

Dear Senators LODGE, Broadsword & Werk, and  
Representatives RAYBOULD, Haqwood & Elaine Smith:

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

IDAPA 58.01.08 - Idaho Rules For Public Drinking Water Systems (Docket #58-0108-0803);

IDAPA 58.01.01 - Rules For The Control Of Air Pollution In Idaho (Docket #58-0101-0803).

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 9-9-08. 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 10-7-08.

\_\_\_\_\_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 and Welfare Committee and the House Environment, Energy and Technology Committee

FROM: Katharine Gerrity, Principal Legislative Research Analyst - LSO

DATE: August 20, 2008

SUBJECT: Department of Environmental Quality

IDAPA 58.01.08 - Idaho Rules For Public Drinking Water Systems  
(Docket #58-0108-0803)

IDAPA 58.01.01 - Rules For The Control Of Air Pollution In Idaho  
(Docket #58-0101-0803)

### **1. IDAPA 58.01.08 - Idaho Rules For Public Drinking Water Systems**

\_\_\_\_\_The Department of Environmental Quality submits notice of proposed rulemaking at **IDAPA 58.01.08 - Idaho Rules For Public Drinking Water Systems**. According to the Department, the rule will incorporate by reference an EPA drinking water regulation setting forth short term regulatory revisions and clarifications relating to lead and copper promulgated in October of 2007. The Department states that the incorporation by reference ensures that Idaho's rules will be neither more nor less stringent than the federal rule.

The Department states that the purpose of the rule is to protect populations from exposure to lead and copper in drinking water and reduce potential health risks associated with lead and copper. The short term revisions, according to the Department, strengthen the implementation of the Lead and Copper Rule in the areas of monitoring, treatment processes, public education, customer awareness, and lead service line replacement. Negotiated rulemaking was not conducted given the fact that this is an adoption by reference of EPA regulations.

The Department notes that the rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations. The Department also states that the rule does not impact the state general fund because the drinking water program is funded by EPA grants and by dedicated fees paid by regulated water systems.

The Department adds that the direct cost to DEQ is anticipated to be between \$8,000 and \$11,000 for postage and supplies, preparing and mailing letters to systems, reviewing utility monitoring reports, reviewing system data, reviewing and tracking self-certification letters from systems, reviewing public notifications after action level exceedances, and consulting with systems.

We have no specific comments relating to the proposed rulemaking. The rule appears to be authorized pursuant to Chapter 1, Title 39, and Chapter 21, Title 37, Idaho Code.

## **2. IDAPA 58.01.01 - Rules For The Control Of Air Pollution In Idaho**

The Department of Environmental Quality submits notice of proposed rulemaking at IDAPA 58.01.01 - Rules For The Control Of Air Pollution In Idaho. According to the Department, in 2006 it negotiated a rule change that added rules for the control of ammonia from dairy farms requiring dairies above a certain threshold number of cows to be subject to industry Best Management Practices (BMPs). The Department states that rulemaking outlined a list of BMPs from which dairies could select various options for controlling ammonia emissions at their dairy farming operations. The Department notes that a BMP Review Team was formed to review new BMPs approved by the Director as new information became available. The Department states that in 2007 the team received a request to approve BMPs using Zeolite, an ammonia reducing product. The team recommended that the Director approve these BMPs for use by dairy farming operations and the purpose of this rulemaking is to include these additional BMPs. Negotiated rulemaking was not conducted.

The Department indicates that the rule is broader in scope than federal law as the federal government has not yet indicated that these particular size and type of dairy farms must obtain air quality permits. The Department adds that the federal government is in the emissions information gathering stage of regulating emissions from dairy farms and that this rule may be revised upon completion of additional state and federal scientific research. The Department confirms that the BMP team reached a consensus that the BMPs being added pursuant to this rule are based on the best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices.

We have no specific comments relating to the proposed rulemaking. The rule appears to be authorized pursuant to Sections 39-105 and 39-107, Idaho Code.

cc: Department of Environmental Quality  
Paula J. Wilson  
Bryan Zibbell  
Martin Bauer

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

#### DOCKET NO. 58-0101-0803

#### 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 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 September 17, 2008. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** In 2006, the Department of Environmental Quality (DEQ) negotiated a rule revision to IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho, which added Rules for the Control of Ammonia from Dairy Farms at Sections 760 through 764, requiring dairies above a certain threshold number of cows to be subject to industry Best Management Practices (BMPs). That rulemaking outlined a list of BMPs from which dairies could select various options for controlling ammonia emissions at their dairy farming operations.

