

Dear Senators LODGE, Broadsword & Werk, and
Representatives BLOCK, Nielsen & Henbest:

The Legislative Services Office, Research and Legislation, has received the enclosed
rules of the Public Health Districts:

IDAPA 41.01.01 - Rules of Public Health District #1 (Docket No. 41-0101-0801) (Proposed).

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
10-24-08. 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 11-21-08.

_____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 334-2475, or send a written request to the
address or FAX number indicated on the memorandum enclosed.

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

FROM: Research & Legislation Staff - Paige Alan Parker

DATE: October 6, 2008

SUBJECT: Public Health District No. 1 - IDAPA 41.01.01 - Rules of Public Health District #1 (Docket No. 41-0101-0801) (Proposed)

According to Public Health District No. 1 (hereafter “District”), the proposed rule contained in Docket No. 41-0101-0801, rules of Public Health District #1 (hereafter “proposed rule”), is authorized by section 39-416, Idaho Code. Section 39-416(1), Idaho Code, allows the district board to adopt, amend or rescind rules and standards as it deems necessary to carry out the purposes and provisions of the public health districts act. At the same time the proposed rule is transmitted to Legislative Services, the proposed rule must be submitted for review and comment to state board of health and welfare and to the board of county commissioners within the public health district’s jurisdiction. Section 39-416(3), Idaho Code.

The legislative intent in the creation of the public health districts was that these districts “operate and be recognized not as state agencies or departments, but as governmental entities whose creation has been authorized by the state, much in the manner as other single purpose districts.” Section 39-401, Idaho Code. Among the District Board of Health powers are the administration and enforcement of all state and district health laws, regulations and standards, and all things required for the preservation and protection of the public health and preventive health, and such other things delegated by the director of the Department of Health and Welfare (DHW) or the Director of the Department of Environmental Quality (DEQ). Section 39-414(1) and (2), Idaho Code. Section 39-409, Idaho Code, which creates a district health department in each of the seven Idaho public health districts, provides that the department services include, but are not limited to, public health education, physical health, environmental health, and public health administration.

Willful violation, disobedience, or disregard of the public health laws or the terms of any lawful notice, order, standard, rule, regulation or ordinance issued pursuant thereto is unlawful.

Section 39-419(1), Idaho Code. The District Board may seek recovery of a fine in the district court of the county wherein the violation of any law or rule within the jurisdiction of the District occurred. Section 39-419(3), Idaho Code. The District Board may prosecute “all proper and necessary civil actions and proceedings to enforce the provisions of this [public health] act and the preservation and protection of the public” Section 39-420, Idaho Code

The District states that the proposed rule revises the septic system application restrictions and will permit drainfields to be installed prior to the building of the structure to be served. Under the proposed rule, the permitted and installed drainfield would be valid under the conditions of the permit for five years, provided that the site and its surroundings are not substantially modified.

According to the District, no fee or charge is imposed by the proposed rule. The District states that there is no anticipated impact to the general fund greater than \$10,000 during the fiscal year as a result of the proposed rule. The District states that a public hearing will be held in Hayden, Idaho, on Friday, October 24th. The District states that all written comments must be delivered to the District on or before October 24, 2008.

ANALYSIS

The proposed rule deletes the requirement that a concurrent request for a permit to establish a specific use and structure to be served by the septic system accompany a request for a septic system permit. Section 100.07.b.

New subsection 08 is added to section 100 that requires the septic permit application shall include the number of bedrooms to be served by the septic system and a scale site plan indicating all constraints (as identified in the State Subsurface Rule) and a building envelope of all proposed structures. This new subsection also provides that a drainfield that is installed, inspected and approved shall be valid to be connected to under the conditions of the original issued permit for five years from the permit application date, provided that the site and its surroundings are not substantially modified.

