

Dear Senators PEARCE, Bair and Werk, and Senators LODGE, Broadsword and Bock, and Representatives RAYBOULD, Harwood and Elaine Smith:

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

- 58.01.01 - Rules For The Control Of Air Pollution In Idaho (crop residue burning) (Docket No. 58-0101-1001) *
- 58.01.01 - Rules For The Control Of Air Pollution In Idaho (coal fired utilities) (Docket No. 58-0101-1102) *
- 58.01.04 - Rules For Administration Of Wastewater Treatment Facility Grants (Docket No. 58-0104-1001)
- 58.01.12 - Rules For Administration Of Water Pollution Control Loans (Docket No. 58-0112-1001)
- 58.01.20 - Rules For Administration Of The Drinking Water Loan Program (Docket No. 58-0120-1001) *
- 58.01.22 - Rules For Administration Of Planning Grants For Public Drinking Water Facilities (Docket No. 58-0122-1001) *

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 07/20/2011. 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 08/17/2011.

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 334-4845, or send a written request to the address or FAX number indicated on the memorandum enclosed.



Jeff Youtz
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee, Senate Health & Welfare Committee* and the House Environment, Energy, & Technology Committee
FROM: Katharine Gerrity, Principal Legislative Research Analyst, LSO
DATE: June 30, 2011
SUBJECT: Department of Environmental Quality

- 58.01.01 - Rules For The Control Of Air Pollution In Idaho (crop residue burning) (Docket No. 58-0101-1001) *
- 58.01.01 - Rules For The Control Of Air Pollution In Idaho (coal fired utilities) (Docket No. 58-0101-1102) *
- 58.01.04 - Rules For Administration Of Wastewater Treatment Facility Grants (Docket No. 58-0104-1001)
- 58.01.12 - Rules For Administration Of Water Pollution Control Loans (Docket No. 58-0112-1001)
- 58.01.20 - Rules For Administration Of The Drinking Water Loan Program (Docket No. 58-0120-1001) *
- 58.01.22 - Rules For Administration Of Planning Grants For Public Drinking Water Facilities (Docket No. 58-0122-1001) *

1. 58.01.01 - Rules For The Control Of Air Pollution In Idaho

The Department of Environmental Quality submits notice of temporary and proposed rule at IDAPA 58.01.01 - Rules For The Control Of Air Pollution In Idaho. According to the Department, the rulemaking is proposed to revise provisions of rules relating to crop residue burning. The Department notes that since crop residue burning rules were first adopted in 2008, it has become apparent that some smaller crop residue burns could and should be regulated under the rules differently than large scale high fuel content burns. The Department notes that the proposed rules set out provisions for obtaining spot burn, baled agricultural residue burn and propane flaming permits. The Department states that adoption of a temporary rule is appropriate in that the rule confers a benefit by enabling farmers with small crop residue burns to burn within a streamlined process under certain conditions. The Department also notes that prior to EPA state implementation plan approval, those desiring to conduct spot burns, baled agricultural residue burns or propane flaming must obtain a permit by rule in accordance with sections 618 through 623 of the rule and contact DEQ before burning.

Negotiated rulemaking was conducted. The Department also notes that the rule does not regulate an activity not regulated by the federal government nor is the rule broader in scope or more stringent than federal regulations.

The rule appears to be authorized by Sections 39-105 and 39-107, Idaho Code.

Mike Nugent Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Don H. Berg, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

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

The Department of Environmental Quality submits notice of temporary and proposed rule at IDAPA 58.01.01 - Rules For The Control Of Air Pollution In Idaho. According to the Department, the purpose of the rulemaking is to repeal IDAPA 58.01.01, Section 199, Electric Generating Unit Construction Prohibition and IDAPA 58.01.01, Subsection 107.03.o which specifically excludes the Federal Register publications regarding coal fired utilities from incorporation by reference into the Rules For The Control Of Air Pollution in Idaho. The Department notes that this rulemaking was initiated following legislative approval during the 2011 session of air quality rules designed to limit and control mercury emissions from certain facilities.

Negotiated rulemaking was not conducted. The Department also notes that the rule does not regulate an activity not regulated by the federal government nor is the rule broader in scope or more stringent than federal regulations.

The rule appears to be authorized by Sections 39-105 and 39-107, Idaho Code.

3. 58.01.04 - Rules For Administration Of Wastewater Treatment Facility Grants

The Department of Environmental Quality submits notice of temporary and proposed rule at 58.01.04 - Rules Pertaining To The Wastewater Treatment Facility Grants. According to the Department, the purpose of the rulemaking is to revise the priority rating criteria for the wastewater planning grants to closely match the Clean Water State Revolving Fund loan criteria, bring the Wastewater Planning Grant Program into closer alignment with related DEQ programs, address the need to reduce the obligation to conduct an environmental study in those cases in which a grant recipient will not immediately pursue federal aid for construction and update the cost eligibility criteria to achieve consistency. The Department states that the change to make the environmental study optional will reduce costs for grant recipients in their preparation of facility planning studies by making the environmental study aspect of facility planning optional. Typographical and nonsubstantive revisions have also been made.

The Department states that there is no federal law or regulation comparable to this rule, that the proposed rule does regulate an activity not regulated by the federal government but the rule is not broader in scope or more stringent than federal law. Negotiated rulemaking was conducted.

The rule appears to be authorized by Chapters 1 and 36, Title 39, Idaho Code.

4. 58.01.12 - Rules For Administration Of Water Pollution Control Loans

The Department of Environmental Quality submits notice of proposed rule at 58.01.12 - Rules Pertaining To The Water Pollution Control Loans. According to the Department, the purpose of the rulemaking is to make revisions for consistency with recent changes to the Clean Water State Revolving Fund. The Department states that recent changes to the federal statutes governing the Clean Water State Revolving Fund require that DEQ update and revise the state rules for the administration of water pollution control loans. The Department notes that federal law now requires that DEQ consider system sustainability practices as a measure of fitness for municipalities and districts to receive a loan and also requires that a certain amount of each year's federal Clean Water Act grant be provided in the form of a subsidy. The Department states that the revisions also will bring the Clean Water State Revolving Fund Program into closer alignment with other related DEQ programs. Typographical and nonsubstantive revisions have also been made.

The Department states that the proposed rule does regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal law. Negotiated rulemaking was conducted.

The rule appears to be authorized by Chapters 1 and 36, Title 39, Idaho Code.

5. 58.01.20 - Rules For Administration Of The Drinking Water Loan Program

The Department of Environmental Quality submits notice of proposed rule at 58.01.20 - Rules For Administration Of The Drinking Water Loan Program. According to the Department, the purpose of the rulemaking is to make revisions for consistency with recent changes to the Drinking Water State Revolving Fund. The Department states that recent changes to the federal statutes governing the fund require that DEQ update and revise the state rules for the administration of the Drinking Water Loan Program. The Department notes that federal law now requires that DEQ consider system sustainability practices as a measure of fitness for municipalities and districts to receive a loan and also requires that a certain amount of each year's federal Safe Drinking Water Act grant be provided in the form of a subsidy. The Department states that the revisions also will bring the state Drinking Water State Revolving Fund Program into closer alignment with other related DEQ programs. Typographical and nonsubstantive revisions have also been made.

The Department states that the proposed rule does regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal law. Negotiated rulemaking was conducted.

The rule appears to be authorized by Chapters 1 and 76, Title 39, Idaho Code.

6. 58.01.22 - Rules For Administration Of Planning Grants For Public Drinking Water Facilities

The Department of Environmental Quality submits notice of temporary and proposed rule at 58.01.22 - Rules For Administration Of Planning Grants For Public Drinking Water Facilities. According to the Department, the purpose of the rulemaking is to revise the priority rating criteria for the drinking water planning grants to closely match the Drinking Water State Revolving Fund loan criteria, bring the Drinking Water Planning Grant Program into closer alignment with related DEQ programs, address the need to reduce the obligation to conduct an environmental study in those cases in which a grant recipient will not immediately pursue federal aid for construction and update the cost eligibility criteria to achieve consistency. The Department states that the change to make the environmental study optional will reduce costs for grant recipients in their preparation of facility planning studies by making the environmental study aspect of facility planning optional. Typographical and nonsubstantive revisions have also been made.

The Department states that there is no federal law or regulation comparable to this rule, that the proposed rule does regulate an activity not regulated by the federal government, but the rule is not broader in scope or more stringent than federal law. Negotiated rulemaking was conducted.

The rule appears to be authorized by Chapters 1 and 36, Title 39, Idaho Code.

cc: Paula Wilson
Mary Anderson
Martin Bauer
Tim Wendland

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-1001

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule is effective July 1, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226(1), Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality is commencing proposed rulemaking. This action is authorized by Sections 39-105 and 39-107, Idaho Code, and House Bill 40 (to be codified at Section 39-114, Idaho Code).

PUBLIC HEARING SCHEDULE: A public hearing concerning this proposed rule will be held as follows:

July 7, 2011, 3:30 p.m.

**Department of Environmental Quality
Conference Room B
1410 N. Hilton, Boise, Idaho**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: The new crop residue burning rules have been in effect since 2008. Upon completion of the second year of burning under the new rules, it became apparent that some smaller crop residue burns could and should be regulated under the rules differently than those large scale high fuel content burns. This temporary/proposed rule sets out provisions for obtaining spot burn, baled agricultural residue burn, and propane flaming permits.

Farmers desiring to burn crop residue, members of the regulated community who may be subject to Idaho's air quality rules as well as special interest groups, Idaho State Department of Agriculture, tribes, public officials, and members of the public who have an interest in the regulation of air emissions from 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 in October 2011 for adoption of a pending rule. The pending rule is expected to become final and effective upon adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

DEQ will submit the final rule to the United States Environmental Protection Agency to be included in the State Implementation Plan as required by Section 110 of the Clean Air Act.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule confers a benefit. Adoption of a temporary rule enables farmers with small crop residue burns to burn within a streamlined process under certain conditions.

Adoption of Section 624 does not in itself authorize the open burning of crop residue in Idaho. Before burning under Section 624 can be conducted, several actions must take place, including development of a revised State Implementation Plan (SIP) and approval of the SIP by the U.S. Environmental Protection Agency (EPA). Prior to EPA SIP approval, those desiring to conduct spot burns, baled agricultural residue burns, or propane flaming must obtain a permit by rule in accordance with Sections 618 through 623. Contact DEQ before burning.

IDAHO CODE SECTION 39-107D STATEMENT: This rule 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: The text of the rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23.810-815. On June 2, 2010, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 10-6, page 64, and a preliminary draft rule was made available for public review. Meetings were held on June 30, August 10, and September 23, 2010. Several members of the public participated in this negotiated rulemaking process by attending the meetings and by submitting written comments. A record of the negotiated rule drafts, written public comments received, and documents distributed during the negotiated rulemaking process is available at http://www.deq.idaho.gov/rules/air/58_0101_1001_temporary_proposed.cfm.

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.

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 questions concerning the negotiated rulemaking, contact Mary Anderson at (208)373-0202, mary.anderson@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 July 7, 2011.

DATED this 26th day of April, 2011.

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 THE TEMPORARY RULE AND THE
PROPOSED RULE TEXT FOR DOCKET NO. 58-0101-1001**

617. CROP RESIDUE DISPOSAL.

The open burning of crop residue on fields where the crops were grown is an allowable form of open burning if conducted in accordance with Section 39-114, Idaho Code, and Sections 618 through 623~~4~~ of these rules.

~~(5-8-09)~~(7-1-11)T

618. PERMIT BY RULE.

01. General Requirements. All persons shall be deemed to have a permit by rule if they comply with all the provisions of Sections 618 through 623~~4~~. No person shall conduct an open burn of crop residue without obtaining the applicable permit by rule. Those persons applying for a spot burn, baled agricultural residue burn, or propane flaming permit shall comply with the provisions in Section 624. The permit by rule does not relieve the

applicant from obtaining all other required permits and approvals required by other state and local fire agencies or permitting authorities. ~~(5-8-09)~~(7-1-11)T

02. Forms. The Department shall provide the appropriate forms to complete the permit by rule. Forms may be available at the Department offices or on the Department website. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

620. REGISTRATION FEE.

01. Payment of Fee. The permit by rule registration fee set out in Section 39-114, Idaho Code, shall be paid in its entirety at least seven (7) days prior to the proposed burn date. See also Subsection 624.02.a. for registration and fee requirements for burning under a spot and baled agricultural residue burn permit. The permit by rule registration form and fee should be sent to:

Crop Residue Burning Registration Fees
Fiscal Office
Idaho Department of Environmental Quality
1410 N. Hilton, Boise, ID 83706-1255

~~(5-8-09)~~(7-1-11)T

02. Effect of Payment. Payment of the registration fee does not imply authorization or approval to burn. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

622. GENERAL PROVISIONS.

01. Burn Provisions. All persons in Idaho intending to dispose of crop residue through burning shall abide by the following provisions: (5-8-09)

a. Burning Prohibitions. Burning of crop residue shall not be conducted on weekends, federal or state holidays, or after sunset or before sunrise; (5-8-09)

b. Designated Burn Day. Burning of crop residue shall not be conducted unless the Department has designated that day a burn day and the permittee has received individual approval specifying the conditions under which the burn may be conducted; (5-8-09)

c. Portable Form of Communication. The person conducting the burning must have on their possession a portable form of communication such as a cellular phone or radio of compatible frequency with the Department in order to receive burn approval information or information that might require measures to withhold additional material such that the fire burns down; (5-8-09)

d. Location of Field Burning. Open burning of crop residue shall be conducted in the field where it was generated; (5-8-09)

e. Limitations on Burning. When required by the conditions of the notice of approval to burn, the permittee burning in proximity to institutions with sensitive populations shall immediately extinguish the fire or withhold additional material such that the fire burns down, unless the Department determines that the burn will not have an adverse impact on such institutions; (5-8-09)

f. Training Session. All persons intending to burn crop residue shall attend a crop residue burning training session provided by the Idaho Department of Environmental Quality or the Idaho State Department of

