous gases; and (4-2-03)
 - iv. Litter. Effective measures shall be taken to minimize the loss of debris from the facility. Debris blown from or within the facility shall be collected and properly disposed to prevent objectionable accumulations. (4-2-03)
- c. Bird Hazards to Aircraft. No facility may handle putrescible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft; and (4-2-03)
- d. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by ~~these rules and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho."~~ Section 061. (4-2-03)()
 - i. ~~No open burning shall be conducted during an air pollution episode, declared in accordance with~~

**DEPARTMENT OF ENVIRONMENTAL QUALITY
Solid Waste Management Rules**

**Docket No. 58-0106-1901
Proposed Rulemaking**

~~IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho."~~

~~(4-2-03)~~

~~ii. Open burning is authorized only if it is infrequent and the materials are agricultural wastes, silviculture wastes, land clearing debris, diseased trees, or debris from emergency cleanup operations. Materials burned shall not include garbage, dead animals, asphalt, petroleum products, paints, tires or other rubber products, plastics, paper (other than that necessary to start the fire), cardboard, treated wood, construction debris, metal, pathogenic wastes, hazardous wastes, or any other substance (other than natural vegetation) that when burned releases toxic emissions, dense smoke or strong odors.~~

~~(4-2-03)~~

~~iii. Open burning shall be conducted pursuant to conditions set forth by the Department or local fire authority. The owner and operator of the facility shall contact the Department and the local fire authority prior to conducting open burning to report its nature and location.~~

~~(4-2-03)~~

02. Application Content, Review and Approval Requirements. The owner and operator of a BRC facility are not required to submit an application. (4-2-03)

03. Documentation Requirements. The owner and operator shall maintain on site documentation, such as a daily log of the quantity and type of waste received or managed, that verifies the facility's BRC status. (4-2-03)

011. APPLICABLE REQUIREMENTS FOR TIER I FACILITIES.

01. Applicable Requirements. The owner and operator of a ~~new~~ Tier I facility shall comply with the following requirements prior to accepting waste. ~~The owner and operator of an existing Tier I facility shall comply with the following requirements within two (2) years from April 26, 2002. During the two-year period from April 26, 2002, existing facilities shall operate in compliance with their approved operating plan, if any, and 40 CFR 257.1 through 257.3.~~

~~(4-2-03)()~~

a. Prohibited Activities. The following activities are prohibited: (4-2-03)

i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. "Regulated waste" and "decontaminated" for the purpose of Section 011 ~~shall~~ will have the same meaning as defined at 29 CFR 1910.1030; (4-2-03)()

ii. Speculative accumulation, unless otherwise approved by the Department in writing; and (4-2-03)

iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code, and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended. (4-2-03)

b. Signs. Facilities open to the general public shall clearly post visible and legible signs at each entrance to the facility. The signs shall specify at a minimum the name of the facility, the hours of operation, the waste accepted at the facility and an emergency phone number. (4-2-03)

c. Nuisance Control. The owner and operator shall control nuisances, including but not limited to: (4-2-03)

i. Disease or Discomfort. Operations at any facility shall not provide sustenance to rodents or insects that cause human disease or discomfort; (4-2-03)

ii. Vector. Vector control procedures shall prevent or control vectors that may cause health hazards or nuisances; (4-2-03)

iii. Odor. The facility shall be operated to control malodorous gases; and (4-2-03)

iv. Litter. Effective measures shall be taken to minimize the loss of debris from the facility. Debris

blown from or within the facility shall be collected and properly disposed to prevent objectionable accumulations. (4-2-03)

d. Facility Access. Unauthorized vehicles and persons shall be prohibited access to the facility. A facility open to the public shall accept waste only when an attendant is on duty. The facility shall be fenced or otherwise blocked to access when an attendant is not on duty. The owner and operator shall maintain the fencing or other access controls for a period of ten (10) years after closure, or another timeframe approved in writing by the Department. (4-2-03)

e. Bird Hazards to Aircraft. No facility may handle putrescible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft. (4-2-03)

f. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by ~~these rules and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho."~~ **Section 061.** (4-2-03)()

~~i. No open burning shall be conducted during an air pollution episode, declared in accordance with IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho."~~ (4-2-03)

~~ii. Open burning is authorized only if it is infrequent and the materials are agricultural wastes, silviculture wastes, land clearing debris, diseased trees, or debris from emergency cleanup operations. Materials burned shall not include garbage, dead animals, asphalt, petroleum products, paints, tires or other rubber products, plastics, paper (other than that necessary to start the fire), cardboard, treated wood, construction debris, metal, pathogenic wastes, hazardous wastes, or any other substance (other than natural vegetation) that when burned releases toxic emissions, dense smoke or strong odors.~~ (4-2-03)

~~iii. Open burning shall be conducted pursuant to conditions set forth by the Department or local fire authority. The owner and operator of the facility shall contact the Department and the local fire authority prior to conducting open burning to report its nature and location.~~ (4-2-03)

g. Storm Water Run-On/Run-Off Controls. Implement sufficient storm water management provisions, which may incorporate a NPDES storm water pollution prevention plan, to prevent contamination of surface or ground water and prevent the spread and impact of contamination beyond the boundary of the facility. (4-2-03)

h. Variance Request. An owner and operator may submit a written variance request for a variance from the requirements listed in Section 011. The owner and operator must demonstrate to the Department that the variance is at least as protective of human health and the environment as the requirements listed in Section 011. (4-2-03)

02. Application Content, Review and Approval Requirements. The owner and operator of a Tier I facility shall submit notification to the Department prior to operating. The notice shall include; the owners name, operators name, physical location of site, mailing address, facility phone number and type of solid waste management facility. (4-2-03)

03. Documentation Requirements. The owner and operator shall maintain on site documentation, such as a daily log of the quantity and type of waste received, that verifies the facility's Tier I status. (4-2-03)

012. APPLICABLE REQUIREMENTS FOR TIER II FACILITIES.

The owner and operator of a ~~new~~ Tier II facility shall establish compliance with the requirements of Section 012 by obtaining Department approval of the applications required in Subsection 012.02 before beginning construction and Subsection 012.04 prior to accepting waste. ~~The owner and operator of an existing Tier II facility shall establish compliance with the requirements of Section 012 by obtaining Department approval of the applications required in Subsection 012.04 within two (2) years from April 26, 2002, and Subsection 012.02 within five (5) years from April 26, 2002. During the two (2) year period from April 26, 2002, existing facilities shall operate in compliance with their approved operating plan, if any, and 40 CFR 257.1 through 257.3. In lieu of submitting an application, the owner and operator of existing facilities may demonstrate to the Department, compliance with Section 012 by~~

**DEPARTMENT OF ENVIRONMENTAL QUALITY
Solid Waste Management Rules**

**Docket No. 58-0106-1901
Proposed Rulemaking**

~~submitting copies of existing permits and other approvals that establish compliance with the applicable siting, design, operating, closure, and post closure requirements of Section 012 and Subsection 032.01.~~ The owner and operator of a Tier II facility shall meet the requirements of Subsection 012.05 prior to facility closure; ~~except that owners and operators closing Tier II facilities within eighteen (18) months from April 26, 2002 shall comply with applicable cover, seeding, grading and closure requirements of the former Solid Waste Management Rules and Standards, as enumerated in Subsection 001.04.d. of these rules.~~ (4-2-03)()

01. General Siting Requirements. The owner and operator of a Tier II facility shall comply with the following siting requirements: (4-2-03)()

a. Flood Plain Restriction. A facility shall not be located within a one hundred (100) year flood plain if the facility will restrict the flow of the one hundred (100) year flood, reduce the temporary water storage capacity of the flood plain, or result in a washout of solid waste so as to pose a hazard to human health and the environment. (4-2-03)

b. Endangered or Threatened Species Restriction. The facility shall not cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife or result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in 50 CFR Part 17. (4-2-03)

c. Surface Water Restriction. The active portion of a facility shall be located such that the facility shall not cause contamination of surface waters, unless such surface waters are an integral part of the non-municipal solid waste management facility's operation for storm water and/or leachate management. (4-2-03)

d. Park, Scenic or Natural Use Restriction. The active portion of a facility shall not be located closer than one thousand (1,000) feet from the boundary of any state or national park, or land reserved or withdrawn for scenic or natural use including, but not limited to, wild and scenic areas, national monuments, wilderness areas, historic sites, recreation areas, preserves and scenic trails. (4-2-03)

e. Variance from Siting Requirement. An owner or operator of ~~an existing or planned~~ facility that cannot meet the siting requirements of Section 012 may apply for a variance from the Department. The Department shall approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of public health and the environment as the siting requirements in Section 012. (4-2-03)()

02. Siting Application. Documentation shall be submitted to the Department demonstrating compliance with the siting requirements and restrictions specified in Subsection 012.01 within the time frames specified in Section 012. If the documentation has been certified by a qualified professional, the Director shall approve the siting application unless the Director finds the evidence supports a contrary opinion. A map indicating the following shall also be submitted to the Department as part of a Siting Application: (4-2-03)

- a.** Highways, roads, and adjacent communities; (4-2-03)
- b.** Property boundaries; (4-2-03)
- c.** Total acreage of the site; (4-2-03)
- d.** Off-site and on-site access roads and service roads; (4-2-03)
- e.** Type(s) of land use adjacent to the facility and a description of all facilities on the site; (4-2-03)
- f.** All water courses, ponds, lakes, reservoirs, canals, irrigation systems, and existing water supplies, within one-quarter (1/4) mile of the proposed facility property lines; (4-2-03)
- g.** High tension power line rights-of-way, fuel transmission pipeline rights-of-way, and proposed and existing utilities; (4-2-03)
- h.** Proposed or existing fencing; (4-2-03)

i. Proposed and existing structures at the facility and within five hundred (500) feet of the facility boundary. This shall include location of employee buildings, and scales (if provided); and (4-2-03)

j. Direction of prevailing winds. (4-2-03)

03. General Operating Requirements. The owner and operator of a Tier II facility shall comply with the following operating requirements: (4-2-03)

a. Prohibited Activities. The following activities are prohibited: (4-2-03)

i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. "Regulated waste" and "decontaminated" for the purpose of Section 012 ~~has~~ have the same meaning as defined at 29 CFR 1910.1030; (4-2-03)()

ii. Speculative accumulation, unless otherwise approved in an operating plan; and (4-2-03)

iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code, and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended. (4-2-03)

b. Signs. Facilities open to the general public shall clearly post visible and legible signs at each entrance to the facility specifying, at a minimum, the name of the facility, the hours of operation, the waste accepted at the facility and an emergency phone number. (4-2-03)

c. Waste Types. Only the solid waste types listed in the approved operating plan may be accepted for disposal or processing. (4-2-03)

d. Waste Monitoring and Measurement. Provisions shall be made for monitoring or measuring all solid waste delivered to a facility. The waste monitoring program shall include: (4-2-03)

i. A daily written log listing the types and quantities of wastes received; (4-2-03)

ii. A plan for monitoring and handling receipt of unauthorized wastes; (4-2-03)

iii. Routine characterization of the wastes received; and (4-2-03)

iv. Other measures included in an approved Operating Plan. (4-2-03)

e. Communication. Communication devices shall be available or reasonably accessible at the site. (4-2-03)

f. Fire Prevention and Control. Adequate provisions shall be made for controlling or managing fires at the site. (4-2-03)

g. Facility Access. Unauthorized vehicles and persons shall be prohibited access to the facility. A facility open to the public shall accept waste only when an attendant is on duty. The facility shall be fenced or otherwise blocked to access when an attendant is not on duty. (4-2-03)

h. Scavenging and Salvaging. Scavenging by the public at a facility is prohibited; however, salvaging may be conducted in accordance with a written operations plan and only by the owner, operator or an authorized agent. (4-2-03)

i. Nuisance Control. The owner and operator shall control nuisances, including but not limited to: (4-2-03)

DEPARTMENT OF ENVIRONMENTAL QUALITY
Solid Waste Management Rules

Docket No. 58-0106-1901
Proposed Rulemaking

- i. Disease or Discomfort. Operations at any facility shall not provide sustenance to rodents or insects that cause human disease or discomfort; (4-2-03)
- ii. Vector. Vector control procedures shall prevent or control vectors that may cause health hazards or nuisances; (4-2-03)
- iii. Odor. The facility shall be operated to control malodorous gases; and (4-2-03)
- iv. Litter. Effective measures shall be taken to minimize the loss of debris from the facility. Debris blown from or within the facility shall be collected and properly disposed to prevent objectionable accumulations. (4-2-03)
- j. Bird Hazards to Aircraft. No facility may handle putrescible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft. (4-2-03)
- k. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by *these rules and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho." Section 061.* (4-2-03)()
- ~~i. No open burning shall be conducted during an air pollution episode, declared in accordance with IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho."~~ (4-2-03)
- ~~ii. Open burning is authorized only if it is infrequent and the materials are agricultural wastes, silviculture wastes, land clearing debris, diseased trees, or debris from emergency cleanup operations. Materials burned shall not include garbage, dead animals, asphalt, petroleum products, paints, tires or other rubber products, plastics, paper (other than that necessary to start the fire), cardboard, treated wood, construction debris, metal, pathogenic wastes, hazardous wastes, or any other substance (other than natural vegetation) that when burned releases toxic emissions, dense smoke or strong odors.~~ (4-2-03)
- ~~iii. Open burning shall be conducted pursuant to conditions set forth by the Department or local fire authority. The owner and operator of the facility shall contact the Department and the local fire authority prior to conducting open burning to report its nature and location.~~ (4-2-03)
- l. Storm Water Run-On/Run-Off Controls. The operating plan shall include sufficient storm water management provisions, which may incorporate a NPDES storm water pollution prevention plan, to prevent contamination of surface and ground water and prevent the spread and impact of contamination beyond the boundary of the facility. (4-2-03)
- m. Variance Request. An owner and operator of an ~~an existing or planned~~ facility may submit to the Department a written variance request for a variance from the operating requirements listed in Section 012. The Department shall approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of human health and the environment as the requirements listed in Section 012. (4-2-03)()
- 04. Operating Plan.** The owner and operator of a Tier II facility shall submit to the Department an Operating Plan containing that information required by Subsection 012.03, within the time frames stated in Section 012. An Operating Plan shall include a description of the wastes to be accepted, the methods for maintaining compliance with each of the applicable general operating requirements of Subsection 012.03, and complies with any applicable facility specific requirements found in Subsections 012.09 through 012.11. (4-2-03)
- 05. Closure Requirement.** The owner and operator of a Tier II facility shall comply with the following closure and post-closure care requirements: (4-2-03)
- a. Public Notice. For a facility open to the public the owner and operator shall provide public notice of the facility's closure by publishing a notice in the local newspaper and posting signs at the facility's entrance. This

notice shall be published and the signs posted; (4-2-03)

i. At least thirty (30) days and no more than ninety (90) days prior to the date of last receipt of waste for a facility that has reached disposal capacity; or (4-2-03)

ii. If the facility has remaining capacity and there is a reasonable likelihood that the facility will receive additional waste, a notice shall be published and signs posted at least thirty (30) days and no more than ninety (90) days prior to closure. (4-2-03)

b. Facility Closure. Unless the Department establishes an alternate closure time period, the owner and operator shall close the facility within six (6) months of the Department's approval of the Closure Plan. The facility shall be closed in accordance with the approved Closure Plan. (4-2-03)

c. Clean Site/Access Control. The owner and operator shall close the facility by managing or removing all solid waste to prevent impact to human health or the environment and installing a gate or other device to prevent public access after the last receipt of waste; and (4-2-03)

d. Drainage and Erosion Control. The owner and operator shall install appropriate measures to control erosion and install appropriate measures to control the run-on and runoff from a twenty-five (25) year, twenty-four (24) hour storm event and to provide for the diversion of other surface waters from the closed facility. (4-2-03)

e. Closure Plan Certification. Within thirty (30) days of closure, the owner and operator shall notify the Department in writing that the facility was closed in accordance with the approved Closure Plan. If closure of the facility is different from the approved Closure Plan, the owner and operator shall submit for Department review and approval documents, such as "as-built" plans, showing the final conditions of the facility. (4-2-03)

06. Closure Plan Application. Except as specified in Subsection 012.10, the owner and operator of a Tier II facility shall submit to the Department a Closure Plan Application containing the following information no later than ninety (90) days before the date on which the facility receives the known final receipt of wastes or, if the facility has remaining capacity and there is a reasonable likelihood that the facility will receive additional wastes, no later than one (1) year after the most recent receipt of wastes: (4-2-03)

a. A complete and accurate legal description of the facility; (4-2-03)

b. A map of the facility, showing pertinent facility features, including: (4-2-03)

i. Facility boundaries, drainage patterns, location of fill areas, and location of access control measures; (4-2-03)

ii. All water courses, ponds, lakes, reservoirs, canals, irrigation systems, and existing water supplies, within one-quarter (1/4) mile of the facility boundary; (4-2-03)

iii. Location of disposal trenches and description of waste disposed; and (4-2-03)

iv. Proposed final contours of the closed facility, drawn to a reasonable scale with five (5) foot intervals for the operational area, and ten (10) foot intervals for the remainder of the facility; (4-2-03)

c. Estimated date of last receipt of waste; (4-2-03)

d. A description of how public access to the closed facility will be controlled; (4-2-03)

e. Estimated total cubic yards, or tons, of waste in place; (4-2-03)

f. Total acreage of the facility and acres containing waste; (4-2-03)

g. Closure equipment and procedures to be used; (4-2-03)

DEPARTMENT OF ENVIRONMENTAL QUALITY
Solid Waste Management Rules

Docket No. 58-0106-1901
Proposed Rulemaking

- h.** Texture, depth and permeability of final cover material; (4-2-03)
- i.** Design and construction plan for any necessary final cover; (4-2-03)
- j.** Placement, design, and management of run-on and run-off storm water controls; (4-2-03)
- k.** Types of vegetation and planting procedures to be used for establishing vegetative cover; (4-2-03)
- l.** Other closure information the Department determines is necessary to protect human health and the environment. (4-2-03)

07. Documentation Requirements. The owner and operator of a Tier II facility shall maintain on site a copy of each Department-approved Application and Plan required by Section 012. (4-2-03)

08. Modification Application. The owner and operator shall submit to the Department for review and approval a Modification Application describing any proposed modification. The owner and operator of a Tier II facility shall not implement the modification prior to Department approval. If a proposed modification alters the classification of a facility, the owner and operator shall comply with the application content, review and approval requirements for the new classification. (4-2-03)

09. Tier II Processing Facilities. In addition to the requirements in Subsections 012.01 through 012.08, the owner and operator of a Tier II processing facility shall also comply with the following requirements: (4-2-03)

- a.** Siting Requirements: (4-2-03)
 - i.** Ground Water. The active portion of a facility shall be located, designed and constructed such that the facility shall not cause contamination to a drinking water source or cause contamination of the ground water. (4-2-03)
 - ii.** Geologic Restrictions. No facility may be located on land that would threaten the integrity of the design. (4-2-03)
 - iii.** Property Line Restriction. The active portion of a facility shall not be located closer than one hundred (100) feet to the property line. (4-2-03)

b. Siting Application. The owner and operator shall provide in the Siting Application documentation that demonstrates compliance with the siting requirements specified in Subsection 012.01 and 012.09.a. (4-2-03)

- c.** Operating Requirements: (4-2-03)
 - i.** Odor Management Plan. The owner and operator of a Tier II processing facility shall implement a Department approved Odor Management Plan designed to minimize malodorous gases. An Odor Management Plan shall include specific operating criteria for oxygen, moisture and temperature levels appropriate for the wastes to be processed and processing technologies to be employed, methods used to maintain the specific operating criteria and a monitoring strategy that includes the frequency and parameters for monitoring the specific operating criteria. (4-2-03)

ii. Documentation requirement. The owner and operator of a processing facility shall maintain documentation of compliance with Section 012, including an operational log of the methods used to maintain the operating criteria and sampling results. (4-2-03)

d. Operating Plan. The operating plan required in Subsection 012.04 shall identify methods used for maintaining compliance with each applicable operating requirement of Subsection 012.03 and Subsection 012.09.c. (4-2-03)

10. Tier II Incinerators, ~~CE~~YSQG Management Facility and Transfer Stations. In addition to the

**DEPARTMENT OF ENVIRONMENTAL QUALITY
Solid Waste Management Rules**

**Docket No. 58-0106-1901
Proposed Rulemaking**

requirements in Subsections 012.01 through 012.04 and Subsections 012.07 and 012.08, the owner and operator of a Tier II incinerator, ~~CEV~~ SQG management facility or transfer station shall comply with the following requirements: ~~(4-2-03)()~~

a. Design Requirements. The owner and operator shall comply with the following design requirements: (4-2-03)

i. A tipping floor design constructed of impermeable and durable material and designed to contain, collect, and convey any liquids to a storage or leachate management system. ~~Any transfer station that accepts only waste tires will not be required to construct a tipping floor;~~ ~~and~~ (4-2-03)()

ii. A leachate storage or management system. (4-2-03)

b. Design Application. The following information shall be submitted to the Department in a Design Application: (4-2-03)

i. A description of the tipping floor design; (4-2-03)

ii. A description of the storage or leachate management system design; (4-2-03)

iii. Building and construction design blueprints; (4-2-03)

iv. A map illustrating a storm water run-on/run-off system designed to prevent contamination of surface and ground water, and prevent the spread and impact of contamination beyond the boundary of the facility; and (4-2-03)

v. Operational design and capacity information including a description of the waste types and projected daily and annual waste volumes. (4-2-03)

c. Operating Requirements. The owner and operator of a Tier II facility shall comply with the following operating requirements: (4-2-03)

i. Implement cleaning procedures and waste residency times to maintain sanitary conditions on the surface of the tipping floor; and (4-2-03)

ii. Implement and operate a leachate storage or management system. (4-2-03)

~~**d.** Waste Tire Collection Site Requirements. Individual tire piles shall not exceed five thousand (5000) square feet of continuous area, nor fifty thousand (50,000) cubic feet in volume or ten (10) feet in height. (4-2-03)~~

ed. Closure Requirement. The owner and operator of a Tier II facility shall comply with the following closure and post-closure care requirements: (4-2-03)

i. Public Notice. For a facility open to the public the owner and operator shall provide public notice of the facility's closure by publishing a notice in the local newspaper and posting signs at the facility's entrance. This notice shall be published and the signs posted at least thirty (30) days prior to closure; (4-2-03)

ii. Facility Closure. The owner and operator shall close the facility by removing all solid waste to prevent impact to human health or the environment and installing a gate or other device to prevent public access after the last receipt of waste; ~~and~~ (4-2-03)()

iii. Closure Time Period. Unless the Department establishes an alternate closure time period, the owner and operator shall close the facility within two (2) months of the Department's approval of the Closure Plan. The facility shall be closed in accordance with the approved Closure Plan; ~~and~~ (4-2-03)()

iv. Closure Plan Certification. Within thirty (30) days of closure, the owner and operator shall notify the Department in writing that the facility was closed in accordance with the approved Closure Plan. If closure of the

DEPARTMENT OF ENVIRONMENTAL QUALITY
Solid Waste Management Rules

Docket No. 58-0106-1901
Proposed Rulemaking

facility is different from the approved Closure Plan, the owner and operator shall submit for Department review and approval documents, such as “as-built” plans, showing the final conditions of the facility. (4-2-03)

f. Closure Plan Application. The owner and operator shall submit to the Department a Closure Plan Application containing the following information no later than ninety (90) days before the date on which the facility receives the known final receipt of wastes: (4-2-03)

- i. A complete and accurate legal description of the facility; (4-2-03)
- ii. A map of the facility, showing pertinent facility features, including facility boundaries, drainage patterns, and location of access control measures; (4-2-03)
- iii. Estimated date of last receipt of waste; (4-2-03)
- iv. A description of how public access to the closed facility will be controlled; (4-2-03)
- v. Closure equipment and procedures to be used; (4-2-03)
- vi. Anticipated future uses for the facility; and ~~(4-2-03)~~ ()
- vii. Other closure information the Department determines is necessary to protect human health and the environment. (4-2-03)

11. Tier II NMSWLF. In addition to the requirements in Subsections 012.01 through 012.08, the owner and operator of a Tier II NMSWLF shall also comply with the following requirements: (4-2-03)

- a. Siting Requirements:** (4-2-03)
 - i. Wetlands. A facility shall not be located in wetlands, except as provided in 40 CFR 257.9. (4-2-03)
 - ii. Ground Water. The active portion of a facility shall be located, designed and constructed such that the facility shall not cause contamination to a drinking water source or cause contamination of the ground water. (4-2-03)
 - iii. Geologic Restrictions. No facility may be located on land that would threaten the integrity of the design. (4-2-03)
 - iv. Property Line Restriction. The active portion of a facility shall not be located closer than one hundred (100) feet to the property line. (4-2-03)

b. Siting Application. The owner and operator shall provide in the Siting Application documentation that demonstrates compliance with the siting requirements specified in Subsections 012.01 and 012.11.a.; (4-2-03)

c. Design Application. The owner and operator shall provide the following information for design approval: (4-2-03)

- i. A facility map illustrating: (4-2-03)
 - (1) Surface water and erosion control systems; (4-2-03)
 - (2) Proposed fill area, including the location of waste disposal trenches or cells, noting the locations of trenches used for separated wastes such as animal carcasses, tree trunks, stumps, bulky wastes, car bodies, asbestos, and petroleum contaminated soils; (4-2-03)
 - (3) Location of borrow areas; (4-2-03)
 - (4) Design elevation grade of final cover; (4-2-03)

DEPARTMENT OF ENVIRONMENTAL QUALITY
Solid Waste Management Rules

Docket No. 58-0106-1901
Proposed Rulemaking

- (5) Soil and water table test boring holes, wells, or excavations; (4-2-03)
- (6) Proposed receiving, storage, and processing areas; (4-2-03)
- (7) Proposed trench layout and development; and (4-2-03)
- (8) Contour lines at five (5) foot intervals within the operating area and ten (10) foot intervals to the facility boundary. (4-2-03)

d. Operating Requirements: The owner and operator of a NMSWLF shall comply with the following operating requirements: (4-2-03)

- i. Compaction and placement of waste in locations consistent with the approved operating plan; (4-2-03)
- ii. Provision for storage of waste during periods when the NMSWLF is inaccessible; (4-2-03)
- iii. Application of a six (6) inch compacted soil cover layer on exposed waste as necessary to prevent nuisance and vector conditions at periods consistent with the approved operating plan. An owner and operator may request that the Department approve an alternate cover that addresses vectors, litter, fire, odor, and scavenging concerns; (4-2-03)
- iv. Placement of an interim cover layer of twelve (12) inches of compacted soil between lifts to provide erosion control and structural stability. An owner and operator may request that the Department approve an alternate interim cover that addresses erosion, and stability for subsequent lifts; (4-2-03)
- v. Preservation of existing vegetation where attainable. (4-2-03)

e. Operating Plan. The operating plan required in Subsection 012.04 shall identify the methods used for maintaining compliance with each applicable operating requirement of Subsection 012.03 and Subsection 012.11.d.; (4-2-03)

f. Closure Requirements. The owner and operator of a Tier II NMSWLF shall comply with the following closure requirements: (4-2-03)