Subsection 764.01 provides that the DEQ Director may approve additional BMPs as new information becomes available to DEQ. A BMP Review Team comprised of representatives from DEQ, the dairy industry, an environmental group, and other state agencies was subsequently formed to review these new BMPs as they were recommended.

In 2007, the BMP Review Team received a request to approve BMPs using Zeolite, an ammonia reducing product. After review, the team recommended that the DEQ Director approve these BMPs for use by dairy farming operations. The purpose of this rulemaking is to revise Subsection 764.02 to include these additional BMPs.

All dairy facilities and associations, special interest groups, agricultural agencies, public officials, or members of the public who have an interest in the regulation of air emissions from dairy sources in Idaho 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 at the November 2008 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon the adjournment of the 2009 legislative session if adopted by the Board and approved by the Legislature.

**NEGOTIATED RULEMAKING:** Because of the prior review, discussion, and negotiations by the BMP Review Team, which is comprised of the majority of the original stakeholders, no additional negotiations on this revision are anticipated unless requested.

**IDAHO CODE 39-107D STATEMENT:** This rule is broader in scope than federal law as the federal government has not yet indicated that these particular size and type of dairy farms must obtain air quality permits. The federal government is in the emissions information gathering stage of regulating emissions from dairy farms. This rule may be revised upon completion of additional state and federal scientific research. The BMP Review Team reached a consensus that the BMPs being added pursuant to this rule are based on the best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices.

**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 AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440, martin.bauer@deq.idaho.gov.

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 October 1, 2008.

DATED this 1st day of August, 2008.

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 TEXT OF DOCKET NO. 58-0101-0803**

**764. DAIRY FARM BEST MANAGEMENT PRACTICES.**

**01. BMPs.** Each dairy farm subject to Sections 760 through 764, or that otherwise obtains a permit by rule under these sections, shall employ BMPs for the control of ammonia to total twenty-seven (27) points. Points may be obtained through third party export with sufficient documentation. The table located at Subsection 764.02. lists available BMPs and the associated point value. As new information becomes available or upon request, the Director may determine a practice not listed in the table constitutes a BMP and assign a point value. (3-30-07)

**02. Table - Ammonia Control Practices for Idaho Dairies.**

		Ammonia Control Effectiveness <sup>1</sup>			
System	Component	Open Lot	Freestall Scrape	Freestall Flush	Compliance Method <sup>3</sup>
Waste Storage and Treatment Systems	Synthetic Lagoon Cover	15	20	20	1
	GeoteXtile Covers	10	13	13	1
	Solids Separation	3	3	3	3, 4
	Composting	4	4	4	1
	Separate Slurry and Liquid Manure Basins	6	10	-	1
	In-House Separation	0	12	0	1
	Direct Utilization of Collected Slurry	6	10	-	1, 3, 4
	Direct Utilization of Parlor Wastewater	10	10	10	1
	Direct Utilization of Flush Water	8	0	13	3, 4

		Ammonia Control Effectiveness <sup>1</sup>			Compliance Method <sup>3</sup>
System	Component	Open Lot	Freestall Scrape	Freestall Flush	
	Anaerobic Digester	-	-	-	-
	Anaerobic Lagoon	-	-	-	-
	Aerated Lagoon	10	12	15	2
	Sequencing-Batch Reactor	15	20	20	2
	Lagoon Nitrification/Denitrification Systems	15	20	20	2
	Fixed-Media Aeration Systems	15	20	20	2
	<u>Zeolite Treatment of Liquid Manure 1lb/cow/day</u>	<u>4</u>	<u>5</u>	<u>5</u>	<u>2</u>
	<u>Zeolite Treatment of Liquid Manure 2lb/cow/day</u>	<u>8</u>	<u>10</u>	<u>10</u>	<u>2</u>
General Practices	Vegetative or Wooded Buffers (established)	7	7	7	1
	Vegetative or Wooded Buffers (establishing)	2	2	2	1
	Alternatives to Copper Sulfate	-	-	-	-
Freestall Barns	Scrape Built Up Manure	-	3	3	1
	Frequent Manure Removal	UD	UD	UD	-
	Tunnel Ventilation	-	-	-	-
	Tunnel Ventilation w/Biofilters	-	10	10	1
	Tunnel Ventilation w/Washing Wall	-	10	10	3, 4
Open Lots and Corrals	Rapid Manure Removal	4	2	2	1, 2
	Corral Harrowing	4	2	2	1
	Surface Amendments	10	5	5	2
	In-Corral Composting / Stockpiling	4	2	2	1
	Summertime Deep Bedding	10	5	5	1
Animal Nutrition	Manage Dietary Protein	2	2	2	2