Agriculture and shall attend a crop residue disposal refresher training session every five (5) years; (5-8-09)

g. Air Stagnation or Degraded Air Quality. All field burning shall be prohibited when the Department issues an air quality forecast and caution, alert, warning or emergency as identified in Section 552 of these rules; (5-8-09)

h. Allowable Forms of Open Burning. The use of reburn machines, propane flammers, or other portable devices to ignite or reignite a field for the purposes of crop residue burning shall be considered an allowable form of open burning. Tires and other restricted material described in Subsection 603.01, of this rule, are not allowed for ignition of fields; (5-8-09)

i. Additional Burn Permits. All persons intending to burn crop residue shall obtain any additional applicable permits from federal, state or local fire control authorities prior to receiving approval from the Department to burn crop residue; and (5-8-09)

j. Reporting to the Department. All persons burning crop residue shall report to the Department the date burning was conducted, the actual number and location of acres burned, and other information as required by the Department. The Department may restrict further burning by a permittee until completed burns are reported. (5-8-09)

k. Specific Conditions. The open burning of crop residue shall be conducted in accordance with the specific conditions in the permittee's permit by rule. (7-1-11)T

02. Annual Report. The Department shall develop an annual report that shall include, at a minimum, an analysis of the causes of each exceedance of a limitation in Section 621 of this rule, if any, and an assessment of the circumstances associated with any reported endangerment to human health associated with a burn. The report shall include any proposed revisions to these rules or the Crop Residue Operating Guide deemed necessary to prevent future exceedances. (5-8-09)

03. Advisory Committee. The Department will assemble an advisory committee consisting of representatives from environmental organizations, farming organizations, health organizations, tribal organizations, the Idaho State Department of Agriculture, the Idaho Department of Environmental Quality, and others to discuss open burning of crop residue issues. (5-8-09)

623. PUBLIC NOTIFICATION.

01. Designation of Burn Days. The Director or his designee shall designate for a given county or airshed within a county burn or no-burn days. (5-8-09)

02. Posting on Website. The Department shall post daily on its website: ~~(5-8-09)~~(7-1-11)T

a. Whether a given day is a burn or no-burn day; (5-8-09)

b. The location and number of acres permitted to be burned; (5-8-09)

c. Meteorological conditions and any real time ambient air quality monitoring data; and (5-8-09)

d. A toll-free number to receive requests for information (1-800-345-1007). ~~(5-8-09)~~(7-1-11)T

03. E-Mail Update Service. The Department shall provide an opportunity for interested persons to sign up to receive automatic e-mail updates for information regarding the open burning of crop residue. (5-8-09)

624. ~~(RESERVED)~~ SPOT BURN, BALED AGRICULTURAL RESIDUE BURN, AND PROPANE FLAMING PERMITS.

Note: Adoption of Section 624 does not in itself authorize the open burning of crop residue in Idaho. Before burning under Section 624 can be conducted, several actions must take place, including development of a revised

State Implementation Plan (SIP) and approval of the SIP by the U.S. Environmental Protection Agency (EPA). Prior to EPA SIP approval, those desiring to conduct spot burns, baled agricultural residue burns, or propane flaming must obtain a permit by rule in accordance with Sections 618 through 623. Contact DEQ before burning. (7-1-11)T

01. Applicability. (7-1-11)T

a. Spot Burn. A spot burn includes no more than one (1) acre of evenly distributed crop residue or two (2) tons of piled crop residue. The open burning of weed patches, spots of heavy residue, equipment plugs and dumps, pivot corners of fields, and pastures may constitute a spot burn. Spot burn does not include the open burning of wind rows. (7-1-11)T

b. Baled Agricultural Residue Burn. An open burn used to dispose of broken, mildewed, diseased, or otherwise pest-ridden bales still in the field where they were generated. (7-1-11)T

c. Propane Flaming. The use of flame-generating equipment to briefly apply flame and/or heat to the topsoil of a cultivated field of pre-emerged or plowed-under crop residue with less than five hundred fifty (550) pounds of burnable, non-green residue per acre in order to control diseases, insects, pests, and weed emergence. (7-1-11)T

02. Spot and Baled Agricultural Residue Burn Permit. (7-1-11)T

a. Registration and Fee Requirements. Any person applying for a spot and baled agricultural residue burn permit under Section 624 shall provide the registration information listed in Subsections 619.01 and 619.02 and pay a nonrefundable fee of twenty dollars (\$20) to the Department (see Section 620) at least fourteen (14) days prior to the date the applicant proposes to conduct the first burn of the calendar year. (7-1-11)T

b. Term and Acreage. A spot and baled agricultural residue burn permit is valid for the calendar year in which it is issued and is good for a cumulative total of no more than ten (10) acres of spots and/or equivalent piled or baled agricultural residue during the year and no more than one (1) acre of spots and/or equivalent piled or baled agricultural residue per day. Two (2) tons of piled or baled agricultural residue is assumed to be equivalent to one (1) acre. (7-1-11)T

03. Propane Flaming Permit. Persons conducting propane flaming as defined under Subsection 624.01.c. shall be deemed to have a permit by rule if they comply with the applicable provisions in Subsections 624.04 and 624.05. (7-1-11)T

04. General Provisions. All persons intending to burn under Section 624 shall comply with the provisions of Subsections 622.01.c., 622.01.d., 622.01.f., through 622.01.i., and 622.01.k. in addition to the following: (7-1-11)T

a. The permittee is responsible to ensure that adequate measures are taken so the burn does not create a hazard for travel on a public roadway. (7-1-11)T

b. Burning is not allowed if the proposed burn location is within three (3) miles of an institution with a sensitive population and the surface wind speed is greater than twelve (12) miles per hour or if the smoke is adversely impacting or is expected to adversely impact an institution with a sensitive population. (7-1-11)T

c. Designated Burn Day. Burning shall not be conducted unless the Department has designated that day a burn day, which for purposes of Section 624 may include weekends and holidays, and the permittee burns within the burn window provided on the Department's website at www.deq.idaho.gov. Spot and baled agriculture residue burns shall not smolder and create smoke outside of the designated time period burning is allowed. (7-1-11)T

05. Recordkeeping. Permittees shall record the date, time frame, type of burn, type of crop, and amount burned on the date of the burn. Records of such burns shall be retained for two (2) years and made available to the Department upon request. (7-1-11)T

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-1102

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule is effective April 26, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226(1), Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality is commencing proposed rulemaking. This action is authorized by Sections 39-105 and 39-107, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this proposed rule will be held as follows:

July 7, 2011, 3:30 p.m.

**Department of Environmental Quality
Conference Room B
1410 N. Hilton, Boise, Idaho**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to repeal IDAPA 58.01.01, Section 199, Electric Generating Unit Construction Prohibition, and IDAPA 58.01.01, Subsection 107.03.o., which specifically excludes the Federal Register publications regarding coal fired utilities from incorporation by reference into the Rules for the Control of Air Pollution in Idaho, IDAPA 58.01.01.

In November 2006, DEQ was required by the federal Clean Air Mercury Rule (CAMR) to submit a plan to EPA that (1) ensured the state would meet its Annual Coal Fired Electric Utility Steam Generating Unit (EGU) Mercury (H_g) budget for the appropriate periods; and (2) required EGUs to comply with various monitoring, recordkeeping and reporting provisions. As part of the plan, DEQ proposed the adoption of a rule to opt out of, or not participate in, the federal cap and trade program for H_g emissions from EGUs, codified at 40 CFR Part 60, Subpart HHHH (Subsection 107.03.o). Additionally, to meet the state of Idaho's zero budget, DEQ proposed a rule that prohibits the construction of any EGU with H_g emissions (Section 199). These rules were adopted by the Board of Environmental Quality in 2006 and approved by the Idaho Legislature in 2007. The D.C. Circuit Court of Appeals vacated the CAMR in *New Jersey v. EPA*, 517 F.3d 574 (D.C. Circuit 2008).

DEQ initiated this rulemaking following legislative approval of air quality rules designed to limit and control mercury emissions from certain facilities (Pending Rule Docket No. 58-0101-0904). The pending rule docket was adopted by the Board of Environmental Quality in October 2010 and approved by the 2011 Idaho Legislature.

Members of the regulated community who may be subject to Idaho's air quality rules as well as special interest groups, public officials, or members of the public who have an interest in the regulation of air emissions from 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 in October 2011 for adoption of a pending rule. The pending rule is expected to become final and effective upon adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule confers a benefit. Temporary adoption of this rule confers a benefit to the state of Idaho in that construction of electric generating units would no longer be prohibited.

IDAHO CODE SECTION 39-107D STATEMENT: This rule 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: Due to the nature of this rulemaking, negotiations were not held.

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.

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 questions concerning the negotiated 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 July 7, 2011.

DATED this 26th day of April, 2011.

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 THE TEMPORARY RULE AND THE
PROPOSED RULE TEXT FOR DOCKET NO. 58-0101-1102**

107. INCORPORATIONS BY REFERENCE.

01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term "documents" includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-1-94)

02. Availability of Referenced Material. Copies of the documents incorporated by reference into these rules are available at the following locations: (5-1-94)

- a.** All federal publications: U.S. Government Printing Office; and (4-7-11)
- b.** All documents herein incorporated by reference: (7-1-97)
 - i.** Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373-0502. (7-1-97)

- ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)

03. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (5-1-94)

a. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR Part 51 revised as of July 1, 2010. The following portions of 40 CFR Part 51 are expressly excluded from any incorporation by reference into these rules: (4-7-11)

i. All sections included in 40 CFR Part 51, Subpart P, Protection of Visibility, except that 40 CFR 51.301, 51.304(a), 51.307, and 51.308 are incorporated by reference into these rules; and (3-30-07)

ii. Appendix Y to Part 51, Guidelines for BART Determinations Under the Regional Haze Rule. (3-30-07)

b. National Primary and Secondary Ambient Air Quality Standards, 40 CFR Part 50, revised as of July 1, 2010. (4-7-11)

c. Approval and Promulgation of Implementation Plans, 40 CFR Part 52 revised as of July 1, 2010. (4-7-11)

d. Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR Part 53, revised as of July 1, 2010. (4-7-11)

e. Ambient Air Quality Surveillance, 40 CFR Part 58, revised as of July 1, 2010. (4-7-11)

f. Standards of Performance for New Stationary Sources, 40 CFR Part 60, revised as of July 1, 2010. (4-7-11)

g. National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, revised as of July 1, 2010. (4-7-11)

h. National Emission Standards for Hazardous Air Pollutants for Source Categories, 40 CFR Part 63, revised as of July 1, 2010. (4-7-11)

i. Compliance Assurance Monitoring, 40 CFR Part 64, revised as of July 1, 2010. (4-7-11)

j. Permits, 40 CFR Part 72, revised as of July 1, 2010. (4-7-11)

k. Sulfur Dioxide Allowance System, 40 CFR Part 73, revised as of July 1, 2010. (4-7-11)

l. Protection of Stratospheric Ozone, 40 CFR Part 82, revised as of July 1, 2010. (4-7-11)

m. Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). (3-19-99)

n. Determining Conformity of Federal Actions to State or Federal Implementation Plans: Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, 40 CFR Part 93, Subpart A, Sections 93.100 through 93.129, revised as of July 1, 2010, except that Sections 93.102(c), 93.104(d), 93.104(e)(2), 93.105, 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1), and 93.124(b) are expressly omitted from the incorporation by reference. (4-7-11)

~~**o.** *The final rule for Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units, 70 Fed. Reg. 28,606 (May 18, 2005), corrected at 70 Fed. Reg. 51,266 the final rule for Standards of Performance for Electric Utility Steam Generating Units, Industrial-Commercial-Institutional Steam*~~

Generating Units, and Small Industrial-Commercial-Institutional Steam Generating Units, only as it applies to coal fired electric steam generating units as defined in 40 CFR 60.24, 71 Fed. Reg. 9865 (February 27, 2006); Revision of December 2000 Clean Air Act Section 112(n) Finding Regarding Electric Utility Steam Generating Units; and Standards of Performance for New and Existing Electric Utility Steam Generating Units: Reconsideration, 71 Fed. Reg. 33,388 (June 9, 2006) are expressly excluded from any incorporation by reference into these rules. (3-30-07)

~~190.~~ The final rule for Primary National Ambient Air Quality Standards for Sulfur Dioxide, 75 Fed. Reg. 35,520 through 35,603 (June 22, 2010) to be codified at 40 CFR Part 50 (National Primary and Secondary Ambient Air Quality Standards), 40 CFR Part 53 (Ambient Air Monitoring Reference and Equivalent Methods), and 40 CFR Part 58 (Ambient Air Quality Surveillance). This final rule is effective on August 23, 2010. (4-7-11)

~~191.~~ The final rule for Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 75 Fed. Reg. 31,514 through 31,608 (June 3, 2010) to be codified at 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans), 40 CFR Part 52 (Approval and Promulgation of Implementation Plans), and 40 CFR Part 70 (State Operating Permit Programs). This final rule is effective on August 2, 2010. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

182. -- 1989. (RESERVED).

~~199. ELECTRIC GENERATING UNIT CONSTRUCTION PROHIBITION.~~

No owner or operator shall construct or operate an Electric Generating Unit (EGU), as defined in 40 CFR 60.24, with a potential to emit mercury (Hg) emissions. (3-30-07)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.04 - RULES FOR ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS

DOCKET NO. 58-0104-1001

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule is effective April 26, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226(1), Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality is commencing proposed rulemaking. This rulemaking 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 June 15, 2011. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to revise the priority rating criteria for the wastewater planning grants to closely match the Clean Water State Revolving Fund (SRF) loan criteria, address the need to reduce the obligation to conduct an environmental study in those cases in which a grant recipient will not immediately pursue federal aid for construction, and update the cost eligibility criteria to achieve consistency. The change to make the environmental study optional will reduce costs for grant recipients in their preparation of facility planning studies by making the environmental study aspect of facility planning optional. Additionally, this rulemaking will bring the Wastewater Planning Grant Program into closer alignment with related DEQ programs (the Clean Water SRF Program and the Drinking Water Planning Grant Program).