- i. **Final Cover.** Within seven (7) days of the date of last receipt of waste, a cover layer shall be applied to prevent nuisances and vector conditions. Within one hundred and twenty (120) days of the date of last receipt of waste, a final cover layer of eighteen (18) inches of compacted soil with an approved in-place permeability designed to minimize infiltration, or its functional equivalent, and, a six (6) inch soil layer that minimizes erosion and sustains plant growth shall be constructed; (4-2-03)
- ii. **Facility Stabilization.** All disturbed portions of the facility shall be stabilized. Stabilization practices may include but are not limited to: establishment of vegetation, mulching, geotextiles, and sod stabilization; (4-2-03)
- iii. **Slope Stability.** Finished grade shall be at a minimum of two percent (2%) and a maximum of thirty- three percent (33%) slope on the final surface of the completed fill area, after settlement; and (4-2-03)
- iv. **Drainage Control.** The completed landfill shall be graded to prevent surface water ponding and erosion, and to conform to the local topography. (4-2-03)

g. Closure Plan. The owner and operator shall provide in the Closure Plan documentation that demonstrates compliance with closure requirements specified in Subsections 012.05 and 012.11.f. (4-2-03)

h. ~~Deed Notation~~ Environmental Covenants: (~~4-2-03~~)()

**DEPARTMENT OF ENVIRONMENTAL QUALITY
Solid Waste Management Rules**

**Docket No. 58-0106-1901
Proposed Rulemaking**

i. After completion and certification of closure of a NMSWLF, the owner and operator shall record ~~a notation on the deed to the landfill facility property, or some other recorded instrument that is normally examined during title search and is commonly recorded in the County where the landfill facility property is located, to provide notice to any potential purchaser that~~ an environmental covenant, pursuant to the Uniformed Environmental Covenants Act (UECA) Chapter 30, Title 55, Idaho Code, on the property ~~has been used as a solid waste processing or disposal facility where the landfill facility is located~~ and its future use may be restricted in accordance with a post-closure care plan. A copy of the ~~notated deed, or other recorded instrument~~ environmental covenant shall be sent to the Department after recording with the county clerk; (4-2-03)()

ii. The owner may request permission from the Department to remove the ~~notation from the deed, or to remove the other recorded instrument,~~ environmental covenant if all wastes are removed from the facility; (4-2-03)()

iii. Federal agencies with responsibility for management of landfills on federal property shall make an environmental covenant or notation in the federal property records for the affected property. If the subject property is ever sold or transferred by the federal government, a notation on the deed or patent shall be made. (4-2-03)()

i. Post-Closure Care Plan. Owners and operators of a NMSWLF shall submit, in accordance with the time frames specified in Subsection 012.06, to the Department for review and approval a Post-Closure Care Plan, shall obtain Department approval of the Plan, and shall conduct post-closure care in accordance with the Plan. The Post-Closure Care Plan shall typically contain: (4-2-03)

i. The name and address of an agent authorized to accept communications or service during the post-closure period. The name may be changed during the post-closure period by providing the Department with twenty (20) days advance written notice of the change; (4-2-03)

ii. Provisions to maintain the integrity and effectiveness of the final cover; (4-2-03)

iii. Provisions to continue to maintain and operate the systems required in the operating plan including run-on/run-off control systems; (4-2-03)

iv. Provisions to maintain appropriate security of the closed facility; (4-2-03)

v. Provisions for routine facility inspections by the owner and operator to insure compliance with the Post-Closure Care Plan; and (4-2-03)

vi. A description of the planned use(s) of the property during the post-closure care period: (4-2-03)

j. Post-closure care for the NMSWLF shall be conducted for a period of five (5) years, unless the Department establishes in writing an alternate facility-specific post-closure care period. (4-2-03)

k. Post-Closure Standards and Inspection. Post-closure use or operation of the site shall not disturb any final cover or storm water control systems in a manner that will increase the potential to threaten human health or the environment. (4-2-03)

l. The approved Post-Closure Care Plan shall be maintained and available for review on request by the Department. (4-2-03)

013. APPLICABLE REQUIREMENTS FOR TIER III FACILITIES.

The owner and operator of a ~~new~~ Tier III facility shall establish compliance with the requirements of Section 013 by obtaining Department approval of the applications required in Subsection 013.02 before beginning construction and Subsection 013.04 prior to accepting waste. ~~The owner and operator of an existing Tier III facility shall establish compliance with the requirements of Section 013 by obtaining Department approval of the applications required in Subsection 013.04 within two (2) years from April 26, 2002, and Subsection 013.02 within five (5) years from April 26, 2002. During the two (2) year period from April 26, 2002, existing facilities shall operate in compliance with their approved operating plan and 40 CFR 257.1 through 257.3. In lieu of submitting an application, the owner and operator of existing facilities may demonstrate to the Department, compliance with Section 013 by submitting copies~~

**DEPARTMENT OF ENVIRONMENTAL QUALITY
Solid Waste Management Rules**

**Docket No. 58-0106-1901
Proposed Rulemaking**

~~of existing permits and other approvals that establish compliance with the applicable siting, design, operating, closure, and post closure requirements of Section 013 and Subsection 032.01.~~ The owner and operator of a Tier III facility shall meet the requirements of Subsection 012.07 prior to facility closure; ~~except that owners and operators closing Tier III facilities within eighteen (18) months from April 26, 2002 shall comply with applicable cover, seeding, grading and closure requirements of the former Solid Waste Management Rules and Standards, as enumerated in Subsection 001.04.d. of these rules.~~ (4-2-03)()

01. General Siting Requirements. The owner and operator of a Tier III facility shall comply with the following siting requirements: (4-2-03)

a. Flood Plain Restriction. A facility shall not be located within a one hundred (100) year flood plain if the facility will restrict the flow of the one hundred (100) year flood, reduce the temporary water storage capacity of the flood plain, or result in a washout of solid waste so as to pose a hazard to human health and the environment. (4-2-03)

b. Endangered or Threatened Species Restriction. The facility shall not cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife or result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in 50 CFR Part 17. (4-2-03)

c. Surface Water Restriction. The active portion of a facility shall be located such that the facility shall not cause contamination of surface waters, unless such surface waters are an integral part of the non-municipal solid waste management facility's operation for storm water and/or leachate management. (4-2-03)

d. Ground Water. The active portion of the facility shall be located, designed and constructed such that the facility shall not cause contamination to a drinking water source or cause contamination of ground water. (4-2-03)

e. Geologic Restrictions. No facility may be located on land that would threaten the integrity of the design. (4-2-03)

f. Property Line Restriction. The active portion of a facility shall not be located closer than one hundred (100) feet to the property line. (4-2-03)

g. Park, Scenic or Natural Use Restriction. The active portion of a facility shall not be located closer than one thousand (1,000) feet from the boundary of any state or national park, or land reserved or withdrawn for scenic or natural use including, but not limited to, wild and scenic areas, national monuments, wilderness areas, historic sites, recreation areas, preserves and scenic trails. (4-2-03)

h. Variance from Siting Requirement. Any ~~existing or planned~~ facility that does not meet the siting requirements of Section 013 may apply for a variance from the Department. The Department may approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of public health and the environment as the siting requirements in Section 013. (4-2-03)()

02. Siting Application. Documentation shall be submitted to the Department demonstrating compliance with the siting requirements and restrictions specified in Subsection 013.01 within the time frames specified in Section 013. If the documentation has been certified by a qualified professional, the Director shall approve the siting application unless the Director finds the evidence supports a contrary opinion. A map indicating the following shall also be submitted to the Department as part of a Siting Application: (4-2-03)

a. Highways, roads, and adjacent communities; (4-2-03)

b. Property boundaries; (4-2-03)

c. Total acreage of the site; (4-2-03)

d. Off-site and on-site access roads and service roads; (4-2-03)

DEPARTMENT OF ENVIRONMENTAL QUALITY
Solid Waste Management Rules

Docket No. 58-0106-1901
Proposed Rulemaking

- e. Type(s) of land use adjacent to the facility and a description of all facilities on the site; (4-2-03)
 - f. All water courses, ponds, lakes, reservoirs, canals, irrigation systems, and existing water supplies, within one-quarter (1/4) mile of the proposed facility property lines; (4-2-03)
 - g. High tension power line rights-of-way, fuel transmission pipeline rights-of-way, and proposed and existing utilities; (4-2-03)
 - h. Proposed or existing fencing; (4-2-03)
 - i. Proposed and existing structures at the facility and within five hundred (500) feet of the facility boundary. This shall include location of employee buildings, and scales (if provided); and (4-2-03)
 - j. Direction of prevailing winds. (4-2-03)
- 03. General Operating Requirements.** The owner and operator of a Tier III facility shall comply with the following operating requirements: (4-2-03)
- a. Prohibited Activities. The following activities are prohibited: (4-2-03)
 - i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. “Regulated waste” and “decontaminated” for the purpose of Section 013 ~~has~~ have the same meaning as defined at 29 CFR 1910.1030; (4-2-03)()
 - ii. Speculative accumulation, unless otherwise approved in an operating plan; and (4-2-03)
 - iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended. (4-2-03)
 - b. Signs. Facilities open to the general public shall clearly post visible and legible signs at each entrance to the facility specifying, at a minimum, the name of the facility, the hours of operation, the waste accepted at the facility and an emergency phone number. (4-2-03)
 - c. Waste Types. Only the solid waste types listed in the approved operating plan may be accepted for disposal or processing. (4-2-03)
 - d. Waste Monitoring and Measurement. Provisions shall be made for monitoring or measuring all solid waste delivered to a facility. The waste monitoring program shall include: (4-2-03)
 - i. A daily written log listing the types and quantities of wastes received; (4-2-03)
 - ii. A plan for monitoring and handling receipt of unauthorized wastes; (4-2-03)
 - iii. Routine characterization of the wastes received; and (4-2-03)
 - iv. Other measures included in an approved Operating Plan. (4-2-03)
 - e. Communication. Communication devices shall be available or reasonably accessible at the site. (4-2-03)
 - f. Fire Prevention and Control. Adequate provisions shall be made for controlling or managing fires at the site. (4-2-03)
 - g. Facility Access. Unauthorized vehicles and persons shall be prohibited access to the facility. A facility open to the public shall accept waste only when an attendant is on duty. The facility shall be fenced or

DEPARTMENT OF ENVIRONMENTAL QUALITY
Solid Waste Management Rules

Docket No. 58-0106-1901
Proposed Rulemaking

otherwise blocked to access when an attendant is not on duty. (4-2-03)

h. Scavenging and Salvaging. Scavenging by the public at a facility is prohibited; however, salvaging may be conducted in accordance with a written operating plan and only by the owner, operator or an authorized agent. (4-2-03)

i. Nuisance Control. The owner and operator shall control nuisances, including but not limited to: (4-2-03)

i. Disease or Discomfort. Operations at any facility shall not provide sustenance to rodents or insects that cause human disease or discomfort; (4-2-03)

ii. Vector. Vector control procedures shall prevent or control vectors that may cause health hazards or nuisances; (4-2-03)

iii. Odor. The facility shall be operated to control malodorous gases; and (4-2-03)

iv. Litter. Effective measures shall be taken to minimize the loss of debris from the facility. Debris blown from or within the facility shall be collected and properly disposed to prevent objectionable accumulations. (4-2-03)

j. Bird Hazards to Aircraft. No facility may handle putrescible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft. (4-2-03)

k. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by ~~these rules and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho."~~ Section 061. (4-2-03)()

~~**i.** No open burning shall be conducted during an air pollution episode, declared in accordance with IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho."~~ (4-2-03)

~~**ii.** Open burning is authorized only if it is infrequent and the materials are agricultural wastes, silviculture wastes, land clearing debris, diseased trees, or debris from emergency cleanup operations. Materials burned shall not include garbage, dead animals, asphalt, petroleum products, paints, tires or other rubber products, plastics, paper (other than that necessary to start the fire), cardboard, treated wood, construction debris, metal, pathogenic wastes, hazardous wastes, or any other substance (other than natural vegetation) that when burned releases toxic emissions, dense smoke or strong odors.~~ (4-2-03)

~~**iii.** Open burning shall be conducted pursuant to conditions set forth by the Department or local fire authority. The owner and operator of the facility shall contact the Department and the local fire authority prior to conducting open burning to report its nature and location.~~ (4-2-03)

l. Storm Water Run-On/Run-Off Controls. The operating plan shall include sufficient storm water management provisions, which may incorporate a NPDES storm water pollution prevention plan, to prevent contamination of ground or surface water and prevent the spread and impact of contamination beyond the boundary of the facility. (4-2-03)

m. Variance Request. An owner and operator may submit to the Department a written variance request for a variance from the operating requirements listed in Section 013. The Department shall approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of human health and the environment as the requirements listed in Section 013. (4-2-03)

04. Operating Plan. The owner and operator of a Tier III facility shall submit to the Department an Operating Plan containing that information required by Subsection 013.03, within the time frames stated in Section 013. An Operating Plan shall include a description of the wastes to be accepted, the methods for maintaining compliance with each of the applicable general operating requirements of Subsection 013.03, and complies with any

DEPARTMENT OF ENVIRONMENTAL QUALITY
Solid Waste Management Rules

Docket No. 58-0106-1901
Proposed Rulemaking

applicable facility specific requirements found in Subsections 013.11 through 013.13.

(4-2-03)()

05. Ground Water Monitoring Requirements. The owner and operator of a ~~new~~ Tier III facility shall comply with the following ground water monitoring requirements:

(4-2-03)()

a. Install and maintain ground water monitoring wells at the point of compliance as approved by the Department;

(4-2-03)

b. Within thirty (30) days of completion of each well, submit a copy of the geologic log and record of well construction to the Department;

(4-2-03)

c. Monitor the ground water quarterly, unless otherwise directed by the Department. Constituents to be monitored shall be those listed in 40 CFR Part 257.24 unless otherwise authorized by the Department; and

(4-2-03)

d. The owner and operator of any facility required to monitor ground water pursuant to Section 013 shall continue the approved monitoring schedule for five (5) years following facility closure, unless otherwise approved by the Department upon request of the owner and operator for a modified monitoring schedule.

(4-2-03)

06. Ground Water Monitoring Application. The following information shall be submitted to the Department in a Ground Water Monitoring Application:

(4-2-03)

a. A map showing soil types, depth to ground water, ground water flow direction and locations of proposed ground water monitoring wells; and

(4-2-03)

b. A monitoring schedule indicating sample frequency and constituents to be analyzed.

(4-2-03)

07. Closure Requirement. The owner and operator of a Tier III facility shall comply with the following closure requirements:

(4-2-03)

a. Public Notice. For a facility open to the public the owner and operator shall provide public notice of the facility's closure by publishing a notice in the local newspaper and posting signs at the facility's entrance. This notice shall be published and the signs posted;

(4-2-03)

i. At least thirty (30) days and no more than ninety (90) days prior to the date of last receipt of waste for a facility that has reached disposal capacity; or

(4-2-03)

ii. If the facility has remaining capacity and there is a reasonable likelihood that the facility will receive additional waste, a notice shall be published and signs posted at least thirty (30) days and no more than ninety (90) days prior to closure.

(4-2-03)

b. Facility Closure. Unless the Department establishes an alternate closure time period, the owner and operator shall close the facility within six (6) months of the Department's approval of the Closure Plan. The facility shall be closed in accordance with the approved Closure Plan.

(4-2-03)

c. Clean Site/Access Control. The owner and operator shall close the facility by managing or removing all solid waste to prevent impact to human health or the environment and shall install a gate or other device to prevent public access after the last receipt of waste;

(4-2-03)

d. Drainage and Erosion Control. The owner and operator shall install appropriate measures to control erosion and install appropriate measures to control the run-on and runoff from a twenty-five (25) year, twenty-four (24) hour storm event and to provide for the diversion of other surface waters from the closed facility; and

(4-2-03)

e. Closure Plan Certification. Within thirty (30) days of closure, the owner and operator shall notify the department in writing that the facility was closed in accordance with the approved Closure Plan. If closure of the facility is different from the approved Closure Plan, the owner and operator shall submit for Department review and approval documents, such as "as-built" plans, showing the final conditions of the facility.

(4-2-03)

08. Closure Plan Application. The owner and operator of a Tier III facility shall submit to the Department a Closure Plan Application containing the information no later than ninety (90) days before the date on which the facility receives the known final receipt of wastes or, if the facility has remaining capacity and there is a reasonable likelihood that the facility will receive additional wastes, no later than one (1) year after the most recent receipt of wastes. The following information shall be submitted to the Department in a Closure Application: (4-2-03)

- a. A complete and accurate legal description of the facility; (4-2-03)
- b. A map of the facility, showing pertinent facility features, including: (4-2-03)
 - i. Facility boundaries, drainage patterns, location of fill areas, and location of access control measures; (4-2-03)
 - ii. All water courses, ponds, lakes, reservoirs, canals, irrigation systems, and existing water supplies, within one-quarter (1/4) mile of the facility boundary; (4-2-03)
 - iii. Location of disposal trenches and description of waste disposed; and (4-2-03)
 - iv. Proposed final contours of the closed facility, drawn to a reasonable scale with five (5) foot intervals for the operational area, and ten (10) foot intervals for the remainder of the facility; (4-2-03)
- c. Estimated date of last receipt of waste; (4-2-03)
- d. A description of how public access to the closed facility will be controlled; (4-2-03)
- e. Estimated total cubic yards, or tons, of waste in place; (4-2-03)
- f. Total acreage of the facility and acres containing waste; (4-2-03)
- g. Closure equipment and procedures to be used; (4-2-03)
- h. Texture, depth and permeability of final cover material; (4-2-03)
- i. Design and construction plan for any necessary final cover; (4-2-03)
- j. Placement, design, and management of run-on and run-off storm water controls; (4-2-03)
- k. Types of vegetation and planting procedures to be used for establishing vegetative cover; (4-2-03)
- l. Details of any proposed changes to any existing groundwater monitoring system; (4-2-03)
- m. Details of any proposed changes to any existing landfill gas control system; (4-2-03)
- n. Details of any proposed changes to any existing leachate collection system; and (4-2-03)
- o. Other closure information the Department determines is necessary to protect human health and the environment. (4-2-03)

09. Documentation Requirements. The owner and operator of a Tier III facility shall maintain on site each Department-approved application required by Section 013. (4-2-03)

10. Modification Application. The owner and operator shall submit to the Department a Modification Application describing the proposed modification no less than sixty (60) days prior to the proposed modification of the facility. The owner and operator of a Tier III facility shall not implement the modification prior to Department approval. If a proposed modification alters the classification of a facility, the owner and operator shall comply with the application content, review and approval requirements for the new classification. (4-2-03)

11. Tier III Processing Facilities. In addition to the requirements in Subsections 013.01 through 013.10, the owner and operator of a Tier III processing facility shall comply with the following requirements: (4-2-03)

a. Odor Management Plan. The owner and operator of a Tier III processing facility shall implement a Department approved Odor Management Plan designed to minimize malodorous gases. An Odor Management Plan shall include specific operating criteria for oxygen, moisture and temperature levels appropriate for the wastes to be processed and processing technologies to be employed; methods used to maintain the specific operating criteria and a monitoring strategy that includes the frequency and parameters for monitoring the specific operating criteria; (4-2-03)

b. Additional Requirements for PCS. Owners and operators of Tier III PCS processing facilities shall comply with the following applicable requirements: (4-2-03)

i. Leachate collection and control system to prevent contamination of ground and surface waters; (4-2-03)

ii. Liner designed to prevent ground and surface water contamination. The liner design shall account for the types of wastes handled and the potential for migration of liquids and gaseous contaminants to ground water; and (4-2-03)

iii. Air emission control system to prevent discharges of air pollutants. (4-2-03)

iv. An owner and operator of a PCS processing facility may submit a written request for a variance from the leachate control and liner requirements. The owner and operator must demonstrate that the variance is at least as protective of surface and ground water as the leachate collection system and liner. (4-2-03)

c. Design Application. The following information shall be submitted to the Department in a Design Application: (4-2-03)

i. Building and construction design blueprints; (4-2-03)

ii. A map illustrating a storm water run-on/run-off system designed to prevent contamination of ground or surface water or and prevent contamination beyond the boundary of the facility; (4-2-03)

iii. Operational design and capacity information including a description of the waste types and projected daily and annual waste volumes; and (4-2-03)

iv. Design and Construction Requirements. The owner and operator of a Tier III PCS processing facility shall submit for Department review and approval the following information as part of the Design Application: (4-2-03)

(1) A hydrogeologic evaluation, including the potential for migration of contamination to ground or surface water; (4-2-03)

(2) A detailed description of treatment methods to be used; (4-2-03)

(3) Design plans for a leachate collection and control system to prevent ground and surface water contamination from the leachate control system; (4-2-03)

(4) Design plans for an air emissions control system to prevent discharges of air pollutants; and (4-2-03)

(5) Design plans for a liner designed to prevent ground or surface water contamination. The liner design shall account for the types of wastes handled and the potential for migration of liquid and gaseous contaminants to ground water. (4-2-03)

DEPARTMENT OF ENVIRONMENTAL QUALITY
Solid Waste Management Rules

Docket No. 58-0106-1901
Proposed Rulemaking

d. Operating Plan. The owner and operator of a PCS processing facility shall submit for Department review and approval the following information as part of the Subsection 013.04, Operating Plan: (4-2-03)

i. A sampling plan that describes the methods and frequency that the owner and operator will use to sample and analyze the wastes when received, during processing, and on final testing of processed material; and (4-2-03)

ii. A description of how the owner and operator will maintain and operate the liner, leachate collection and control system, and air emission control system consistent with the approved design application. (4-2-03)

e. Documentation Requirement. The owner and operator of a processing facility shall maintain documentation of compliance with Section 013, including an operational log of the methods used to maintain the operating criteria and sampling results. (4-2-03)

12. Tier III Incinerators. In addition to the requirements in Subsections 013.01 through 013.04 and Subsections 013.09 and 013.10, the owner and operator of a Tier III incinerator shall comply with the following requirements: (4-2-03)

a. Design Requirements. The owner and operator of an incinerator comply with the following design requirements: (4-2-03)

i. A tipping floor constructed of impermeable and durable material and designed to contain, collect, and convey any liquids to a storage or leachate management system. ~~Any facility that accepts only waste tires will not be required to construct a tipping floor.~~ (4-2-03) ()

ii. A storage or leachate management system. (4-2-03)

b. Design Application. The following information shall be submitted to the Department in a Design Application: (4-2-03)

i. A description of the tipping floor design; (4-2-03)

ii. A description of the storage or leachate management system design; (4-2-03)

iii. Building and construction design blueprints; (4-2-03)

iv. A map illustrating a storm water run-on/run-off system designed to prevent ground or surface water contamination, or contamination from the facility beyond the boundary of the facility; (4-2-03)

v. Operational design and capacity information including a description of the waste types and projected daily and annual waste volumes; and (4-2-03)

vi. Any facility specific design elements required by these rules. (4-2-03)

c. Operating Requirements. The owner and operator of an incinerator shall comply with the following operating requirements: (4-2-03)

i. Maintain and operate the tipping floor to control odors, insects, and rodents; (4-2-03)

ii. Implement cleaning procedures and waste residency times used to maintain sanitary conditions on the surface of the tipping floor; and (4-2-03)

iii. Implement a storage or leachate management system operation. (4-2-03)

~~**d.** Waste Tire Collection Site Requirements. Individual tire piles shall not exceed five thousand (5000) square feet of continuous area, nor fifty thousand (50,000) cubic feet in volume or ten (10) feet in height. (4-2-03)~~

ed. If it is determined that the tipping floor or leachate management system integrity has been breached, or waste has been handled or stored outside of the containment of the tipping floor, unless allowed in the facility Operating Plan, the owner and operator of the Tier III incinerator shall comply with Subsections 013.05 through 013.08. (4-2-03)

13. Tier III NMSWLFs. In addition to the requirements in Subsection 013.01 through 013.10, the owner and operator of a Tier III NMSWLF shall comply with the following requirements: (4-2-03)

a. Siting Requirements: A facility shall not be located in wetlands, except as provided in 40 CFR 257.9; (4-2-03)

b. Siting Application. The owner and operator shall include in the Siting Application documentation demonstrating compliance with the requirement specified in Subsection 013.13.a.; (4-2-03)

c. Design and Construction Requirements: The owner and operator of a ~~new~~ NMSWLF shall comply with the following design and construction requirements: ~~(4-2-03)~~ ()

i. Leachate Collection and Control System. A leachate collection and control system shall be constructed to prevent ground and surface water contamination; (4-2-03)

ii. Liner. A liner designed to prevent ground or surface water contamination shall be installed. The liner design shall account for the types of wastes handled and the potential for migration of liquid and gaseous contamination to ground or surface water; (4-2-03)

iii. Landfill Emission Control System. Appropriate toxic and flammable gas monitoring devices shall be installed where the location, geophysical condition, and waste characteristics indicate that there is a reasonable probability that the facility will generate toxic and flammable gas: exceeding twenty-five (25) percent of the lower explosive limit for gases in facility structures (excluding gas control or gas recovery system components); exceeding the lower explosive limit at the property boundary; or otherwise presenting a potential threat to public health or the environment; and (4-2-03)

iv. An owner or operator may submit a written request for a variance from the leachate collection and control system, liner, or emission control system requirements. The Department may approve the variance upon demonstration by the owner or operator that the variance is at least as protective of human health and the environment as the leachate collection and control system, liner, or emission control system. (4-2-03)

d. Design Application. The following information shall be submitted to the Department in a Design Application: (4-2-03)

i. Design plans shall address the need for and include as required a leachate collection and control system, liner, and emission control systems in Subsection 013.13.c.; (4-2-03)

ii. A facility map illustrating: (4-2-03)

(1) Surface water and erosion control systems; (4-2-03)

(2) Proposed fill area, including the location of waste disposal trenches or cells, noting the locations of trenches used for separated wastes such as animal carcasses, tree trunks, stumps, bulky wastes, car bodies, asbestos, and petroleum contaminated soils; (4-2-03)

(3) Location of borrow areas; (4-2-03)

(4) Design elevation grade of final cover; (4-2-03)

(5) Soil and water table test boring holes, wells, or excavations; (4-2-03)