SUMMARY

A cross reference to the “State Subsurface Rule” should be included in the proposed rule. The proposed rule appears to be authorized pursuant to section 39-416, Idaho Code.

cc: Dale Peck, Panhandle Health District, 8500 N. Atlas Road, Hayden, ID 83835;
Jeanne Bock, Director, Public Health District #1 [same address]

IDAPA 41 - PUBLIC HEALTH DISTRICTS

41.01.01 - RULES OF PUBLIC HEALTH DISTRICT #1

DOCKET NO. 41-0101-0801

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 procedures. The action is authorized pursuant to Section 39-416, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rulemaking will be held as follows:

Friday - October 24, 2008 - 3:30 pm to 5:00 pm

PANHANDLE HEALTH DISTRICT 1

**8500 North Atlas Road
Hayden, Idaho**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The current rule, IDAPA 41.01.01.100.07.b., requires that the application for a septic system must be accompanied by a building permit. The proposed change would revise septic system application restrictions and allow drainfields to be installed prior to the building of the structure to be served. The permitted and installed drainfield would be valid under the conditions of the permit for five years, provided that the site and its surroundings are not substantially modified.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None

FISCAL IMPACT: 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 as a result of this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because extensive informal negotiation with potentially affected parties was conducted prior to rulemaking process.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dale Peck, Panhandle Health District, 8500 N. Atlas Road, Hayden, ID 83835; (208) 415-5210.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Dale Peck, Panhandle Health District, 8500 North Atlas Road, Hayden, ID 83835 and must be delivered on or before 5:00 p.m., local time, on October 24, 2008.

DATED this 15th day August, 2008.

Jeanne Bock, Director
Public Health District 1
8500 North Atlas Road
Hayden, ID 83835
Phone: (208) 415-5103
Fax (208) 415-5101

THE FOLLOWING IS THE TEXT OF DOCKET NO. 41-0101-0801

100. WATER QUALITY CONTROL.

01. Sewage and Waste Disposal -- Political Subdivisions. Any political subdivision within the District may enter into a sewage management plan agreement with the District, the purpose of which will be to establish permanent sewage disposal practices that will fulfill the needs and goals of the political subdivision and the responsibilities of the District. The Board shall have authority to enforce the provisions of sewage management plan agreements. (7-1-93)

02. Sewage and Waste Disposal -- Public Sewage Treatment. All public sewage treatment facilities shall be constructed and operated in accordance with applicable state and federal laws. All public sewage treatment facilities constructed after the effective date of this rule shall be owned, operated, or maintained by a political subdivision of the state of Idaho, as defined in Idaho Code or by such entity as may be deemed acceptable by the Board. All public sewage treatment facilities incorporating subsurface disposal in the design must include two (2) disposal fields, each sized for the design loading and capable of being alternately loaded; in addition, a third acceptable site, large enough to install an additional replacement field, must be available. (7-1-93)

03. Sewage and Waste Disposal -- Private Sewage Disposal. No residence, place of business, or other building where persons congregate, reside, or are employed shall hereafter be constructed or altered until the owner or builder or agent thereof shall have first been issued a permit to construct sanitary disposal facilities by the Health Officer. (7-1-93)

a. This rule shall not apply to any construction on a street or alley in which there is a public sanitary sewer or to any construction within two-hundred (200) feet of a public sanitary sewer where connection with such sewer is actually made. In such case, the residence, place of business, or other building shall connect to the sewer. (7-1-93)

b. The application for a permit to construct sanitary disposal facilities shall include all applicable information as set forth in the Idaho Department of Environmental Quality Rules for Individual and Subsurface Sewage Disposal Systems, and by a fee as set in the fee schedule. (3-27-07)

c. No drywells or drainfields deeper than four (4) feet below ground level shall be permitted for the disposal of domestic sewage waste. No sewage holding or retention tanks shall be allowed as a method of sewage disposal for residential purposes unless the operation and maintenance, including pumping of the facility, is conducted by or under the authority of a political subdivision as defined in Idaho Code. (7-1-93)

d. No dwelling or building shall be occupied until the sanitary disposal facilities have been constructed, inspected, and approved by the Health Officer or his agents. The sanitary disposal facilities shall not be covered with dirt or otherwise completed until inspected and approved. (7-1-93)

04. Sewage and Waste Disposal -- Septage Disposal Site. It shall be unlawful for any person engaged in the business, firm or corporation to clean any septic tank, sewage pit, or other means of sewage disposal, or to operate a septage disposal site within the limits of Panhandle Health District 1 without first having been issued a registration permit by the Health Officer. (7-1-93)

a. Application shall be made upon a form provided by the Health Officer and shall be accompanied by a fee as set in the fee schedule. The registration permit shall be issued yearly and shall be revocable for failure to comply with the rules governing sewage disposal. Each permit shall be only for the unexpired portion of the calendar year for which the permit is issued, and at the end of the calendar year all permits shall expire becoming void and of no further effect. (7-1-93)

b. Any person engaged in the business of removing and transporting sewage shall comply with all