This temporary/proposed rule includes the following:

- 1) Priority rating criteria for the wastewater planning grants have been revised to closely match the Clean Water SRF loan criteria.
- 2) The requirement to produce an environmental study as part of a planning document has been made optional.
- 3) Cost eligibility criteria have been updated to achieve consistency.
- 4) This rule also includes revisions that are typographical and nonsubstantive in nature (e.g., revisions made for consistency with other sections in this rule chapter and other DEQ rules).

Prospective grant and loan recipients, consulting engineers, grant and loan administrators, and other funding agencies 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 October 2011 for adoption of a pending rule. The pending rule is expected to become final and effective upon adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule confers a benefit. Adoption of this temporary rule confers a benefit to the citizens of the state of Idaho in that it reduces costs for grant recipients and makes the program more efficient.

IDAHO CODE SECTION 39-107D STATEMENT: There is no federal law or regulation comparable to IDAPA 58.01.04, "Rules for Administration of Wastewater Treatment Facility Grants." Therefore, the proposed rule does regulate an activity not regulated by the federal government but is not broader in scope or more stringent than federal law.

NEGOTIATED RULEMAKING: The text of the rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23.810-815. On October 6, 2010, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 10-

10, pages 613 through 614, and a preliminary draft rule was made available for public review. A meeting was held on October 26, 2010. 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 public comments received, and documents distributed during the negotiated rulemaking process is available at http://www.deq.idaho.gov/rules/wastewater_grants/58_0104_1001_temporary_proposed.cfm.

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.

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 questions concerning the negotiated rulemaking, contact Tim Wendland at (208)373-0439 or tim.wendland@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 June 29, 2011.

DATED this 26th day of April, 2011.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton/Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
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**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE AND THE
PROPOSED RULE TEXT FOR DOCKET NO. 58-0104-1001**

001. TITLE AND SCOPE.

01. Title. These rules will be known and cited as Idaho Department of Environmental Quality Rules, IDAPA 58.01.04, "Rules for Administration of Wastewater Treatment Facility Grants." (5-3-03)

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering a state grant program for providing financial assistance to qualifying entities to prepare ~~an engineering report or facility plan~~ a wastewater treatment facility planning document. ~~(4-2-08)~~(4-26-11)T

(BREAK IN CONTINUITY OF SECTIONS)

007. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (12-31-91)

- 01. Applicant.** Any qualifying entity making application for wastewater treatment facility grant funds. (5-3-03)
- 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. (3-15-85)
- 05. Department.** The Idaho Department of Environmental Quality. (1-3-78)
- 06. Director.** The Director of the Idaho Department of Environmental Quality or the Director's designee. (4-2-08)
- 07. 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. (3-15-85)
- 08. Eligible Costs.** Costs which are necessary for planning, and/or designing wastewater treatment facilities. 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 041. (4-2-08)
- ~~**09. Engineering Report.** A report that addresses specific portions of the system(s) as they are being contemplated for design. These reports address specific purpose and scope, design requirements, a comparison of wastewater treatment facility alternative solutions and identify the cost effective and environmentally sound alternative. Engineering reports are generally project specific as opposed to an overall system wide plan such as a master plan or a facility plan. An engineering report shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare an engineering report may be found in the Handbook. (4-2-08)~~
- ~~**10. Environmental Impact Statement (EIS).** A document prepared by the applicant when the Department determines that the proposed wastewater 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)~~
- ~~**11. Environmental Information Document (EID).** Any written environmental assessment prepared by ~~an~~ the applicant ~~or consultant~~ describing the environmental impacts of a proposed wastewater construction project. This document will be of sufficient scope to enable the ~~responsible official~~ Department to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (4-2-08)(4-26-11)T~~
- ~~**12. Facility Plan.** A plan that describes the overall system, including the collection system, the treatment system, and the disposal system. It is a comprehensive planning document for the existing infrastructure and includes the plan for the future of the systems, including upgrades and additions. The plan also includes a systematic evaluation of feasible alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the selected alternative is cost effective and environmentally sound. A facility plan is sometimes referred to as a master plan or facilities planning study and is an overall system wide plan as opposed to a project specific plan. A facility plan shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a facility plan may be found in the Handbook. (4-2-08)~~

~~13~~**1.** **Finding of No Significant Impact (FONSI).** A document prepared by the Department *briefly* 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. ~~(4-2-08)~~(4-26-11)T

12. **Grant Recipient.** An applicant who has been awarded a grant. (4-26-11)T

~~14~~**3.** **Handbook.** "Wastewater Facilities Loan Handbook of Procedures." (5-3-03)

154.** **Ineligible Costs.** Costs which are *described in Subsection 041.05* not eligible for funding pursuant to these rules. ~~(4-2-08)~~(4-26-11)T**

165.** **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. (3-15-85)**

176.** **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). (5-3-03)**

187.** **Nondomestic Wastewater.** Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. (1-1-82)**

198.** **O & M Operation and Maintenance Manual.** A guidance and training manual delineating the optimum operation and maintenance of the wastewater treatment facility or its components. ~~(10-6-88)~~(4-26-11)T**

2019.** **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). (4-2-08)**

20. **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 grant funds are provided in Section 030 of these rules and in the Handbook. (4-26-11)T

21. **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. (5-3-03)

22. **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. (3-15-85)

23. **Priority List.** A list of proposed projects rated by severity as described in Section 020. (5-3-03)

24. **Qualifying Entity.** 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. (4-2-08)

25. **Rehabilitation.** The repair or replacement of limited segments of interceptor or collector sewers. (1-3-78)

26. **Reserve Capacity.** That portion of the treatment works that is designed and incorporated in the

constructed facilities to handle future sewage flows and loadings. (1-1-82)

27. 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. (4-2-08)

28. State. The state of Idaho. (3-15-85)

29. Suspension. An action by the Director to suspend a grant contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (10-6-88)

30. 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. (4-26-11)T

301. 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. (10-6-88)

312. Treatment Plant. That portion of the wastewater treatment facility whose primary purpose is to remove pollutants from domestic and nondomestic wastewater. (3-15-85)

323. 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. (4-2-08)

334. 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. (3-15-85)

345. 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. (10-6-88)

008. -- 019. (RESERVED).

020. 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. 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. (~~4-2-08~~)(4-26-11)T

01. Purpose. A priority rating system shall be utilized by the Department to annually allot available funds to water quality projects determined eligible for funding assistance in accordance with these rules. (~~5-3-03~~)(4-26-11)T

02. Priority Rating. The priority rating system shall be based on a weighted numerical points system *wherein each succeeding prevention, control or abatement need is weighted less heavily than the preceding need.* Priority criteria, *listed herein in descending numerical weight,* shall contain the following points: (~~3-15-85~~)(4-26-11)T

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. (~~4-2-08~~)(4-26-11)T

~~b. Documented public health hazard identified by a District Health Department or the Department—fifteen (15) points. Regulatory compliance issues (e.g., noncompliance and resulting legal actions relating to infrastructure deficiencies at a wastewater facility) – up to one hundred (100) points. (4-2-08)(4-26-11)T~~

~~c. Special resource water protection needs documented by the Department for waters identified in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, “Water Quality Standards” – fifteen (15) points. 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. (4-2-08)(4-26-11)T~~

~~d. Potential public health hazard and/or water quality impact: 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. (4-1-87)(4-26-11)T~~

~~i. Potential public health hazard which is suspected but may not be documented by District Boards of Health or the Department three (3) or five (5) or seven (7) points. (3-15-85)~~

~~ii. Potential water quality impacts other than public health which may affect the intended use of surface or groundwaters as identified in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, “Water Quality Standards” – three (3) or five (5) or seven (7) points. (3-15-85)~~

~~e. The points in Subsections 020.02.d.i. and 020.02.d.ii. shall be selected based on the proportion of the population in contact with the pollutant, or the quantity of wastewater discharged in relation to the volume of the receiving water, or the relation of the pollutant quantity to other pollutant sources. Preventing impacts to uses (nonpoint source pollution projects) – up to one hundred (100) points. (12-31-91)(4-26-11)T~~

~~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. (4-26-11)T~~

~~g. Affordability (current system user charges exceed state affordability guidelines) -- ten (10) points. (4-26-11)T~~

~~03. Rating Forms. Rating criteria for Subsection 020.02 is set forth in a rating form that is available in the Handbook. (4-26-11)T~~

~~03d. Priority List. A list shall be developed annually from projects rated according to Subsection 020.02. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval. (5-3-03)(4-26-11)T~~

~~04a. 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 basis for or the need for the planning project, a reevaluation of that priority rating will be conducted. (3-15-85)(4-26-11)T~~

~~05b. Priority Target Date. A qualifying entity whose project is on the approved list 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. (5-3-03)(4-26-11)T~~

~~06c. 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(s) that are ready to proceed. An qualifying entity eligible applicant that is bypassed will be notified in writing of the reasons for being bypassed. (4-2-08)(4-26-11)T~~

~~05. Amendment of Priority List. The Director may amend the Priority List as set forth in Section 081~~

of these rules.

(4-26-11)T

021. -- 029. (RESERVED).

030. PROJECT SCOPE AND FUNDING.

Grant funds awarded under this program will be used entirely to prepare ~~an engineering report or facility plan which identifies a wastewater treatment facility planning document.~~ The planning document will identify the cost effective and environmentally sound ~~wastewater system~~ alternative to achieve or maintain compliance with IDAPA 58.01.16, "Wastewater Rules," and the federal Clean Water Act, 33 U.S.C. Sections ~~1251~~ 1381 et seq. ~~and which is approvable~~. The planning document must be approved by the Department. (4-2-08)(4-26-11)T

01. ~~Engineering Report or Facility Planning Document.~~

(4-2-08)(4-26-11)T

a. A planning document shall include all items required by 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 be required prior to construction. (4-26-11)T

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. (4-26-11)T

a.i. The ~~engineering report or facility plan shall be certified by an Idaho licensed professional engineer. The engineering report or facility plan shall include, as a minimum,~~ draft planning document shall include all items required by 58.01.16 "Wastewater Rules," Subsection 411.03 or 410.04, as well as the following: (4-2-08)(4-26-11)T

~~i.~~(1) Description of existing conditions for the proposed project area; (4-2-08)

~~ii.~~(2) Description of future conditions for the proposed project area; (4-2-08)

~~iii.~~(3) Development and initial screening of alternatives; and (4-2-08)(4-26-11)T

(4) Development of an environmental review specified by the Department as described in Section 042. (4-26-11)T

ii. The final planning document shall include all items required of the draft planning document as well as the following: (4-26-11)T

~~i.~~(1) Final screening of principal alternatives and plan adoption; (4-2-08)

~~ii.~~(2) Selected plan description and implementation arrangements; and (4-2-08)(4-26-11)T

~~iii.~~(3) Relevant engineering data supporting the final alternative; ~~and~~. (4-2-08)(4-26-11)T

vii. ~~Level of environmental review specified by the Department as described in Section 042.~~ (4-2-08)

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 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. (4-26-11)T

~~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. (4-26-11)T

~~bd.~~ The ~~engineering report or facility plan~~ draft and final planning documents must be reviewed and approved by the Department. (4-2-08)(4-26-11)T

~~ee.~~ The planning period shall be twenty (20) years for all facilities except for conveyance systems which may be forty (40) years. (4-2-08)

~~d.~~ At least one (1) public hearing shall be held within the jurisdiction of the grantee and shall be conducted in accordance with state law. The cost effective and environmentally sound alternative selected shall be based in part on public comments received from intended users affected by the proposed project. (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. (4-2-08)

~~031. LIMITATION ON PRE-GRANT ENGINEERING REVIEWS.~~
~~Pre-grant 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~~. -- **039. (RESERVED).**

040. REVIEW AND EVALUATION OF GRANT APPLICATIONS.

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 as prescribed by the Department. (5-3-03)

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 041. (5-3-03)

c. ~~Engineering Report or Facility~~ Planning Document. Plan of study describing the work tasks to be performed in the ~~Engineering report or facility~~ planning document, a schedule for completion of the work tasks and an estimate of ~~man~~ staff hours and costs to complete the work tasks. (4-2-08)(4-26-11)T

d. Design: (4-2-08)

i. ~~Engineering report or facility~~ Planning document; and (4-2-08)(4-26-11)T

ii. Intermunicipal service agreements between all qualifying entities within the scope of the project, if applicable. (4-2-08)

e. 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. (5-3-03)

f. 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. (5-3-03)

g. 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. (4-2-08)

h. A statement regarding how the non-grant portion of the project will be funded. (5-3-03)

03. Determination of Completeness of Application. Applications will be reviewed to determine whether they contain 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 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 project deficiencies are resolved and project readiness is secured, provided the applicant remains on the approved priority list. (10-6-88)

041. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department shall 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 ~~for planning or designing wastewater treatment facilities~~ costs; ~~(4-2-08)~~(4-26-11)T

b. Reasonable costs; and ~~(5-3-03)~~(4-26-11)T

c. Costs that are not ineligible as described in Subsection 041.05. (4-2-08)

02. Necessary Costs. The Department shall 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, the ~~facility plan or engineering report~~ planning document for design of wastewater treatment facilities, and any other relevant information in the application that describes the scope of the project to be funded. ~~(4-2-08)~~(4-26-11)T