DEPARTMENT OF ENVIRONMENTAL QUALITY
Solid Waste Management Rules

Docket No. 58-0106-1901
Proposed Rulemaking

- (6) Proposed receiving, storage, and processing areas; (4-2-03)
 - (7) Proposed trench layout and development; and (4-2-03)
 - (8) Contour lines at five (5) foot intervals within the operating area and ten (10) foot intervals to the facility boundary. (4-2-03)
 - (9) Building and construction design blueprints; (4-2-03)
 - (10) Operational design and capacity information including a description of the waste types and projected daily and annual waste volumes; and (4-2-03)
- e.** Operating Requirements: The owner and operator of a NMSWLF shall comply with the following operating requirements: (4-2-03)
- i. Compaction and placement of waste in locations consistent with the approved operations plan; (4-2-03)
 - ii. Provision for storage of waste during periods when the NMSWLF is inaccessible; (4-2-03)
 - iii. Application of a six (6) inch compacted soil cover layer on exposed waste as necessary to prevent nuisance and vector conditions at periods consistent with the approved operations plan. An owner and operator may request that the Department approve an alternate cover that addresses vectors, litter, fire, odor, and scavenging concerns; (4-2-03)
 - iv. Placement of an interim cover layer of twelve (12) inches of compacted soil between lifts to provide erosion control and structural stability. An owner and operator may request that the Department approve an alternate interim cover that addresses erosion, and stability for subsequent lifts; (4-2-03)
 - v. Maintenance and operation of a leachate collection and control system and air emission control system consistent with the approved design application; and (4-2-03)
 - vi. Preservation of existing vegetation where attainable. (4-2-03)
- f.** Operating Plan. The operating plan required in Section 013 shall identify the methods used for maintaining compliance with each applicable operating requirement of Subsection 013.03. and Subsection 013.13.e. including but not limited to the type, the method of compaction and the frequency of application of respective cover materials; (4-2-03)
- g.** Closure Requirements. The owner and operator of a NMSWLF shall comply with the following closure requirements: (4-2-03)
- i. Final Cover. Within seven (7) days of the date of last receipt of waste, a cover layer shall be applied to prevent nuisances and vector conditions. Within one hundred and twenty (120) days of the date of last receipt of waste, a final cover layer of eighteen (18) inches of compacted soil with an approved in-place permeability designed to minimize infiltration, or its functional equivalent, and, a six (6) inch soil layer that minimizes erosion and sustains plant growth shall be constructed; (4-2-03)
 - ii. Facility Stabilization. All disturbed portions of the facility shall be stabilized. Stabilization practices may include but are not limited to: establishment of vegetation, mulching, geotextiles, and sod stabilization; (4-2-03)
 - iii. Slope Stability. Finished grade shall be at a minimum of two percent (2%) and a maximum of thirty- three percent (33%) slope on the final surface of the completed fill area, after settlement; and (4-2-03)
 - iv. Drainage Control. The completed landfill shall be graded to prevent surface water ponding and erosion, and to conform to the local topography. (4-2-03)

- h. Deed Notation Environmental Covenants: (4-2-03)()
- i. After completion and certification of closure of a NMSWLF, the owner and operator shall record ~~a notation on the deed to the landfill facility property, or some other recorded instrument that is normally examined during title search and is commonly recorded in the County where the landfill facility property is located, to provide notice to any potential purchaser that~~ an environmental covenant, pursuant to the Uniformed Environmental Covenants Act (UECA) Chapter 30, Title 55, Idaho Code, on the property ~~has been used as a solid waste processing or disposal facility~~ where the landfill facility is located and its future use may be restricted in accordance with a post-closure care plan. A copy of the ~~notated deed, or other recorded instrument, shall~~ environmental covenant will be sent to the Department after recording with the county clerk. (4-2-03)()
- ii. The owner may request permission from the Department to remove the ~~notation from the deed, or the other recorded instrument,~~ environmental covenant if all wastes are removed from the facility. (4-2-03)()
- iii. Federal agencies with responsibility for management of landfills on federal property shall make an environmental covenant or notation in the federal property records for the affected property. If the subject property is ever sold or transferred by the federal government, a notation on the deed or patent shall be made. (4-2-03)()
- i. Closure Plan. The owner and operator shall provide in the Closure Plan documentation that demonstrates compliance with closure requirements specified in Subsections 013.07 and 013.13.g. (4-2-03)
- j. Post-Closure Care Plan. Owners and operators of a NMSWLF shall submit, in accordance with the time frames specified in Subsection 013.08, to the Department for review and approval a Post-Closure Care Plan, shall obtain Department approval of the Plan, and shall conduct post-closure care in accordance with the Plan: (4-2-03)
- i. Unless the Department determines otherwise, the Post-Closure Care Plan shall contain: (4-2-03)
- (1) The name and address of an agent authorized to accept communications or service during the post-closure period. The name may be changed during the post-closure period by providing the Department with twenty (20) days advance written notice of the change; (4-2-03)
- (2) Provisions to maintain the integrity and effectiveness of the final cover; (4-2-03)
- (3) Provisions to continue to maintain and operate the systems required in the operating plan, including: run-on/run-off control systems, leachate collection and control systems, groundwater monitoring systems, and gas monitoring systems; (4-2-03)
- (4) Provisions to maintain appropriate security of the closed facility; (4-2-03)
- (5) Provisions for routine facility inspections by the owner and operator to insure compliance with the Post-Closure Care Plan; and (4-2-03)
- (6) A description of the planned use(s) of the property during the post-closure care period. (4-2-03)
- ii. Post-closure care for the NMSWLF shall be conducted for a minimum of five (5) years, but not more than thirty (30) years, as necessary to protect human health and the environment. (4-2-03)
- iii. Post-Closure Standards and Inspection. Post-closure use or operation of the site shall not disturb any final cover, liner or other component of the containment system in a manner that will increase the potential to threaten human health or the environment. (4-2-03)
- iv. The approved Post-Closure Care Plan shall be maintained and available for review on request by the Department. (4-2-03)
- v. The requirements in Subsection 013.07 shall apply to owners and operators and their successors and assigns. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

061. OPEN BURNING AND FIRES.

Open burning is prohibited at facilities except as authorized by IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho,” and the following: ()

01. No Open Burning During an Air Pollution Episode. No open burning may be conducted during an air pollution episode, declared in accordance with IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho”; ()

02. Conditions Under Which Open Burning Authorized. Open burning is authorized only if it is infrequent and the materials are agricultural wastes, silviculture wastes, land clearing debris, diseased trees, or debris from emergency cleanup operations. Materials burned may not include garbage, dead animals, asphalt, petroleum products, paints, tires or other rubber products, plastics, paper (other than that necessary to start the fire), cardboard, treated wood, construction debris, metal, pathogenic wastes, hazardous wastes, or any other substance (other than natural vegetation) that when burned releases toxic emissions, dense smoke or strong odors; and ()

03. Contact Department and Local Fire Authority Prior to Conducting Open Burning. Open burning may be conducted pursuant to conditions set forth by the Department or local fire authority. The owner and operator of the facility must contact the Department and the local fire authority prior to conducting open burning to report its nature and location. ()

~~061~~. -- 993. (RESERVED)

FINAL PROPOSAL
Dated March 16, 2020

SOLID WASTE MANAGEMENT RULES, DOCKET NO. 58-0106-1901

The proposed rule was published in the Idaho Administrative Bulletin, November 6, 2019, Vol. 19-11, pages 307 through 339. DEQ received no public comments and recommends that the Idaho Board of Environmental Quality adopt the rule as initially proposed.

The draft "Notice of Rulemaking – Adoption of Pending Rule" is attached.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.06 – SOLID WASTE MANAGEMENT RULES
DOCKET NO. 58-0106-1901
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Idaho Board of Environmental Quality (Board) and is now pending review by the 2021 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment *sine die* of the First Regular Session of the Sixty- sixth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Sections 39-105 and 39-107, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, November 6, 2019, Vol. 19-11, pages 307 through 339. DEQ received no public comments, and the rule has been adopted as initially proposed. More information regarding this rule docket is available at www.deq.idaho.gov/58-0106-1901.

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.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning the rulemaking, contact Matt Beeter at matthew.beeter@deq.idaho.gov or (208)373-0121.

Dated this 1st day of July, 2020

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton/Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

Idaho Board of Environmental Quality
May 14, 2020 Board Meeting

**Agenda Item 5: Rules for Administration of Wastewater Treatment
Facility Grants**

Docket No. 58-0104-1901 (Chapter Repeal)

Agenda Item #5

Rules for Administration of Wastewater Treatment Facility Grants, Docket No. 58-0104-1901 (Chapter Repeal)

I move that the Idaho Board of Environmental Quality adopt as pending rules the repeal of the Rules for Administration of Wastewater Treatment Facility Grants as presented in the final proposal under Docket No. 58-0104-1901, with the repeal becoming final and effective, if approved by the Legislature, upon the adjournment sine die of the First Regular Session of the Sixty-sixth Idaho Legislature.

<p>Docket Number: <u>58-0104-1901 – Chapter Repeal</u> Effective Date: <u>2021 Sine die</u> Rules Title: <u>IDAPA 58.01.04, Rules for Administration of Wastewater Treatment Facility Grants</u> Agency Contact and Phone: <u>Jerri Henry (208)373-0471</u></p>	<p style="text-align: center;"><u>Public Participation</u></p> <p>Negotiated Rule Making? <input checked="" type="checkbox"/> Yes [] No Negotiated Rulemaking Summary attached</p>
<p><u>Overview of Rulemaking</u></p> <p>DEQ initiated this rulemaking in response to Executive Order No. 2019-02, Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two facility planning grant rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.04, Rules for Administration of Wastewater Treatment Facility Grants, and merge necessary and relevant sections of IDAPA 58.01.04 with IDAPA 58.01.22, Rules for Administration of Planning Grants for Public Drinking Water Facilities. DEQ has initiated a separate rulemaking for the revisions to IDAPA 58.01.22 (Docket No. 58-0122-1901).</p>	<p>Proposed Rule: 11/6/19 Idaho Administrative Bulletin</p> <p>Public Hearings? [] Yes <input checked="" type="checkbox"/> No Locations and Dates: N/A</p> <p>Written Comment Deadline: 12/4/19</p> <p>Public Comments Received? [] Yes <input checked="" type="checkbox"/> No</p> <hr/> <p><u>Interim Legislative Review of Proposed Rule Pursuant to Idaho Code § 67-5223</u></p> <p>Meetings Held? [] Yes <input checked="" type="checkbox"/> No Objections Filed? [] Yes <input checked="" type="checkbox"/> No</p> <p>Documentation from Legislative Services Office (LSO) attached: 11/15/19 Memo from LSO to Germane Joint Subcommittees 12/5/19 Letter from LSO to DEQ</p>
<p><u>DEQ's Recommendation for Adoption</u></p> <p>DEQ recommends that the Board adopt the rule, as presented in the final proposal, as a pending rule.</p>	<p><u>Costs To the Agency:</u> No additional costs to the agency.</p> <p><u>Costs To the Regulated Community:</u> No additional costs to the regulated community.</p>

**Department of Environmental Quality
Rules for Administration of Wastewater Treatment Facility Grants
IDAPA 58.01.04**

Docket No. 58-0104-1901

**Negotiated Rulemaking Summary
Idaho Code § 67-5220(3)(f)**

This rulemaking has been initiated in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019.

On August 1, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the August 2019 issue of the Idaho Administrative Bulletin, and a meeting was held on August 27, 2019. Key information was posted on the DEQ website and distributed to the public. No comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule in the Idaho Administrative Bulletin. The negotiated rulemaking record, which includes the negotiated rule draft and documents distributed during the negotiated rulemaking process, is available at www.deq.idaho.gov/58-0104-1901.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Environment, Energy & Technology Committee

FROM: Deputy Division Manager - Katharine Gerrity

DATE: November 15, 2019

SUBJECT: Department of Environmental Quality

IDAPA 58.01.04 - Rules for Administration of Wastewater Treatment Facility Grants (Chapter Repeal) - Proposed Rule (Docket No. 58-0104-1901)

IDAPA 58.01.22 - Rules for Administration of Planning Grants for Drinking Water Facilities - Proposed Rule (Docket No. 58-0122-1901)

1. IDAPA 58.01.04 - Rules for Administration of Wastewater Treatment Facility Grants (Chapter Repeal)

Summary and Stated Reasons for the Rule

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.04 - Rules for Administration of Wastewater Treatment Facility Grants. This is a chapter repeal. The rulemaking was initiated as part of the Red Tape Reduction Act. The department states that it determined that its two facility planning grant rule chapters could be simplified and consolidated into a single chapter. The department confirms that the rulemaking does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted.

Statutory Authority

The rulemaking appears to be authorized pursuant to Chapters 1 and 36, Title 39, Idaho Code.

2. IDAPA 58.01.22 - Rules for Administration of Planning Grants for Drinking Water Facilities

Summary and Stated Reasons for the Rule

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.22 - Rules for Administration of Planning Grants for Drinking Water Facilities. The rulemaking was initiated as part of the Red Tape Reduction Act. The department states that it determined that its two facility planning grant

rule chapters could be simplified and consolidated into a single chapter. The department confirms that the rulemaking does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted.

Statutory Authority

The rulemaking appears to be authorized pursuant to Chapters 1 and 36, Title 39, Idaho Code.

cc: Department of Environmental Quality
Paula J. Wilson

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.



Eric Milstead
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

December 05, 2019

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Id 83706-1255

Dear Paula J. Wilson:

The Senate and House Subcommittees for review of administrative rules have reviewed the proposed changes to the Department of Environmental Quality rules:

IDAPA 58.01.04 - Rules for Administration of Wastewater Treatment Facility Grants (Chapter Repeal) - Proposed Rule - Docket No. 58-0104-1901

IDAPA 58.01.22 - Rules for Administration of Planning Grants for Drinking Water Facilities - Proposed Rule - Docket No. 58-0122-1901

No meeting will be held, and we are pleased to report that no objections will be filed.

Sincerely yours,

A handwritten signature in black ink that reads "Katharine J. Gerrity". The signature is fluid and cursive.

Katharine Gerrity
Deputy Division Manager

KAG/jk

cc:

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.04 – RULES FOR ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS

DOCKET NO. 58-0104-1901 (CHAPTER REPEAL)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before November 20, 2019. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: DEQ initiated this rulemaking in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two facility planning grant rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.04, Rules for Administration of Wastewater Treatment Facility Grants, and merge necessary and relevant sections of IDAPA 58.01.04 with IDAPA 58.01.22, Rules for Administration of Planning Grants for Public Drinking Water Facilities. DEQ has initiated a separate rulemaking for the revisions to IDAPA 58.01.22 (Docket No. 58-0122-1901).

Prospective grant and loan recipients, consulting engineers, grant and loan administrators, other funding agencies, public officials representing various counties and cities, and the public at large may be interested in commenting on this proposed rule.

After consideration of public comments, DEQ intends to present the final proposal to the Idaho Board of Environmental Quality (Board) in 2020 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2021 legislative session if adopted by the Board and approved by the Legislature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220. On August 1, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the August 2019 issue of the Idaho Administrative Bulletin, [Vol. 19-8, pages 145–146](#), and a meeting was held on August 27, 2019. Key information was posted on the DEQ website and distributed to the public. No comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule draft, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0104-1901.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov or (208) 373-0439.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before December 4, 2019.

Dated this 6th day of November, 2019.

Paula J. Wilson
Phone: (208) 373-0418 / Fax: (208) 373-0481
paula.wilson@deq.idaho.gov

Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706

FINAL PROPOSAL
Dated March 16, 2020

**RULES FOR ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS,
DOCKET NO. 58-0104-1901 (CHAPTER REPEAL)**

The proposed rule was published in the Idaho Administrative Bulletin, November 6, 2019, Vol. 19-11, page 310. DEQ received no public comments and recommends that the Idaho Board of Environmental Quality repeal the rule as initially proposed.

The draft "Notice of Rulemaking – Adoption of Pending Rule" is attached.

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.04 – RULES FOR ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS
DOCKET NO. 58-0104-1901 (CHAPTER REPEAL)
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

EFFECTIVE DATE: This rule has been adopted by the Idaho Board of Environmental Quality (Board) and is now pending review by the 2021 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment *sine die* of the First Regular Session of the Sixty- sixth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for repealing the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, November 6, 2019, Vol. 19-11, page 310. DEQ received no public comments, and the rule has been repealed as initially proposed. More information regarding this rule docket is available at www.deq.idaho.gov/58-0104-1901.

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.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning the rulemaking, contact the undersigned.

Dated this 1st day of July, 2020

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton/Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

Idaho Board of Environmental Quality
May 14, 2020 Board Meeting

**Agenda Item 6: Rules for Administration of Planning Grants for
Drinking Water Facilities**

Docket No. 58-0122-1901

Agenda Item #6

Rules for Administration of Planning Grants for Drinking Water Facilities, Docket No. 58-0122-1901

I move that the Idaho Board of Environmental Quality adopt as pending rules the Rules for Administration of Planning Grants for Drinking Water Facilities as presented in the final proposal under Docket No. 58-0122-1901, with the rules becoming final and effective, if approved by the Legislature, upon the adjournment sine die of the First Regular Session of the Sixty-sixth Idaho Legislature.

<p>Docket Number: <u>58-0122-1901</u> Effective Date: <u>2021 Sine die</u> Rules Title: <u>IDAPA 58.01.22, Rules for Administration of Planning Grants for Public Drinking Water Facilities</u> Agency Contact and Phone: <u>Jerri Henry (208)373-0471</u></p>	<p style="text-align: center;"><u>Public Participation</u></p> <p>Negotiated Rule Making? <input checked="" type="checkbox"/> Yes [] No Negotiated Rulemaking Summary attached</p>
<p><u>Overview of Rulemaking</u></p> <p>DEQ initiated this rulemaking in response to Executive Order No. 2019-02, Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two facility planning grant rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.04, Rules for Administration of Wastewater Treatment Facility Grants, and merge necessary and relevant sections of IDAPA 58.01.04 with IDAPA 58.01.22, Rules for Administration of Planning Grants for Public Drinking Water Facilities. DEQ has initiated a separate rulemaking for the deletion of IDAPA 58.01.04 (Docket No. 58-0104-1901).</p>	<p>Proposed Rule: 11/6/19 Idaho Administrative Bulletin</p> <p>Public Hearings? [] Yes <input checked="" type="checkbox"/> No Locations and Dates: N/A</p> <p>Written Comment Deadline: 12/4/19</p> <p>Public Comments Received? [] Yes <input checked="" type="checkbox"/> No</p> <hr/> <p><u>Interim Legislative Review of Proposed Rule Pursuant to Idaho Code § 67-5223</u></p> <p>Meetings Held? [] Yes <input checked="" type="checkbox"/> No Objections Filed? [] Yes <input checked="" type="checkbox"/> No</p> <p>Documentation from Legislative Services Office (LSO) attached: 11/15/19 Memo from LSO to Germane Joint Subcommittees 12/5/19 Letter from LSO to DEQ</p>
<p><u>DEQ's Recommendation for Adoption</u></p> <p>DEQ recommends that the Board adopt the rule, as presented in the final proposal, as a pending rule.</p>	<p><u>Costs To the Agency:</u> No additional costs to the agency.</p> <p><u>Costs To the Regulated Community:</u> No additional costs to the regulated community.</p>

**Department of Environmental Quality
Rules for Administration of Planning Grants for Public Drinking Water Facilities
IDAPA 58.01.22**

Docket No. 58-0122-1901

**Negotiated Rulemaking Summary
Idaho Code § 67-5220(3)(f)**

This rulemaking has been initiated in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019.

On August 1, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the August 2019 issue of the Idaho Administrative Bulletin, and a meeting was held on August 27, 2019. Key information was posted on the DEQ website and distributed to the public. No comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule in the Idaho Administrative Bulletin. The negotiated rulemaking record, which includes the negotiated rule draft and documents distributed during the negotiated rulemaking process, is available at www.deq.idaho.gov/58-0122-1901.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Environment, Energy & Technology Committee

FROM: Deputy Division Manager - Katharine Gerrity

DATE: November 15, 2019

SUBJECT: Department of Environmental Quality

IDAPA 58.01.04 - Rules for Administration of Wastewater Treatment Facility Grants (Chapter Repeal) - Proposed Rule (Docket No. 58-0104-1901)

IDAPA 58.01.22 - Rules for Administration of Planning Grants for Drinking Water Facilities - Proposed Rule (Docket No. 58-0122-1901)

1. IDAPA 58.01.04 - Rules for Administration of Wastewater Treatment Facility Grants (Chapter Repeal)

Summary and Stated Reasons for the Rule

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.04 - Rules for Administration of Wastewater Treatment Facility Grants. This is a chapter repeal. The rulemaking was initiated as part of the Red Tape Reduction Act. The department states that it determined that its two facility planning grant rule chapters could be simplified and consolidated into a single chapter. The department confirms that the rulemaking does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted.

Statutory Authority

The rulemaking appears to be authorized pursuant to Chapters 1 and 36, Title 39, Idaho Code.

2. IDAPA 58.01.22 - Rules for Administration of Planning Grants for Drinking Water Facilities

Summary and Stated Reasons for the Rule

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.22 - Rules for Administration of Planning Grants for Drinking Water Facilities. The rulemaking was initiated as part of the Red Tape Reduction Act. The department states that it determined that its two facility planning grant

rule chapters could be simplified and consolidated into a single chapter. The department confirms that the rulemaking does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted.

Statutory Authority

The rulemaking appears to be authorized pursuant to Chapters 1 and 36, Title 39, Idaho Code.

cc: Department of Environmental Quality
Paula J. Wilson

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.



Eric Milstead
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

December 05, 2019

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Id 83706-1255

Dear Paula J. Wilson:

The Senate and House Subcommittees for review of administrative rules have reviewed the proposed changes to the Department of Environmental Quality rules:

IDAPA 58.01.04 - Rules for Administration of Wastewater Treatment Facility Grants (Chapter Repeal) - Proposed Rule - Docket No. 58-0104-1901

IDAPA 58.01.22 - Rules for Administration of Planning Grants for Drinking Water Facilities - Proposed Rule - Docket No. 58-0122-1901

No meeting will be held, and we are pleased to report that no objections will be filed.

Sincerely yours,

A handwritten signature in black ink that reads "Katharine J. Gerrity". The signature is written in a cursive, flowing style.

Katharine Gerrity
Deputy Division Manager

KAG/jk

cc:

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.22 – RULES FOR ADMINISTRATION OF PLANNING GRANTS FOR DRINKING WATER FACILITIES

DOCKET NO. 58-0122-1901

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before November 20, 2019. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: DEQ initiated this rulemaking in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two facility planning grant rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.04, Rules for Administration of Wastewater Treatment Facility Grants, and merge necessary and relevant sections of IDAPA 58.01.04 with IDAPA 58.01.22, Rules for Administration of Planning Grants for Public Drinking Water Facilities. DEQ has initiated a separate rulemaking for the deletion of IDAPA 58.01.04 (Docket No. 58-0104-1901).

Prospective grant and loan recipients, consulting engineers, grant and loan administrators, other funding agencies, public officials representing various counties and cities, and the public at large may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Idaho Board of Environmental Quality (Board) in 2020 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2021 legislative session if adopted by the Board and approved by the Legislature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220. On August 1, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the August 2019 issue of the Idaho Administrative Bulletin, [Vol. 19-8, pages 160–161](#) and a meeting was held on August 27, 2019. Key information was posted on the DEQ website and distributed to the public. No comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule draft, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0122-1901.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov or (208) 373-0439.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before December 4, 2019.

Dated this 6th day of November, 2019.

Paula J. Wilson
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706
Phone: (208) 373-0418
Fax: (208) 373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0122-1901
(Only Those Sections With Amendments Are Shown.)

58.01.22 – RULES FOR ADMINISTRATION OF PLANNING GRANTS
FOR DRINKING WATER ~~AND WASTEWATER~~ FACILITIES

000. LEGAL AUTHORITY.

The Idaho State Board of Environmental Quality, pursuant to authority granted in Chapters 1 and 36, Title 39, Idaho Code, adopted the following rules for the administration of ~~a~~ Drinking Water ~~and Wastewater~~ Planning Grant Programs in Idaho. ~~(5-3-03)()~~

001. TITLE AND SCOPE.

01. Title. These rules will be known and cited as Rules of the Idaho Department of Environmental Quality, IDAPA 58.01.22, “Rules for Administration of Planning Grants for Drinking Water ~~and Wastewater~~ Facilities.” ~~(3-30-01)()~~

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering a state grant program providing financial assistance to qualifying entities to prepare a drinking water ~~or wastewater~~ facility planning document. ~~(3-29-12)()~~

002. ~~WRITTEN INTERPRETATIONS. (RESERVED)~~

~~As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706. (3-30-01)~~

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.

