

Dear Senators BAIR, VICK, Stennett, and
Representatives THOMPSON, Anderst, Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Department of Environmental Quality:

IDAPA 58.01.03 - Individual/Subsurface Sewage Disposal Rules - Proposed Rulemaking (Docket
No. 58-0103-1501).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 01/20/2016. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 02/17/2016.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the
memorandum attached below.



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: Principal Legislative Research Analyst - Katharine Gerrity

DATE: December 29, 2015

SUBJECT: Department of Environmental Quality

IDAPA 58.01.03 - Individual/Subsurface Sewage Disposal Rules - Proposed Rulemaking (Docket No. 58-0103-1501)

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.03 - Individual/Subsurface Sewage Disposal Rules. According to the department, the rulemaking has been initiated to create an effective and useful means of approving and overseeing service providers for the department and health districts and will expand choices of service for private property owners. The department notes that complex alternative septic systems are engineered and/or manufactured systems and products that contain many different mechanical components to achieve secondary wastewater treatment. The department states that it is important that the systems undergo a minimum of annual operation, maintenance and monitoring by a qualified service technician that is familiar with the technology to ensure system functionality and efficacy. The department goes on to state that without proper operation, maintenance and monitoring, the wastewater treatment systems do not achieve their designed treatment levels prior to discharge and that improper treatment prior to discharge to the subsurface may result in degradation of Idaho's ground water resources where these systems are located.

The department states that its current ability to approve qualified service technicians and ensure they have baseline knowledge of the technology is limited because there are no state requirements supported by rule for the minimum qualifications, responsibilities and approval of service providers for complex alternative treatment systems. The department notes that several private property owners have requested via public comment that it develop an approval process for service providers that allows the property owners to have a larger base of service providers from which to choose. The owners are also hopeful that an approval process will foster healthy competition for the business, resulting in better service and effective cost control for provider services. In addition, the department states it also received recommendation from its Technical Guidance Committee for Individual and Subsurface Alternative Sewage Disposal to pursue a service provider based operation, maintenance and monitoring model for the systems. The department adds that the rulemaking will allow it to authorize individuals to be service providers for complex alternative treatment systems through the issuance of a complex installer's registration permit with a service provider certification.

The department confirms that negotiated rulemaking was conducted and verifies that the standards included in the proposed rule are not broader in scope, nor more stringent, than federal regulations and do not

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, 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

regulate an activity not regulated by the federal government. The rulemaking appears to be authorized pursuant to Chapters 1 and 36, Title 39, Idaho Code.

cc: Department of Environmental Quality
Paula J. Wilson

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.03 - INDIVIDUAL/SUBSURFACE SEWAGE DISPOSAL RULES

DOCKET NO. 58-0103-1501

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This 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 January 20, 2016. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: This rulemaking has been initiated to create an effective and useful means of approving and overseeing service providers for DEQ and the health districts and will expand choices of service for private property owners.

Complex alternative septic systems are engineered and/or manufactured systems and products that contain many different mechanical components to achieve secondary wastewater treatment. Without complex alternative septic systems, an individual property owner's options for subsurface sewage disposal system installation may be extremely limited in many environmentally sensitive areas. It is important that complex alternative septic systems undergo a minimum of annual operation, maintenance, and monitoring by a qualified service technician that is familiar with the technology to ensure system functionality and efficacy. Without the proper operation, maintenance, and monitoring, these wastewater treatment systems do not achieve their designed treatment levels prior to discharge. Improper wastewater treatment prior to discharge to the subsurface may result in degradation of Idaho's ground water resources where these systems are located.

Currently, DEQ's ability to approve qualified service technicians and ensure that they have baseline knowledge of the technology that they are servicing is limited because there are no state requirements supported by rule for the minimum qualifications, responsibilities, and approval of service providers for complex alternative treatment systems. DEQ is currently limited to approving service providers through guidance and has found that manufacturers of the treatment technology are limiting the number of service providers they are willing to train. The limited training of service providers by manufacturers under DEQ's current guidance system has resulted in a limited number of service providers who can conduct routine operation, maintenance and repair for private property owners.