03. Reasonable Costs. Costs shall 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 operating expenses such as salaries and expenses of a mayor, city council members or a city attorney; (4-2-08)
- b. Contracts for professional and consulting services; (4-2-08)
- c. Planning directly related to the water pollution control projects; (5-3-03)
- d. Sewer system evaluations; (5-3-03)
- e. Financial and management capability analysis; (5-3-03)
- f. Preparation of construction drawings, specifications, estimates, and construction contract documents; (5-3-03)
- g. Public participation for alternative selection; (5-3-03)
- h. Development of user charge and financial management systems; (5-3-03)
- i. Development of sewer use ordinance or resolution; (4-2-08)
- j. Staffing plans and budget development; (5-3-03)
- k. Certain direct and other costs as determined eligible by the Department; (5-3-03)
- ~~l. Costs of assessing and defending contractor claims determined unmeritorious by the Department; (5-3-03)~~
- ~~m.~~ **m.** Costs of complying with the federal Clean Water Act, 33 U.S.C Sections 1251 et seq., loan requirements applied to specific projects; and (4-2-08)
- ~~n.~~ **n.** Site acquisition services which could include legal fees, appraisals and surveys for land associated with the cost-effective alternative in the report and ~~for land for purchase through future State Revolving Fund loan funding from a willing seller.~~ (4-2-08)(4-26-11)T

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. 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, or district personnel costs and acquiring project funding; and (4-2-08)
- f. Cost of refinancing existing indebtedness. (5-3-03)
- g. Costs incurred prior to award of the grant unless specifically approved in writing as eligible pre-award costs by the Department. (4-26-11)T

06. Notification Regarding Eligible Costs. Prior to providing a grant offer, the Department shall 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 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 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 as provided in Section 060. (4-2-08)

042. ENVIRONMENTAL REVIEW.

01. Environmental Documentation. The ~~applicant shall~~ grant recipient may complete an environmental review as part of and in conjunction with ~~an engineering report or a facility plan~~ a planning document. Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. ~~The applicant shall consult with~~ If the grant recipient prepares an environmental review, then the Department shall be consulted at an early stage in the preparation of the engineering report or facility planning document to determine the required level of environmental review. Based on review of existing information and assessment of environmental impacts, the applicant shall grant recipient may complete one (1) of the following, per the Department's instruction: (4-2-08)(4-26-11)T

- a. Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (4-2-08)
 - b. Prepare an Environmental Information Document (EID) in a format specified by the Department; (4-2-08)
- or
- c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (4-2-08)

02. Categorical Exclusion. If the ~~applicant~~ grant recipient requests a CE, the Department shall review the request and, based upon the supporting documentation, take one (1) of the following actions: (4-2-08)(4-26-11)T

- a. Determine if an action is consistent with categories eligible for exclusion whereupon the Department shall issue a notice of CE from further substantive environmental review. Once the CE is granted for the selected alternative, the Department shall publish a notice of CE in a local newspaper, following which the ~~engineering report or facility~~ planning document can be approved; or (4-2-08)(4-26-11)T
- b. Determine if the 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 notify the ~~applicant~~ grant recipient of the need to prepare an EID. (4-2-08)(4-26-11)T

03. Environmental Information Document Requirements. When an EID is required, the ~~applicant~~ grant recipient shall prepare the EID in accordance with the following Department procedures: (4-2-08)(4-26-11)T

- 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 review the draft EID and either request additional information about one (1) or more potential impacts, or draft a "finding of no significant impact" (FONSI). (4-2-08)

04. Final Finding of No Significant Impact. The Department shall 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 assess the effectiveness and feasibility of mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the ~~engineering report or facility~~ planning document. ~~(4-2-08)~~(4-26-11)T

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the ~~applicant grant~~ recipient shall: ~~(4-2-08)~~(4-26-11)T

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 ~~hearing meeting~~ hearing which may be held in conjunction with ~~an engineering report or facility plan hearing~~ a planning document meeting; and ~~(4-2-08)~~(4-26-11)T

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 ~~applicant grant recipient~~ recipient and approval by the Department of all requirements listed in Subsection 042.05, the Department shall issue a record of decision, documenting the mitigative measures which shall be required of the ~~applicant grant recipient~~ recipient. The ~~engineering report or facility~~ planning document can be completed once the final EIS has been approved by the Department. ~~(4-2-08)~~(4-26-11)T

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 reevaluate the project, environmental conditions, and public comments and shall: ~~(5-3-03)~~(4-26-11)T

a. Reaffirm the earlier decision; or (5-3-03)

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 shall issue and distribute a revised notice of Categorical Exclusion, finding of no significant impact, or record of decision. (5-3-03)

043. -- 049. (RESERVED).

050. GRANT OFFER AND ACCEPTANCE.

01. Grant Offer. Grant offers will be delivered to successful applicants by representatives of the Department or by registered mail. (3-15-85)

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. (4-2-08)

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 ~~grantee~~ grant recipient, the grant offer shall become a grant contract agreement. The disbursement of funds pursuant to an agreement is subject to a finding by the Director that the ~~grantee~~ 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 *grantee 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. ~~(3-15-85)~~(4-26-11)T

04. Estimate of Reasonable Cost. Each grant project contract will include the eligible cost of the project. Some eligible costs may be estimated and the grant 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: (3-15-85)

a. Terms consistent with ~~this chapter~~ these rules and consistent with the ~~Step covered by~~ scope of the grant offer project; and ~~(12-31-91)~~(4-26-11)T

b. Special clauses as determined necessary by the Department for the successful investigation, design, and management of the project; and (4-2-08)

c. Terms consistent with applicable state and federal laws pertaining to ~~engineering reports or facility plans~~ planning documents, and design; and ~~(4-2-08)~~(4-26-11)T

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)

e. The project documents shall be in accordance with the current edition of Idaho Standards for Public Works Construction (ISPWC) unless the *grantee grant recipient* otherwise has approved and adopted acceptable public works construction standards approved by the Department. ~~(4-2-08)~~(4-26-11)T

051. -- 059. (RESERVED).

060. PAYMENTS.

01. Payments for State Grants. Requests for payment will be submitted to the Department on a form provided by the Department. The Department will pay for those costs that are determined to be eligible. (5-3-03)

02. Limitations on Advance Payments. Advanced payment will not be made on a project unless a written request from the *grantee grant recipient* for a waiver is approved by the Board. ~~(10-6-88)~~(4-26-11)T

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. (3-15-85)

04. Increases for Bid Underestimates. Increases for bid underestimates may be considered for grant increase; however, errors of omission or engineering consultant errors will not be considered. (10-6-88)

05. Grant Decreases. If the actual eligible cost is determined to be lower than the estimated eligible cost the grant amount will be reduced proportionately. (3-15-85)

06. 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 *grantee grant recipient* may be reviewed by the Department. ~~(4-2-08)~~(4-26-11)T

07. Final Payment. The final payment consisting of five percent (5%) of the total state grant will not be made until the ~~project review has been completed or deferred, or after final approval of the engineering, or completion of the environmental review process~~ requirements contained in the grant agreement have been satisfied.
(4-2-08)(4-26-11)T

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.12 - RULES FOR ADMINISTRATION OF WATER POLLUTION CONTROL LOANS

DOCKET NO. 58-0112-1001

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. This rulemaking 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 June 15, 2011. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to make the necessary revisions for consistency with the recent changes to the Clean Water State Revolving Fund (SRF). Recent changes to the federal statutes (Pub. L. No. 111-88, 123 Stat. 2904 (2009)) governing the Clean Water SRF require that DEQ update and revise the state Rules for Administration of Water Pollution Control Loans. Federal law now requires that DEQ consider system sustainability practices as a measure of fitness for municipalities and districts to receive a loan. Federal law also requires that a certain amount of each year's federal Clean Water Act grant be provided in the form of a subsidy. In addition, this rulemaking will bring Idaho's Clean Water SRF Program into closer alignment with other related DEQ programs (the Drinking Water SRF Program and the Wastewater Planning Grant Program).

This proposed rule includes the following:

- 1) Priority rating criteria have been revised to incorporate points for sustainability.
- 2) The step-by-step process to arrive at a loan subsidy has been revised so that interest rates and loan repayment periods will be used in a more flexible manner.
- 3) The priority list rating and cost eligibility criteria have been updated to achieve consistency with other DEQ rules.
- 4) This proposed rule also includes revisions that are typographical and nonsubstantive in nature (e.g., revisions made for consistency with other sections in this rule chapter and other DEQ rules).

Prospective loan recipients, consulting engineers, grant administrators, and other funding agencies 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 October 2011 for adoption of a pending rule. The pending rule is expected to become final and effective upon adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

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.

NEGOTIATED RULEMAKING: The text of the rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure before the Board of Environmental Quality," Sections 810 through 815. On October 6, 2010, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 10-10, pages 613 through 614, and a preliminary draft rule was made available for public review. A meeting was held on October 28, 2010. 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 public comments received, and documents distributed during the negotiated rulemaking process is available at http://www.deq.idaho.gov/rules/wastewater_loans/58_0112_1001_proposed.cfm.

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.

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 questions concerning the negotiated rulemaking, contact Tim Wendland at (208)373-0439 or tim.wendland@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 June 29, 2011.

DATED this 26th day of April, 2011.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton/Boise, Idaho 83706-1255
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**THE FOLLOWING IS THE TEXT OF THE PROPOSED RULE
FOR DOCKET NO. 58-0112-1001**

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." (3-30-01)

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering a state loan program for providing financial assistance to eligible applicants of water pollution control projects. The U.S. Environmental Protection Agency provides annual capitalization grants to the state of Idaho for this program. 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.).

(~~5-8-09~~)()

(BREAK IN CONTINUITY OF SECTIONS)

007. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (12-31-91)

01. Applicant. A municipality or nonpoint source project sponsor which has the ability to establish and maintain a loan repayment source. Individuals and for-profit corporations are not eligible. (5-8-09)

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 ~~borrower~~ loan recipient issues and physically delivers to the Department the bond or note evidencing the loan to the ~~borrower~~ loan recipient, specifically determining the principal, interest and fee amounts that shall be repaid and the schedule for payment. (~~3-19-07~~)(____)

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. 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 for projects funded with federal moneys the costs incurred during the one (1) year project certification period~~ and start-up of the associated facilities. (~~1-1-89~~)(____)

08. Department. The Idaho Department of Environmental Quality. (1-1-89)

09. Director. The Director of the Idaho Department of Environmental Quality or his/her designee. (5-3-03)

10. 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. (____)

11. Disadvantaged Loans. Loans made to a disadvantaged community. (____)

102. 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)

~~**11. Engineering Report.** A report prepared to address a specific portion of the system or facility for which modifications are being designed. These reports address specific purpose and scope, design requirements, and evaluate feasible treatment, storage, or collection alternatives for the system to identify the cost effective and environmentally sound alternative. Engineering reports are generally project specific as opposed to an overall system wide plan such as a master plan or a facility plan. An engineering report shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare an engineering report may be found in the Handbook. (5-8-09)~~

123. Environmental Impact Statement (EIS). A document prepared by the applicant, ~~under the Department's direction~~, 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. (~~5-8-09~~)(____)

134. Environmental Information Document (EID). Any written environmental assessment prepared by the applicant, ~~under the Department's direction~~, 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. (5-8-09)(____)

~~14. **Facility Plan.** A plan that describes the overall system, including collection, treatment processes and facilities, and waste disposal. It is a comprehensive planning document for the existing infrastructure and includes the plan for the future of the system/facility, including upgrades and additions. The plan also includes a systematic evaluation of feasible alternatives considering demographic, topographic, hydrographic, and institutional characteristics of a project area to demonstrate that the selected alternative is cost effective and environmentally sound. A facility plan is sometimes referred to as a master plan or facilities planning study and is an overall system-wide plan as opposed to a project specific plan. A facility plan shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a facility plan may be found in the Handbook.~~ (5-8-09)

15. **Financial Management System.** Uniform method of recording, summarizing and analyzing financial information about the water pollution control loan applicant. (3-30-01)

16. **Finding of No Significant Impact (FONSI).** A document prepared by the Department ~~briefly~~ 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. (5-8-09)(____)

17. **Handbook.** "Wastewater Facilities Loan Handbook of Procedures." (5-8-09)

18. **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)

19. **Ineligible Costs.** Costs which are ~~described in Section 041.05~~ not eligible for funding pursuant to these rules. (5-3-03)(____)

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. (1-1-89)

21. **Loan Recipient.** An applicant who has been awarded a loan. (____)

~~242.~~ **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)

~~223.~~ **Nondomestic Wastewater.** Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. (5-3-03)

~~234.~~ **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)

~~245.~~ **Nonpoint Source Project Sponsor.** Any applicant for water pollution control loan funds for a nonpoint source pollution project. (5-8-09)

~~256.~~ **O & M 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. (3-30-01)(____)

27. **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. ()

268. 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 water pollution control projects. (5-3-03)

279. 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)

2830. 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)

2931. Priority List. An integrated list of proposed wastewater treatment facility and nonpoint source pollution control projects rated as described in Section 020. (5-3-03)

302. Rehabilitation. The repair or replacement of limited segments of interceptor or collector sewers. (5-3-03)

343. Reserve Capacity. That portion of the treatment works that is designed and incorporated in the constructed facilities to handle future sewage flows and loadings. (1-1-89)

324. 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. (5-8-09)

335. State. The state of Idaho. (12-31-91)

346. Supplemental Grants. A state funded grant awarded in conjunction with a loan from the water pollution control loan account. ~~(5-8-09)~~()

357. 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)

368. ~~Unified Watershed Assessment.~~ ~~Federal watershed assessment that encompasses the State list of impaired waters.~~ 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. ~~(3-30-01)~~()

379. 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)

3840. 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)

3941. 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)

402. 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)

43. 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)

(BREAK IN CONTINUITY OF SECTIONS)

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. Projects are rated by the Department on a standard priority rating form using public health, sustainability, and water quality criteria. (5-3-03)(____)

01. Purpose. An integrated priority rating system shall be utilized by the Department to annually allot available funds to water quality projects determined eligible for funding assistance under the water pollution control loan program in accordance with these rules. (5-3-03)

02. Priority Rating. The priority rating system shall be based on a ~~weighted~~ numerical points system ~~wherein each succeeding prevention, compliance, control or abatement need is weighted less heavily than the preceding need.~~ Priority criteria, ~~listed herein in descending numerical weight,~~ shall contain the following points ~~(with a maximum allowable point total of one hundred and fifty (150)):~~ (5-8-09)(____)