01. Incorporation by Reference. These rules do not contain documents incorporated by reference. (4-2-08)

02. Availability of Referenced Material. The “Drinking Water Loan Handbook of Procedures” ~~and~~

“Clean Water Loan Handbook of Procedures” (Handbook) is available at the Idaho Department of Environmental Quality, Water Quality Division Loan Program, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502, or www.deq.idaho.gov. ~~(4-2-08)~~()

(BREAK IN CONTINUITY OF SECTIONS)

006. POLICY.

It is the policy of the Idaho Board of Environmental Quality, through the Idaho Department of Environmental Quality, to administer the Drinking Water and Wastewater Grant Programs. The Drinking Water and Wastewater Grant Programs provide assistance to eligible public drinking water and wastewater systems for the planning of facilities to help ensure safe and adequate supplies of drinking water and appropriate processing and disposal of wastewater. It is also the intent of the Idaho Board of Environmental Quality to assign a priority rating to those projects ~~which shall~~ to facilitate the compliance of any eligible public drinking water system with national primary drinking water regulations applicable to the system, IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems,” and the Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq., and to administer the Wastewater Treatment Facility Grant Program to protect and enhance the quality and value of the water resources of the state of Idaho by financially assisting in the prevention, control and abatement of water pollution in accordance with IDAPA 58.01.16, Wastewater Rules. ~~(4-2-08)~~()

007. SYSTEM ELIGIBILITY.

01. Eligible Drinking Water Systems. Community water systems and nonprofit noncommunity water systems. ~~(3-30-01)~~()

02. Eligible Wastewater Systems. Any county, city, special service district, nonprofit corporation, or other governmental entity, or a combination thereof, having authority to collect, treat or dispose of wastewater. ()

023. Systems Not Eligible. The following public drinking water systems will not be considered eligible for project planning grants: ~~(3-30-01)~~()

a. Systems that do not have the financial capability to pay their non-grant share of a planning project. (3-30-01)

b. Systems delinquent in payment of the annual state drinking water fee, Idaho Pollutant Discharge Elimination System (IPDES) permit assessments or state revolving fund loan repayments. ~~(3-30-01)~~()

008. -- 009. (RESERVED)

010. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (3-30-01)

01. Applicant. Any qualifying entity making application for drinking water planning grant funds. (3-30-01)

02. Board. The Idaho Board of Environmental Quality. (4-2-08)

03. Categorical Exclusion (CE). Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental information document nor an environmental impact statement is required. (4-2-08)

04. Collector Sewer. That portion of the wastewater treatment facility whose primary purpose is to receive sewage from individual residences and other individual public or private structures and which is intended to convey wastewater to an interceptor sewer or a treatment plant. ()

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Planning Grants for Drinking Water Facilities

Docket No. 58-0122-1901
Proposed Rulemaking

- ~~045.~~ **Community Water System.** A public drinking water system that: (3-30-01)
- a.** Serves at least fifteen (15) service connections used by year round residents of the area served by the system; or (3-30-01)
- b.** Regularly serves at least twenty-five (25) year-round residents. (3-30-01)
- ~~056.~~ **Contaminant.** Any physical, chemical, biological, or radiological substance or matter in water. (3-30-01)
- ~~067.~~ **Department.** The Idaho Department of Environmental Quality. (3-30-01)
- ~~078.~~ **Director.** The Director of the Idaho Department of Environmental Quality or the Director's designee. (4-2-08)
- ~~089.~~ **Distribution System.** Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s), treatment facility(ies), or a combination of source(s) and treatment facility(ies) to the consumer. Chlorination may be considered as a function of a distribution system. (3-29-12)
10. Domestic Wastewater. Wastewater derived from public or private residences, business buildings or institutions and similar establishments and which contains water and human body wastes, specifically excreta and urine, along with such products designed to come in contact with excreta and urine in the practice of personal hygiene. ()
- ~~0911.~~ **Eligible Costs.** Costs which are necessary for planning ~~public drinking water systems~~. To be eligible, costs must also be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 032. (~~5-3-03~~)()
- ~~102.~~ **Environmental Impact Statement (EIS).** A document prepared by the applicant when the Department determines that the proposed drinking water project will significantly affect the environment. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. The Environmental Review Procedures contained in Chapter 5 of the Handbook may be used as guidance when preparing the EIS. (4-2-08)
- ~~143.~~ **Environmental Information Document (EID).** Any written environmental assessment prepared by the applicant describing the environmental impacts of a proposed drinking water construction project. This document will be of sufficient scope to enable the Department to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (3-29-12)
- ~~124.~~ **Financial Capability.** The ability to raise and manage funds to provide the necessary resources for proper operation of the system. (~~3-30-01~~)()
- ~~135.~~ **Finding of No Significant Impact (FONSI).** A document prepared by the Department presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement (EIS) will not be prepared. It shall include the environmental information document or a summary of it and ~~shall~~ note any other environmental documents related to it. (~~3-29-12~~)()
- ~~146.~~ **Grant Recipient.** An applicant who has been awarded a grant. (3-29-12)
- ~~157.~~ **Handbook.** "Drinking Water Loan and Wastewater Loan Handbook ~~of Procedures.~~" (~~4-2-08~~)()
18. Idaho Pollutant Discharge Elimination System. Point source permitting program established pursuant to Section 402 of the federal Clean Water Act (33 U.S.C. Section 1342). ()
- ~~169.~~ **Ineligible Costs.** Costs which are not eligible for funding pursuant to these rules. (3-29-12)

20. Interceptor Sewer. That portion of the wastewater treatment facility whose primary purpose is to transport domestic sewage or nondomestic wastewater from collector sewers to a treatment plant. ()

~~21.~~ **Maximum Contaminant Level (MCL).** The maximum permissible level of a contaminant in water which is delivered to any user of a public drinking water system. (3-30-01)

~~22.~~ **Managerial Capability.** The capabilities of the qualified entity to support the proper financial management and technical operation of the system. (3-30-01)

~~23.~~ **Noncommunity Water System.** A public water system that is not a community water system. (5-3-03)

24. Nondomestic Wastewater. Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. ()

~~25.~~ **Nonprofit Noncommunity Water System.** A public drinking water system that is not a community water system and is governed by Section 501 of the Internal Revenue Code and includes, but is not limited to, state agencies, municipalities and nonprofit organizations such as churches and schools. (5-3-03)

~~26.~~ **Nontransient Noncommunity Water System.** A public drinking water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year. (4-2-08)

27. Operation and Maintenance Manual. A guidance and training manual delineating the optimum operation and maintenance of the facility or its components. ()

~~28.~~ **Person.** An individual, corporation, company, association, partnership, state agency, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, state agency, municipality, or federal agency). (5-3-03)

~~29.~~ **Planning Document.** A document which describes the condition of a public drinking water or wastewater system and presents a cost effective and environmentally sound alternative to achieve or maintain regulatory compliance. Engineering reports and facility plans are examples of such planning documents. The planning documents shall be prepared by or under the responsible charge of an Idaho licensed professional engineer and ~~shall~~ bear the imprint of the engineer's seal. Requirements for planning documents prepared using grant funds are provided in Section 030 of these rules and in the Handbook. (~~3-29-12~~)()

30. Point Source. Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. ()

31. Pollutant. Any chemical, biological, or physical substance whether it be solid, liquid, gas, or a quality thereof, which if released into the environment can, by itself or in combination with other substances, create a nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other beneficial uses. ()

~~32.~~ **Priority List.** A list of proposed projects ~~rated by severity of a risk to public health, the necessity to ensure compliance with, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C., Sections 300f et seq., population affected, the need on a household basis for protection of Idaho's public drinking water supplies, and as otherwise as~~ described in Section 020. (4-2-08)()

~~33.~~ **Public Drinking Water System/Public Water System/Water System.** A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty

(60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any “special irrigation district.” A public water system is either a “community water system” or a “noncommunity water system.” (4-2-08)

~~26~~**34. Qualifying Entity.** Any county, city, special service district, nonprofit or investor-owned corporation, or other governmental entity, or a combination thereof, which owns or operates a public drinking water system ~~or~~, irrigation system, or wastewater system. (4-2-08)()

27. Rehabilitation. The repair or replacement of segments of drinking water facilities. (3-30-01)

28. Reserve Capacity. That portion of the system in the planned facilities to handle future drinking water demand. (3-30-01)

~~29.~~ **Sewer Use Ordinance/Sewer Use Resolution.** An ordinance or resolution which requires new sewers and connections to be properly designed and constructed, prohibits extraneous sources of inflow and prohibits introduction of wastes into the sewer in an amount that endangers the public safety or the physical or operational integrity of the wastewater treatment facility. ()

~~29~~**30. State.** The state of Idaho. (3-30-01)

~~30~~**1. Suspension.** An action by the Director to suspend a grant contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (3-30-01)

~~31~~**2. Sustainability.** Sustainability will include efforts for energy and water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement. (3-29-12)

~~32~~**3. Technical Capability.** The ability of the public drinking water or wastewater system to comply with existing and expected ~~drinking water~~ rules. (3-30-01)()

~~33~~**4. Termination.** An action by the Director to permanently terminate a grant contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (3-30-01)

~~34~~**5. User Charge System.** A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required, and which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the wastewater treatment facility. ()

~~35~~**6. Wastewater.** A combination of the liquid and water-carried wastes from dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water and storm water that may be present; liquid and water that is physically, chemically, biologically, or rationally identifiable as containing excreta, urine, pollutants or domestic or commercial wastes; sewage. ()

~~36~~**7. Wastewater Treatment Facility.** Any facility, including land, equipment, furnishings and appurtenances thereof, for the purpose of collecting, treating, neutralizing or stabilizing wastewater and removing pollutants from wastewater including the treatment plant, collectors, interceptors, outfall and outlet sewers, pumping stations, sludge treatment and handling systems and land disposal systems. ()

~~37~~**8. Water Treatment Plant.** That portion of the public drinking water system whose primary purpose is to remove contaminants. (3-30-01)

011. -- 019. (RESERVED)

020. PRIORITY RATING SYSTEM.
Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis.

**DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Planning Grants for Drinking Water Facilities**

**Docket No. 58-0122-1901
Proposed Rulemaking**

~~Information is also received from the Department and consulting engineers.~~ Grant funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health, sustainability, and water quality criteria and condition of the existing system. (3-29-12)()

01. Purpose. A priority rating system shall be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance in accordance with these rules. (4-2-08)

02. Priority Rating for Drinking Water Systems. The priority rating system shall be based on a numerical point system. Priority criteria shall contain the following points: (3-29-12)

a. Public Health Hazard. Any condition which creates, or may create, a danger to the consumer's health, which may include any one (1) or more of the following, may be awarded a maximum of one hundred (100) points: (3-29-12)

i. Documented unresolved violations of the primary drinking water standards including maximum contaminant levels, action levels, and treatment techniques (to include maximum contaminant levels for acute and chronic contaminates); (3-29-12)

ii. Documented unresolved violations of pressure requirements; (3-29-12)

iii. Documented reduction in source capacity that impacts the system's ability to reliably serve water; (3-29-12)()

iv. Documented significant deficiencies (e.g., documented in a sanitary survey) in the physical system that is causing the system to not be able to reliably serve safe drinking water. (3-29-12)

v. Documented unregulated contaminants that have been shown to be a hazard to public health. ()

b. General Conditions of Existing Facilities. Points shall be given based on deficiencies (which would not constitute a public health hazard) for pumping, treating, storing, and delivering drinking water - up to sixty (60) points. (3-29-12)

c. Sustainability Efforts (e.g., prospective efforts at energy conservation, water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement) - up to fifty (50) points. (3-29-12)

d. Consent Order, Compliance Agreement Schedule, or Court Order. Points shall be given if the system is operating under and in compliance with a Consent Order, Compliance Agreement Schedule, or Court Order and the proposed construction project will address the Consent Order, Compliance Agreement Schedule, or Court Order - up to thirty (30) points. (3-29-12)

e. Incentives. Bonus points shall be awarded to systems that promote source water protection, conservation, economy, proper operation maintenance, and monitoring - up to ten (10) points. (3-29-12)

f. Affordability. Points shall be given when current system user charges exceed state affordability guidelines - ten (10) points. (3-30-01)

03. Priority Rating for Wastewater Systems. The priority rating system shall be based on a numerical point system. Priority criteria shall contain the following points. ()

a. Public health emergency or hazard certified by the Idaho Board of Environmental Quality, the Department, a District Health Department, or by a District Board of Health - one hundred fifty (150) points. ()

b. Regulatory compliance issues (e.g., noncompliance and resulting legal actions relating to infrastructure deficiencies at a wastewater facility) - up to one hundred (100) points. ()

c. Watershed restoration (e.g., implementation of best management practices or initiation of construction at wastewater collection and treatment facilities as part of an approved total maximum daily load plan, implementation of nonpoint source management actions in protection of a threatened water, or is part of a special water quality effort) – up to one hundred (100) points. ()

d. Watershed protection from impacts (e.g., improvement of beneficial use(s) in a given water body, evidence of community support, or recognition of the special status of the affected water body) – up to one hundred (100) points. ()

e. Preventing impacts to uses (nonpoint source pollution projects) – up to one hundred (100) points. ()

f. Sustainability efforts (e.g., prospective efforts at energy conservation, water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement) – up to fifty (50) points. ()

g. Affordability (current system user charges exceed state affordability guidelines) -- ten (10) points. ()

034. **Rating Forms.** Rating criteria for Subsections 020.02 and 020.03 is set forth in a rating form that is available *in the Handbook* at www.deq.idaho.gov. (3-29-12)()

045. **Priority List.** A list shall be developed from projects rated according to the priority rating system. *Such list shall be*, submitted for public review and comment, and *shall thereafter be* submitted to the Board for approval and adoption. (3-29-12)()

a. **Priority Reevaluation.** Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for or scope of any project, a reevaluation of that priority rating will be conducted. (3-30-01)

b. **Priority Target Date.** An eligible applicant whose project is on the approved priority list, and for which funding is available, will be contacted by the Department and a target date for submission of a completed grant application will be established. (3-29-12)

c. **Project Bypass.** A project that does not or will not meet the project target date or a Department schedule that allows for timely utilization of grant funds may be bypassed, substituting in its place the next highest ranking project that is ready to proceed. An eligible applicant that is bypassed will be notified in writing of the reasons for being bypassed. (3-29-12)

056. **Amendment of Priority List.** The Director may amend the Priority List as set forth in Section 080 of these rules. (3-29-12)

021. -- 029. (RESERVED)

030. PROJECT SCOPE AND FUNDING.

Grant funds awarded under this program will be used entirely to prepare a *drinking water facility planning document*. *The* planning document *will to* identify the cost effective and environmentally sound alternative to achieve or maintain compliance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq.; or, maintain compliance with IDAPA 58.01.16, Wastewater Rules, and the federal Clean Water Act, 33 U.S.C. Sections 1381 et seq. The planning document must be approved by the Department. (3-29-12)()

01. Planning Document. (3-29-12)

a. A planning document shall include all items required by IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 503.03 or 502.04 or IDAPA 58.01.16, "Wastewater Rules," Subsection 411.03 or 410.04. Should the grant recipient proceed to construction using federal funds (e.g., a state revolving fund loan),

then the items listed in Subsection 030.01.b. of these rules ~~shall~~ will be required prior to construction.

~~(3-29-12)~~()

b. A planning document that is prepared anticipating the use of federal funds shall include an environmental review that will require the Department approval of both a draft and final planning document.

(3-29-12)

i. The draft planning document shall include all items required by IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 502.04 or 503.03, as well as the following: ~~or 58.01.16. "Wastewater Rules," Subsection 411.03 or 410.04~~

~~(3-29-12)~~()

- (1) Description of existing conditions for the proposed project area; (3-30-01)
- (2) Description of future conditions for the proposed project area; (3-30-01)
- (3) Development and initial screening of alternatives; (3-30-01)
- (4) Development of an environmental review specified by the Department as described in Section 040. (3-29-12)

ii. The final planning document shall include all items required of the draft planning document as well as the following: (3-29-12)

- (1) Final screening of principal alternatives and plan adoption; (3-30-01)
- (2) Selected plan description and implementation arrangements; and (3-29-12)
- (3) Relevant engineering data supporting the final alternative. (3-29-12)

~~(4) Assessment of the cost and effectiveness, to the maximum extent practicable, of efficient water use, reuse, recapture and conservation, and energy conservation, with cost including construction, operation and maintenance, and replacement.~~ ()

iii. The grant recipient shall provide an opportunity for the public to comment on the draft planning document. The public comment period shall be held after alternatives have been developed and the Department has approved the draft planning document. The grant recipient shall provide written notice of the public comment period and hold at least one (1) public meeting within the jurisdiction of the grant recipient during the public comment period. At the public meeting, the ~~grant recipient shall present the~~ draft planning document ~~shall be presented by the grant recipient~~ with an explanation of the alternatives identified. The cost effective and environmentally sound alternative selected shall consider public comments received from those affected by the proposed project. After the public meeting and public comment period, the final alternative will be selected and the Environmental Information Document may be prepared. ~~(3-29-12)~~()

c. The draft and final planning document shall bear the imprint of an Idaho licensed professional engineer's seal that is both signed and dated by the engineer. (3-29-12)

d. The draft and final planning documents must be reviewed and approved by the Department. (3-29-12)

e. The planning period shall be twenty (20) years for all facilities except for distribution and transmission systems which may be forty (40) years. (4-2-08)

02. Limitation on Funding Assistance. The maximum grant funding provided in a state planning grant award shall not exceed fifty percent (50%) of the total eligible costs for grants awarded. (3-30-01)

031. REVIEW AND EVALUATION OF GRANT APPLICATIONS.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Planning Grants for Drinking Water Facilities

Docket No. 58-0122-1901
Proposed Rulemaking

01. Submission of Application. Those eligible systems which received high priority ranking shall be invited to submit an application. The applicant shall submit to the Department, a completed application in a form prescribed by the Department. (3-30-01)

02. Application Requirements. Applications shall contain the following documentation, as applicable: (5-3-03)

a. An authorizing resolution passed by a majority of the governing body authorizing an elected official or officer of the qualifying entity to commit funding; and (5-3-03)

b. Contracts for engineering services or other technical services and the description of costs and tasks set forth therein shall be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 032; and (3-29-12)

c. A plan of study describing the work tasks to be performed in the planning document, a schedule for completion of the work tasks and an estimate of staff hours and costs to complete the work tasks; and (3-29-12)

d. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)

~~**i.** Be procured through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and (5-3-03)~~

~~**ii.** Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and (5-3-03)~~

~~**iii.** Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)~~

~~**iv.** Be covered by professional liability insurance in accordance with Subsection 050.05.d. A certification of liability insurance shall be included in the application; and (5-3-03)~~

e. A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 032; and (3-29-12)

f. A demonstration that the obligation to pay the costs for which funding is requested, is the result or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code; and (4-2-08)

g. A statement regarding how the non-grant portion of the project will be funded; and (5-3-03)

h. For incorporated nonprofit applicants only, Articles of Incorporation and/or Bylaws showing nonprofit and incorporated status according to Chapter 3, Title 30, Idaho Code. (3-30-01)

03. Determination of Completeness of Application. Applications will be reviewed to determine whether they contain all of the information required by Subsection 031.02. (3-29-12)

04. Notification Regarding Incompleteness of Application. Written notification if an application is incomplete, including an explanation of missing documentation, will be sent to the applicant. ~~The applicant may provide the missing documentation. (5-3-03)~~ ()

05. Reapplication for Grant. The action of disapproving, recalling, or terminating a grant in no way precludes or limits the former applicant from reapplying for another grant when the project deficiencies are resolved and project readiness is secured. (5-3-03)

032. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department ~~shall~~ will review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. ~~(5-3-03)~~()

01. Eligible Costs. Eligible costs are those determined by the Department to be: (5-3-03)

a. Necessary costs; (3-29-12)

b. Reasonable costs; and (3-29-12)

c. Costs that are not ineligible as described in Subsection 032.05. (3-29-12)

02. Necessary Costs. The Department ~~shall~~ will determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the plan of study for the planning document. ~~(3-29-12)~~()

03. Reasonable Costs. Costs ~~shall~~ will be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code. ~~(4-2-08)~~()

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable and not ineligible costs include: (5-3-03)

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary expenses such as salaries and expenses of a mayor; city council members; board; or a city, district or board attorney; (4-2-08)

b. Professional and consulting services ~~utilizing a lump-sum contract~~, specifying costs of individual tasks. ~~(5-3-03)~~()

c. Engineering costs ~~pursuant to a lump-sum contract~~, specifying costs of individual tasks, directly related to the planning of ~~public drinking water treatment, storage and distribution~~ facilities including but not limited to the preparation of a planning document and environmental review report; ~~(3-29-12)~~()

d. Financial, technical and management capability analysis; (5-3-03)

e. Public participation for alternative selection; (5-3-03)

f. Certain direct and other costs as determined eligible by the Department; and (5-3-03)

g. ~~Site acquisition services which could include legal fees, appraisals and surveys for land associated with the cost effective alternative in the report and for purchase from a willing seller~~ Legal costs necessary to allow for the completion of the facility plan. ~~(3-29-12)~~()

05. Ineligible Project Costs. Costs which are ineligible for funding include, but are not limited to: (5-3-03)

a. ~~Basin or area wide p~~lanning not directly related to the project; ~~(5-3-03)~~()

b. Personal injury compensation or damages arising out of the project; (5-3-03)

c. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)

d. Costs outside the scope of the approved project; (5-3-03)

- e. Ordinary operating expenses such as salaries and expenses of a mayor, city council members, city attorney, district or association personnel costs, and acquiring project funding; (4-2-08)
- f. Preparation of a grant application; (5-3-03)
- g. All costs related to assessment, defense and settlement of disputes, unless such costs are integral to the completion of the project; ~~(5-3-03)~~()
- h. Costs of supplying required permits or waivers; and ~~(5-3-03)~~()
- i. Costs incurred prior to award of the grant unless specifically approved in writing as eligible pre-award costs by the Department; (5-3-03)
- ~~j. Engineering costs incurred prior to approval of the engineering contract or those costs in excess of the contract ceiling unless preapproval has been given in writing by the Department; and (5-3-03)~~

06. Notification Regarding Ineligible Costs. Prior to providing a grant offer, the Department shall will notify the applicant that certain costs are not eligible for funding and the reasons for the Department's determination. If such costs are included in the engineering contract, the Department shall will also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. ~~(5-3-03)~~()

07. Eligible Costs and the Grant Offer. The grant offer shall will reflect those costs determined by the Department to be eligible costs. The grant offer, however, may include estimates of some eligible costs that have not yet been set. Actual eligible costs may differ from such estimated costs set forth in the grant offer. In addition, grant disbursements may be increased or decreased if eligible costs are modified. ~~(4-2-08)~~()

033. -- 039. (RESERVED)

040. ENVIRONMENTAL REVIEW.

01. Environmental Documentation. The grant recipient may complete an environmental review as part of and in conjunction with a planning document. Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. If the grant recipient prepares an environmental review, then the Department shall will be consulted at an early stage in the preparation of the planning document to determine the required level of environmental review. Based on review of existing information and assessment of environmental impacts, the grant recipient may complete at least one (1) of the following: ~~(3-29-12)~~()

- a. Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (4-2-08)
- or
- b. Prepare an Environmental Information Document (EID) in a format specified by the Department; (4-2-08)
- c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (4-2-08)

02. Categorical Exclusions. If the grant recipient requests a CE, the Department shall will review the request and, based upon the supporting documentation, take one (1) of the following actions: ~~(3-29-12)~~()

- a. Determine if an action is consistent with categories eligible for exclusion whereupon the Department shall will issue a notice of CE from further substantive environmental review. Once the CE is granted for the selected alternative, the Department will publish a notice of CE in a local newspaper, following which the planning document can be approved; or ~~(3-29-12)~~()
- b. Determine if an action is not consistent with categories eligible for exclusion and that issuance of a

CE is not appropriate. If issuance of a CE is not appropriate, the Department *shall will* notify the grant recipient of the need to prepare an EID. ~~(3-29-12)~~()

03. Environmental Information Document Requirements. When an EID is required, the grant recipient shall prepare the EID in accordance with the following Department procedures: (3-29-12)

a. Various laws and executive orders related to environmentally sensitive resources shall be considered as the EID is prepared. Appropriate state and federal agencies shall be consulted regarding these laws and executive orders. (4-2-08)

b. A full range of relevant impacts, both direct and indirect, of the proposed project shall be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that shall cause irreversible or irretrievable commitment of resources. (4-2-08)

c. The Department *shall will* review the draft EID and either request additional information about one (1) or more potential impacts, or *shall will* draft a “finding of no significant impact” (FONSI). ~~(4-2-08)~~()

04. Final Finding of No Significant Impact. The Department *shall will* publish the draft FONSI in a newspaper of general circulation in the geographical area of the proposed project and shall allow a minimum thirty (30) day public comment period. Following the required period of public review and comment, and after any public concerns about project impacts are addressed, the FONSI shall become final. The Department *shall will* assess the effectiveness and feasibility of the mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the planning document. ~~(3-29-12)~~()

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the grant recipient shall: (3-29-12)

a. Contact all affected state agencies, and other interested parties, to determine the required scope of the document; (4-2-08)

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (4-2-08)

c. Conduct a public meeting which may be held in conjunction with a planning document meeting; and (3-29-12)

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. (4-2-08)

06. Final EIS. Upon completion of the EIS by the grant recipient and approval by the Department of all requirements listed in Subsection 040.05, the Department *shall will* issue a record of decision, documenting the mitigative measures *which shall to* be required of the grant recipient. The planning document can be completed once the final EIS has been approved by the Department. ~~(3-29-12)~~()

07. Use of Environmental Reviews Conducted by Other Agencies. If an environmental review for the project has been conducted by another state, federal, or local agency, the Department may, at its discretion, issue its own determination by adopting the document and public notification process of the other agency. (4-2-08)

08. Validity of Review. Environmental reviews, once completed by the Department, are valid for five (5) years from the date of completion. If a grant application is received for a project with an environmental review which is more than five (5) years old, the Department *shall will* reevaluate the project, environmental conditions, and public comments and *shall will*: ~~(3-29-12)~~()

a. Reaffirm the earlier decision; or (3-30-01)

b. Require supplemental information to the earlier Environmental Impact Statement, Environmental Information Document, or request for Categorical Exclusion. Based upon a review of the updated document, the

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Planning Grants for Drinking Water Facilities

Docket No. 58-0122-1901
Proposed Rulemaking

Department ~~shall~~ **will** issue and distribute a revised notice of Categorical Exclusion, finding of no significant impact, or record of decision. ~~(3-30-01)~~()

041. -- 049. (RESERVED)

050. GRANT OFFER AND ACCEPTANCE.

01. Grant Offer. Grant offers will be delivered by certified mail to applicants who received high priority ranking, were invited to submit an application, and provided a complete application. (3-30-01)

02. Acceptance of Grant Offer. Applicants have sixty (60) days in which to officially accept the grant offer on prescribed forms furnished by the State. The sixty (60) day acceptance period commences from the date indicated on the grant offer notice. If the applicant does not accept the grant offer within the sixty (60) day period, the grant funds may be offered to the next project of priority. (3-30-01)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director or the Director's designee as the grantor, and upon signature by the authorized representative of the qualifying entity, as the grant recipient, the grant offer ~~shall~~ **will** become a grant contract agreement. The disbursement of funds pursuant to an agreement is subject to a finding by the Director that the grant recipient has complied with all agreement conditions and has prudently managed the project. The Director may, as a condition of payment, require that a grant recipient vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with grant funds or transfer its claim against such third parties to the Department. Grant contract agreements shall be interpreted according to the law of grants in aid. No third party shall acquire any rights against the State or its employees from a grant contract agreement. ~~(3-29-12)~~()

04. Estimate of Reasonable Cost. Each grant project contract will include the eligible cost of conducting the planning study. Some eligible costs may be estimated and payments may be increased or decreased as provided in Section 060. (5-3-03)

05. Terms of Agreement. The grant offer shall contain terms of agreement as prescribed by the Department including, but not limited to special conditions as determined necessary by the Department for the successful planning of the project. (3-30-01)

a. Terms consistent with these rules and consistent with the scope of the grant project; and (3-29-12)

b. Special clauses as determined necessary by the Department for the successful investigation and management of the project; and (5-3-03)

c. Terms consistent with applicable state ~~and federal laws~~ pertaining to planning documents; and ~~(3-29-12)~~()

d. Requirement for the prime engineering firm(s) retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project steps, whether or not such services or steps are state funded, until the certification of project performance is accepted by the Department. (4-2-08)

051. -- 059. (RESERVED)

060. PAYMENTS.

01. Eligibility Determination. Grant funds will only be provided for eligible costs as defined at Section 010 and determined in accordance with Section 032. (3-29-12)

02. Payments for State Grants. Requests for payment shall be submitted to the Department on a form provided by the Department. The Department ~~shall~~ **will** pay for those costs that are determined to be eligible.