Several private property owners have requested via public comment that DEQ develop an approval process for service providers that allows the property owner to have a larger base of service providers from which to choose. The private property owners also hope that an unlimited service provider system would help foster healthy and open competition for their business, resulting in better service and effective cost control for the provider's services. DEQ also received recommendation from its Technical Guidance Committee for Individual and Subsurface Alternative Sewage Disposal, authorized by IDAPA 58.01.03.004.07, to pursue a service provider based operation, maintenance, and monitoring model for complex alternative treatment units for septic systems during the committee's March and May 2015 meetings. The Idaho Attorney General's Office has advised that approval and oversight of service providers should be done under authorized agency rule.

DEQ is responding to the desires of the private property owners that have complex alternative treatment systems installed on their property and the Technical Guidance Committee for Individual and Subsurface Alternative Sewage Disposal by pursuing an amendment to IDAPA 58.01.03.006. The amendment to IDAPA 58.01.03.006 will allow DEQ to authorize individuals to be service providers for complex alternative treatment systems through the issuance of a complex installer's registration permit with a service provider certification. The rule amendment creates minimum application contents and responsibilities that service providers would have to meet.

Idahoans who own or purchase property that necessitates the installation of a complex alternative subsurface sewage disposal system and permitted installers 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 Board of Environmental Quality in the spring of 2016 for adoption of a pending rule. The rule is expected to be final and effective on July 1, 2017 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: Not applicable.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220 and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the October 2015 Idaho Administrative Bulletin, **Vol. 15-10, pages 681-682**, and a preliminary draft rule was made available for public review. A meeting was held on October 22, 2015. Members of the public participated in this negotiated rulemaking process by attending the meeting and by submitting written comments. A record of the negotiated rule drafts, written comments, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary is available at www.deq.idaho.gov/58-0103-1501.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions that resulted in drafting the proposed rule. At the conclusion of the negotiated rulemaking process, DEQ formatted the final rule draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule.

IDAHO CODE SECTION 39-107D STATEMENT: The standards included in this proposed rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

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 when the pending rule will become effective: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Tyler Fortunati at tyler.fortunati@deq.idaho.gov or (208)373-0140.

Anyone may submit written comments by mail, fax or email at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before February 3, 2016.

DATED this 6th day of January, 2016.

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

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0103-1501
(Only Those Sections With Amendments Are Shown.)**

003. DEFINITIONS.

For the purposes of these rules, the following definitions apply. (5-7-93)

01. Abandoned System. A system which has ceased to receive blackwaste or wastewater due to diversion of those wastes to another treatment system or due to termination of waste flow. (10-1-90)

02. Alternative System. Any system for which the Department has issued design guidelines or which the Director judges to be a simple modification of a standard system. (10-1-90)

03. Authorized or Approved. The state of being sanctioned or acceptable to the Director as stated in a written document. (10-1-90)

04. Blackwaste. Human body waste, specifically excreta or urine. This includes toilet paper and other products used in the practice of personal hygiene. (10-1-90)

05. Blackwater. A wastewater whose principal pollutant is blackwaste; a combination of blackwaste and water. (10-1-90)

06. Board. Idaho State Board Of Environmental Quality. (10-1-90)

07. Building Sewer. The extension of the building drain beginning five (5) feet outside the inner face of the building wall. (10-1-90)

08. Central System. Any system which receives blackwaste or wastewater in volumes exceeding twenty-five hundred (2,500) gallons per day; any system which receives blackwaste or wastewater from more than two (2) dwelling units or more than two (2) buildings under separate ownership. (10-1-90)

09. Construct. To make, form, excavate, alter, expand, repair, or install a system, and, their derivations. (5-7-93)

10. Director. The Director of the Idaho Department of Environmental Quality or the Director's designee or authorized agent. (10-1-90)

11. Existing System. Any system which was installed prior to the effective date of these rules. (5-7-93)

12. Expand. To enlarge any nonfailing system. (10-1-90)

13. Failing System. Any system which exhibits one (1) or more of the following characteristics: (10-1-90)

a. The system does not meet the intent of these rules as stated in Subsection 004.01. (5-7-93)

b. The system fails to accept blackwaste and wastewater. (10-1-90)

c. The system discharges blackwaste or wastewater into the waters of the State or onto the ground surface. (10-1-90)