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. (5-8-09)(____)

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. (5-8-09)(____)

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. (5-8-09)(____)

e. Preventing impacts to uses (nonpoint source pollution projects) -- up to one hundred (100) points. (5-8-09)(____)

f. ~~Secondary incentives (e.g. readiness to proceed, financial ability)~~ 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. (5-8-09)(____)

g. Affordability (current system user charges exceed state affordability guidelines) -- ten (10) points. ()

03. ~~**Department Guidelines.** Secondary ranking under each factor in Subsection 020.02 will be established by Department guidelines, which will be approved and advertised each year. The additional ranking will include but not be limited to the following: nexus/benefit to the municipality; project water quality effectiveness; readiness to proceed; cost effectiveness; etc.~~ **Rating Forms.** Rating criteria for Subsection 020.02 is set forth in a rating form that is available in the Handbook. (5-8-09)()

04. Integrated Priority List. A list shall be developed ~~annually~~ from projects rated according to Subsection 020.02 ~~and 020.03~~. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval. (5-3-03)()

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)

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 loan funds may be bypassed, substituting in its place the next highest ranking project(s) that is ready to proceed. An project eligible applicant that is bypassed will be notified in writing of the reasons for being bypassed. (3-30-01)()

05. Amendment of Integrated Priority List. The Director may amend the Integrated 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: ()

01. Qualifying for a Disadvantaged Loan. In order to qualify for a disadvantaged loan, a loan applicant must have an annual user rate for wastewater service for residential customers which exceeds one and one-half percent (1½%) of the applicant community's median household income. 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. ()

02. Adjustment of Loan Terms. DEQ will equally apportion funds available for principal forgiveness to all prospective disadvantaged loan recipients. Consistent with achieving user rates of one and one-half percent (1½%) of the applicant community's median household income, and where possible with available funds, loan terms may be adjusted in the following order: decreasing the interest rate and providing principal forgiveness. ()

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 equal to one and one-half percent (1½%) of median household income. The interest rate may be reduced to as low as zero percent (0%). ()

b. Principal Forgiveness. If even at zero percent (0%) interest, the annual user rate per residential user still exceeds one and one-half percent (1½%) of median household income, the principal which causes the user charge to exceed one and one-half percent (1½%) may be reduced except the principal reduction cannot exceed fifty percent (50%) of the total loan. 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 one and one-half percent (1½%) of the applicant community's median household income. ()

0242. 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 ~~applicants~~ loan recipients in the following manner: (5-8-09)()

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. ~~Applicants~~ 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: (5-8-09)()

i. An annual ~~cost~~ user rate per household which exceeds one and one-half percent (1 1/2%) of the median household income from the most recent census data. If the ~~applicant's~~ loan recipient's service area is not within the boundaries of a municipality, the ~~applicant~~ 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 (5-8-09)()

ii. The annual ~~cost~~ user rate includes all operating, maintenance, replacement and debt service costs, both for the existing system and for upgrades, ~~being financed with state revolving funds.~~ (5-8-09)()

b. If ~~an applicant~~ a loan recipient meets the requirement of Subsections 0242.02.i. and 0242.02.ii., a supplemental grant may be made for the amount of the project that causes the annual ~~cost of~~ 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. (5-8-09)()

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)

0223. -- 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 58.01.16, "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. ()

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. ~~Facility plan or engineering report~~ Planning document prepared in accordance with the Handbook. (~~5-8-09~~)(____)

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 ~~will~~ shall not be awarded until a final cost effective and environmentally sound alternative has been selected by the Step 1 ~~facility plan as~~ planning document and approved by the Department. ~~The cost effective alternative may be selected based on the comment received from at least one (1) public hearing attended by affected users within the jurisdiction of the eligible applicant and conducted in accordance with state law. If the planning document has not been completed pursuant to IDAPA 58.01.04, "Rules for Administration of Wastewater Treatment Facility Grants," 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.~~ (~~5-3-03~~)(____)

g. Funding For 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)

(BREAK IN CONTINUITY OF SECTIONS)

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) effort. 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 ~~charge the same loan fee on all loans closed during any one fiscal year~~ 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(c) of the Clean Water Act. In determining the amount of the loan fee, the Department shall consider: ~~(3-19-07)~~(_____)

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 related needs to support the CWSRF loan program. (5-8-09)

03. 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)

04. 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 which received high priority ranking 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)

iv. 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; ~~(5-8-09)~~(____)

f. Step 1 -- Scope of work describing the work tasks to be performed in the ~~facility plan~~ 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 ~~man~~ staff hours and costs to complete the work tasks; ~~(5-8-09)~~(____)

g. Step 2 -- Design, or Step 4 -- Design and Construction: (1-1-89)

i. ~~Facility plan or engineering report~~ Planning document, including a final environmental document and decision in accordance with Section 042; ~~(5-8-09)~~(____)

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 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 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 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 for planning, designing and/or constructing wastewater treatment facilities or implementation of water pollution control projects~~ costs; (~~5-3-03~~)()

b. Reasonable costs; and (~~5-3-03~~)()

c. Costs that are not ineligible as described in Subsection 041.05. (5-3-03)

02. Necessary Costs. The Department shall 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, ~~the facility plan for design and construction of wastewater treatment facilities~~ 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. (~~5-3-03~~)()

03. Reasonable Costs. Costs shall 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 system 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)
 - 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 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 assessing and defending contractor claims determined unmeritorious by the Department; (5-3-03)~~
 - ~~**vi.** Costs of complying with the Federal Water Pollution Control Act (P.L. 92-500) as amended, 33 USC Section 1251 et seq., loan requirements applied to specific projects; and (5-3-03)~~
 - ~~**vii.** 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. (5-3-03)(____)~~
- 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; ~~and~~ (~~5-8-09~~)()
- j. Reserve funds; ~~and~~ (~~5-8-09~~)()
- k. Costs incurred prior to acceptance of the loan unless specifically approved in writing as eligible pre-award costs by the Department. ()

06. Notification Regarding Ineligible Costs. Prior to providing a loan offer, the Department shall 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 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.

Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. (~~5-8-09~~)

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 found in Chapter 5 of the Handbook. For eligible ~~non~~point source projects funded solely with non-federal funds (i.e. State Revolving Loan Fund repayments), see Subsection 042.10. For eligible point source projects, the ~~applicant~~ loan recipient shall complete an environmental review as part of and in conjunction with ~~an engineering report or facility plan~~ a planning document. Projects funded exclusively as nonpoint or estuary management projects may not be required to complete an environmental review. The ~~applicant~~ 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 ~~applicant~~ loan recipient shall complete one (1) of the following per the Department's instruction: (~~5-8-09~~)()

a. Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (5-8-09)

or
b. Prepare an Environmental Information Document (EID) in a format specified by the Department; (5-8-09)

c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (5-8-09)

02. Categorical Exclusions. If ~~an applicant~~ the loan recipient requests a CE, the Department shall review the request and, based upon the supporting documentation, take one (1) of the following actions: (~~5-8-09~~)()

a. Determine if the action is consistent with categories eligible for exclusion whereupon the Department shall 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 ~~engineering report or facility planning document~~ can be approved and the loan award can proceed; or (~~5-8-09~~)()

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 notify the ~~applicant~~ loan recipient to prepare an

EID. (5-8-09)(____)

03. Environmental Information Document Requirements. When an EID is required, the ~~applicant~~ loan recipient shall prepare the EID in accordance with the following Department procedures: (5-8-09)(____)

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 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 publish the draft FONSI in a local newspaper 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 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 ~~preliminary engineering report or facility~~ planning document. (5-8-09)(____)

05. Environmental Impact Statement (EIS) Requirements. If an (EIS) is required, the ~~applicant~~ loan recipient shall: (5-8-09)(____)

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 ~~hearing meeting~~ hearing meeting which may be in conjunction with ~~an engineering report or facility plan hearing~~ a planning document meeting; and (5-8-09)(____)

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 ~~applicant~~ loan recipient and approval by the Department of all requirements listed in Subsection 042.05, the Department shall issue a record of decision, documenting the mitigation measures which shall be required of the ~~applicant~~ loan recipient. The loan agreement can be completed once the final EIS has been approved by the Department. (5-8-09)(____)

07. Partitioning the Environmental Review. Under certain circumstances, the building of a component/partition of a ~~drinking water~~ wastewater system may be justified in advance of all environment review requirements for the remainder of the system. The Department shall approve partitioning the environment review in accordance with established procedures. (5-8-09)(____)

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 reevaluate the project, environmental conditions and public views and shall: (5-8-09)(____)

- 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 issue and distribute a revised notice of CE, FONSI, or record of decision. (5-8-09)

10. Exemption From Review. Loan projects ~~funded solely with CWSRF repayment monies or with state monies~~ 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. (~~5-8-09~~)(____)

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 a 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 ~~engineering reports~~ 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 requirements for projects funded with loan moneys of federal origin; (~~5-8-09~~)(____)

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 ~~of~~ 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; (~~5-8-09~~)(____)

e. The project shall be bid, contracted and constructed according to the current edition of Idaho Standards for Public Works Construction unless the ~~applicant~~ loan recipient has approved and adopted acceptable public works construction standards approved by the Department; (5-8-09)(____)

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 ~~twenty~~ thirty (230) years after project completion, ~~unless the project qualifies for extended financing (Section 603(d)(2) of the Clean Water Act (33 U.S.C. 1383(d)(2))~~. The loan contract will contain a schedule of loan repayments stating the due dates and the amount due. The ~~borrower~~ loan recipient may elect for either a schedule of semi-annual or annual repayments at the time the loan is finalized; and (5-8-09)(____)

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.

~~Applicants receiving~~ Loans recipients must maintain project accounts in accordance with generally accepted accounting principles. Eligible nonpoint source water pollution control implementation funding project sponsors may be audited on an annual basis according to government auditing standards issued by the U.S. General Accounting Office. (5-8-09)(____)

052. -- 059. (RESERVED).

060. DISBURSEMENTS.

01. Loan Disbursements. Requests to the Department for actual disbursement of loan proceeds will be made by the loan recipient on forms provided by the Department. (3-30-01)

02. Loan Increases. An increase in the loan amount as a result of an increase in eligible project costs will be considered, provided funds are available. Documentation supporting the need for an increase must be submitted to the Department for approval prior to incurring any costs above the eligible cost ceiling. (1-1-89)

03. Loan Decreases. If the actual eligible cost is determined by the Department to be lower than the estimated eligible cost the loan amount will be reduced proportionately. (1-1-89)

04. Project Review to Determine Final Eligible Costs. A project review by the Department or a Department designee will determine the final eligible costs. (3-30-01)

05. Final Disbursement. The final loan disbursement ~~will~~ consisting of five percent (5%) of the total loan amount shall not be made until final inspection, final review, and a final loan repayment schedule have been completed. (3-30-01)(____)

(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 ~~applicant~~ recipient requesting the waiver that the following conditions exist. See also Subsection 020.05 of these rules. (5-8-09)(____)

- ~~01~~**a.** **Health Hazard.** A significant public health hazard exists; (5-8-09)
- ~~02~~**b.** **Water Contamination.** A significant water contamination problem exists; (5-8-09)
- ~~03~~**c.** **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 ~~(5-8-09)~~(____)
- ~~04~~**d.** **Affordability Criteria Exceeded.** The project will exceed affordability criteria adopted by the Department in the event the waiver is not granted; ~~or~~ ~~(1-1-89)~~(____)
- ~~05~~**2.** **Availability of Federal Funds.** The waiver will not affect the availability of federal funds for the project where such funding is required by the ~~applicant~~ loan recipient requesting the waiver. ~~(5-8-09)~~(____)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.20 - RULES FOR ADMINISTRATION OF DRINKING WATER LOAN PROGRAM

DOCKET NO. 58-0120-1001

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. This rulemaking 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 June 15, 2011. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to make the necessary revisions for consistency with the recent changes to the Drinking Water State Revolving Fund (SRF). Recent changes to the federal statutes (Pub. L. No. 111-88, 123 Stat. 2904 (2009)) governing the Drinking Water SRF require that DEQ update and revise the state Rules for the Administration of Drinking Water Loan Program. Federal law now requires that DEQ consider system sustainability practices as a measure of fitness for municipalities and districts to receive a loan. Federal law also requires that a certain amount of each year's federal Safe Drinking Water Act grant be provided in the form of a subsidy. In addition, this rulemaking will bring Idaho's Drinking Water SRF Program into closer alignment with other related DEQ programs (the Clean Water SRF Program and the Drinking Water Planning Grant Program).

This proposed rule includes the following:

- 1) Priority rating criteria have been revised to incorporate points for sustainability.
- 2) The step-by-step process to arrive at a loan subsidy has been revised so that interest rates and loan repayment periods will be used in a more flexible manner.
- 3) The priority list rating and cost eligibility criteria have been updated to achieve consistency with other DEQ rules.
- 4) This proposed rule also includes revisions that are typographical and nonsubstantive in nature (e.g., revisions made for consistency with other sections in this rule chapter and other DEQ rules).

Prospective loan recipients, consulting engineers, grant administrators, and other funding agencies 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 October 2011 for adoption of a pending rule. The pending rule is expected to become final and effective upon adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

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.

NEGOTIATED RULEMAKING: The text of the rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23.810-815. On October 6, 2010, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 10-10, pages 613 through 614, and a preliminary draft rule was made available for public review. A meeting was held on October 28, 2010. Members of the public participated in this negotiated rulemaking process by attending the meeting. A record of the negotiated rule drafts and documents distributed during the negotiated rulemaking process is available at http://www.deq.idaho.gov/rules/drinking_water_loans/58_0120_1001_proposed.cfm.

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.

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 questions concerning the negotiated rulemaking, contact Tim Wendland at (208)373-0439 or tim.wendland@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 June 29, 2011.

DATED this 26th day of April, 2011.