~~(3-30-01)~~()

03. Grant Increases. Grant amendment increase requests as a result of an increase in eligible project costs will be considered, provided funds are available. Documentation and justification supporting the unavoidable need for a grant increase must be submitted to the Department for approval prior to incurring any costs above the approved eligible cost ceiling. (3-30-01)

04. Grant Decreases. If the actual eligible cost is determined to be lower than the estimated eligible cost the grant amount will be reduced proportionately. (3-30-01)

05. Final Project Review to Determine Actual Eligible Costs. The Department may conduct a final project review to determine the actual eligible costs. The financial records of the grant recipient may be reviewed by the Department. (3-29-12)

06. Final Payment. The final payment consisting of five percent (5%) of the total state grant will not be made until the requirements contained in the grant agreement have been satisfied. (3-29-12)

061. -- 069. (RESERVED)

070. SUSPENSION OR TERMINATION OF GRANT.

01. Causes. The Director may suspend or terminate any grant for failure by the grantee or its agents, including his engineering firm(s), contractor(s) or subcontractor(s) to perform. A grant may be suspended or terminated for good cause including, but not limited to, the following: (3-30-01)

a. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; or (3-30-01)

b. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years imprisonment or any crime involving or affecting the project; or (3-30-01)

c. Violation(s) of any term of agreement of the grant offer or contract agreement; or (3-30-01)

d. Any willful or serious failure to perform within the scope of the project; or (4-2-08)

e. Debarment of an engineering firm, contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (3-30-01)

02. Notice. The Director will notify the grantee in writing and by certified mail of the intent to suspend or terminate the grant. The notice of intent shall state: (3-30-01)

a. Specific acts or omissions which form the basis for suspension or termination; and (3-30-01)

b. That the grantee may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (3-15-02)

03. Determination. A determination will be made by the Board pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (3-15-02)

04. Reinstatement of Suspended Grant. Upon written request by the grantee and evidence that the cause(s) for suspension no longer exist, the Director may, if funds are available reinstate the grant. (3-30-01)

05. Reinstatement of Terminated Grant. No terminated grant shall be reinstated. (3-30-01)

071. -- 079. (RESERVED)

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration of Planning Grants for Drinking Water Facilities

Docket No. 58-0122-1901
Proposed Rulemaking

080. WAIVERS.

Waivers from the requirements of these rules may be granted by the Department on a case-by-case basis upon full demonstration that a significant public health ~~emergency~~ hazard exists. ~~(3-30-01)~~()

081. -- 999. (RESERVED)

FINAL PROPOSAL
Dated March 16, 2020

**RULES FOR ADMINISTRATION OF PLANNING GRANTS FOR
PUBLIC DRINKING WATER FACILITIES,
DOCKET NO. 58-0122-1901**

The proposed rule was published in the Idaho Administrative Bulletin, November 6, 2019, Vol. 19-11, pages 366 through 381. DEQ received no public comments and recommends that the Idaho Board of Environmental Quality adopt the rule as initially proposed.

The draft "Notice of Rulemaking – Adoption of Pending Rule" is attached.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.22 – RULES FOR ADMINISTRATION OF PLANNING GRANTS FOR
PUBLIC DRINKING WATER FACILITIES
DOCKET NO. 58-0122-1901
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Idaho Board of Environmental Quality (Board) and is now pending review by the 2021 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment *sine die* of the First Regular Session of the Sixty- sixth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, November 6, 2019, Vol. 19-11, pages 366 through 381. DEQ received no public comments, and the rule has been adopted as initially proposed. More information regarding this rule docket is available at www.deq.idaho.gov/58-0122-1901.

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.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning the rulemaking, contact the undersigned.

Dated this 1st day of July, 2020

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton/Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

Idaho Board of Environmental Quality
May 14, 2020 Board Meeting

Agenda Item 7: Rules for Administration of Drinking Water Loan
Program

Docket No. 58-0120-1901 (Chapter Repeal)

Agenda Item #7

Rules for Administration of Drinking Water Loan Program, Docket No. 58-0120-1901 (Chapter Repeal)

I move that the Idaho Board of Environmental Quality adopt as pending rules the repeal of the Rules for Administration of Drinking Water Loan Program as presented in the final proposal under Docket No. 58-0120-1901, with the repeal becoming final and effective, if approved by the Legislature, upon the adjournment sine die of the First Regular Session of the Sixty-sixth Idaho Legislature.

<p>Docket Number: <u>58-0120-1901 – Chapter Repeal</u> Effective Date: <u>2021 Sine die</u> Rules Title: <u>IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program</u> Agency Contact and Phone: <u>Jerri Henry (208)373-0471</u></p>	<p style="text-align: center;"><u>Public Participation</u></p> <p>Negotiated Rule Making? <input checked="" type="checkbox"/> Yes [] No Negotiated Rulemaking Summary attached</p>
<p><u>Overview of Rulemaking</u></p> <p>DEQ initiated this rulemaking in response to Executive Order No. 2019-02, Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program, and merge necessary and relevant sections of IDAPA 58.01.20 with IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans. DEQ has initiated a separate rulemaking for the revisions to IDAPA 58.01.12 (Docket No. 58-0112-1901).</p>	<p>Proposed Rule: 11/6/19 Idaho Administrative Bulletin</p> <p>Public Hearings? [] Yes <input checked="" type="checkbox"/> No Locations and Dates: N/A</p> <p>Written Comment Deadline: 12/4/19</p> <p>Public Comments Received? [] Yes <input checked="" type="checkbox"/> No</p> <hr/> <p><u>Interim Legislative Review of Proposed Rule Pursuant to Idaho Code § 67-5223</u></p> <p>Meetings Held? [] Yes <input checked="" type="checkbox"/> No Objections Filed? [] Yes <input checked="" type="checkbox"/> No</p> <p>Documentation from Legislative Services Office (LSO) attached: 11/15/19 Memo from LSO to Germane Joint Subcommittees 12/5/19 Letter from LSO to DEQ</p>
<p><u>DEQ's Recommendation for Adoption</u></p> <p>DEQ recommends that the Board adopt the rule, as presented in the final proposal, as a pending rule.</p>	<p><u>Costs To the Agency:</u> No additional costs to the agency.</p> <p><u>Costs To the Regulated Community:</u> No additional costs to the regulated community.</p>

**Department of Environmental Quality
Rules for Administration of Drinking Water Loan Program
IDAPA 58.01.20**

Docket No. 58-0120-1901

**Negotiated Rulemaking Summary
Idaho Code § 67-5220(3)(f)**

This rulemaking has been initiated in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019.

On August 1, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the August 2019 issue of the Idaho Administrative Bulletin, and a meeting was held on August 27, 2019. Key information was posted on the DEQ website and distributed to the public. No comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule in the Idaho Administrative Bulletin. The negotiated rulemaking record, which includes the negotiated rule draft and documents distributed during the negotiated rulemaking process, is available at www.deq.idaho.gov/58-0120-1901.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Environment, Energy & Technology Committee

FROM: Deputy Division Manager - Katharine Gerrity

DATE: November 15, 2019

SUBJECT: Department of Environmental Quality

IDAPA 58.01.12 - Rules for Administration of Water Pollution Control Loans - Proposed Rule (Docket No. 58-0112-1901)

IDAPA 58.01.20 - Rules for Administration of Drinking Water Loan Program (Chapter Repeal) - Proposed Rule (Docket No. 58-0120-1901)

1. IDAPA 58.01.12 - Rules for Administration of Water Pollution Control Loans

Summary and Stated Reasons for the Rule

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.12 - Rules for Administration of Water Pollution Control Loans. The rulemaking was initiated as part of the Red Tape Reduction Act. The department states that it determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. The department confirms that the rulemaking does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted.

Statutory Authority

The rulemaking appears to be authorized pursuant to Chapters 1 and 36, Title 39, Idaho Code.

2. IDAPA 58.01.20 - Rules for Administration of Drinking Water Loan Program (Chapter Repeal)

Summary and Stated Reasons for the Rule

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.20 - Rules for Administration of Drinking Water Loan Program. This is a chapter repeal. The rulemaking was initiated as part of the Red Tape Reduction Act. The department states that it determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. The department confirms that the

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

rulemaking does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted.

Statutory Authority

The rulemaking appears to be authorized pursuant to Chapters 1 and 76, Title 39, Idaho Code.

cc: Department of Environmental Quality
Paula J. Wilson

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.



Eric Milstead
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

December 05, 2019

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Id 83706-1255

Dear Paula J. Wilson:

The Senate and House Subcommittees for review of administrative rules have reviewed the proposed changes to the Department of Environmental Quality rules:

IDAPA 58.01.12 - Rules for Administration of Water Pollution Control Loans - Proposed Rule - Docket No. 58-0112-1901

IDAPA 58.01.20 - Rules for Administration of Drinking Water Loan Program (Chapter Repeal) - Proposed Rule - Docket No. 58-0120-1901

No meeting will be held, and we are pleased to report that no objections will be filed.

Sincerely yours,

A handwritten signature in black ink that reads "Katharine J. Gerrity". The signature is fluid and cursive.

Katharine Gerrity
Deputy Division Manager

KAG/jk

cc:

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.20 – RULES FOR ADMINISTRATION OF DRINKING WATER LOAN PROGRAM

DOCKET NO. 58-0120-1901 (CHAPTER REPEAL)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Chapters 1 and 76, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before November 20, 2019. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: DEQ initiated this rulemaking in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program, and merge necessary and relevant sections of IDAPA 58.01.20 with IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans. DEQ has initiated a separate rulemaking for the revisions to IDAPA 58.01.12 (Docket No. 58-0112-1901).

Prospective grant and loan recipients, consulting engineers, grant and loan administrators, other funding agencies, public officials representing various counties and cities, and the public at large may be interested in commenting on this proposed rule.

After consideration of public comments, DEQ intends to present the final proposal to the Idaho Board of Environmental Quality (Board) in 2020 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2021 legislative session if adopted by the Board and approved by the Legislature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220. On August 1, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the August 2019 issue of the Idaho Administrative Bulletin, [Vol. 19-8, pages 158–159](#), and a meeting was held on August 27, 2019. Key information was posted on the DEQ website and distributed to the public. No comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule draft, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0120-1901.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov or (208) 373-0439.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before December 4, 2019.

Dated this 6th day of November, 2019.

Paula J. Wilson
Phone: (208) 373-0418 / Fax: (208) 373-0481
paula.wilson@deq.idaho.gov

Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706

FINAL PROPOSAL
Dated March 16, 2020

**RULES FOR ADMINISTRATION OF DRINKING WATER LOAN PROGRAM,
DOCKET NO. 58-0120-1901 (CHAPTER REPEAL)**

The proposed rule was published in the Idaho Administrative Bulletin, November 6, 2019, Vol. 19-11, page 365. DEQ received no public comments and recommends that the Idaho Board of Environmental Quality repeal the rule as initially proposed.

The draft "Notice of Rulemaking – Adoption of Pending Rule" is attached.

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.20 – RULES FOR ADMINISTRATION OF DRINKING WATER LOAN PROGRAM
DOCKET NO. 58-0120-1901 (CHAPTER REPEAL)
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

EFFECTIVE DATE: This rule has been adopted by the Idaho Board of Environmental Quality (Board) and is now pending review by the 2021 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment *sine die* of the First Regular Session of the Sixty- sixth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Chapters 1 and 76, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for repealing the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, November 6, 2019, Vol. 19-11, page 310. DEQ received no public comments, and the rule has been repealed as initially proposed. More information regarding this rule docket is available at www.deq.idaho.gov/58-0120-1901.

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.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning the rulemaking, contact the undersigned.

Dated this 1st day of July, 2020

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton/Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

Idaho Board of Environmental Quality
May 14, 2020 Board Meeting

**Agenda Item 8: Rules for Administration of Water Pollution
Control Loans**

Docket No. 58-0112-1901

Agenda Item #8

Rules for Administration of Water Pollution Control Loans, Docket No. 58-0112-1901

I move that the Idaho Board of Environmental Quality adopt as pending rules the Rules for Administration of Water Pollution Control Loans as presented in the final proposal under Docket No. 58-0112-1901, with the rules becoming final and effective, if approved by the Legislature, upon the adjournment sine die of the First Regular Session of the Sixty-sixth Idaho Legislature.

<p>Docket Number: <u>58-0112-1901</u> Effective Date: <u>2021 Sine die</u> Rules Title: <u>IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans</u> Agency Contact and Phone: <u>Jerri Henry (208)373-0471</u></p>	<p style="text-align: center;"><u>Public Participation</u></p> <p>Negotiated Rule Making? <input checked="" type="checkbox"/> Yes [] No Negotiated Rulemaking Summary attached</p>
<p><u>Overview of Rulemaking</u></p> <p>DEQ initiated this rulemaking in response to Executive Order No. 2019-02, Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program, and merge necessary and relevant sections of IDAPA 58.01.20 with IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans. DEQ has initiated a separate rulemaking for the deletion of IDAPA 58.01.20 (Docket No. 58-0120-1901).</p>	<p>Proposed Rule: 11/6/19 Idaho Administrative Bulletin</p> <p>Public Hearings? [] Yes <input checked="" type="checkbox"/> No Locations and Dates: N/A</p> <p>Written Comment Deadline: 12/4/19</p> <p>Public Comments Received? [] Yes <input checked="" type="checkbox"/> No</p> <hr/> <p><u>Interim Legislative Review of Proposed Rule Pursuant to Idaho Code § 67-5223</u></p> <p>Meetings Held? [] Yes <input checked="" type="checkbox"/> No Objections Filed? [] Yes <input checked="" type="checkbox"/> No</p> <p>Documentation from Legislative Services Office (LSO) attached: 11/15/19 Memo from LSO to Germane Joint Subcommittees 12/5/19 Letter from LSO to DEQ</p>
<p><u>DEQ's Recommendation for Adoption</u></p> <p>DEQ recommends that the Board adopt the rule, as presented in the final proposal, as a pending rule.</p>	<p><u>Costs To the Agency:</u> No additional costs to the agency.</p> <p><u>Costs To the Regulated Community:</u> No additional costs to the regulated community.</p>

**Department of Environmental Quality
Rules for Administration of Water Pollution Control Loans
IDAPA 58.01.12**

Docket No. 58-0112-1901

**Negotiated Rulemaking Summary
Idaho Code § 67-5220(3)(f)**

This rulemaking has been initiated in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019.

On August 1, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the August 2019 issue of the Idaho Administrative Bulletin, and a meeting was held on August 27, 2019. Key information was posted on the DEQ website and distributed to the public. No comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule in the Idaho Administrative Bulletin. The negotiated rulemaking record, which includes the negotiated rule draft and documents distributed during the negotiated rulemaking process, is available at www.deq.idaho.gov/58-0112-1901.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Environment, Energy & Technology Committee

FROM: Deputy Division Manager - Katharine Gerrity

DATE: November 15, 2019

SUBJECT: Department of Environmental Quality

IDAPA 58.01.12 - Rules for Administration of Water Pollution Control Loans - Proposed Rule (Docket No. 58-0112-1901)

IDAPA 58.01.20 - Rules for Administration of Drinking Water Loan Program (Chapter Repeal) - Proposed Rule (Docket No. 58-0120-1901)

1. IDAPA 58.01.12 - Rules for Administration of Water Pollution Control Loans

Summary and Stated Reasons for the Rule

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.12 - Rules for Administration of Water Pollution Control Loans. The rulemaking was initiated as part of the Red Tape Reduction Act. The department states that it determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. The department confirms that the rulemaking does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted.

Statutory Authority

The rulemaking appears to be authorized pursuant to Chapters 1 and 36, Title 39, Idaho Code.

2. IDAPA 58.01.20 - Rules for Administration of Drinking Water Loan Program (Chapter Repeal)

Summary and Stated Reasons for the Rule

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.20 - Rules for Administration of Drinking Water Loan Program. This is a chapter repeal. The rulemaking was initiated as part of the Red Tape Reduction Act. The department states that it determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. The department confirms that the

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

rulemaking does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted.

Statutory Authority

The rulemaking appears to be authorized pursuant to Chapters 1 and 76, Title 39, Idaho Code.

cc: Department of Environmental Quality
Paula J. Wilson

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.



Eric Milstead
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

December 05, 2019

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Id 83706-1255

Dear Paula J. Wilson:

The Senate and House Subcommittees for review of administrative rules have reviewed the proposed changes to the Department of Environmental Quality rules:

IDAPA 58.01.12 - Rules for Administration of Water Pollution Control Loans - Proposed Rule - Docket No. 58-0112-1901

IDAPA 58.01.20 - Rules for Administration of Drinking Water Loan Program (Chapter Repeal) - Proposed Rule - Docket No. 58-0120-1901

No meeting will be held, and we are pleased to report that no objections will be filed.

Sincerely yours,

A handwritten signature in black ink that reads "Katharine J. Gerrity". The signature is fluid and cursive.

Katharine Gerrity
Deputy Division Manager

KAG/jk

cc:

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.12 – RULES FOR ADMINISTRATION OF WATER POLLUTION CONTROL LOANS

DOCKET NO. 58-0112-1901

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before November 20, 2019. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: DEQ initiated this rulemaking in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program, and merge necessary and relevant sections of IDAPA 58.01.20 with IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans. DEQ has initiated a separate rulemaking for the deletion of IDAPA 58.01.20 (Docket No. 58-0120-1901).

Prospective grant and loan recipients, consulting engineers, grant and loan administrators, other funding agencies, public officials representing various counties and cities, and the public at large may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Idaho Board of Environmental Quality (Board) in 2020 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2021 legislative session if adopted by the Board and approved by the Legislature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220. On August 1, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the August 2019 issue of the Idaho Administrative Bulletin, [Vol. 19-8, pages 156–157](#), and a meeting was held on August 27, 2019. Key information was posted on the DEQ website and distributed to the public. No comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule draft, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0112-1901.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov or (208) 373-0439.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before December 4, 2019.

Dated this 6th day of November, 2019.

Paula J. Wilson
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706
Phone: (208) 373-0418
Fax: (208) 373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0112-1901
(Only Those Sections With Amendments Are Shown.)

IDAPA 58
TITLE 01
CHAPTER 12

58.01.12 – RULES FOR ADMINISTRATION OF ~~WASTEWATER POLLUTION CONTROL AND~~
~~DRINKING WATER LOANS~~ ~~FUNDS~~

000. LEGAL AUTHORITY.

The Idaho Board of Environmental Quality, pursuant to authority granted in Chapters 1 ~~and~~, 36, ~~and~~ 76, Title 39, Idaho Code, did adopt the following rules for the administration of ~~a~~ ~~the~~ ~~Wastewater Pollution Control and Drinking Water Loan Program in Idaho Funds~~. (5-3-03)()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 58.01.12, “Rules for Administration of ~~Wastewater Pollution Control and Drinking Water Loans Funds~~.” (3-30-01)()

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering ~~a~~ ~~two~~ state loan programs for providing financial assistance to eligible applicants of ~~wastewater and drinking water pollution control~~ projects. The U.S. Environmental Protection Agency provides annual capitalization grants to the state of Idaho for ~~this~~ ~~these~~ programs. Financial assistance projects must be in conformance with the requirements of the Subchapter VI of the federal Clean Water Act (33 U.S.C. Sections 1381 et seq.) ~~and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.)~~. (3-29-12)()

002. ~~WRITTEN INTERPRETATIONS. (RESERVED)~~

~~As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706.~~ (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.

01. Incorporation by Reference. These rules do not contain documents incorporated by reference. (5-8-09)

02. Availability of Referenced Material. The “Wastewater ~~Facilities~~ Loan Handbook ~~of Procedures and the Drinking Water Loan Handbook~~” (Handbook) is available at the Idaho Department of Environmental Quality, Water Quality Division Loan Program, 1410 N. Hilton, Boise, ID 83706-1255, (208) 373-0502, ~~or~~ DEQ website <http://www.deq.idaho.gov>. (~~5-8-09~~)()

(BREAK IN CONTINUITY OF SECTIONS)

006. POLICY.

It is the policy of the Idaho Board of Environmental Quality through the Idaho Department of Environmental Quality, to administer the ~~Wastewater Pollution Control Loan Program~~ **Loan Fund** for the purpose of protecting and enhancing the quality and value of the water resources of the state of Idaho by financially assisting in the prevention, control and abatement of water pollution ~~and the Drinking Water Loan Fund for the purpose of providing assistance to eligible public drinking water systems for the planning, design, and construction of facilities to ensure safe and adequate drinking water~~. It is also the intent of the Idaho Board of Environmental Quality to assign a priority rating to those projects ~~which that~~ will most significantly improve the quality of the waters of the state and most adequately protect the public health. (~~3-30-01~~)()

007. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (12-31-91)

01. Applicant.

a. When used in the context of wastewater loan fund, applicant is defined as ~~A~~ municipality or nonpoint source project sponsor ~~which that~~ has the ability to establish and maintain a loan repayment source. Individuals and for-profit corporations are not eligible. (~~5-8-09~~)()

b. When used in the context of drinking water loan fund, applicant is defined as any eligible system making application for drinking water loan funds. ()

02. Best Management Practice. A practice or combination of practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be the most cost-effective and practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality needs. (3-30-01)

03. Board. The Idaho Board of Environmental Quality. (5-8-09)

04. Categorical Exclusion (CE). Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental information document nor an environmental impact statement is required. (5-8-09)

05. Close or Closing. The date on which the loan recipient issues and physically delivers to the Department the bond or note evidencing the loan to the loan recipient, specifically determining the principal, interest and fee amounts that shall be repaid and the schedule for payment. (3-29-12)

06. Collector Sewer. That portion of the wastewater treatment facility whose primary purpose is to receive sewage from individual residences and other individual public or private structures and which is intended to convey wastewater to an interceptor sewer or a treatment plant. (1-1-89)

07. Community Water System. A public drinking water system that: ()

a. Serves at least fifteen (15) service connections used by year round residents of the area served by the system; or ()

b. Regularly serves at least twenty-five (25) year-round residents. ()

~~078.~~ **Construction.** The erection, building, acquisition, alteration, reconstruction, improvement or extension of wastewater treatment facilities, including preliminary planning to determine the economic and engineering feasibility of wastewater treatment facilities, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures and other action necessary in the construction of wastewater treatment facilities; the inspection and supervision of the construction; and start-up of the associated facilities. (3-29-12)

~~09.~~ **Contaminant.** Any physical, chemical, biological, or radiological substance or matter in water. ()

~~108.~~ **Department.** The Idaho Department of Environmental Quality. (1-1-89)

~~0911.~~ **Director.** The Director of the Idaho Department of Environmental Quality or his/her designee. (5-3-03)

~~102.~~ **Disadvantaged Community.** The service area of a wastewater treatment facility that meets affordability criteria established by the Department of Environmental Quality after public review and comment. (3-29-12)

~~143.~~ **Disadvantaged Loans.** Loans made to a disadvantaged community. (3-29-12)

~~14.~~ **Distribution System.** Any combination of pipes, tanks, pumps, and other equipment that delivers water from the source(s), treatment facility(ies), or a combination of source(s) and treatment facility(ies) to the consumer. Chlorination may be considered as a function of a distribution system. ()

~~125.~~ **Eligible Costs.** Costs which are necessary for planning, designing and/or constructing wastewater treatment facilities or implementation of water pollution control projects. To be eligible, costs must be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (5-3-03)

~~136.~~ **Environmental Impact Statement (EIS).** A document prepared by the applicant when the Department determines that the proposed construction project may significantly affect the environment. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. The environmental review procedures contained in Chapter 5 of the Handbook may be used as guidance when preparing the EIS. (3-29-12)

~~147.~~ **Environmental Information Document (EID).** Any written environmental assessment prepared by the applicant describing the environmental impacts of a proposed wastewater construction project. This document will be of sufficient scope to enable the Department to assess the environmental impacts of the proposed project and ultimately determine if an EIS is warranted. (3-29-12)

~~158.~~ **Financial Management System.** Uniform method of recording, summarizing and analyzing financial information about the water pollution control loan applicant. (3-30-01)

~~169.~~ **Finding of No Significant Impact (FONSI).** A document prepared by the Department presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an EIS will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it. (3-29-12)

~~—~~ 1720. **Handbook.** "Wastewater ~~Facilities~~ Loan Fund and Drinking Water Loan Fund Handbook" ~~of~~ Procedures." (5-8-09)()

218. Implementation Plan. Completed project implementation plan or work plan provides detailed documentation of the proposed project including list of tasks, schedule of tasks, agency/contractor/entity responsible for implementation of the project tasks, adequate time schedules for completion of all budget tasks, and the anticipated results of the project. (3-30-01)

~~222.~~ **Ineligible Costs.** Costs which are not eligible for funding pursuant to these rules. (3-29-12)

203. Interceptor Sewer. That portion of the wastewater treatment facility whose primary purpose is to transport domestic sewage or nondomestic wastewater from collector sewers to a treatment plant. (1-1-89)

~~214.~~ **Loan Recipient.** An applicant who has been awarded a loan. (3-29-12)

~~22.~~ **National Pollutant Discharge Elimination System.** Point source permitting program established pursuant to Section 402 of the federal Clean Water Act (33 U.S.C. Section 1342). (3-30-01)

25. Managerial Capability. The capability of the loan applicant to support the proper financial and technical operation of the system. ()

26. Maximum Contaminant Level (MCL). The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. ()

27. Noncommunity Water System. A public water system that is not a community water system. ()

238. Nondomestic Wastewater. Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. (5-3-03)

249. Nonpoint Source Pollution. Water pollution that enters the waters of the state from nonspecific and diffuse sources and is the result of runoff, precipitation, drainage, seepage, hydrological modification or land disturbing activities. (5-8-09)

~~2530.~~ **Nonpoint Source Project Sponsor.** Any applicant for ~~wastewater pollution control~~ loan funds for ~~to address~~ nonpoint source pollution ~~project~~. (5-8-09)()

2631. Operation and Maintenance Manual. For wastewater treatment facilities, a guidance and training manual outlining the optimum operation and maintenance of the wastewater treatment facility or its components. For nonpoint source water pollution control projects, a plan that incorporates applicable sections of the Natural Resources Conservation Service Field Office Technical Guide, for implementation of best management practices. (3-29-12)

~~2732.~~ **Planning Document.** A document which describes the condition of a public wastewater system and presents a cost effective and environmentally sound alternative to achieve or maintain regulatory compliance. Engineering reports and facility plans are examples of such planning documents. The planning documents shall be prepared by or under the responsible charge of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Requirements for planning documents prepared using loan funds are provided in Section 030 of these rules and in the Handbook. (3-29-12)

~~2833.~~ **Plan of Operation.** A schedule of specific actions and completion dates for construction, start-up and operation of the ~~wastewater treatment~~ facility or for implementation of ~~wastewater pollution control~~ or ~~drinking water~~ projects. (5-3-03)()

~~2934.~~ **Point Source.** Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be discharged to the waters of the state. This term as used in these rules does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. (5-8-09)

~~305.~~ **Pollutant.** Any chemical, biological, or physical substance whether it be solid, liquid, gas, or a quality thereof, which if released into the environment can, by itself or in combination with other substances, create a nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other beneficial uses. (1-1-89)

~~316.~~ **Priority List.** An integrated list of proposed wastewater treatment facility and nonpoint source pollution control projects rated as described in Section 020; or a list of proposed drinking water projects rated by severity of risk to public health, the necessity to ensure compliance with IDAPA 58.01.08, Idaho Rules for Public Drinking Water Systems, and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.), population affected, and need on a household basis for protection of Idaho's public drinking water. (~~5-3-03~~)()

~~32.~~ **Rehabilitation.** *The repair or replacement of limited segments of intercepter or collector sewers.* (~~5-3-03~~)

~~37.~~ **Public Drinking Water System/Public Water System/Water System.** A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any "special irrigation district." A public water system is either a "community water system" or a "noncommunity water system." ()

~~38.~~ **Readiness to Proceed.** The progress which a loan applicant has made towards completion of time-consuming tasks necessary to complete a loan application (e.g. bond election, local improvement district formation, judicial confirmation towards debt authority, completion of facility plan). ()

~~339.~~ **Reserve Capacity.** That portion of the ~~treatment works~~ facility that is designed and incorporated in the constructed facilities to handle future ~~sewage flows and loadings~~ demand upon the system. (~~1-1-89~~)()

~~3440.~~ **Sewer Use Ordinance/Sewer Use Resolution.** An ordinance or resolution ~~which~~ that requires new sewers and connections to be properly designed and constructed, prohibits extraneous sources of inflow and prohibits introduction of wastes into the sewer in an amount that endangers the public safety or the physical or operational integrity of the wastewater treatment facility. (~~5-8-09~~)()

~~3541.~~ **State.** The state of Idaho. (12-31-91)

~~3642.~~ **Supplemental Grants.** A state funded grant awarded in conjunction with a loan from the water pollution control loan account. (3-29-12)

~~3743.~~ **Suspension.** An action by the Director to suspend a loan contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (1-1-89)

~~3844.~~ **Sustainability.** Sustainability will include efforts for energy and water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement. (3-29-12)

~~3945.~~ **Termination.** An action by the Director to permanently terminate a loan contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (1-1-89)

~~406.~~ **User Charge System.** A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required and which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the installed equipment or structures. (3-30-01)

~~417.~~ **Wastewater.** A combination of the liquid and water-carried wastes from dwellings, commercial

buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water and storm water that may be present; liquid and water that is physically, chemically, biologically, or rationally identifiable as containing excreta, urine, pollutants or domestic or commercial wastes; sewage. (1-1-89)

428. Wastewater Treatment Facility. Any facility, including land, equipment, furnishings and appurtenances thereof, used for the purpose of collecting, treating, neutralizing or stabilizing wastewater and removing pollutants from wastewater including the treatment plant, collectors, interceptors, outfall and outlet sewers, pumping stations, sludge treatment and handling systems, land disposal systems; a sewage treatment plant. (1-1-89)

439. Water Pollution Control Project. Any project that contributes to the removal, curtailment, or mitigation of pollution of the surface waters or groundwater of the state, or the restoration of the quality of said waters, and conforms to any applicable planning document which has been approved and/or adopted such as the State Water Quality Management Plan. This includes the planning, design, construction/implementation or any other distinct stage or phase of a project. (3-30-01)

50. Water System Protection Ordinance. An ordinance adopted pursuant to Chapter 32, Title 42, Idaho Code, or other applicable law that requires new connections to be properly designed and constructed, which prohibits cross-connections with non-potable water sources and in all ways protects the water system from injection of contaminants, and that provides for fees for service from users or classes of users. ()

008. OFFICE HOURS — MAILING ADDRESS AND STREET ADDRESS ELIGIBLE SYSTEMS.
The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, telephone number (208) 373-0502. The office hours are 8 a.m. to 5 p.m. Monday through Friday. (5-8-09)

01. Basic Drinking Water Considerations. Public and private community water systems and nonprofit noncommunity water systems. ()

02. Basic Wastewater Considerations. Municipal or non-profit owned wastewater point source treatment facilities, lagoons, reuse facilities, and systems using nonpoint source methodologies of wastewater disposal. ()

03. Assistance to Ensure Compliance. Public water systems not eligible for project loans may receive assistance if: ()

a. The use of the assistance will ensure compliance; ()

b. The owner or operator of the system agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures); ()

c. The Department determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with state and federal drinking water requirements over the long term; and ()

d. Prior to providing assistance under this section to a public water system that is in significant noncompliance with any requirement of IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.), the Department conducts a review to determine whether this section applies to the system. ()

009. (RESERVED) INELIGIBLE SYSTEMS.