		Ammonia Control Effectiveness <sup>1</sup>			
System	Component	Open Lot	Freestall Scrape	Freestall Flush	Compliance Method <sup>3</sup>
Composting Practices	Alum Incorporation	12	8	6	2
	Carbon:Nitrogen Ratio (C:N) Ratio Manipulation	10	7.5	5	2
	Composting with Windrows	-	-	-	-
	Composting Static Pile	6	4.5	3	1
	Forced Aeration Composting	10	7.5	5	1
	Forced Aeration Composting with Biofilter	12	8	6	1
	<u>Zeolite Incorporation</u>	<u>12</u>	<u>8</u>	<u>6</u>	<u>2</u>
Land Application <sup>2</sup>	Soil Injection - Slurry	10	15	7.5	2
	Incorporation of Manure within 24 hrs	10	10	10	2
	Incorporation of Manure within 48 hrs	5	5	5	2
	Nitrification of Lagoon Effluent	10	10	15	3, 4
	Low Energy/Pressure Application Systems	7	7	10	1
	Freshwater Dilution	5	8	8	1, 2
	Pivot Drag Hoses	8	8	10	1
	Subsurface Drip Irrigation	10	10	12	1

Notes:

- The ammonia emission reduction effectiveness of each practice is rated numerically based on practical year-round implementation. Variations due to seasonal practices and expected weather conditions have been factored into these ratings. Not implementing a BMP when it is not practicable to do so, does not reduce the point value assigned to the BMP, nor does it constitute failure to perform the BMP. UD indicates that the practice is still under development.
- Land application practices assume practice is conducted on all manure; points will be pro-rated to reflect actual waste treatment; points can be obtained on exported material with sufficient documentation.
- Method used by inspector to determine compliance
  - 1=Observation by Inspector
  - 2=On-Site Recordkeeping Required
  - 3, 4=Deviation Reporting Required. Equipment upsets and/or breakdowns shall be recorded in a deviation log and if repaired in a reasonable timeframe does not constitute non-compliance with this rule.

(3-30-07)( )

# IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

DOCKET NO. 58-0108-0803

### 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 by Chapter 1, Title 39, Idaho Code, and Chapter 21, Title 37, 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 September 17, 2008. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** This rulemaking will incorporate by reference the National Primary Drinking Water Regulations for Lead and Copper: Short Term Regulatory Revisions and Clarifications; Final Rule, promulgated by the U.S. Environmental Protection Agency (EPA) on October 10, 2007. Incorporation by reference ensures that Idaho's rules will be neither more nor less stringent than the federal rule.

The purpose of the Lead and Copper Rule (LCR) is to protect populations from exposure to lead and copper in drinking water and reduce potential health risks associated with lead and copper. The purpose of the short-term revisions is to strengthen the implementation of the LCR in the following areas: monitoring, treatment processes, public education, customer awareness, and lead service line replacement. The short-term changes finalized in this action are expected to ensure and enhance protection of public health by reducing exposure to lead in drinking water. The revisions to the LCR neither amend the portion of the regulations related to copper nor change the action levels for lead or copper.

Drinking water system owners and operators, developers, consultants, engineers, cities, counties, industry, drinking water professional organizations, 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 Board of Environmental Quality at the November 2008 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon the adjournment of the 2009 legislative session if adopted by the Board and approved by the Legislature.

**NEGOTIATED RULEMAKING:** This rulemaking is an adoption by reference of regulations promulgated by EPA; therefore negotiations were not held.

**IDAHO CODE 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: The proposed rule does not impact the state general fund because the drinking water program is funded by EPA grants and by dedicated fees paid by regulated water systems. The annual direct cost to DEQ is anticipated to be between \$8,000 and \$11,000 according to an analysis from EPA (Table IV.9. - Summary of Annual Direct Costs To Systems And States From All Regulatory Changes, 72 Fed. Reg. 57,806). DEQ will incur costs for postage and supplies, preparing and mailing letters to systems, reviewing utility monitoring reports, reviewing system data, reviewing and tracking self-certification letters from systems, reviewing public notifications after action level exceedances, and consulting with systems.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Bryan Zibbell at (208) 373-0343, bryan.zibbell@deq.idaho.gov.