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 THE PROPOSED RULE
FOR DOCKET NO. 58-0120-1001**

001. TITLE AND SCOPE.

01. Title. These rules shall be known and cited as Rules of the Idaho Department of Environmental Quality, IDAPA 58.01.20, "Rules for Administration of Drinking Water Loan Program." (5-3-03)

02. Scope. The provisions of these rules shall establish administrative procedures and requirements for establishing, implementing, and administering a state loan program to provide financial assistance to qualifying entities of public water system facilities. The U.S. Environmental Protection Agency provides annual capitalization grants to the state of Idaho for this program. Financial assistance projects must be in conformance with the requirements of the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.). (~~3-23-98~~)(____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (3-23-98)

01. Applicant. Any qualifying entity making application for Drinking Water loan funds. (5-3-03)

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. Close or Closing.** The date on which the borrower loan recipient issues and physically delivers to the Department the bond or note evidencing the loan to the borrower loan recipient, specifically determining the principal, interest and fee amounts that shall be repaid and the schedule for payment. ~~(4-7-11)~~(____)
- 05. Community Water System.** A public drinking water system that: (5-3-03)
- a.** Serves at least fifteen (15) service connections used by year round residents of the area served by the system; or (3-23-98)
- b.** Regularly serves at least twenty-five (25) year-round residents. (3-23-98)
- 06. Construction.** The building, erection, acquisition, alteration, reconstruction, improvement, or extension of public drinking water system facilities, including preliminary planning to determine the economic and engineering feasibility of public drinking water system facilities, the engineering, architectural, legal, fiscal, and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures, other action necessary in the construction of public water system facilities, the inspection and supervision of the construction, and start-up of the associated facilities. (5-3-03)
- 07. Contaminant.** Any physical, chemical, biological, or radiological substance or matter in water. (5-3-03)
- 08. Department.** The Idaho Department of Environmental Quality. (3-23-98)
- 09. Director.** The Director of the Idaho Department of Environmental Quality or the Director's designee. (4-2-08)
- 10. Disadvantaged Community.** The service area of a public water system that meets affordability criteria established by the Department of Environmental Quality after public review and comment. (3-23-98)
- 11. Disadvantaged Loans.** Loans made to a disadvantaged community. (3-23-98)
- 12. Distribution System.** Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s), ~~and/or~~ 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. ~~(5-3-03)~~(____)
- 13. Eligible Costs.** Costs which are necessary for planning, designing, and/or constructing public water system facilities. 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 041. (5-3-03)
- 14. Eligible Systems.** Public and private community water systems and nonprofit noncommunity water systems. (3-23-98)
- ~~**15. Engineering Report.** A report prepared to address a specific portion of the system or facility for which modifications are being designed. These reports address specific purpose and scope, design requirements, and evaluate feasible treatment, storage, or distribution alternatives for the public drinking water system to identify the cost effective and environmentally sound alternative. Engineering reports are generally project specific as opposed to an overall system wide plan such as a master plan or a facility plan. An engineering report shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare an engineering report may be found in the Handbook. (4-2-08)~~
- 16. Environmental Impact Statement (EIS).** A document prepared by the applicant when the Department determines that the proposed drinking water construction 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 an EIS. (4-2-08)

~~176.~~ **Environmental Information Document (EID).** Any written environmental assessment prepared by ~~an~~ the applicant ~~or consultant~~ describing the environmental impacts of a proposed drinking water construction project. This document will be of sufficient scope to enable the ~~responsible official~~ Department to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (4-2-08)()

~~18.~~ **Facility Plan.** *A plan that describes the overall system, including sources of water, treatment processes and facilities, pumping stations and distribution piping, finished water storage, and waste disposal. It is a comprehensive planning document for the existing infrastructure and includes the plan for the future of the system/facility, including upgrades and additions. The plan also includes a systematic evaluation of feasible alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the selected alternative is cost effective and environmentally sound. A facility plan is sometimes referred to as a master plan or facilities planning study and is an overall system wide plan as opposed to a project specific plan. A facility plan shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a facility plan may be found in the Handbook.* (4-2-08)

~~197.~~ **Financial Management System.** Uniform method of recording, summarizing, and analyzing financial information about the public water system facility. (3-23-98)

~~2018.~~ **Finding Of No Significant Impact (FONSI).** A document prepared by the Department *briefly* 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 assessment or a summary of it and shall note any other environmental documents related to it. (4-2-08)()

~~219.~~ **Handbook.** "Drinking Water Loan Handbook of Procedures." (5-3-03)

~~220.~~ **Ineligible Costs.** Costs which are *described in Subsection 041.05* not eligible for funding pursuant to these rules. (5-3-03)()

~~21.~~ **Loan Recipient.** An applicant who has been awarded a loan. ()

~~232.~~ **Managerial Capability.** The capabilities of the qualified entity to support the proper financial management and technical operation of the system. (5-3-03)

~~243.~~ **Maximum Contaminant Level (MCL).** The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. (5-3-03)

~~254.~~ **Noncommunity Water System.** A public water system that is not a community water system. (3-23-98)

~~265.~~ **Nonprofit Noncommunity Water System.** A public water system that is not a community water system and is governed by Section 501 of the U. S. Internal Revenue Code and includes but is not limited to: state agencies, municipalities, and nonprofit organizations such as churches and schools. (3-23-98)

~~276.~~ **Nontransient Noncommunity Water System.** A public water system that is not a community water system and that regularly serves at least 25 (twenty-five) of the same persons over six (6) months per year. (3-23-98)

~~287.~~ **O & M Operation and Maintenance Manual.** Operation and Maintenance Manual is a guidance and training manual outlining the optimum operation and maintenance of the public water system facility or its components. (3-23-98)()

~~298.~~ **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). (3-23-98)

29. Planning Document. A document which describes the condition of a public drinking water 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. ()

30. Plan of Operation. A schedule of specific actions and completion dates for construction, start-up, and operation of the public water system facility. (5-3-03)

31. Priority List. 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. 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)

33. 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 water system or irrigation system and which establishes and maintains a dedicated loan repayment source. (4-2-08)

34. Rehabilitation. The repair or replacement of segments of drinking water facilities. (5-3-03)

35. Reserve Capacity. That portion of the system in the planned facilities to handle future drinking water demand. (5-3-03)

36. State. The state of Idaho. (3-23-98)

37. Supplier or Provider of Water. Any person who owns and/or operates a public water system. (3-23-98)

38. Suspension. An action by the Director to suspend a loan contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (3-23-98)

39. 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. ()

~~**39**~~**40. Technical Capability.** The ability of the public drinking water system to comply with existing and expected drinking water rules. (5-3-03)

~~**40**~~**1. Termination.** An action by the Director to permanently terminate a loan contract prior to project completion for a specific cause. Terminated contracts shall not be reinstated. (3-23-98)

~~**41. Unreasonable Risks to Health (URTH).** Refers to a level of contamination that presents an "unreasonable risk to health" and is determined on a contaminant by contaminant basis by the U.S. Environmental Protection Agency. (5-3-03)~~

42. 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, which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the public water system. (4-2-08)

43. Water System Protection Ordinance. An ordinance adopted pursuant to Chapter 32, Title 42, Idaho Code, or other applicable law which 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 which provides for fees for service from users or classes of users. (3-23-98)

44. Water Treatment Plant. That portion of the public drinking water system whose primary purpose is to remove contaminants. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

020. 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. Loan funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health criteria, sustainability criteria, water quality criteria, and condition of the existing system. (4-2-08)()

01. Purpose. A priority rating system shall be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance under the Drinking Water Loan Program in accordance with these rules. Projects considered for priority rating shall first be evaluated by Department regional staff. (5-3-03)

02. Priority Rating. The priority rating system shall be based on a weighted numerical points system. Priority criteria shall contain the following points: (3-23-98)()

~~a.~~ Public Health Emergency. Shall be certified by the Idaho Board of Environmental Quality or by a District Board of Health. Such emergencies shall be related to a waterborne outbreak, contamination levels at or above Unreasonable Risks to Health (URTH), or a failed water source. (100 points) (4-2-08)

~~b.~~ Public Health Hazard. Identified and documented by the Department or by a District Health Department. Points shall be given based on the presence and severity of waterborne illnesses. (19 points) Any condition which creates, or may create, a danger to the consumer's health, which may include any one or more of the following, may be awarded a maximum of one hundred (100) points: (4-2-08)()

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); ()

ii. Documented unresolved violations of pressure requirements; ()

iii. Documented reduction in source capacity that impacts the system's ability to reliably serve water; ()
or

iv. Documented significant deficiencies (e.g., documented in a sanitary survey) in the physical system that is causing the system to not reliably serve safe drinking water. ()

~~e.~~ Water Quality Violations. Identified and verified by the Department. Points shall be given, based on maximum contaminant levels (MCLs) or based on treatment technique violations, for microbiological and chemical constituents. (71 points) (3-23-98)

~~f.~~ General Conditions of Existing Facilities. Points shall be given based on deficiencies with facilities (which would not constitute a public health hazard) for pumping, treating, and delivering drinking water. (up to sixty

(640) points)

(3-23-98)()

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. Overall Urgency. Points shall be given to entities that need a new source of water to assure safety and adequate supply. (10 points) (3-23-98)

f. Consent or Administrative Orders. Points shall be given if the system is operating under an order. (30 points) (3-23-98)

g. 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) (3-23-98)()

h. Affordability. Points shall be given when ~~proposed~~ current system user charges exceed state affordability guidelines. (ten (10) points) (3-23-98)()

03. **Rating Forms.** Rating criteria for Subsection 020.02 is set forth in a rating form that is available in the Handbook. ()

03d. **Priority List.** A list shall be developed ~~annually~~ from projects rated according to Subsection 020.02. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval and adoption. (3-23-98)()

04a. **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 shall be conducted. (3-23-98)

05b. **Priority Target Date.** A qualifying entity, whose project is on the adopted priority list, and for which funding is available, shall be contacted by the Department and a target date for submission of a completed loan application shall be established. (3-23-98)

06c. **Project Bypass.** A project that does not or shall 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 ranking project or projects that are ready to proceed. An ~~project~~ eligible applicant that is bypassed shall be notified in writing of the reasons for being bypassed. (3-23-98)()

05. **Amendment of Priority List.** The Director may amend the Integrated Priority List as set forth in Section 995 of these rules. ()

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: (3-23-98)

01. **Qualifying for a Disadvantaged Loan.** In order to qualify for a disadvantaged loan, a loan applicant must have an annual ~~cost of~~ user rate for drinking water service for residential customers which exceeds one and one-half percent (1½%) of the applicant community's median household income. (4-2-08)

a. The annual ~~cost includes~~ user rate would be based on all operating, maintenance, replacement, and debt service costs (both for the existing system and for upgrades) ~~being financed with state revolving funds~~. 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. (4-2-08)(____)

b. For disadvantaged applicants for which the annual cost exceeds one and one-half percent (1½%) of the median household income, those applicants must agree to seek assistance from all other available state and federal agencies offering grants before loan terms can be adjusted. (4-2-08)

02. Adjustment of Loan Terms. ~~Loan terms may be adjusted in the following sequence:~~ DEQ will equally apportion funds available for principal forgiveness to all prospective disadvantaged loan recipients. Consistent with achieving user rates of one and one-half percent (1½%) of the applicant community's median household income, and where possible with available funds, loan terms may be adjusted in the following order: increasing the repayment period, decreasing the interest rate, and providing principal forgiveness. (5-3-03)(____)

a. Increasing Repayment Period. ~~First,~~ The length of the loan repayment may be extended in increments of years from twenty (20) years up to a maximum of thirty (30) years until the annual ~~cost~~ user rate equals one and one-half percent (1½%) of median household income. (4-2-08)(____)

b. Decreasing Interest Rate. If at a thirty (30) year repayment, the annual ~~cost~~ user rate still exceeds one and one-half percent (1½%) of the median household income, 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 ~~charge~~ user rate equal to one and one-half percent (1½%) of median household income. The interest rate may be reduced to as low as zero percent (0%). (4-2-08)(____)

c. ~~The interest rate may be reduced to as low as zero percent (0%).~~ **Principal Forgiveness.** If even at zero percent (0%) interest and a thirty (30) year repayment, the annual ~~charge~~ user rate per residential user still exceeds one and one-half percent (1½%) of median household income, the principal which causes the user charge to exceed one and one-half percent (1½%) may be reduced except the principal reduction cannot exceed ~~an amount greater than~~ fifty percent (50%) of the total loan. 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 one and one-half percent (1½%) of the applicant community's median household income. (4-2-08)(____)

022. -- 029. (RESERVED).

030. PROJECT SCOPE AND FUNDING.

Loan funds awarded under this program may be used to prepare ~~an engineering report or a facility plan~~ a drinking water facility planning document which identifies the cost effective and environmentally sound ~~drinking water system~~ 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., and which is approvable by the Department. Loan funds may also be used for design and construction of the chosen alternative. (4-2-08)(____)

01. Project Step Funding. Projects may be funded in steps: (3-23-98)

a. Step 1. ~~Engineering report or facility plan~~ Planning document prepared by an Idaho licensed professional engineer who carries professional liability insurance in accordance with Subsection 050.05.d., and in a format prescribed by the Department; (4-2-08)(____)

b. Step 2. Design, which includes the preparation by an Idaho licensed professional engineer of the detailed engineering plans and specifications necessary for the bidding and construction of the project; (4-2-08)

c. Step 3. Construction, which includes bidding and actual construction of the project; or (3-23-98)

d. Step 4. A combination of Step 2 and Step 3. (3-23-98)

02. Combination Step Funding. Projects may be funded in any combination of the steps with 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 shall be amortized and a repayment schedule prepared by the Department. (3-23-98)

03. Requirements for Awarding a Loan. 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 ~~engineering report or facility planning document~~ and approved by the Department. If the ~~engineering report or facility planning document~~ has not been completed pursuant to IDAPA 58.01.22, "Rules for Administration of Planning Grants for Drinking Water Facilities," ~~at least one (1) public hearing must be held so that the affected users can submit comments before accepting the cost effective and environmentally sound selected alternative. The public hearing will be held within the jurisdiction of the qualifying entity and conducted in accordance with state law~~ 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. (4-2-08)(_____)

04. Funding for 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. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

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 Drinking Water State Revolving Fund (DWSRF) effort. The Department may impose a loan fee on loans scheduled to close after December 2, 2009. The loan fee shall not exceed one percent (1%) of the unpaid balance of the loan at the time each loan payment is due. (4-7-11)

02. Determination of Loan Fee. The Department shall determine the amount of the loan fee on a yearly basis and shall ~~charge the same loan fee on all loans closed during any one fiscal year~~ 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 1452 of the Safe Drinking Water Act (42 U.S.C. Section 300j-12). In determining the amount of the loan fee, the Department shall consider: (4-7-11)(_____)

a. The Department's anticipated costs of administering the loan program for the upcoming fiscal year, including salaries and overhead; (4-7-11)

b. Any Department costs related to providing technical assistance for the loan program for the upcoming fiscal year; (4-7-11)

c. The amount of money generated from loan fees in previous fiscal years available for use in the upcoming fiscal year; and (4-7-11)

d. The anticipated demand for planning assistance to supplement regular appropriations and other related needs to support the DWSRF loan program. (4-7-11)

03. 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. (4-7-11)

04. Payment of Loan Fee. The loan fee shall be due and payable concurrently with scheduled loan principal and interest repayments over the repayment period. (4-7-11)

033. -- 039. (RESERVED).