01. Basic Considerations. Systems not eligible for project loans are described in Subsection 009.02. ()

02. Systems Not Eligible. The following systems will not be considered eligible for project loans: ()

- a.** Wastewater systems that are owned by individuals or for-profits; ()
- b.** Drinking water systems in significant noncompliance with any requirement of IDAPA 58.01.08, Idaho Rules for Public Drinking Water Systems, and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); ()
- c.** Drinking water systems under disapproval designation as outlined in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems"; or ()
- d.** Systems delinquent in payment of fines, state revolving fund loans, penalties, or fee assessments due to DEQ. ()

010. FINANCIAL AND MANAGEMENT CAPABILITY ANALYSIS.

No loans shall be awarded for projects unless the applicant has demonstrated and certified that it has the legal, technical, managerial, and financial capabilities as provided for in these rules to ensure construction, operation and maintenance, and to repay principal and interest which would be due on a loan. (5-3-03)

01. Information Needed. Before an application will be considered complete, the applicant must submit all necessary information on a form prescribed by the Department along with substantiating documentation. The information may include, but not be limited to, demographic information of the applicant, estimated construction or implementation costs, annual operating costs, and information regarding the financing of the project, including the legal debt limit of the applicant and the existence and amount of any outstanding bonds or other indebtedness which may affect the project. (5-8-09)

02. Incorporated Nonprofit Applicants. (7-1-93)

a. In addition to all other information required to be submitted by these rules, an incorporated nonprofit applicant must demonstrate to the satisfaction of the Department by its articles of incorporation and/or bylaws, that: (3-30-01)

- i.** The corporation is nonprofit and lawfully incorporated pursuant to Chapter 3, Title 30, Idaho Code; (5-8-09)
- ii.** The corporation is authorized to incur indebtedness to construct, improve or repair wastewater ~~treatment~~ or drinking water facilities and/or implement water pollution control nonpoint source projects; (~~5-8-09~~)()
- iii.** The corporation is authorized to secure indebtedness by pledging corporation ~~property assets,~~ including any revenues raised through a user charge system; (~~5-8-09~~)()
- iv.** The corporation exists either perpetually or for a period long enough to repay a ~~wastewater treatment facility loan or water pollution control~~ project loan; and (~~3-30-01~~)()
- v.** The corporation is capable of raising revenues sufficient to repay a loan. (3-30-01)

b. The Department may impose conditions on the making of a ~~wastewater treatment~~ facility loan or water pollution control nonpoint source project to an incorporated nonprofit applicant which are necessary to carry out the provisions of these rules and the provisions of Chapter 36 or 76, Title 39, Idaho Code. (~~3-30-01~~)()

03. Cost Allocation. An applicant proposing a point source wastewater, drinking water or nonpoint source ~~water pollution control~~ project designed to serve two (2) or more entities must show how the costs will be allocated among the participating entities. Such applicants must provide an executed intermunicipal service agreement which, at a minimum, incorporates the following information: (~~5-8-09~~)()

- a.** The basis upon which the costs are allocated; (5-8-09)

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules for Administration of Water Pollution Control Loans

Docket No. 58-0112-1901
Proposed Rulemaking

b. The formula by which the costs are allocated; and (1-1-89)

c. The manner in which the cost allocation system will be implemented. (1-1-89)

04. Waivers. The requirement in ~~Subsection 010.03~~ may be waived by the Department if the applicant can demonstrate: ~~(12-31-91)~~()

a. Such an agreement is already in place; (5-8-09)

b. There is documentation of a service relationship in the absence of a formal agreement; or (1-1-89)

c. An applicant exhibits sufficient financial strength to continue the project if one (1) or more of the applicants fails to participate. (5-8-09)

011. -- 019. (RESERVED)

020. ~~INTEGRATED~~ PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. ~~Information is also received from the Department and consulting engineers.~~ Limited loan funds are awarded to projects based on priority ratings and readiness to proceed. Projects are rated by the Department on a standard priority rating form using public health, sustainability, the condition of the existing system and water quality criteria. ~~(3-29-12)~~()

01. Purpose. An ~~integrated~~ priority rating system shall be utilized by the Department to annually allot available funds to wastewater quality and drinking water projects determined eligible for funding assistance under ~~the water pollution control loan program in accordance with~~ these rules. ~~(5-3-03)~~()

02. Wastewater Priority Rating. The priority rating system shall be based on a numerical point system. Priority criteria shall contain the following points: (3-29-12)

a. Public health emergency or hazard certified by the Idaho Board of Environmental Quality, the Department, a District Health Department or by a District Board of Health -- one hundred and fifty (150) points. (5-8-09)

b. Regulatory compliance issues (e.g., noncompliance and resulting legal actions relating to infrastructure deficiencies at a wastewater facility) -- up to one hundred (100) points. (3-29-12)

c. Watershed restoration (e.g., implementation of best management practices or initiation of construction at wastewater collection and treatment facilities as part of an approved total maximum daily load plan, implementation of nonpoint source management actions in protection of a threatened water, or is part of a special water quality effort) -- up to one hundred (100) points. (3-29-12)

d. Watershed protection from impacts (e.g., improvement of beneficial use(s) in a given water body, evidence of community support, or recognition of the special status of the affected water body) -- up to one hundred (100) points. (3-29-12)

e. Preventing impacts to uses (nonpoint source pollution projects) -- up to one hundred (100) points. (3-29-12)

f. Sustainability efforts (e.g., prospective efforts at energy conservation, water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement) -- up to fifty (50) points. (3-29-12)

g. Affordability (current system user charges exceed state affordability guidelines) -- ten (10) points. (3-29-12)

03. Drinking Water Priority Rating. The priority rating system shall be based on a numerical points

system. Priority criteria shall contain the following points. ()

a. Public Health Hazard. Any condition that creates, or may create, a danger to the consumer's health, which may include any one (1) or more of the following, may be awarded a maximum of one hundred (100) points: ()

i. Documented unresolved violations of the primary drinking water standards including maximum contaminant levels, action levels, and treatment techniques (to include maximum contaminant levels for acute and chronic contaminants); ()

ii. Documented unresolved violations of pressure requirements; ()

iii. Documented reduction in source capacity that impacts the system's ability to reliably serve water; ()

iv. Documented significant deficiencies (e.g., documented in a sanitary survey) in the physical system that are causing the system to not reliably serve safe drinking water; or ()

v. Documented unregulated contaminants that have been shown by EPA to be a risk to public health. ()

b. General Conditions of Existing Facilities. Points shall be given based on deficiencies, which would not constitute a public health hazard, for pumping, treating, and delivering drinking water - up to sixty (60) points. ()

c. Sustainability Efforts (e.g., prospective efforts at energy conservation, water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement) - up to fifty (50) points. ()

d. Consent Order, Compliance Agreement Schedule, or Court Order. Points shall be given if the system is operating under and in compliance with a Consent Order, Compliance Agreement Schedule, or Court Order and the proposed construction project will address the Consent Order, Compliance Agreement Schedule, or Court Order - up to thirty (30) points. ()

e. Incentives. Bonus points shall be awarded to systems that promote source water protection, conservation, economy, proper operation maintenance, and monitoring - up to ten (10) points. ()

f. Affordability. Points shall be given when current system user charges exceed state affordability guidelines - ten (10) points. ()

034. Rating Forms. Rating criteria for ~~Sub~~section 020.02 is set forth in a rating form that is available in the Handbook. (3-29-12)()

045. ~~Integrated~~ Priority List. A list shall be developed from projects rated according to ~~Sub~~section 020.02. ~~Such list shall be~~ submitted for public review and comment, and ~~shall thereafter be~~ submitted to the Board for approval. (3-29-12)()

a. Priority Reevaluation. Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for or scope of any project, a reevaluation of that priority rating will be conducted. (1-1-89)

~~**b. Priority Target Date.** An eligible applicant whose project is on the approved priority list, and for which funding is available, will be contacted by the Department and a target date for submission of a completed loan application will be established.~~ (5-3-03)

eb. Project Bypass. A project that does not or will not meet the ~~project target date or a~~ Department schedule that allows for timely utilization of loan funds may be bypassed, substituting in its place the next highest

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules for Administration of Water Pollution Control Loans

Docket No. 58-0112-1901
Proposed Rulemaking

ranking project(s) that is ready to proceed. An eligible applicant that is bypassed will be notified in writing of the reasons for being bypassed. (3-29-12)()

056. Amendment of ~~Integrated~~ a Priority List. The Director may amend ~~the Integrated~~ a Priority List as set forth in Section 995 of these rules. (5-8-09)()

021. DISADVANTAGED LOANS.

Disadvantaged Loan Awards. In conjunction with the standard loans, the Department may award disadvantaged loans to applicants deemed disadvantaged using the following criteria: (3-29-12)

01. Qualifying for a Disadvantaged Loan. In order to qualify for a disadvantaged loan, a loan applicant must have an ~~annual residential~~ user rate for ~~either drinking water or~~ wastewater services ~~for residential customers which that~~ exceeds two percent (2%) of the applicant community's median household income or, if the user rate is between one and one-half percent (1½%) and two percent (2%) of the applicant community's median household income, the community must also have: unemployment that exceeds the state average; and a decreasing population. The applicant shall agree to a thirty (30) year loan unless the design life of the project is documented to be less than thirty (30) years. The annual user rate would be based on all operating, maintenance, replacement, and debt service costs (both for the existing system and for upgrades). If the applicant's service area is not within the boundaries of a municipality, or if the applicant's service area's median household income is not consistent with the municipality as a whole, the applicant may use the census data for the county in which it is located or may use a representative survey, conducted by a Department approved, objective third party, to verify the median household income of the applicant's service area. (3-25-16)()

02. Adjustment of Loan Terms. DEQ will equally apportion funds available for principal forgiveness to all prospective disadvantaged loan recipients. ~~For wastewater loan funding, the length of the repayment period is set at the borrower's discretion, up to the maximum repayment period of thirty (30) years. For drinking water loan funding, extensions of repayment term to thirty (30) years are only allowed for disadvantaged applicants.~~ Consistent with achieving user rates as per the criteria set forth in ~~Subsection 021-01~~, and where possible with available funds, loan terms may be adjusted in the following order: decreasing the interest rate and providing principal forgiveness. (3-25-16)()

a. Decreasing Interest Rate. The loan interest rate may be reduced from the rate established by the Director for standard loans to a rate that results in an annual user rate equaling the criteria set forth in ~~Subsection 021-01~~. The interest rate may be reduced to as low as zero percent (0%). (3-25-16)()

b. Principal Forgiveness. If even at zero percent (0%) interest, the annual user rate per residential user still exceeds the criteria set forth in ~~Subsection 021-01~~, then the principal ~~which that~~ causes the user charge to exceed the criteria set forth in ~~Subsection 021-01~~ may be partially forgiven or reduced. The principal reduction cannot exceed fifty percent (50%) of the total loan, ~~unless the user rate will exceed \$100 per month (in which case the principal reduction may exceed fifty percent (50%)).~~ Principal forgiveness terms may be revised (from initial estimates established in the annual Intended Use Plan) based upon final construction costs, such that loan terms do not result in user rates that are below the criteria set forth in ~~Subsection 021-01~~. (3-25-16)()

022. SUPPLEMENTAL GRANTS.

In conjunction with loans, the Department may award state funded supplemental grants, not to exceed ninety percent (90%) of total eligible costs, to loan recipients in the following manner: (3-29-12)

01. Projects Not Funded by Loans. Planning and design projects may receive grant assistance up to ninety percent (90%) funding of eligible costs not funded by a loan; and (1-1-89)

02. Costs in Excess of Financial Ability. (3-30-01)

a. Loan recipients may receive supplemental grant assistance for eligible costs that exceed the amount a loan recipient is able to pay. In order to qualify for a supplemental grant, a loan recipient must have the following: (3-29-12)

i. An annual user rate per household which exceeds one and one-half percent (1 1/2%) of the median

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules for Administration of Water Pollution Control Loans

Docket No. 58-0112-1901
Proposed Rulemaking

household income from the most recent census data. If the loan recipient's service area is not within the boundaries of a municipality, the loan recipient may use the census data for the county in which it is located or may use an income survey approved by the Department; and (3-29-12)

ii. The annual user rate includes all operating, maintenance, replacement and debt service costs, both for the existing system and for upgrades. (3-29-12)

b. If a loan recipient meets the requirement of ~~Subsections 022.02.i. and 022.02.ii.~~, a supplemental grant may be made for the amount of the project that causes the annual user rate for wastewater service per household to exceed one and one-half percent (1 1/2%) of the median household income, subject to available funds. (3-29-12)()

~~03. **Accrued Interest on Loans with Supplemental Grants.** Interest will not be accrued during the design and construction phases on loan projects that also have a supplemental grant. (3-30-01)~~

023. -- 029. (RESERVED)

030. PROJECT SCOPE AND FUNDING.

Loan funds awarded under this program may be used to prepare a ~~wastewater treatment~~ facility planning document which identifies the cost effective and environmentally sound alternative to achieve or maintain compliance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," the Safe Drinking Water Act, 42 U.S.C., Sections 300f et seq., IDAPA 58.01.16, "Wastewater Rules," and the Clean Water Act, 33 U.S.C. Sections 1381 et seq., and which is approvable by the Department. Loan funds may also be used for design and construction of the chosen alternative. (3-29-12)()

01. Nonpoint Source Implementation Funding. Eligible nonpoint source water pollution control projects may be funded when all of the following criteria are met: (3-30-01)

a. Consistent with and implements the Idaho Nonpoint Source Management Plan. (3-30-01)

b. Data is used to substantiate a nonpoint source pollutant problem or issue exists and is described or directly referenced. (3-30-01)

c. Completed project implementation plan or work plan. (3-30-01)

d. Project commitment documentation through demonstrated ability for loan repayment. (3-30-01)

e. The project includes documentation that the project owner(s), manager(s), or the sponsoring agency will maintain the project for the life of the project (e.g., Maintenance Agreement). (3-30-01)

f. The project provides adequate tracking and evaluation of the effectiveness of the water quality improvements being funded by either the project owner/manager or the sponsoring agency throughout the life of the project. (3-30-01)

g. The project demonstrates nexus/benefit to municipality through a letter of support from one (1) or more affected municipalities. (3-30-01)

02. ~~Wastewater Treatment Facility Funding.~~ Projects may be funded in steps: (3-30-01)()

a. Step 1. Planning document prepared in accordance with the Handbook. (3-29-12)

b. Step 2. Design which includes the preparation of the detailed engineering plans and specifications necessary for the bidding and construction of the project. (1-1-89)

c. Step 3. Construction, which includes bidding and actual construction of the project. (1-1-89)

d. Step 4. A combination of Step 2 and Step 3. (1-1-89)

e. Combination Step Funding. Projects may be funded in any combination of the steps with the approval of the Department. Separate loans may be awarded for Step 1 or Step 2 projects. If a Step 1 or Step 2 project proceeds to construction, either the Step 1 or Step 2 loan, or both, may be consolidated with the Step 3 loan. If a project does not proceed to construction, outstanding Step 1 and Step 2 loans will be amortized and a repayment schedule prepared by the Department. (1-1-89)

f. Cost Effective Requirement. Step 2, Step 3 or Step 4 loans shall not be awarded until a final cost effective and environmentally sound alternative has been selected by the Step 1 planning document and approved by the Department. If the planning document has not been completed pursuant to IDAPA 58.01.0422, "Rules for Administration of ~~Wastewater Treatment Facility~~ Planning Grants for Drinking Water and Wastewater Facilities," then the loan recipient shall provide an opportunity for the public to comment on the draft planning document. The public comment period shall be held after alternatives have been developed and the Department has approved the draft planning document. The loan recipient shall provide written notice of the public comment period and hold at least one (1) public meeting within the jurisdiction of the loan recipient during the public comment period. At the public meeting, the draft planning document shall be presented by the loan recipient with an explanation of the alternatives identified. The cost effective and environmentally sound alternative selected shall consider public comments received from those affected by the proposed project. After the public meeting and public comment period, the final alternative will be selected and the Environmental Information Document will be prepared. (3-29-12)()

g. Funding For Wastewater Reserve Capacity. Funding for reserve capacity of a treatment plant will not exceed a twenty (20) year population growth and funding for reserve capacity of an interceptor will not exceed a forty (40) year population growth as determined by the Department. (1-1-89)()

h. Funding for Drinking Water Reserve Capacity. Funding for reserve capacity of a drinking water system shall not exceed a twenty (20) year population growth, except that distribution and transmission lines which may be planned for a forty (40) year useful life. ()

031. LIMITATION OF PRELOAN ENGINEERING REVIEWS.

Preloan engineering documents prepared by consulting engineers will be reviewed by Department staff only when accompanied by a certificate that the consulting engineer carries professional liability insurance in accordance with ~~Subsection 050.05.d.~~ (5-3-03)()

032. LOAN FEE.

01. Loan Fee. The Department may elect to impose a loan fee when necessary to offset the costs of administering the loan program, to provide planning assistance, or to otherwise facilitate the operation of the Clean Water Act State Revolving Fund (CWSRF) loan efforts. ~~The Department may impose a loan fee on loans scheduled to close after January 4, 2006.~~ The loan fee shall not exceed one percent (1%) of the unpaid balance of the loan at the time each loan payment is due. (5-8-09)()

~~**02. Determination of Loan Fee.** The Department shall determine the amount of the loan fee on a yearly basis and shall assess a loan fee based upon each loan recipient's total interest rate. The amount of the loan fee shall be included in the Intended Use Plan, as described by Section 606(e) of the Clean Water Act. In determining the amount of the loan fee, the Department shall consider:~~ (3-29-12)

~~**a.** The Department's anticipated costs of administering the loan program for the upcoming fiscal year, including salaries and overhead;~~ (3-19-07)

~~**b.** Any Department costs related to providing technical assistance for the loan program for the upcoming fiscal year;~~ (5-8-09)

~~**c.** The amount of money generated from loan fees in previous fiscal years available for use in the upcoming fiscal year; and~~ (3-19-07)

~~**d.** The anticipated demand for planning assistance to supplement regular appropriations and other~~

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules for Administration of Water Pollution Control Loans

Docket No. 58-0112-1901
Proposed Rulemaking

~~related needs to support the CWSRF loan program.~~

~~(5-8-09)~~

032. Effect on Loan Interest Rate. The loan interest rate, as described in ~~Subsection 050-05~~, will be reduced by the corresponding percentage of the loan fee. ~~(3-19-07)()~~

043. Payment of Loan Fee. The loan fee shall be due and payable concurrently with scheduled loan principal and interest repayments over the repayment period. (3-19-07)

033. -- 039. (RESERVED)

040. LOAN APPLICATION AND REVIEW.

01. Submission of Application. Those eligible systems that received high priority ranking ~~and are ready to proceed~~ shall be invited to submit an application. The applicant shall submit to the Department, a completed application on a form as prescribed by the Department. ~~(5-3-03)()~~

02. Application Requirements. Applications shall contain the following documentation, as applicable: (5-3-03)

a. A lawful resolution passed by the governing body authorizing an elected official or officer of the applicant to execute a loan contract and sign subsequent loan disbursement requests; (5-8-09)

b. Contracts for engineering or other technical services and the description of costs and tasks set forth therein shall be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 041; (5-8-09)

c. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)

~~i. Be procured for design and/or services during construction or previously procured for planning services through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; (5-8-09)~~

~~ii.~~ Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; (5-8-09)

~~iii.~~ Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)

~~i+ii.~~ Be covered by professional liability insurance in accordance with ~~Subsection 050-05.d.~~ of these rules. A certification of liability insurance shall be included in the application. ~~(5-8-09)()~~

d. A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 041; (5-8-09)

e. A demonstration that the obligation to pay the costs for which funding is requested is the result or will be the result of the applicant's compliance with applicable competitive bidding requirements for construction and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code; (3-29-12)

f. Step 1 -- Scope of work describing the work tasks to be performed in the preparation of the planning document if required in accordance with ~~Subsection 030-02~~, a schedule for completion of the work tasks and an estimate of staff hours and costs to complete the work tasks; ~~(3-29-12)()~~

g. Step 2 -- Design, or Step 4 -- Design and Construction: (1-1-89)

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules for Administration of Water Pollution Control Loans

Docket No. 58-0112-1901
Proposed Rulemaking

- i. Planning document, including a final environmental document and decision in accordance with Section 042; (3-29-12)
 - ii. Financial and management capability analysis as provided in ~~Subsection 010-01~~; and ~~(12-31-91)~~()
 - iii. Intermunicipal service agreements between all entities within the scope of the project, if applicable; (5-8-09)
 - h.** Step 3 -- Construction: (1-1-89)
 - i. Documented evidence of all necessary easements and land acquisition; (5-8-09)
 - ii. Biddable plans and specifications of the approved wastewater treatment facility alternative; (5-8-09)
 - iii. A plan of operation and project schedule; (5-8-09)
 - iv. A user charge system, sewer use or water system protection ordinance and financial management system; and ~~(1-1-89)~~()
 - v. A staffing plan and budget; (5-8-09)
 - i.** Step 4 -- Design and Construction. Loan applicants must submit all documentation specified in ~~Subsection 040-02-h~~ prior to advertising for bids on construction contracts; ~~(5-8-09)~~()
 - j.** Nonpoint Source Implementation Funding: (5-8-09)
 - i. Information demonstrating that the project is consistent with and implements the Idaho Nonpoint Source Management Plan; (5-8-09)
 - ii. Data that substantiates a nonpoint source pollution problem or issue exists; (5-8-09)
 - iii. A project implementation plan or workplan; (5-8-09)
 - iv. Project commitment documentation that demonstrates the ability for loan repayment; (5-8-09)
 - v. Documentation that the project owner, manager or sponsoring agency will maintain the project for the life of the project; (5-8-09)
 - vi. A demonstration that there will be adequate tracking and evaluation of the effectiveness of the water quality improvements being funded by either the project owner/manager or the sponsoring agency throughout the life of the project; and (5-8-09)
 - vii. A description of the nexus/benefit to a municipality and a letter of support from one (1) or more affected municipalities. (5-3-03)
- 03. Determination of Completeness of Application.** The Department ~~shall~~ will review the application to determine whether it includes all of the information required by ~~Subsection 040-02~~. ~~(5-3-03)~~()
- 04. Notification of Incompleteness of Application.** Written notification if an application is incomplete, including an explanation of missing documentation will be sent to the applicant. The applicant may provide the missing documentation. (5-3-03)
- 05. Reapplication for Loan.** The action of disapproving, recalling or terminating a loan in no way precludes or limits the former applicant from reapplying for another loan when the project deficiencies are resolved and project readiness is secured. (1-1-89)

041. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department ~~shall~~ **will** review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. ~~(5-3-03)~~()

01. Eligible Costs. Eligible costs are those determined by the Department to be: (5-3-03)

a. Necessary costs; (3-29-12)

b. Reasonable costs; and (3-29-12)

c. Costs that are not ineligible as described in ~~Sub~~section 041.05. ~~(5-3-03)~~()

02. Necessary Costs. The Department ~~shall~~ **will** determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the plan of study for facility planning ~~planning~~ documents, the project implementation plan or work plan for nonpoint source projects, and any other relevant information in the application that describes the scope of the project to be funded. ~~(3-29-12)~~()

03. Reasonable Costs. Costs ~~shall~~ **will** be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements for construction and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code. ~~(5-8-09)~~()

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable and not ineligible costs include: (5-3-03)

a. Costs of salaries, benefits, and expendable material the applicant incurs in the project except ordinary operating expenses of local government, such as salaries and expenses of mayors, city council members, attorneys, commissioners, board members, or managers; (5-8-09)

b. Costs under construction contracts bid and executed in compliance with state public works construction laws; (5-3-03)

c. Professional and consulting services utilizing a lump sum contract, a negotiated hourly rate contract, a time and materials contract, or cost plus a fixed fee contract; (5-3-03)

d. Planning directly related to the ~~water pollution control~~ projects; ~~(5-3-03)~~()

e. ~~Sewer~~sSystem evaluations; ~~(5-3-03)~~()

f. Financial and management capability analysis; (5-3-03)

g. Preparation of construction drawings, specifications, estimates, and construction contract documents; (5-3-03)

h. Landscaping; (5-3-03)

i. Removal and relocation or replacement of utilities for which the applicant is legally obligated to pay; (5-8-09)

j. Material acquired, consumed, or expended specifically for the project; (5-3-03)

k. A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; (5-3-03)

l. Preparation of an operation and maintenance manual; (5-3-03)