14. Ground Water. Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (5-7-93)

- 15. High Groundwater Level -- Normal, Seasonal.** High ground water level may be established by the presence of low chroma mottles, actual ground water monitoring or historic records. (5-7-93)
- a.** The normal high groundwater level is the highest elevation of ground water that is maintained or exceeded for a continuous period of six (6) weeks a year. (5-7-93)
- b.** The seasonal high groundwater level is the highest elevation of ground water that is maintained or exceeded for a continuous period of one (1) week a year. (5-7-93)
- 16. High Water Mark.** The line which the water impresses on the soil by covering it for sufficient periods of time to prevent the growth of terrestrial vegetation. (10-1-90)
- 17. Individual System.** Any standard, alternative or subsurface system which is not a central system. (10-1-90)
- 18. Install.** To excavate or to put in place a system or a component of a system. (10-1-90)
- 19. Installer.** Any person, corporation, or firm engaged in the business of excavation for, or the construction of individual or subsurface sewage disposal systems in the State. (10-1-90)
- 20. Large Soil Absorption System.** A large soil absorption system is a subsurface sewage disposal system designed to receive two thousand five hundred (2,500) gallons of wastewater or more per day, including where the total wastewater flow from the entire proposed project exceeds two thousand five hundred (2,500) gallons per day but the flow is separated into absorption modules which receive less than two thousand five hundred (2,500) gallons per day. (5-7-93)
- 21. Limiting Layer.** A characteristic subsurface layer or material which will severely limit the capability of the soil to treat or absorb wastewater including, but not limited to, water tables, fractured bedrock, fissured bedrock, excessively permeable material and relatively impermeable material. (10-1-90)
- 22. Mottling.** Irregular areas of different color in the soil that vary in contrast, density, number and size. Mottling generally indicates poor aeration and impeded drainage. (5-7-93)
- 23. New System.** A system which is or might be authorized or approved on or after the effective date of these rules. (5-7-93)
- 24. Nondischarging System.** Any system which is designed and constructed to prevent the discharge of blackwaste or wastewater. (10-1-90)
- 25. Permit.** An individual or subsurface system installation permit or installer's registration permit. (10-1-90)
- 26. Pollutants.** 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 public nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, agricultural, recreational, aesthetic, or other beneficial uses. (10-1-90)
- 27. Public System.** Any system owned by a county, city, special service district, or other governmental entity or Indian tribe having the authority to dispose of blackwaste or wastewater; a municipal wastewater treatment facility. (10-1-90)
- 28. Repair.** To remake, reform, replace, or enlarge a failing system or any component thereof as is necessary to restore proper operation. (10-1-90)
- 29. Scarp.** The side of a hill, canyon, ditch, river bank, roadcut or other geological feature characterized by a slope of forty-five (45) degrees or more from the horizontal. (10-1-90)

30. Service Provider. Any person, corporation, or firm engaged in the business of providing operation, maintenance, and monitoring of complex alternative systems in the state of Idaho. ()

- ~~301.~~ **Sewage.** Sewage has the same meaning as wastewater. (10-1-90)
- ~~342.~~ **Soil Texture.** The relative proportion of sand, silt, and clay particles in a mass of soil. (10-1-90)
- ~~323.~~ **Standard System.** Any system recognized by the Board through the adoption of design and construction regulations. (10-1-90)
- ~~334.~~ **Subsurface System.** Any system with a point of discharge beneath the earth's surface. (10-1-90)
- ~~345.~~ **Surface Water - Intermittent, Permanent, Temporary.** (7-1-93)
- a.** Any waters of the State which flow or are contained in natural or man-made depressions in the earth's surface. This includes, but is not limited to, lakes, streams, canals, and ditches. (10-1-90)
- b.** An intermittent surface water exists continuously for a period of more than two (2) months but not more than six (6) months a year. (10-1-90)
- c.** A permanent surface water exists continuously for a period of more than six (6) months a year. (10-1-90)
- d.** A temporary surface water exists continuously for a period of less than two (2) months a year. (10-1-90)
- ~~356.~~ **System.** Beginning at the point of entry physically connected piping, treatment devices, receptacles, structures, or areas of land designed, used or dedicated to convey, store, stabilize, neutralize, treat, or dispose of blackwaste or wastewater. (10-1-90)
- ~~367.~~ **Wastewater.** Any combination of liquid or water and pollutants from activities and processes occurring in dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water, and storm water that may be present; liquid or water that is chemically, biologically, physically or rationally identifiable as containing blackwater, grey water or commercial or industrial pollutants; and sewage. (10-1-90)
- ~~378.~~ **Waters of the State.** All the accumulations of water, surface and underground, natural and artificial, public and private or parts thereof which are wholly or partially within, which flow through or border upon the state of Idaho. (10-1-90)
- ~~389.~~ **Water Table.** The surface of an aquifer. (10-1-90)