040. LOAN APPLICATION AND REVIEW.

01. Submission of Application. The applicant shall submit to the Department, a completed application on a form as prescribed by the Department. (3-23-98)

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 authorized individual of the qualifying entity to execute a loan contract and sign subsequent loan disbursement requests; 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 041; and (5-3-03)

c. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)

i. As applicable, 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)

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; and (5-3-03)

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 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)

f. In the case of a privately owned system, demonstrate that there is adequate security for the repayment of the loan. (3-23-98)

g. Step 1. Engineering Report or Facility Plan. Plan of study describing the work tasks to be performed in the ~~engineering report or facility plan~~ preparation of the planning document, a schedule for completion of the work tasks, and an estimate of ~~man~~ staff hours and costs to complete the work tasks. (~~4-2-08~~)(____)

h. Step 2. Design. (4-2-08)

i. ~~Engineering report or facility p~~lanning document including a final environmental document and

decision in accordance with Section 042; ~~(4-2-08)~~(____)

- ii. Financial, technical, and management capability analysis as provided in Subsection 011.01; (3-23-98)
- iii. Inter-organizational service agreements between all qualifying entities within the scope of the project, if applicable; and (4-2-08)
- i. Step 3. Construction. (4-2-08)
 - i. Documented evidence of all necessary easements and land acquisition. (5-3-03)
 - ii. Biddable plans and specifications of the approved public water system facility alternative; (3-23-98)
 - iii. A plan of operation and project schedule; (3-23-98)
 - iv. A ~~user charge system~~, water ~~use~~ system protection ordinance, and financial management system; ~~(3-23-98)~~(____)
 - v. A staffing plan and budget. (3-23-98)
- j. Step 4. Design and Construction. Loan applicants must submit all documentation specified in Subsection 040.02.d. prior to advertising for bids on construction contracts. (4-2-08)

03. Determination of Completeness of Application. The Department shall 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 shall 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. (3-23-98)

041. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department shall 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 ~~for planning, designing and/or constructing drinking water systems~~ costs; ~~(5-3-03)~~(____)
 - b. Reasonable costs; and ~~(5-3-03)~~(____)
 - c. Costs that are not ineligible as described in Subsection 041.05. (5-3-03)

02. Necessary Costs. The Department shall 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, ~~the facility plan or engineering report for design and construction of drinking water systems~~ planning document, and any other relevant information in the application that describes the scope of the project to be funded. ~~(4-2-08)~~(____)

03. Reasonable Costs. Costs shall 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 operating expenses such as salaries and expenses of a mayor, city council members, board; or city, district, or board attorney; (4-2-08)

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, an hourly rate contract, a time and materials contract or cost plus a fixed fee contract; (5-3-03)

d. Engineering directly related to the public water system facilities; (5-3-03)

e. Financial and management capability analysis if it ensures compliance; (5-3-03)

f. Preparation of construction drawings, specifications, estimates, and construction contract documents; (5-3-03)

g. Landscaping; (5-3-03)

h. Removal and relocation or replacement of utilities for which the qualifying entity is legally obligated to pay; (5-3-03)

i. Material acquired, consumed, or expended specifically for the project; (5-3-03)

j. A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; (5-3-03)

k. Preparation of an operation and maintenance manual; (5-3-03)

l. Preparation of a plan of operation; (5-3-03)

m. Start-up services; (5-3-03)

n. Project identification signs; (5-3-03)

o. Public participation for alternative selection; (5-3-03)

p. Development of user charge and financial management systems; (5-3-03)

q. Development of water system protection and backflow prevention ordinance or rule; (5-3-03)

r. Initial staffing plans and budget development; (5-3-03)

~~**s.** Costs of assessing and defending contractor claims determined unmeritorious by the Department;~~
(5-3-03)

~~**§.** Site acquisition costs from a willing seller, including right of way and the site for public water system; and~~
(5-3-03)(_____)

~~**¶.** Certain direct and other costs as determined eligible by the Department.~~ (5-3-03)

- 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 such as salaries and expenses of a mayor, city council members, board, or city, district or board attorney; (4-2-08)
 - g.** Cost of land in excess of that needed for the proposed project; (5-3-03)
 - h.** Cost of condemnations; ~~or~~ (~~5-3-03~~)(____)
 - i.** Engineering costs incurred without professional liability insurance; (~~5-3-03~~)(____)
 - j.** Reserve funds; (____)
 - k.** Cost of refinancing existing indebtedness; and (____)
 - l.** Costs incurred prior to the loan acceptance unless specifically approved in writing by the Department. (____)

06. Notification Regarding Ineligible Costs. Prior to providing a loan offer, the Department shall 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 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. The ~~applicant~~ loan recipient shall complete an environmental review as part of and in conjunction with ~~an engineering report or facility plan~~ a planning document. Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. The ~~applicant~~ 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 ~~applicant~~ loan recipient shall complete one (1) of the following per the Department's instruction: (~~4-2-08~~)(____)

- a.** Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (3-23-98)
 - b.** Prepare an Environmental Information Document (EID) in a format specified by the Department; (3-23-98)
- or

- c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (3-23-98)
- 02. Categorical Exclusions.** If the applicant loan recipient requests a CE, the Department shall review the request and, based upon the supporting documentation, take one (1) of the following actions: ~~(4-2-08)~~(____)
- a. Determine if the action is consistent with categories eligible for exclusion whereupon the Department shall 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 to inform the public of this action, following which the ~~engineering report or facility~~ planning document can be approved and the loan award can proceed. ~~(4-2-08)~~(____)
- 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 notify the applicant loan recipient to prepare an EID. ~~(4-2-08)~~(____)
- 03. Environmental Information Document Requirements.** When an EID is required, the applicant loan recipient shall prepare the EID in accordance with the following Department procedures: ~~(4-2-08)~~(____)
- 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. (3-23-98)
- 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. (3-23-98)
- c. The Department shall 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). (4-2-08)
- 04. Final Finding of No Significant Impact.** The Department shall 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 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 ~~engineering report or facility~~ planning document. ~~(4-2-08)~~(____)
- 05. Environmental Impact Statement (EIS) Requirements.** If an EIS is required, the applicant loan recipient shall: ~~(3-23-98)~~(____)
- a. Contact all affected state agencies, and other interested parties, to determine the required scope of the document; (3-23-98)
- b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (3-23-98)
- c. Conduct a public ~~hearing meeting~~ planning document meeting; and ~~an engineering report or facility plan hearing~~ ~~(4-2-08)~~(____)
- d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. (3-23-98)
- 06. Final EIS.** Upon completion of the EIS by the applicant loan recipient and approval by the Department of all requirements listed in Subsection 042.05, the Department shall issue a record of decision, documenting the mitigative measures which shall be required of the applicant loan recipient. The loan agreement can be completed once the final EIS has Department approval. ~~(5-3-03)~~(____)

07. Partitioning the Environmental Review. Under certain circumstances, the building of a component/partition of a drinking water system may be justified in advance of all environment review requirements for the remainder of the system. The Department shall approve partitioning the environment review in accordance with established procedures. (3-23-98)

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. (4-2-08)

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 reevaluate the project, environmental conditions, and public views and shall: ~~(3-23-98)~~()

a. Reaffirm the earlier decision; or (3-23-98)

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 shall issue and distribute a revised notice of Categorical Exclusion, finding of no significant impact, or record of decision. (3-23-98)

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. ()

043. -- 049. (RESERVED).

050. LOAN OFFER AND ACCEPTANCE.

01. Loan Offer. Loan offers shall be delivered to successful applicants by representatives of the Department or by registered mail. (3-23-98)

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 on the priority list. (3-23-98)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director or the Director's designee and upon signature by the authorized representative of the qualifying entity, the loan offer shall become a contract. Upon accepting a loan offer, a qualifying entity 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 shall 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. (4-2-08)

04. Estimate of Reasonable Cost. All loan contracts shall 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: (3-23-98)

a. Terms consistent with these rules, the project step to be funded under the loan offer, and Chapter 76, Title 39, Idaho Code; (5-3-03)

b. Special clauses as determined necessary by the Department for the successful investigation, design,

construction, and management of the project; (3-23-98)

c. Terms consistent with applicable state and federal laws pertaining to ~~engineering reports or facility planning documents~~, design, and construction (including the Public Works Contractors License Act (Idaho Code Sections 54-1901 through 54-1924)); the Public Contracts Bond Act (Idaho Code Sections 54-1925 through 54-1930); and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) requirements for projects funded with loan moneys of federal origin; (~~4-2-08~~)(____)

d. Requirement for the prime engineering firm(s), retained for engineering services, to carry professional liability insurance to protect the public from negligent acts of the engineer and errors ~~of and~~ omissions of a professional nature. The total aggregate of the professional liability of the engineer insurance shall be one hundred thousand dollars (\$100,000) or twice the amount of the fee of the engineer, whichever is greater. Professional liability insurance must cover all such services rendered for all project phases which are state funded; (~~4-2-08~~)(____)

e. The project shall be bid, contracted, and constructed according to the current edition of Idaho Standards for Public Works Construction and the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08) unless the ~~qualifying entity~~ loan recipient has approved and adopted acceptable public works construction standards approved by the Department; (~~5-3-03~~)(____)

f. The loan interest rate for loans made during the state fiscal year beginning July 1 shall be established by the Director. The interest rate shall be a fixed rate in effect for the life of the loan. The rate may equal but shall not exceed the current market rate; (5-3-03)

g. The loan fee pursuant to Section 032; (4-7-11)

h. All loans, except disadvantaged loans, must be fully amortized within a period not to exceed twenty (20) years after project completion. Disadvantaged loans must be fully amortized within a period not to exceed thirty (30) years. The ~~borrower~~ loan recipient may elect for either a schedule of semi-annual repayments or annual repayments at the time the loan is finalized; and (~~3-23-98~~)(____)

i. Repayment default shall 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)

(BREAK IN CONTINUITY OF SECTIONS)

060. DISBURSEMENTS.

01. Loan Disbursements. The loan contract shall include a schedule of estimated disbursements to be made to the ~~borrower~~ loan recipient. The schedule shall include the anticipated dates and amounts of disbursements. Requests to the Department for actual disbursement of loan proceeds shall be made by the loan recipient on forms provided by the Department. (~~3-23-98~~)(____)

02. Loan Increases. An increase in the loan amount as a result of an increase in eligible project costs shall be considered, provided funds are available. Documentation supporting the need for an increase must be submitted to the Department for approval prior to incurring any costs above the eligible cost ceiling. (3-23-98)

03. Loan Decreases. If the actual eligible cost is determined by the Department to be lower than the estimated eligible cost, the loan amount shall be reduced proportionately. (3-23-98)

04. Project Review to Determine Final Eligible Costs. A project review by the Department shall determine the final eligible costs. (3-23-98)

05. Final Disbursement. The final loan disbursement consisting of five percent (5%) of the total loan amount shall not be made until final inspection, final review, and a final loan repayment schedule have been

completed.

(3-23-98)

(BREAK IN CONTINUITY OF SECTIONS)

995. WAIVERS.

01. Conditions for Waiver. Waiver from the requirements of these rules may be granted by the Department Director or the Director's designee, on a case-by-case basis, upon full demonstration by the loan ~~applicant~~ recipient requesting the waiver that the following conditions exist. See also Subsection 020.05 of these rules. ~~(4-2-08)~~(____)

~~01~~a. Health Hazard. A significant public health hazard exists; or ~~(3-23-98)~~(____)

~~02~~b. Affordability Criteria Exceeded. The project shall exceed affordability criteria adopted by the Department in the event the waiver is not granted; ~~or~~. ~~(3-23-98)~~(____)

~~03~~2. Availability of Federal Funds. The waiver shall not affect the availability of federal funds for the project where such funding is required by the ~~entity~~ loan recipient requesting the waiver. ~~(3-23-98)~~(____)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.22 - RULES FOR ADMINISTRATION OF PLANNING GRANTS FOR PUBLIC DRINKING WATER FACILITIES

DOCKET NO. 58-0122-1001

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule is effective April 26, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226(1), Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality is commencing proposed rulemaking. This rulemaking 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 June 15, 2011. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to revise the priority rating criteria for the drinking water planning grants to closely match the Drinking Water State Revolving Fund (SRF) loan criteria, address the need to reduce the obligation to conduct an environmental study in those cases in which a grant recipient will not immediately pursue federal aid for construction, and update the cost eligibility criteria to achieve consistency. The change to make the environmental study optional will reduce costs for grant recipients in their preparation of facility planning studies by making the environmental study aspect of facility planning optional. Additionally, this rulemaking will bring the Drinking Water Planning Grant Program into closer alignment with related DEQ programs (the Drinking Water SRF Program and the Wastewater Planning Grant Program).