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules for Administration of Water Pollution Control Loans

Docket No. 58-0112-1901
Proposed Rulemaking

- m. Preparation of a plan of operation; (5-3-03)
 - n. Start-up services; (5-3-03)
 - o. Project identification signs; (5-3-03)
 - p. Public participation for alternative selection; (5-3-03)
 - q. Development of user charge and financial management systems; (5-3-03)
 - r. Development of sewer use or water system protection ordinance; ~~(5-3-03)~~()
 - s. Staffing plans and budget development; (5-3-03)
 - t. Certain direct and other costs as determined eligible by the Department; (5-3-03)
 - u. Costs of complying with the Federal Water Pollution Control Act (P.L. 92-500) as amended, 33 USC Section 1251 et seq. and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq), loan requirements applied to specific projects; and ~~(5-3-03)~~()
 - v. Site acquisition costs, including ~~sewer~~ right of way, ~~sewage treatment~~ plant site, wastewater land application sites and sludge disposal areas. Land purchase shall be from a willing seller. ~~(3-29-12)~~()
- 05. Ineligible Project Costs.** Costs which are ineligible for funding include, but are not limited to: (5-3-03)
- a. Basin or area wide planning not directly related to the project; (5-3-03)
 - b. Bonus payments not legally required for completion of construction before a contractual completion date; (5-3-03)
 - c. Personal injury compensation or damages arising out of the project; (5-3-03)
 - d. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)
 - e. Costs outside the scope of the approved project; (5-3-03)
 - f. Ordinary operating expenses of local government, such as salaries and expenses of mayors, city council members, attorneys, commissioners, board members, or managers; (5-8-09)
 - g. Construction of privately owned wastewater treatment facilities; (5-3-03)
 - h. Cost of land in excess of that needed for the proposed project; (5-3-03)
 - i. Cost of refinancing existing indebtedness; (3-29-12)
 - ~~j.~~ Engineering costs incurred without professional liability insurance; ()
 - ~~k.~~ Costs of condemnation; ()
 - ~~j.l.~~ Reserve funds; and (3-29-12)
 - ~~k.m.~~ Costs incurred prior to acceptance of the loan unless specifically approved in writing as eligible pre-award costs by the Department. (3-29-12)

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules for Administration of Water Pollution Control Loans

Docket No. 58-0112-1901
Proposed Rulemaking

06. Notification Regarding Ineligible Costs. Prior to providing a loan offer, the Department *shall will* notify the applicant if certain costs are not eligible for funding and the reasons for the Department's determination. If such costs are included in the engineering contract, the Department *shall will* also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. (5-3-03)()

07. Eligible Costs and the Loan Offer. The loan offer shall reflect those costs determined by the Department to be eligible costs. The loan offer, however, may include estimates of some eligible costs that have not yet been set, such as construction costs. Actual eligible costs may differ from such estimated costs set forth in the loan offer. In addition, loan disbursements may be increased or decreased if eligible costs are modified as provided in Section 060. (5-3-03)

042. ENVIRONMENTAL REVIEW.

01. Environmental Documentation. ~~Projects may be a nonpoint source activity or a wastewater treatment facility or other point source facility.~~ Guidance on how to complete an environmental review *may be is* found in Chapter 5 of the *applicable* Handbook. For eligible *point source* projects funded solely with non-federal funds (*i.e.g.* State Revolving Loan Fund repayments), see ~~Subsection 042.10~~. For eligible *point source* projects, the loan recipient shall complete an environmental review as part of and in conjunction with a planning document. Projects funded exclusively as nonpoint or estuary management projects may not be required to complete an environmental review. The loan recipient shall consult with the Department at an early stage in the loan process to determine the required level of environmental review. Based on review of existing information, and assessment of environmental impacts, the loan recipient shall complete one (1) of the following per the Department's instruction: (3-29-12)()

- a. Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (5-8-09)
 - b. Prepare an Environmental Information Document (EID) in a format specified by the Department; (5-8-09)
- or
- c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (5-8-09)

02. Categorical Exclusions. If the loan recipient requests a CE, the Department *shall will* review the request and, based upon the supporting documentation, take one (1) of the following actions: (3-29-12)()

- a. Determine if the action is consistent with categories eligible for exclusion whereupon the Department *shall will* issue a notice of CE from substantive environmental review. Once the CE is granted for the selected alternative, the Department will publish a notice of CE in a local newspaper in the geographical area of the proposed project to inform the public of this action, following which the planning document can be approved and the loan award can proceed; or (3-29-12)()
- b. Determine if the action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If a CE is not issued, the Department *shall will* notify the loan recipient to prepare an EID. (3-29-12)()

03. Environmental Information Document Requirements. When an EID is required, the loan recipient shall prepare the EID in accordance with the following Department procedures: (3-29-12)

- a. Various laws and executive orders related to environmentally sensitive resources shall be considered as the EID is prepared. Appropriate state and federal agencies shall be consulted regarding these laws and executive orders; (5-8-09)
- b. A full range of relevant impacts, both direct and indirect, of the proposed project shall be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that shall cause irreversible or irretrievable commitment of resources; and (5-8-09)

c. The Department *shall will* review the draft EID and either request additional information about one (1) or more potential impacts, or *shall* draft a “finding of no significant impact” (FONSI). (5-8-09)()

04. Final Finding of No Significant Impact. The Department *shall will* publish the draft FONSI in a local newspaper in the geographical area of the proposed project and *shall will* allow a minimum thirty (30) day public comment period. Following the required period of public review and comment, and after any public concerns about project impacts are addressed, the FONSI *shall will* become final. The Department *shall will* assess the effectiveness and feasibility of the mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the planning document. (3-29-12)()

05. Environmental Impact Statement (EIS) Requirements. If an (EIS) is required, the loan recipient shall: (3-29-12)

a. Consult with all affected federal and state agencies, and other interested parties, to determine the required scope of the document; (5-8-09)

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (5-8-09)

c. Conduct a public meeting which may be in conjunction with a planning document meeting; and (3-29-12)

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. (5-8-09)

06. Final ~~Environmental Impact Statement (EIS)~~. Upon completion of the EIS by the loan recipient and approval by the Department of all requirements listed in ~~Subsection 042-05~~, the Department *shall will* issue a record of decision, documenting the mitigation measures ~~which shall to~~ be required of the loan recipient. The loan agreement can be completed once the final EIS has been approved by the Department. (3-29-12)()

07. Partitioning the Environmental Review. Under certain circumstances, the building of a component/partition of a ~~wastewater~~ system may be justified in advance of all environment review requirements for the remainder of the system. The Department *shall will* approve partitioning the environment review in accordance with established procedures. (3-29-12)()

08. Use of Environmental Reviews Conducted by Other Agencies. If environmental review for the project has been conducted by another state, federal, or local agency, the Department may, at its discretion, issue its own determination by adopting the document and public participation process of the other agency. (5-8-09)

09. Validity of Review. Environmental reviews, once completed by the Department, are valid for five (5) years from the date of completion. If a loan application is received for a project with an environmental review which is more than five (5) years old, the Department *shall will* reevaluate the project, environmental conditions and public views and *shall will*: (3-29-12)()

a. Reaffirm the earlier decision; or (1-1-89)

b. Require supplemental information to the earlier EIS, EID, or request for CE. Based upon a review of the updated document, the Department *shall will* issue and distribute a revised notice of CE, FONSI, or record of decision. (5-8-09)()

10. Exemption From Review. Loan projects may be exempt from certain federal crosscutting authorities at the discretion of the Department as long as in any given year the annual amount of loans, equal to the most recent federal capitalization grant, complies with all of the federal crosscutting authorities. (3-29-12)

043. -- 049. (RESERVED)

050. LOAN OFFER AND ACCEPTANCE.

01. Loan Offer. Loan offers will be delivered to successful applicants by representatives of the Department or by registered mail. (1-1-89)

02. Acceptance of Loan Offer. Applicants have sixty (60) days in which to officially accept the loan offer on prescribed forms furnished by the Department. The sixty (60) day acceptance period commences from the date indicated on the loan offer notice. If the applicant does not accept the loan offer within the sixty (60) day period the loan funds may be offered to the next project of priority. (1-1-89)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director and upon signature by the authorized representative of the eligible applicant, the loan offer shall become a contract. Upon accepting a loan offer, an eligible applicant becomes a loan recipient. The disbursement of funds pursuant to a loan contract is subject to a finding by the Director that the loan recipient has complied with all loan contract conditions and has prudently managed the project. The Director may, as a condition of disbursement, require that a loan recipient vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with loan funds. No third party shall acquire any rights against the state or its employees from a loan contract. (5-3-03)()

04. Estimate of Reasonable Cost. All loan contracts will include the eligible costs of the project. Some eligible costs may be estimated and disbursements may be increased or decreased as provided in Section 060. (5-3-03)

05. Terms of Loan Offers. The loan offer shall contain such terms as are prescribed by the Department including, but not limited to: (1-1-89)

a. Terms consistent with these rules, the project step to be funded under the loan offer, and Title 39, Chapter 36, Idaho Code; (5-8-09)

b. Special clauses as determined necessary by the Department for the successful investigation, design, construction and management of the project; (5-8-09)

c. Terms consistent with applicable state and federal laws pertaining to planning documents, design, and construction, including the Public Works Contractors License Act and the Public Contracts Bond Act, Chapter 19, Title 54, Idaho Code, and the federal Clean Water Act and Safe Drinking Water Act requirements for projects funded with loan moneys of federal origin; (3-29-12)()

d. Requirement for the prime engineering firm(s) and their principals retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors and omissions of a professional nature. The total aggregate of the engineer's professional liability insurance shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project phases, whether or not such services or phases are state funded, until the certification of project performance is accepted by the Department; (3-29-12)

e. The project shall be bid, contracted and constructed according to the current edition of Idaho Standards for Public Works Construction unless the loan recipient has approved and adopted acceptable public works construction standards approved by the Department; (3-29-12)

f. The loan interest rate for loans made during the state fiscal year beginning July 1 will be established by the Director. The interest rate will be a fixed rate in effect for the life of the loan. The rate may equal but shall not exceed the current market rate; (5-8-09)

g. The loan fee pursuant to Section 032; (5-8-09)

h. All loans must be fully amortized within a period not to exceed thirty (30) years after project completion. The loan contract will ~~contain~~ be appended with a schedule of loan repayments stating the due dates and the amount due upon project completion. The loan recipient may elect for either a schedule of semi-annual or annual

repayments at the time the loan is finalized; and

~~(3-29-12)~~()

i. Repayment default will occur when a scheduled loan repayment is thirty (30) days past due. If default occurs, the Department may invoke appropriate loan contract provisions and/or bond covenants. (5-3-03)

051. ACCOUNTING AND AUDITING PROCEDURES.

Loan recipients must maintain project accounts in accordance with generally accepted accounting principles. ~~Eligible nonpoint source water pollution control implementation funding p~~Projects sponsors may be audited on an annual basis according to government auditing standards issued by the U.S. ~~General Accounting~~ Governmental Accountability Office. ~~(3-29-12)~~()

(BREAK IN CONTINUITY OF SECTIONS)

995. WAIVER OF REQUIREMENTS AND AMENDMENT OF ~~INTEGRATED~~ PRIORITY LIST.

~~01. Conditions for Waiver.~~The Director may amend the ~~Integrated~~ Priority List and grant a waiver from the requirements of these rules on a case-by-case basis upon full demonstration by the loan recipient requesting the waiver that the following conditions exist. See also ~~Subsection 020.05~~ of these rules. ~~(3-29-12)~~()

~~a01. Health Hazard.~~ A significant public health hazard exists; (5-8-09)

~~b02. Water Contamination.~~ A significant water contamination problem exists; (5-8-09)

~~e03. Pollution.~~ A significant point source of pollution exists causing a violation of Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards"; or (3-29-12)

~~d04. Affordability Criteria Exceeded.~~ The project will exceed affordability criteria adopted by the Department in the event the waiver is not granted. (3-29-12)

~~02. Availability of Federal Funds.~~ The waiver will not affect the availability of federal funds for the project where such funding is required by the loan recipient requesting the waiver. ~~(3-29-12)~~

996. -- 999. (RESERVED)

FINAL PROPOSAL
Dated March 16, 2020

**RULES FOR ADMINISTRATION OF WATER POLLUTION CONTROL LOANS,
DOCKET NO. 58-0112-1901**

The proposed rule was published in the Idaho Administrative Bulletin, November 6, 2019, Vol. 19-11, pages 344 through 364. DEQ recommends that the Board take the following action:

IDAPA 58.01.12

Subsection 001.02	ADOPT AS REVISED
-------------------	------------------

The draft "Notice of Rulemaking – Adoption of Pending Rule" is attached.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.12 – RULES FOR ADMINISTRATION OF WATER POLLUTION CONTROL LOANS
DOCKET NO. 58-0112-1901
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Idaho Board of Environmental Quality (Board) and is now pending review by the 2021 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment *sine die* of the First Regular Session of the Sixty- sixth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, November 6, 2019, Vol. 19-11, pages 344 through 364. DEQ received no public comments; however, a correction has been made to the Safe Drinking Water Act citation in Subsection 001.02. 42 U.S.C. Section 300f has been changed to Section 300j. The remainder of the rule has been adopted as initially proposed. More information regarding this rule docket is available at www.deq.idaho.gov/58-0112-1901.

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.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning the rulemaking, contact the undersigned.

Dated this 1st day of July, 2020

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton/Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

**Revisions to Proposed Rule for Board Consideration, Docket No. 58-0112-1901
(dated March 16, 2020)**

The revisions made to the proposed rule are highlighted. Only the rule sections containing revisions are included.

001. TITLE AND SCOPE.

01. Title. These rules will be known and cited as Idaho Department of Environmental Quality Rules, IDAPA 58.01.12, “Rules for Administration of ~~Water Pollution Control Loans~~ the Wastewater and Drinking Water Loan Funds.” (3-30-01)

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering ~~a two~~ state loan programs for providing financial assistance to eligible applicants of ~~water pollution control~~ wastewater and drinking water projects. The U.S. Environmental Protection Agency provides annual capitalization grants to the state of Idaho for ~~this program~~ these programs. Financial assistance projects must be in conformance with the requirements of the Subchapter VI of the federal Clean Water Act (33 U.S.C. Sections 1381 et seq.) and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.). (3-29-12)

Idaho Board of Environmental Quality
May 14, 2020 Board Meeting

Agenda Item 9: FY2021 Water Pollution Control State Revolving
Fund Intended Use Plan and State Wastewater Loan Priority List

Agenda Item #9

FY2021 Water Pollution Control State Revolving Fund Intended Use
Plan and State Wastewater Loan Priority List

I move that the Idaho Board of Environmental Quality approve the FY2021 Water Pollution Control State Revolving Fund Intended Use Plan which includes the State Wastewater Loan Priority List.

May 14, 2020

Caption: **ISSUE ANALYSIS**

**APPROVAL OF THE PROPOSED FINAL DRAFT FY 2021 STATE
WASTEWATER LOAN PRIORITY LIST**

Prepared by Tim Wendland, 373-0439

Issue: The Department of Environmental Quality (DEQ) has prepared the **FINAL DRAFT FY 2021 STATE WASTEWATER LOAN PRIORITY LIST**.

The question before the Board is the following: **Should the Final Draft FY 2021 State Wastewater Loan Priority List be approved as presented?**

Issue

Discussion:

DEQ has been making low interest State Revolving Fund (SRF) loans to Idaho communities for thirty years to help them construct point and nonpoint source pollution control projects. The loan program is funded by grants to Idaho from the Environmental Protection Agency, matching state funds and loan repayments interest earnings.

Access to SRF loan funds helps many communities design and construct improved wastewater (WW) facilities that promote public health and protect water quality.

Projects placed on the list were identified through a **Letter of Interest Form** submitted to the DEQ by the project entities on the list.

Relevant

Statutes:

Title 39, Chapter 36, Idaho Code, provides for adoption of “Rules for Administration of Water Pollution Control Loans,” IDAPA 58.01.12.

Public

Notification:

The public was notified of the availability of the list and related information through notices in six (6) Idaho regional newspapers published once per week for three consecutive weeks. Additionally, email notices were sent to numerous stakeholders. Notification of the availability of the list and the related Intended Use Plan were also placed on the DEQ website for four weeks. The website was set up to allow public comment. In the newspaper notices and on our website the public was invited to review copies of the list and related information available on the website and at each of our Regional Offices.

Public Hearing: The Department elected not to have a public hearing this year unless requested to do so by the public. No requests for a hearing were received.

Consistency With Federal Requirements: The operation of the Clean Water SRF account is consistent with federal and state requirements.

Temporary Rule Justification: Not applicable.

Cost Impact: Approval of the list by the Board has a direct impact upon Idaho citizens in communities included on the final list. Approval will help ensure that a pool of eligible entities is available to receive state financial assistance. Preparation of the WW loan priority list is a requirement of our operating agreement with EPA.

- Alternatives:**
1. Reject the list for SRF WW loans. Under this alternative, DEQ will be unable to issue new WW construction loans during FY 2021.
 2. Adopt the list for SRF WW loans. Under this alternative, DEQ will be able to continue offering construction SRF WW loans to Idaho communities for correction of sewage-related public health and water pollution problems.

Recommendation: The DEQ recommends **Alternative 2**, to promote continuing efforts to correct public health and water problems in Idaho.

Comments Concerning the List:

Entity	Comment	Result
Elk City and Moon Lake	Late entries onto the Priority List.	DEQ engineers reviewed the entries and approved the changes.

SUMMARY - WASTEWATER LOAN LIST

The final draft WW Loan List has 14 projects. All projects on the list have received thorough review by our Regional Office staff. All projects on the list are supported by local commitment contained in a **Letter of Interest**. Ratings have been done with the point/nonpoint rating form in accordance with the **Rules for Administration of Water Pollution Control Loans**. The public has been given

opportunity to review the projects on the list. Comments from the general public and from our engineering staff and from the consulting engineers have been considered in preparing the final list.

ATTACHMENT I. Fundable List**State of Idaho Clean Water State Revolving Fund
for the Period of July 1, 2020 through June 30, 2021
LIST OF FUNDABLE CLEAN WATER PROJECTS**

Rank	Project	Rating Points	Regional Office	Ancillary Requirements	Estimated Cost of Green Infrastructure	Needs Category (for EPA use)	NPDES or Land Application Permit #	Estimated Assistance Commitment Date and Est. Funding Terms	Estimated Project Cost	Project Description
1+	Preston	291	Pocatello	Davis Bacon Wage Provisions, Cross-cutting Requirements, American Iron and Steel, FFATA Reporting, Single Audit Act and Disadvantaged Business Enterprise Compliance Reporting	\$1,000,000	I,II	ID0020214	November 2020 30 years at 1.75% with \$154,905 of principal forgiveness	\$20,000,000	Upgrades to the treatment system
2	Wilder	246	Boise	Davis Bacon Wage Provisions and American Iron and Steel	\$5,649,000	I	ID-0020265	November 2020 30 years at 1.75% with \$131,826 of principal forgiveness	\$5,649,000	Repair of lagoon and implementation of land application
3	Aberdeen	218	Pocatello	Davis Bacon Wage Provisions, Cross-cutting Requirements, American Iron and Steel, FFATA Reporting, Single Audit Act and Disadvantaged Business Enterprise Compliance Reporting	\$2,000,000	I, III-B	ID-002017-6	November 2020 30 years at 1.75% with \$154,516 of principal forgiveness	\$11,000,000	Upgrade treatment including final treatment of sludge and collection system
4	Idaho City	208	Boise	Davis Bacon Wage Provisions and American Iron and Steel	\$25,000	II, III-A, III-B	M-108-03	November 2020 30 years at 1.75% with \$137,289 of principal forgiveness	\$3,720,000	Repair/replace lagoon, upgrade treatment and collection system
6	Grace	144	Pocatello	Davis Bacon Wage Provisions and American Iron and Steel	None	I, III-B	ID0023825	November 2020 30 years at 1.75%	\$5,000,000	Upgrade treatment system and repair collection system
7	Julietta	142	Lewiston	Davis Bacon Wage Provisions and American Iron and Steel	\$200,000	I,II, IV-B	ID-002376-1	November 2020 30 years at 1.75% with \$496,940 of principal forgiveness	\$5,500,000	Upgrade to the treatment system and liftstation rehabilitation
8	Moose Draw Association	121	Lewiston	Davis Bacon Wage Provisions and American Iron and Steel	None	I	None	November 2020 30 years at 1.75% with \$647,310 of principal forgiveness	\$750,000	Implement a large scale absorption system to include purchase of land
9	Moon Lake Ranch Owners Association	105	Boise	Davis Bacon Wage Provisions and American Iron and Steel	None	IV-A	None	July 2020 30 years at 3.00%	\$450,000	Abandon existing treatment and connect to neighboring system.
10	Fairfield	85	Twin Falls	Davis Bacon Wage Provisions and American Iron and Steel	None	III-A	ID-0024384	November 2020 30 years at 1.75% with \$81,327 of principal forgiveness	\$1,378,100	Repair of collection system to fix inflow and infiltration
11	Elk City Water and Sewer Association	42	Lewiston	Davis Bacon Wage Provisions and American Iron and Steel	None	III-B	ID0022012	July 2020 30 years at 1.75%	\$91,000	Repair collection system
12	Albion	42	Twin Falls	Davis Bacon Wage Provisions and American Iron and Steel	\$456,000	III-A	M-077-04	November 2020 30 years at 1.75% with \$102,087 of principal forgiveness	\$800,000	Repair of collection system to fix inflow and infiltration
13	Rural Community Assistance Corp.	TBD	TBD	Davis Bacon Wage Provisions and American Iron and Steel	None	XII	None	Date TBD \$150,000 of principal forgiveness	\$150,000	Replacement of failing septic systems

ATTACHMENT I. (CONT.)

14	Emergencies	TBD	TBD	Davis Bacon Wage Provisions and American Iron & Steel	TBD	TBD	TBD	Date TBD \$200,000 of principal forgiveness	\$200,000	Emergency situations: repair of proximate cause of emergency and investigation costs to determine proximate cause
<u>Totals →</u>					<u>\$9,330,000</u>			<u>\$2,256,200</u>	<u>\$54,688,100</u>	
<p>+ Note: DEQ plans to increase loan \$8,000,000 in FY2022 to meet Preston's full loan amount request ++ Note: DEQ plans to increase Nampa by \$12,000,000 in FY2021 if loans opt out or decline funding</p>										

ATTACHMENT II. Priority List
State of Idaho Clean Water State Revolving Fund
for the Period of July 1, 2020 through June 30, 2021
COMPREHENSIVE LISTING OF CLEAN WATER PROJECTS

Rank	Project	Rating Points	Regional Office	Est. Project Cost	Needs Category (for EPA use)	NPDES, Reuse or Land Application Permit #	Est. Cost of Green Infrastructure	Project Description
1	Preston	291	Pocatello	\$28,000,000	I, II	ID0020214	\$1,000,000	Upgrades to the treatment system
2	Wilder	246	Boise	\$5,649,000	I	ID-0020265	\$5,649,000	Repair of lagoon and implementation of land application
3	Aberdeen	218	Pocatello	\$11,000,000	I, III-B	ID-002017-6	\$2,000,000	Upgrade treatment including final treatment of sludge and collection system
4	Idaho City	208	Boise	\$3,720,000	II,III-A, III-B	M-108-03	\$25,000	Repair/replace lagoon, upgrade treatment and collection system
5	Rigby	154	Idaho Falls	\$18,000,000	II	ID-0020010	\$200,000	Upgrades to the treatment system
6	Grace	144	Pocatello	\$5,000,000	I, III-B	ID0023825	None	Upgrade treatment system and repair collection system
7	Juliaetta	142	Lewiston	\$5,500,000	I,II, IV-B	ID-002376-1	\$200,000	Upgrade to the treatment system and liftstation rehabilitation
8	Moose Draw Association	121	Lewiston	\$750,000	I	None	None	Implement a large scale absorption system to include purchase of land
9	Moon Lake Ranch Owners Association	105	Boise	\$450,000	IV-A	None	None	Abandon existing treatment and transport waste to neighboring system. Moon Lake will be annexed into the Eagle Sewer District
10	Fairfield	85	Twin Falls	\$1,378,100	III-A	ID-0024384	None	Repair of collection system to fix inflow and infiltration
11	Elk City Water and Sewer Association	42	Lewiston	\$91,000	III-B	ID0022012	None	Repair collection system
12	Albion	42	Twin Falls	\$800,000	III-A	M-077-04	\$456,000	Repair of collection system to fix inflow and infiltration
13	Rural Community Assistance Corp.	TBD	TBD	\$150,000	XII	None	\$150,000	Replacement of failing septic systems
14	Emergencies	TBD	TBD	\$200,000	TBD	TBD	\$200,000	Emergency situations: repair of proximate cause of emergency and investigation costs to determine proximate cause
	Totals =====>			<u>\$80,688,100</u>			<u>\$9,880,000</u>	

Idaho Board of Environmental Quality
May 14, 2020 Board Meeting

Agenda Item 10: FY2021 State Wastewater Planning Grant
Priority List

Agenda Item #10

FY2021 State Wastewater Planning Grant Priority List

I move that the Idaho Board of Environmental Quality approve the FY2021 State Wastewater Planning Grant Priority List.

May 14, 2020

Caption: **ISSUE ANALYSIS**

**APPROVAL OF THE PROPOSED FINAL DRAFT FY 2021 STATE
WASTEWATER GRANT PRIORITY LIST**

Prepared by Tim Wendland, 373-0439

Issue: The Department of Environmental Quality (DEQ) has prepared the **FINAL DRAFT FY 2021 STATE WASTEWATER GRANT PRIORITY LIST**.

The question before the Board is the following: **Should the Final Draft FY 2021 State Wastewater Grant Priority List be approved as presented?**

Issue

Discussion:

A wastewater facilities grant program was started by the Department in the early 1980s under authority granted in Title 39, Chapter 36, Idaho Code. DEQ for many years has administered this program. In the early years of the program grants were available for all three steps of a construction project: planning, design and construction. In recent years, however, grant monies have been available for facility planning work only.

Projects placed on the list were identified through a **Letter of Interest Form** submitted to the DEQ by the project entities on the list.

Relevant

Statutes:

Title 39, Chapter 36, Idaho Code, provides for adoption of “Rules for Administration of Wastewater Treatment Facility Grants,” IDAPA 58.01.04.

Public

Notification:

The public was notified of the availability of the list and related information through notices in six (6) Idaho regional newspapers published once per week for three consecutive weeks. Additionally, email notices were sent to numerous stakeholders. Notification of the availability of the list and the related Intended Use Plan were also placed on the DEQ website for four weeks. The website was set up to facilitate public comment. In the newspaper notices and on our website the public was invited to review copies of the list and related information at the website and in the DEQ Regional Offices.