(BREAK IN CONTINUITY OF SECTIONS)

006. INSTALLER'S REGISTRATION PERMIT AND SERVICE PROVIDER CERTIFICATION.

- 01. Permit and Certification Required.** Every installer and service provider shall secure from the Director an installer's registration permit. Service providers must also obtain a service provider's certification. Two (2) types of installer permits and one (1) type of service provider certification are available. ~~(5-7-93)~~()
- a.** A standard and basic alternative system installer's registration permit is required to install all individual systems not listed under Subsection 006.01.b. (5-7-93)
- b.** A complex alternative system installer's registration permit is required to install evapotranspiration systems, extended treatment systems, lagoon systems, large soil absorption systems, pressure distribution systems,

intermittent sand filters, ~~in-trench sand filter~~, sand mounds or other systems as may be specified by the Director.

(5-7-93)()

c. A service provider certification is required to perform operation, maintenance, and monitoring of complex alternative systems. ()

02. Examination. The initial issuance of the installer's permit and service provider certification shall be based on the completion of an examination, with a passing score of seventy (70) or more, of the applicant's knowledge of the principles set forth in ~~this chapter~~ these rules and the applicable sections of the Technical Guidance Manual. The examinations will be prepared, administered and graded by the Director. The installer examination and service provider examination shall be separate exams. (5-7-93)()

03. Permits and Certifications Required Annually. Registration permits and service provider certifications expire annually on the first (1st) day of January, and all permits and certifications issued thereafter will be issued for the balance of the calendar year. Additionally, installers and service providers shall attend at least one (1) refresher course approved by the state of Idaho, Department of Environmental Quality, ~~be attended~~ every three (3) years. (5-7-93)()

04. Contents of Application. Applications for installer permits and service provider certifications shall be in writing; shall be signed by the applicant or by an officer or authorized agent of a corporation, shall contain the name and address of the applicant; shall indicate whether the permit is to be for installation of standard and basic alternative systems ~~or for~~ installation of standard, basic and complex alternative systems, or installation of standard, basic and complex alternative systems and certification as a service provider; and shall contain the expiration date of the bond required by Subsection 006.05. Additionally, for applicants seeking certification as a service provider, the application shall also contain annual documentation of manufacturer specific training, as required by Subsection 006.06.a. (5-7-93)()

05. Bond Required. At the time of application, all applicants, including those seeking a service provider certification, shall deliver to the Director a bond in a form approved by the Director in the sum of five thousand dollars (\$5,000) for a standard and basic alternative system installer's registration permit, or in the sum of fifteen thousand dollars (\$15,000) for standard, basic and complex alternative system installer's registration permit. The bond will be executed by a surety company duly authorized to do business in the state of Idaho and must run concurrent with the installer's registration permit ~~to~~. The bond shall be approved by the Director and must guarantee ~~ing~~ the installer or service provider's faithful performance of all work undertaken under the provisions of the installer's registration permit or service provider certification, or both. Any person who suffers damage as the result of ~~the~~ negligent or wrongful acts of the ~~registrant~~ installer or service provider or by ~~his~~ the installer or service provider's failure to competently perform any of the work agreed to be done under the terms of the registration permit or certification shall, in addition to other legal remedies, have a right of action in his own name on the bond for all damages not exceeding five thousand dollars (\$5,000) for standard and basic alternative systems or fifteen thousand dollars (\$15,000) for complex alternative systems or required operation, maintenance, and monitoring by certified service providers. The maximum liability of the surety and/or sureties on the bond, regardless of the number of claims filed against the bond, shall not exceed the sum of five thousand dollars (\$5,000) for standard and basic alternative systems or fifteen thousand dollars (\$15,000) for complex alternative systems or required operation, maintenance, and monitoring by certified service providers. (5-7-93)()