applicable rules governing removal, transportation, and disposal of sewage or sewage sludge issued by the Idaho State Department of Health and Welfare and with all applicable rules hereinafter adopted. (7-1-93)

c. All applications for permits to operate septage land disposal sites must be accompanied by a plan of operations which shall include details relative to application rates and methods, access control, odor control, control of surface water runoff, cropping, and vegetation. All land disposal sites must not be closer than three-hundred (300) feet from a property line, nor closer than one quarter (1/4) mile from a residence at the time the site is established. All disposal sites must provide access for all-weather operation. All land disposal sites established after the effective date of these rules may be required to have an engineering report prepared by a licensed engineer detailing such items as site topography, site boundaries, property boundaries, direction and distance to nearest residence(s), depth, and type of soil strata, depth to ground water, direction of prevailing winds, and such other information as may be deemed necessary by the Health Officer. All required information must be submitted to and approved by the Health Officer prior to the issuance of a permit. (7-1-93)

05. Sewage and Waste Disposal -- Prohibited Conditions. (7-1-93)

a. Domestic sewage, septage, sanitary sewage, industrial waste, agricultural waste, sewage effluent, or human excreta shall not be allowed to remain open to the atmosphere or on the surface of the ground in such a manner so as to be a source of noxious or offensive odors, to be dangerous to health, or to be a public nuisance. (7-1-93)

b. Domestic sewage, sanitary sewage, septage, industrial sewage, industrial waste, agricultural waste, sewage effluent, or human excreta shall not be allowed to endanger any source or supply of drinking water, or cause damage to any public or private property. (7-1-93)

c. Raw or untreated sewage, septage, or industrial waste, or agricultural waste shall not be allowed in any body of water, water course, or any underground water drain, any storm water drain, channel, or other surface water drain. (7-1-93)

06. Sewage and Waste Disposal. Expansion or Replacement of a Structure with Existing Waste Disposal System (Vested Rights). (3-27-07)

a. The square footage of habitable space will be used to determine a vested right for expansion or replacement of a structure with an existing wastewater system. (3-27-07)

b. An increase in square footage of habitable space by more than ten percent (10%) when replacing or remodeling an existing structure with an existing wastewater system will require a septic system that meets current standards. (3-27-07)

c. An application for a subsurface sewage disposal repair permit is required for all remodeling or replacement of an existing structure served by a sewage disposal system which fails to have both a septic permit and an approved final inspection. The sewage disposal system must be upgraded to current standards if possible. If this is not possible, the sewage disposal system must be upgraded to the best possible system given the constraints of the property. The remodeled or replacement structure will be limited to no more than one hundred ten percent (110%) of the original structure's square footage of habitable space. An alternative system may be required. (3-27-07)

d. If a system has ceased to receive wastewater for one year or more, the system is considered abandoned. The abandoned site must be inspected to determine if it is in compliance with current regulations. If system is in compliance with current regulations, it can be used for the current approved habitable space. If system is not in compliance with current regulations, a repair permit will be required, and the system must be upgraded to current standards if possible. If current standards cannot be met, the best possible system given the constraints of the property must be installed. This may require the use of an alternative system. Once the system has been upgraded, it can be connected to. If the upgrade cannot meet current standards, the dwelling will be limited to no more than one hundred ten percent (110%) of the current approved habitable space. (3-27-07)

07. Sewage and Waste Disposal. Authorization to Connect to an Installed System. (3-27-07)

a. This applies to connection to an approved drainfield installation that has never received wastewater flows. (3-27-07)

b. Application must be made, and an authorization to connect permit issued, to determine that the site has not been compromised and continues to meet the standards under which the original permit was issued. A fee for such inspection may be set by the Board. ~~From July 1, 2007, and thereafter, no permit shall be issued for a septic system separate from a concurrent request for a permit to establish a specific use and structure to be served by the requested septic system.~~ (3-27-07)()

08. Sewage and Waste Disposal -- Septic Permit. ()

a. Application for a septic permit shall include the following: ()

i. Complete application shall include the number of bedrooms to be served by the septic system. ()

ii. Scale site plan indicating all constraints as identified in the State Subsurface Rule and a building envelope of all proposed structures. ()

b. A drainfield that is installed, inspected and approved shall be valid to be connected to under the conditions of the original permit for which it was issued, for five (5) years from the date of permit application, provided that the site and its surroundings are not substantially modified. ()