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 October 1, 2008.

DATED this 1st day of August, 2008.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0108-0803**

**151. CONSUMER CONFIDENCE REPORTS.**

40 CFR Part 141, Subpart O, revised as of July 1, 2006~~8~~, is herein incorporated by reference. (~~4-2-08~~)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**350. CONTROL OF LEAD AND COPPER.**

**01. General Requirements.** 40 CFR 141.80, revised as of July 1, 2000~~8~~, is herein incorporated by reference. (~~3-30-01~~)(    )

**02. Applicability of Corrosion Control Treatment Steps to Small, Medium-Size, and Large Water Systems.** 40 CFR 141.81, revised as of July 1, 2000~~8~~, is herein incorporated by reference. (~~3-30-01~~)(    )

**03. Description of Corrosion Control Treatment Requirements.** (12-1-92)

**a.** 40 CFR 141.82, revised as of July 1, 2000~~8~~, is herein incorporated by reference. (~~3-30-01~~)(    )

**b.** The Department may modify its determination of the optimal corrosion control treatment or optimal water quality control parameters where it concludes that such changes are necessary to optimize corrosion control treatment as specified in 40 CFR 141.82(h) and as referred to in Subsection 350.03. The Department may also modify its determination of the optimal corrosion control treatment or water quality control parameters where it finds such changes will provide equivalent or improved treatment in a manner which is simpler or less costly to operate. (12-10-92)

**04. Source Water Treatment Requirements.** 40 CFR 141.83, revised as of July 1, 2000~~8~~, is herein incorporated by reference. The Department may modify its determination of optimal source treatment or maximum permissible lead and ~~not~~ copper concentrations where it concludes that such changes are necessary as specified in 40 CFR 141.83(b)(6). (~~3-30-01~~)(    )

**05. Lead Service Line Replacement Requirements.** 40 CFR 141.84, revised as of July 1, 2000~~8~~, is

herein incorporated by reference.

~~(3-30-01)~~(\_\_\_\_)

**06. Public Education and Supplemental Monitoring Requirements.** 40 CFR 141.85, revised as of July 1, 20008, is herein incorporated by reference.

~~(3-30-01)~~(\_\_\_\_)

**07. Monitoring Requirements for Lead and Copper in Tap Water.** 40 CFR 141.86, revised as of July 1, 20008, is herein incorporated by reference.

~~(3-30-01)~~(\_\_\_\_)

**a.** Systems with insufficient tier one (1), two (2), or three (3) sampling sites shall complete their sampling pools from “tier four (4) sampling sites” consisting of buildings or multiple family residences that contain copper pipes with lead solder installed before 1983, or if these are not available, any other sampling sites acceptable to the Department. Any community water system which includes tier four (4) sites in its sampling pool shall submit a letter to the Department indicating why it was unable to locate sufficient tier one (1), two (2), or three (3) sites.

(10-1-93)

**b.** Nontransient noncommunity water systems with insufficient tier one (1) and pre-1983 lead solder containing copper pipe sampling sites shall complete its sampling pool with other sampling sites acceptable to the Department. A nontransient noncommunity water system which includes sampling sites other than tier one (1) in its sampling pool, shall submit a letter to the Department indicating why it was unable to locate sufficient tier one (1) sites.

(12-10-92)

**08. Monitoring Requirements for Water Quality Parameters.** 40 CFR 141.87, revised as of July 1, 20008, is herein incorporated by reference.

~~(3-30-01)~~(\_\_\_\_)

**09. Monitoring Requirements for Lead and Copper in Source Water.** 40 CFR 141.88, revised as of July 1, 20008, is herein incorporated by reference.

~~(3-30-01)~~(\_\_\_\_)

**10. Analytical Methods.** 40 CFR 141.89, revised as of July 1, 20008, is herein incorporated by reference.

~~(3-30-01)~~(\_\_\_\_)

**11. Reporting Requirements.** 40 CFR 141.90, revised as of July 1, 20008, is herein incorporated by reference.

~~(3-30-01)~~(\_\_\_\_)

**12. Recordkeeping Requirements.** 40 CFR 141.91, revised as of July 1, 20008, is herein incorporated by reference.

~~(3-30-01)~~(\_\_\_\_)