06. Service Provider Responsibilities. All certified service providers who provide operation, maintenance, and monitoring for any complex alternative system are responsible for compliance with each of these rules that are relevant to those services. Additionally, each certified service provider shall: ()

a. Obtain documentation of the completed manufacturer-specific training for each system that is a manufactured and packaged treatment system. Proper documentation includes a certificate or letter of training completion provided by the manufacturer. If a system manufacturer is no longer in business, that manufacturer-specific training is not required. ()

b. Maintain a comprehensive list of real property owners who contracted with the certified service provider. The list shall include the current real property owner name, service property address, real property owner contact address, and subsurface sewage disposal permit number. This list shall be provided to the Director as part of

the annual operation, maintenance, and monitoring reports for individual real property owners; and ()

c. Submit all operation, maintenance, and monitoring records in the form of an annual report for each individual real property owner with whom the service provider contracts to fulfill the real property owner's operation, maintenance, and monitoring responsibilities required through the real property owner's subsurface sewage disposal installation permit as allowed in Subsection 005.14. The annual reports shall be provided to the Director by the timeframe specified in the Technical Guidance Manual for the specific complex alternative system for which operation, maintenance, and monitoring is required. ()

067. Exemption. An installer's permit shall not be required for: (10-1-90)

a. Any person, corporation, or firm constructing a central or municipal subsurface sewage disposal system if that person, corporation, or firm is a licensed public works contractor as provided in Title 54, Chapter 19, Idaho Code, is experienced in the type of system to be installed and is under the direction of a professional engineer licensed in the state of Idaho; or (5-7-93)

b. ~~An o~~wners installing ~~his~~ their own standard or basic alternative systems. (5-7-93)()

078. Application Fee. All applications shall be accompanied by payment of the fee specified in IDAPA 58.01.14, Section 120, "Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services". (5-7-93)

089. Grounds for Revocation. Failure to comply with these rules shall be grounds for revocation of the permit or the certification, or both. (5-7-93)()

10. Transfer from Non-Profit Operation and Maintenance Entity to Certified Service Provider. ()

a. Real property owners who want to install extended treatment package systems must retain a permitted installer and certified service provider. An easement granting general access to a non-profit operation and maintenance entity is no longer required for extended treatment package system installation permits. ()

b. Beginning July 1, 2017, real property owners who had extended treatment package systems installed are not required to be members of non-profit operation and maintenance entities. To meet the operation, maintenance, and monitoring requirements of their extended treatment package systems, real property owners shall retain a certified service provider for their existing extended treatment package systems. ()

(BREAK IN CONTINUITY OF SECTIONS)

009. OTHER COMPONENTS.

01. Design Approval Required. Commercially manufactured blackwaste and wastewater treatment and storage components may not be used in the construction of a system unless their design is approved by the Director. (10-1-90)

02. Plan and Specification Submittal. Plans and specifications for all commercially manufactured individual and subsurface treatment and storage components will be submitted to the Director for approval. Plans and specifications will show or include as requested by the Director, detailed construction drawings, capacities, structural calculations, list of materials, evidence of stability and durability, manufacturers installation, operation and maintenance instructions, and other relevant information. (10-1-90)

03. Effect of Design Approval. The Director may condition a design approval by specifying circumstances under which the component must be installed, used, operated, ~~or~~ maintained, or monitored. (10-1-90)()

a. The Director shall specify the complex alternative systems that must undergo professionally managed operation, maintenance, service, and effluent testing. ()

b. Manufacturers shall not restrict the number of service providers trained in their products to perform required operation, maintenance, or monitoring as specified by the Director. ()

c. Manufacturers may enter into agreements with certified service providers trained in their technology but shall not limit the service providers from being trained in the technology of other manufacturers. ()

04. Notice of Design Disapproval. If the Director is satisfied that the component described in the submittal may not be in compliance with or may not consistently function in compliance with these rules, or that the manufacturer of the proposed system failed to comply with Subsection 009.03, the Director will disapprove the design as submitted. The manufacturer or distributor submitting the design for approval will be notified in writing of the disapproval and the reason for that action. (5-7-93)()