Public

Hearing:

DEQ elected not to have a public hearing this year unless requested to do so by the public. No requests for a hearing were received.

**Consistency
With Federal
Requirements:**

Not applicable.

Temporary Rule

Justification: Not applicable.

Cost Impact: Approval of the list by the Board has a direct impact upon Idaho citizens in communities listed on the final list. Approval will help assure that a pool of eligible entities is available to receive state financial assistance.

- Alternatives:**
1. Reject the list for wastewater planning grants. Under this alternative, DEQ will be unable to issue new wastewater planning grants during FY 2021. Idaho communities will have to self-fund facility planning studies and fewer cities and districts will be eligible for Clean Water SRF loans.
 2. Adopt the list for wastewater planning grants. Under this alternative, DEQ will be able to continue offering construction wastewater planning grants to Idaho communities for correction of sewage-related public health and water pollution problems.

Recommendation: DEQ recommends **Alternative 2**, since it will result in continuing efforts to correct public health and water problems in Idaho.

Comments Concerning the List:

Entity	Comment	Result
	No comments received.	

SUMMARY - WASTEWATER PLANNING GRANT LIST

All 20 projects on the list have received thorough review by DEQ’s Regional Offices and have been peer reviewed by DEQ State Office staff. Ratings have been compiled under the criteria outlined in the Rules **for Administration for Wastewater Treatment Facilities Grants, IDAPA 58.01.04.**

Statewide FY2021 Wastewater Planning Grant Priority List						
Rank	Wastewater System Name	Rating Points	Region	Total Project Cost	DEQ Amount Funded	Project Description
1*	Santa-Fernwood Water and Sewer District	283	Coeur d'Alene	\$60,000	\$30,000	Address new IPDES permit requirements and identify viable alternatives to eliminate discharge.
2*	City of Craigmont	268	Lewiston	\$75,000	\$37,500	Address new IPDES permit requirements pertaining to ammonia and bring system into compliance.
3*	City of Cottonwood	241	Lewiston	\$101,450	\$57,725	Study to address new permit requirements and treatment process.
4*	City of Homedale	235	Boise	\$80,000	\$40,000	Study to address infiltration/inflow issues, leaking lagoon, and new IPDES permit requirements.
5*	City of Tensed	233	Coeur d'Alene	\$60,000	\$30,000	Study to bring the system back into compliance and address aging infrastructure.
6*	Garden Valley School District	212	Boise	\$40,000	\$20,000	Study to meet permit requirements and existing system deficiencies.
7*	City of Smelterville	198	Coeur d'Alene	\$20,000	\$10,000	Study to evaluate treatment methods to meet IPDES ammonia and heavy metal limits, and bring system into compliance.
8*	City of Sandpoint	196	Coeur d'Alene	\$75,000	\$37,500	Study to evaluate possible consolidation.
9*	City of American Falls	178	Pocatello	\$50,000	\$25,000	Study to update the existing facility plan and evaluate Class A reuse water.
10*	Moose Draw Association	166	Lewiston	\$25,000	\$12,500	Address non-compliance issues, unlined lagoons, infiltration/inflow issues, and determine future treatment needs.
11*	City of Menan	157	Idaho Falls	\$70,000	\$35,000	Study to address aging infrastructure and capacity issues due to infiltration problems.
12	City of Lewisville	157	Idaho Falls	\$50,000	\$25,000	Evaluate possible consolidation, and address possible groundwater issues.
13	Southside Water and Sewer District	142	Coeur d'Alene	\$95,000	\$47,500	Update existing facility plan with particular attention on the capacity and future requirements of the reuse site.
14#	City of Bellevue	140	Twin Falls	\$140,000	\$65,000	Evaluate infiltration issues, along with capacity of pumps and pipes.
15	City of Paul	138	Twin Falls	\$50,000	\$25,000	Address the capacity of the existing lagoon system and land application system.
16	City of Challis	137	Idaho Falls	\$60,000	\$30,000	Address leaking lagoons, and potential for a reuse system.
17#	North Lake Recreational	135	Boise	\$140,000	\$65,000	Address infiltration/inflow events, and evaluate treatment/collection capacity issues.
18	Helmer Water and Sewer	110	Lewiston	\$30,000	\$15,000	Study to evaluate overages in lagoon facilities, possible land application or regional consolidation.
19	City of Dubois	107	Idaho Falls	\$40,000	\$20,000	Address excessive use of chlorine due to increased coliform in lagoon system.
20	City of Ririe	55	Idaho Falls	\$60,000	\$30,000	Address inflow/infiltration issues into the treatment process.

Total \$1,321,450 \$657,725

*Denotes entities that will receive grant funding (\$350,000 total available).

Maximum grant amount is \$65,000.

Idaho Board of Environmental Quality
May 14, 2020 Board Meeting

Agenda Item 11: FY2021 Drinking Water State Revolving Fund
Intended Use Plan and State Drinking Water Loan Priority List

Agenda Item #11

FY2021 Drinking Water State Revolving Fund Intended Use Plan and
State Drinking Water Loan Priority List

I move that the Idaho Board of Environmental Quality approve the FY2021 Drinking Water State Revolving Fund Intended Use Plan which includes the State Drinking Water Loan Priority List.

May 14, 2020

Caption: **ISSUE ANALYSIS:
APPROVAL OF THE FINAL DRAFT FY 2021 STATE DRINKING
WATER LOAN PRIORITY LIST**

Prepared by: Charlie Parkins, 373-0577

Issue: The Department of Environmental Quality (DEQ) has prepared the **FINAL DRAFT FY 2021 STATE DRINKING WATER LOAN PROJECT PRIORITY LIST**.

The question before the Board is the following: **Should the Final Draft FY 2021 State Drinking Water Loan Project Priority List be approved as presented?**

**Issue
Discussion:**

The 1996 Amendments to the Safe Drinking Water Act provide a method for financing needed drinking water infrastructure improvements with a revolving loan program. This loan program is funded by capitalization grants to Idaho from the Environmental Protection Agency, by matching state funds from the Water Pollution Control Account, loan repayments and interest earnings.

Access to State Revolving Fund (SRF) loan funds helps many communities design and construct improved water facilities that promote public health while protecting the environment.

Projects on the list were identified through a **Letter of Interest Form** submitted directly to the DEQ by the entities.

**Relevant
Statutes:**

Title 39, Chapters 1 and 2, Idaho Code, provide for adoption of "Rules for Administration of Drinking Water Loan Program," IDAPA 58.01.20.

**Public
Notification:**

The public was notified of the availability of the list and related information through notices in six (6) Idaho regional newspapers published once per week for three consecutive weeks. Additionally, email notices were sent to numerous stakeholders. Notification of the availability of the list and the related Intended Use Plan were also placed on the DEQ website for four weeks. The website was designed to facilitate public comment. In the newspaper notices and on our website the public was invited to review copies of the list and related information available on the website and in hard copy at each of DEQ's Regional Offices.

Public Hearing: DEQ elected not to have a public hearing this year unless requested to do so by the public. No requests for a hearing were received.

**Consistency
With Federal
Requirements:**

The operation of the Drinking Water SRF account is consistent with federal and state requirements.

**Temporary Rule
Justification:**

Not applicable.

Cost Impact:

Approval of the list by the Board has a direct financial impact upon Idaho citizens in communities listed on the final list. Approval will help assure that a pool of eligible entities is available to receive state financial assistance.

Alternatives:

1. Reject the proposed list for drinking water loans. Under this alternative, DEQ will be unable to issue drinking water construction loans during FY 2021.
2. Adopt the list for drinking water loans. Under this alternative, the DEQ will be able to offer drinking water construction SRF loans to Idaho communities during FY 2021.

Recommendation: DEQ recommends **Alternative 2**, since it will result in continuing efforts to correct public health problems related to drinking water.

Comments concerning List: No public comments

SUMMARY

The final draft FY 2021 State Drinking Water Loan Project Priority List contains 15 projects. These have been placed on the list at the request of the listed entity through a letter of interest. All projects on the list have received thorough review by DEQ Regional Office engineers who have rated all new projects. The ratings were done with a standard form that was developed in accordance with **Rules for Administration of Drinking Water Loan Program**.

ATTACHMENT I. Fundable List of Drinking Water Loan Projects

State of Idaho, Drinking Water State Revolving Loan Fund
for the Period of July 1, 2020 through June 30, 2021

Rank	Project	Rating Points	Regional Office	System Type	Green Infrastructure Cost	System Number	Pop. Served	Proposed Funding Terms	Loan Amt. & Est. Loan Date	Project Description
1	Murray Water Association	132	Coeur d'Alene	Private	\$0	ID1400039	100	30 years at 1.75% with \$272,888 of PF	\$735,000 July 2020	Add new wells, pumps, generator, and upgrade distribution system
2	Panhandle Village Water	106	Coeur d'Alene	Public	\$150,000	ID1280132	130	30 years at 1.75% with \$748,402 of PF	\$4,320,000 July 2020	New distribution system, add a well or booster station
3	City of Clifton	103	Pocatello	Public	\$1,600,000	ID6210002	280	30 years at 1.75% with \$207,774 of PF	\$2,200,000 July 2020	Upgrade source water and increase water supply
4	Sunnyside Water Association	95	Coeur d'Alene	Private	\$0	ID1090132	44	30 years at 1.75% with \$456,736 of PF	\$1,251,000 July 2020	Add booster stations, replace and upgrade water mains
5	Elk City Water and Sewer Association	92	Lewiston	Private	\$5,000	ID2250017	320	30 years at 1.75% with \$68,641 of PF	\$439,238 July 2020	Improvements to the water reservoir
6	City of Priest River	88	Coeur d'Alene	Public	\$0	ID1090107	1,773	20 years at 2.75%	\$1,890,000 July 2020	Construct new reservoir, install new generator

ATTACHMENT I (CONT.)

Rank	Project	Rating Points	Regional Office	System Type	Green Infrastructure Cost	System Number	Pop. Served	Proposed Funding Terms	Loan Amt. & Est. Loan Date	Project Description
7	Southside Water and Sewer District	60	Coeur d'Alene	Public	\$0	ID1090131	575	30 years at 2.75%	\$1,030,000 June 2021	Add a new well and storage reservoir
8	City of Bliss	46	Twin Falls	Public	\$1,360,320	ID52400C2	320	30 years at 1.75% with \$78,059 of PF	\$1,424,000 July 2020	Add a new well and storage reservoir
9	City of Rockland	45	Pocatello	Public	\$86,500	ID6390019	318	20 years at 2.75%	\$250,000 January 2021	Add standby generator, relocate storage tank, replace water meters
10	Remington Recreational Water District	42	Coeur d'Alene	Public	\$100,500	ID1280270	900	30 years at 2.75%	\$2,835,000 July 2020	Improve or add wells
11	City of Wilder	41	Boise	Public	\$840,000	ID3140138	1,533	20 years at 2.75%	\$1,000,000 January 2021	Add a booster station, and make distribution improvements
12	City of Aberdeen	37	Pocatello	Public	\$54,000	ID6060001	1,929	20 years at 2.75%	\$1,200,000 July 2020	Add a new well for redundancy
13**	City of Lewiston	99	Lewiston	Public	\$0	ID2350014	15,001	25 years at 1.625%	\$9,917,339 July 2020	Upgrade to treatment, water supply, booster pumps, storage and the distribution system
14	Systems w/Corrosive Water or Lead Fixtures Presenting a Public Health Hazard	Unk	All	All	All	Unk	Unk	\$500,000 of principal forgiveness	\$500,000	Fund Planning, Design and Construction to remediate corrosive/aggressive water situations that present a clear threat to public health

ATTACHMENT I (CONT.)

Rank	Project	Rating Points	Regional Office	System Type	Green Infrastructure Cost	System Number	Pop. Served	Proposed Funding Terms	Loan Amt. & Est. Loan Date	Project Description
15	Emergency	Unk	All	All	Unknown	Unk	Unk	\$200,000 of principal forgiveness	\$200,000	See Section IV.A. of Intended Use Plan
Totals ==>					<u>\$4,196,320</u>			<u>\$2,532,500</u>	<u>\$29,191,577</u>	

NOTES:

*Lewiston and Clifton are expected to meet the state's cross-cutting and reporting requirements which are required of loans that equal the state's annual capitalization grant award amount.

** Increase to an existing loan.

Idaho Board of Environmental Quality
May 14, 2020 Board Meeting

Agenda Item 12: FY2021 State Drinking Water Planning Grant
Priority List

Agenda Item #12

FY2021 State Drinking Water Planning Grant Priority List

I move that the Idaho Board of Environmental Quality approve the FY2021 State Drinking Water Planning Grant Priority List.

May 14, 2020

Caption: **ISSUE ANALYSIS**
APPROVAL OF THE PROPOSED FINAL DRAFT FY 2020 STATE DRINKING WATER PLANNING GRANT PRIORITY LIST
Prepared by Charlie Parkins, 373-0577

Issue: The Department of Environmental Quality (DEQ) has prepared the **FINAL DRAFT FY 2021 STATE DRINKING WATER PLANNING GRANT PRIORITY LIST.**

The question before the Board is the following: **Should the Final Draft FY 2021 State Drinking Water Planning Grant Priority List be approved as presented?**

Issue

Discussion: The Department was given authority to establish such a program by the 2000 Legislature in Senate Bill 1378.

Planning grant assistance is important for many communities in their efforts to understand the scope and need for drinking water infrastructure improvements. Once communities have completed critical planning work, they may choose to move to the design and construction phases using DEQ's state revolving fund loan program. This will both speed the correction of deficiencies in many public water systems in Idaho and increase participation in the drinking water loan program.

The projects on the list were identified through a **Letter of Interest** form sent directly to DEQ from the entities in Idaho who are eligible to be on the list.

Relevant Statutes:

Title 39, Chapter 36, Idaho Code, provides for adoption of "Rules for Administration of Planning Grants for Public Drinking Water Facilities," IDAPA 58.01.22.

Public

Notification: The public was notified of the availability of the list and related information through notices in six (6) Idaho regional newspapers published once per week for three consecutive weeks. Additionally, email notices were sent to numerous stakeholders. Notification of the availability of the list and the related Intended Use Plan were also placed on DEQ website for four weeks. The website was set up to allow for public comment. In the newspaper notices and on our website the public was invited to review copies of the list and related information at the website and in our Regional Offices.

Public Hearing:

The Department elected not to have a public hearing this year unless requested to do so by the public. No requests for a hearing were received.

**Consistency
With Federal
Requirements:**

The operation of the Drinking Water Planning Grant effort is consistent with federal and state requirements.

**Temporary
Rule
Justification:**

Not applicable.

Cost Impact:

Approval of the list by the Board has a direct impact upon Idaho citizens in communities included on the final list. Approval will help assure that a pool of eligible entities is available to receive state financial assistance for drinking water planning projects.

Alternatives:

1. Reject the proposed list for drinking water grants. Under this alternative, DEQ will be unable to award drinking water planning grants during FY 2021. Idaho communities would have to self-fund Drinking Water planning grants, and it is likely that fewer communities would be eligible to enter into a Drinking Water SRF loan.
2. Adopt the proposed list for drinking water grants. Under this alternative, DEQ will be able to offer grants to communities to complete their facility planning, the critical first step in any project. This will act as a catalyst for building needed drinking water facilities thus correcting existing public health and water quality problems related to drinking water treatment and distribution in Idaho's communities.

Recommendation:

DEQ recommends **Alternative 2**, since it will result in continuing efforts to correct public health problems related to drinking water.

Comments Received

One public comment regarding reconsideration of total points for the Garden Valley School District. An additional 8 points were added to the District's total score. The additional points did not move the District into the fundable range.

SUMMARY – DRINKING WATER GRANT LIST

All 22 projects on the list have received thorough review by DEQ's Regional Offices and have been peer reviewed by DEQ State Office staff. Ratings have been compiled under the criteria outlined in the **Rules for Administration of Planning Grants for Drinking Water Facilities, IDAPA 58.01.22**.

Statewide FY2021 Drinking Water Planning Grant Priority List						
Rank	Water System Name	Rating Points	Region	Total Project Cost	DEQ Amount Funded	Project Description
1*	City of Grandview	157	Boise	\$55,000	\$27,500	Address source, treatment (nitrate), storage and distribution deficiencies. Possibly develop a new well.
2*	Scenic Properties Water	130	Boise	\$30,000	\$15,000	Address storage, distribution, redundancy and standby power deficiencies.
3*	Elk City Water and Sewer	107	Lewiston	\$50,000	\$25,000	Evaluate structural improvements needed on water reservoir. Address treatment (cryptosporidium), source, redundancy and standby power deficiencies.
4*	Spirit Bend Water Association	103	Coeur d'Alene	\$65,000	\$32,500	Address source, distribution, redundancy and standby power deficiencies. Evaluate known and unknown issues.
5*	City of Cascade	98	Boise	\$60,000	\$30,000	Address storage, distribution, redundancy and standby power deficiencies.
6*	Arrowhead Ranch Water LLC	94	Coeur d'Alene	\$30,000	\$15,000	Address treatment (uranium), source, distribution, redundancy and standby power deficiencies.
7*#	City of Weiser	80	Boise	\$100,000	\$45,000	Evaluate current system and create a Capital Improvement Plan. Address source and distribution deficiencies
8*	Strawberry Mink Creek Water Association	79	Pocatello	\$35,000	\$17,500	Evaluate influences on source water. Address treatment, source, and distribution deficiencies.
9*	City of Lewiston	73	Lewiston	\$60,000	\$30,000	Address lack of redundant supply, and transmission main inefficiencies.
10*	Golf Club Estates Water Inc.	71	Coeur d'Alene	\$40,000	\$20,000	Address storage deficiencies. Evaluate current system for future growth.
11*	City of Kimberly	70	Twin Falls	\$70,000	\$35,000	Address storage, redundancy and standby power deficiencies.
12*	Camp Sweyolakan	65	Coeur d'Alene	\$50,000	\$25,000	Address treatment, source, storage, distribution, redundancy and standby power deficiencies.
13*	Cave Bay Community System	64	Coeur d'Alene	\$62,500	\$31,250	Address source, and distribution deficiencies. Evaluate redundant groundwater sources and standby power.
14	City of Council	63	Boise	\$65,000	\$32,500	Evaluate existing storage reservoir to meet current and future needs. Address distribution and standby power deficiencies.
15	City of Murtaugh	61	Twin Falls	\$75,000	\$37,500	Update existing facility plan. Address distribution, redundancy and standby power deficiencies.
16	Garden Valley School District	59	Boise	\$60,000	\$30,000	Address treatment, source, distribution, redundancy, and standby power deficiencies.
17	Hidden Valley Water Association	58	Coeur d'Alene	\$25,000	\$12,500	Address distribution, redundancy, and standby power deficiencies.
18	Caribou Acres Water	46	Pocatello	\$40,000	\$20,000	Address storage and redundancy deficiencies.
19	Riverside Water and Sewer	45	Lewiston	\$60,000	\$30,000	Address distribution, redundancy, and standby power deficiencies.
20	Panorama Hills Water Co.	44	Idaho Falls	\$70,000	\$35,000	Address storage deficiencies.
21	City of Rigby	43	Idaho Falls	\$70,000	\$35,000	Update existing facility plan and re-evaluate supply, storage, and delivery needs. Develop a Capital Improvement Plan.
22	City of Rockland	42	Pocatello	\$40,000	\$20,000	Address distribution, redundancy, and standby power deficiencies.
Total				\$1,212,500	\$601,250	

Maximum grant amount is \$45,000.

*Denotes systems that will receive grant funding (total of \$350,000 available)

Idaho Board of Environmental Quality
May 14, 2020 Board Meeting

Agenda Item 13: Contested Case and Rule Promulgation Status
Reports

Status Report

Contested Case Petitions filed with the Idaho Board of Environmental Quality Pursuant to IDAPA 58.01.23

Case Docket No. Subject of Petition	Date Filed	Parties to Case	Status of Case
Case Docket No. 0117-20-01 Petition to Initiate Contested Case Reuse Permit No. M-255-01 issued to city of Nampa	February 24, 2020	Riverside Irrigation District	Withdrawal of Petition to Initiate Contested Case filed on March 13, 2020 Case closed
Case Docket No. 0102-19-02 Petition to Initiate Contested Case and Request to Stay 401 Certification Hecla Limited Lucky Friday Unit NPDES Permit No. ID0000175; IDEQ 401 Water Quality Certification	July 26, 2019	Hecla Limited, Petitioner	Stipulation to Stay Contested Case filed on July 30, 2019 Second Stipulation to Stay Contested Case filed on October 9, 2019 Parties continue to discuss resolution of the case Stipulation and Motion to Dismiss Contested Case filed on February 18, 2020 Case closed

**RULE PROMULGATION STATUS REPORT
DEQ ADMINISTRATIVE RULEMAKING
May 2020**

Rule Dockets Scheduled for Adoption by the Idaho Board of Environmental Quality in 2020 and Review by the Idaho Legislature in 2021			
Rule Chapter Docket Number	Summary of Rule Change	Promulgation Status	Anticipated Date for Board Adoption
Omnibus Rulemaking			
Omnibus Rulemaking 58-0000-2000F Fee Rules	Rulemaking initiated to adopt IDAPA 58 rule chapters as they were presented in the pending rule dockets adopted by the Board in 2019 and submitted to the Second Regular Session of the 65th Idaho Legislature for review.	Temporary Fee Rules: adopted 2/13/20 effective 3/20/20 4/15/20 Special Bulletin Contact: John Tippets/Jess Byrne	February 2020 Board Meeting Temporary Rule Adopted 2020 Board Meeting Pending Rule
Air Quality Division			
Air Quality 58-0101-1901 DFM Tracking #A245-2019-3	Update the rules applicable to prescribed burning to ensure that smoke from this type of burning is properly managed and public health is protected.	Notice of Negotiated Rulemaking: 3/6/19 Bulletin 1st Negotiated Rulemaking Meeting: 4/9/19 Contact: Tiffany Floyd	To be determined
Air Quality 58-0101-1902 DFM Tracking #A245-2019-4	Rulemaking initiated to revise the fee structure of a Clean Air Act mandated air permitting program.	Notice of Negotiated Rulemaking: 5/1/19 Bulletin 1st Negotiated Rulemaking Meeting: 5/7/19 Contact: Tiffany Floyd Negotiated rulemaking postponed until more information is available after the 2020 legislative session.	To be determined

Surface & Wastewater Division			
<p>Water Quality Standards</p> <p>58-0102-1801 DFM Tracking #A245-2018-2</p>	<p>Update Idaho's human health criteria for arsenic</p>	<p>Notice of Negotiated Rulemaking: 4/4/18 Bulletin 1st Negotiated Rulemaking Meeting: 4/19/18</p> <p>Contact: Mary Anne Nelson</p>	<p>Rulemaking extended until 2022</p>
<p>Water Quality Standards</p> <p>58-0102-2001 DFM Tracking #A245-2020-1</p>	<p>Rulemaking initiated to (1) revise water quality standards based on stakeholder comments and concerns regarding the implementation of the bacteria criteria, and (2) delete obsolete rule language.</p>	<p>Notice of Negotiated Rulemaking: 4/1/20 Bulletin 1st Negotiated Rulemaking Meeting: 5/7/20</p> <p>Contact: Mary Anne Nelson</p>	<p>November 2020 Board Meeting Pending Rule</p>
<p>Individual/ Subsurface Sewage Disposal and Cleaning of Septic Tanks</p> <p>58-0103-1901 DFM Tracking #A245-2019-7</p>	<p>Rulemaking initiated in response to challenges made in enforcing and updating portions of the Technical Guidance Manual for Individual Subsurface Sewage Disposal Systems (TGM).</p>	<p>Notice of Negotiated Rulemaking: 6/5/19 Bulletin 1st Negotiated Rulemaking Meeting: 7/10/19</p> <p>Contact: Mary Anne Nelson</p>	<p>November 2020 Board Meeting Pending Rule</p>
<p>IPDES</p> <p>58-0125-2001 DFM Tracking #A245-2020-2</p>	<p>Rulemaking initiated to ensure the Rules Regulating the Idaho Pollutant Discharge Elimination System (IPDES) Program, IDAPA 58.01.25, remain consistent with federal regulations and to make clarifications in response to ambiguities identified during DEQ's administration of the IPDES program.</p>	<p>Notice of Negotiated Rulemaking: 4/1/20 Bulletin 1st Negotiated Rulemaking Meeting: 4/14/20</p> <p>Contact: Mary Anne Nelson</p>	<p>November 2020 Board Meeting Pending Rule</p>

Drinking Water Protection & Finance Division			
<p>Wastewater Drinking Water Grants & Loans</p> <p>58-0104-1901 DFM Tracking #A245-2019-11</p> <p>58-0122-1901 DFM Tracking #A245-2019-12</p> <p>58-0112-1901 DFM Tracking #A245-2019-13</p> <p>58-0120-1901 DFM Tracking #A245-2019-14</p>	<p>Rulemaking initiated in response to Executive Order 2019-02, Red Tape Reduction Act, issued by Governor Little on January 21, 2019.</p>	<p>Notice of Negotiated Rulemaking: 8/7/19 Bulletin Negotiated Rulemaking Meeting: 8/27/19</p> <p>Proposed Rule: 11/6/19 Bulletin</p> <p>Contact: Jerri Henry</p>	<p>May 2020 Board Meeting Pending Rule</p>

Waste Management & Remediation Division			
<p>Solid Waste Management</p> <p>58-0106-1901 DFM Tracking #A245-2019-10</p>	<p>Rulemaking initiated in response to Executive Order 2019-02, Red Tape Reduction Act, issued by Governor Little on January 21, 2019.</p>	<p>Notice of Negotiated Rulemaking: 8/7/19 Bulletin Negotiated Rulemaking Meeting: 8/29/19</p> <p>Proposed Rule: 11/6/19 Bulletin</p> <p>Contact: Michael McCurdy</p>	<p>May 2020 Board Meeting Pending Rule</p>

<p>Ore Processing by Cyanidation</p> <p><u>58-0113-1901</u> DFM Tracking #A245-2019-6</p>	<p>Rulemaking initiated in response to Idaho Mining Association's request for rulemaking.</p>	<p>Notice of Negotiated Rulemaking: 5/1/19 Bulletin 1st Negotiated Rulemaking Meeting: 5/3/19</p> <p>Contact: Michael McCurdy</p>	<p>November 2020 Board Meeting Pending Rule</p>
<p>Design and Construction of Phosphogypsum Stacks</p> <p><u>58-0119-2001</u> DFM Tracking #A245-2020-3</p>	<p>Rulemaking initiated for the promulgation of rules for the design and construction of phosphogypsum stacks as directed by the 2020 Idaho Legislature.</p>	<p>Notice of Negotiated Rulemaking: 4/1/20 Bulletin 1st Negotiated Rulemaking Meeting: 4/16/20</p> <p>Contact: Michael McCurdy</p>	<p>To be determined</p>

**Idaho Board of Environmental Quality
May 14, 2020 Board Meeting**

Agenda Item 14: Other Business