This temporary/proposed rule includes the following:

- 1) Priority rating criteria for the drinking water planning grants have been revised to closely match the Drinking Water SRF loan criteria.
- 2) The requirement to produce an environmental study as part of a planning document has been made optional.
- 3) Cost eligibility criteria have been updated to achieve consistency.
- 4) This rule also includes revisions that are typographical and nonsubstantive in nature (e.g., revisions made for consistency with other sections in this rule chapter and other DEQ rules).

Prospective grant and loan recipients, consulting engineers, grant and loan administrators, and other funding agencies 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 October 2011 for adoption of a pending rule. The pending rule is expected to become final and effective upon adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule confers a benefit. Adoption of this temporary rule confers a benefit to the citizens of the state of Idaho in that it reduces costs for grant recipients and makes the program more efficient.

IDAHO CODE SECTION 39-107D STATEMENT: There is no federal law or regulation comparable to IDAPA 58.01.22, "Rules for Administration of Planning Grants for Public Drinking Water Facilities." Therefore, the proposed rule does regulate an activity not regulated by the federal government but is not broader in scope or more stringent than federal law.

NEGOTIATED RULEMAKING: The text of the rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23.810-815. On [October 6, 2010, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 10-](#)

10, pages 613 through 614, and a preliminary draft rule was made available for public review. A meeting was held on October 26, 2010. 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 public comments received, and documents distributed during the negotiated rulemaking process is available at http://www.deq.idaho.gov/rules/drinking_water_grants/58_0122_1001_temporary_proposed.cfm.

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.

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 questions concerning the negotiated rulemaking, contact Tim Wendland at (208)373-0439 or tim.wendland@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 June 29, 2011.

DATED this 26th day of April, 2011.

Paula J. Wilson
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Department of Environmental Quality
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**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE AND THE
PROPOSED RULE TEXT FOR DOCKET NO. 58-0122-1001**

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 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 ~~an engineering report or facility plan~~ a drinking water facility planning document.
(~~4-2-08~~)(4-26-11)T

(BREAK IN CONTINUITY OF SECTIONS)

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. 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)
- 05. Contaminant.** Any physical, chemical, biological, or radiological substance or matter in water. (3-30-01)
- 06. Department.** The Idaho Department of Environmental Quality. (3-30-01)
- 07. Director.** The Director of the Idaho Department of Environmental Quality or the Director's designee. (4-2-08)
- 08. Distribution System.** Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s), ~~and/or~~ 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. ~~(3-30-01)~~(4-26-11)T
- 09. 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)
- ~~**10. Engineering Report.** A report prepared to address a specific portion of the system or facility for which modifications are being designed. These reports address specific purpose and scope, design requirements, and evaluate feasible treatment, storage, and/or distribution alternatives for the public drinking water system to identify the cost effective and environmentally sound alternative. Engineering reports are generally project specific as opposed to an overall system wide plan such as a master plan or a facility plan. An engineering report shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare an engineering report may be found in the Handbook. (4-2-08)~~
- 10. 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)
- 11. Environmental Information Document (EID).** Any written environmental assessment prepared by ~~an~~ the applicant ~~or consultant~~ describing the environmental impacts of a proposed drinking water construction project. This document will be of sufficient scope to enable the ~~responsible official~~ Department to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. ~~(4-2-08)~~(4-26-11)T
- ~~**13. Facility Plan.** A plan that describes the overall system, including sources of water, treatment processes and facilities, pumping stations and distribution piping, finished water storage, and waste disposal. It is a comprehensive planning document for the existing infrastructure and includes the plan for the future of the system/~~

~~facility, including upgrades and additions. The plan also includes a systematic evaluation of feasible alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the selected alternative is cost effective and environmentally sound. A facility plan is sometimes referred to as a master plan or facilities planning study and is an overall system wide plan as opposed to a project specific plan. A facility plan shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a facility plan may be found in the Handbook.~~

~~(4-2-08)~~

142. Financial Capability. The ability to raise and manage funds to provide the necessary resources for proper operation. (3-30-01)

153. Finding of No Significant Impact (FONSI). A document prepared by the Department ~~briefly~~ 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. ~~(4-2-08)~~(4-26-11)T

14. Grant Recipient. An applicant who has been awarded a grant. (4-26-11)T

165. Handbook. "Drinking Water Loan Handbook of Procedures." (4-2-08)

176. Ineligible Costs. Costs which are ~~described in Subsection 032.06~~ not eligible for funding pursuant to these rules. ~~(5-3-03)~~(4-26-11)T

187. 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)

198. Managerial Capability. The capabilities of the qualified entity to support the proper financial management and technical operation of the system. (3-30-01)

~~2019.~~ **Noncommunity Water System.** A public water system that is not a community water system. (5-3-03)

~~210.~~ **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)

221. 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)

232. 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)

23. Planning Document. A document which describes the condition of a public drinking water 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. (4-26-11)T

24. 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 described in Section 020. (4-2-08)

25. 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. 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. (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. State. The state of Idaho. (3-30-01)

30. 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. 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. (4-26-11)T

~~**32. Technical Capability.** The ability of the public drinking water system to comply with existing and expected drinking water rules. (3-30-01)~~

~~**33. 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)~~

~~**33. 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 public drinking water system. (4-2-08)~~

~~**34. Unreasonable Risk to Health (URTH).** Refers to a level of contamination that presents an "unreasonable risk to health" and is determined on a contaminant by contaminant basis by the U.S. Environmental Protection Agency. (5-3-03)~~

~~**35. 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. 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. (4-2-08)(4-26-11)T

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. The priority rating system shall be based on a numerical point system. Priority criteria shall contain the following points: ~~(3-30-01)~~(4-26-11)T

~~a. Public Health Emergency. Shall be certified by the Idaho Board of Environmental Quality or by a District Board of Health. Such emergencies shall be related to a waterborne outbreak, chemical or radiological contamination levels above Unreasonable Risk to Health (URTH), or a failed water source - one hundred (100) points. (4-2-08)~~

~~b.a. Public Health Hazard. Identified and documented by the Department or by a District Health Department. Points shall be given based on the presence and severity of waterborne illnesses - nineteen (19) points. 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: (4-2-08)(4-26-11)T~~

~~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); (4-26-11)T~~

~~ii. Documented unresolved violations of pressure requirements; (4-26-11)T~~

~~iii. Documented reduction in source capacity that impacts the system's ability to reliably serve water; or (4-26-11)T~~

~~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. (4-26-11)T~~

~~e. Water Quality Violations. Identified and verified by the Department. Points shall be given, based on maximum contaminant levels (MCLs) or based on treatment technique violations, for microbiological and chemical constituents - seventy-one (71) points. (3-30-01)~~

~~b.b. General Conditions of Existing Facilities. Points shall be given based on deficiencies with facilities (which would not constitute a public health hazard) for pumping, treating, storing, and delivering drinking water - up to sixty-one (61) points. (3-30-01)(4-26-11)T~~

~~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. (4-26-11)T~~

~~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. (4-26-11)T~~

~~e. Overall Urgency. Points shall be given to entities that need a new source of water to assure safety and adequate supply - ten (10) points. (3-30-01)~~

~~f. Consent or Administrative Orders. Points shall be given if the system is operating under an order - thirty (30) points. (3-30-01)~~

~~g.e. Incentives. Bonus points shall be awarded to systems that promote source water protection, conservation, economy, proper operation maintenance, and monitoring - up to sixteen ten (160) points. (3-30-01)(4-26-11)T~~

~~h.f. Affordability. Points shall be given when current system user charges exceed state affordability guidelines - ten (10) points. (3-30-01)~~

03. Rating Forms. Rating criteria for Subsection 020.02 is set forth in a rating form that is available in the Handbook. (4-26-11)T

034. Priority List. A list shall be developed ~~annually~~ 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. ~~(3-30-01)~~(4-26-11)T

04a. 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)

05b. Priority Target Date. ~~A qualifying entity whose project is on the approved list~~ 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. ~~(4-2-08)~~(4-26-11)T

06c. 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 qualifying entity~~ eligible applicant that is bypassed will be notified in writing of the reasons for being bypassed. ~~(3-30-01)~~(4-26-11)T

05. Amendment of Priority List. The Director may amend the Priority List as set forth in Section 080 of these rules. (4-26-11)T

021. -- 029. (RESERVED).

030. PROJECT SCOPE AND FUNDING.

Grant funds awarded under this program will be used entirely to prepare ~~an engineering report or facility plan which identifies a drinking water facility planning document. The planning document will identify~~ the cost effective and environmentally sound ~~drinking water system~~ 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.; ~~and which is approvable~~ The planning document must be approved by the Department. ~~(4-2-08)~~(4-26-11)T

01. ~~Engineering Report or Facility~~ Planning Document. ~~(4-2-08)~~(4-26-11)T

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. 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 be required prior to construction. (4-26-11)T

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. (4-26-11)T

ai. ~~The engineering report or facility plan shall be certified by an Idaho licensed professional engineer. The engineering report or facility plan shall include, as a minimum,~~ 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: ~~(4-2-08)~~(4-26-11)T

~~i.~~(1) Description of existing conditions for the proposed project area; (3-30-01)

~~ii.~~(2) Description of future conditions for the proposed project area; (3-30-01)

~~iii.~~(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. (4-26-11)T

ii. The final planning document shall include all items required of the draft planning document as well as the following: (4-26-11)T

- ~~iv.~~(1) Final screening of principal alternatives and plan adoption; (3-30-01)
- ~~v.~~(2) Selected plan description and implementation arrangements; and ~~(3-30-01)~~(4-26-11)T
- ~~vi.~~(3) Relevant engineering data supporting the final alternative; ~~and~~ ~~(3-30-01)~~(4-26-11)T
- ~~vii.~~ *Level of environmental review specified by the Department as described in Section 040.* (4-2-08)

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 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. (4-26-11)T

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. (4-26-11)T

bd. The ~~engineering report or facility plan~~ draft and final planning documents must be reviewed and approved by the Department. ~~(4-2-08)~~(4-26-11)T

ee. 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)

d. ~~At least one (1) public hearing shall be held within the jurisdiction of the grantee and shall be conducted in accordance with state law. The cost effective and environmentally sound alternative selected shall be based in part on public comments received from intended users affected by the proposed project.~~ (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. LIMITATION ON PRE-GRANT ENGINEERING REVIEWS.~~
~~Pre-grant 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)

0321. REVIEW AND EVALUATION OF GRANT APPLICATIONS.

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 0332; and ~~(4-2-08)~~(4-26-11)T

c. A plan of study describing the work tasks to be performed in the *engineering report or facility*

planning document, a schedule for completion of the work tasks and an estimate of staff hours and costs to complete the work tasks; and ~~(4-2-08)~~(4-26-11)T

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 03~~3~~2; and ~~(4-2-08)~~(4-26-11)T

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 03~~2~~1.02. ~~(5-3-03)~~(4-26-11)T

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)

03~~2~~. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department shall 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 ~~for planning drinking water treatment facilities~~ costs; ~~(5-3-03)~~(4-26-11)T

b. Reasonable costs; and ~~(5-3-03)~~(4-26-11)T

c. Costs that are not ineligible as described in Subsection 03~~2~~05. ~~(5-3-03)~~(4-26-11)T

02. Necessary Costs. The Department shall 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 ~~engineering report or facility~~ planning document. ~~(4-2-08)~~(4-26-11)T

03. Reasonable Costs. Costs shall 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 ~~an engineering report or facility~~ a planning document and environmental review report; ~~(4-2-08)~~(4-26-11)T

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 land~~ for purchase ~~through future State Revolving Fund loan~~ ~~funding from a willing seller.~~ ~~(5-3-03)~~(4-26-11)T

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. 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; (5-3-03)

h. Costs of supplying required permits or waivers; (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)

~~k. Land acquisition costs and associated costs other than those listed as eligible in Subsection 032.05.g. (5-3-03)~~

06. Notification Regarding Ineligible Costs. Prior to providing a grant offer, the Department shall 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 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 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)

~~0343.~~ -- 039. (RESERVED).

040. ENVIRONMENTAL REVIEW.

01. Environmental Documentation. The ~~applicant shall~~ grant recipient may complete an environmental review as part of and in conjunction with ~~an engineering report or a facility planning document.~~ Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. ~~The applicant shall consult with~~ If the grant recipient prepares an environmental review, then the Department shall be consulted at an early stage in the preparation of the ~~engineering report or facility planning document~~ to determine the required level of environmental review. Based on review of existing information and assessment of environmental impacts, the ~~applicant shall~~ grant recipient may complete one (1) of the following, ~~per the Department's instruction:~~ (4-2-08)(4-26-11)T

a. Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (4-2-08)

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 ~~applicant~~ grant recipient requests a CE, the Department shall review the request and, based upon the supporting documentation, take one (1) of the following actions: (4-2-08)(4-26-11)T

a. Determine if an action is consistent with categories eligible for exclusion whereupon the Department shall 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 ~~engineering report or facility planning document~~ can be approved; or (4-2-08)(4-26-11)T

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 notify the ~~applicant~~ grant recipient of the need to prepare an EID. (4-2-08)(4-26-11)T

03. Environmental Information Document Requirements. When an EID is required, the ~~applicant~~ grant recipient shall prepare the EID in accordance with the following Department procedures: (4-2-08)(4-26-11)T

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 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). (4-2-08)

04. Final Finding of No Significant Impact. The Department shall 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 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 *engineering report or facility planning document*. ~~(4-2-08)~~(4-26-11)T

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the *applicant grant recipient* shall: ~~(4-2-08)~~(4-26-11)T

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 *hearing meeting* which may be *held* in conjunction with *an engineering report or facility plan hearing a planning document meeting*; and ~~(4-2-08)~~(4-26-11)T

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 *applicant grant recipient* and approval by the Department of all requirements listed in Subsection 040.05, the Department shall issue a record of decision, documenting the mitigative measures which shall be required of the *applicant grant recipient*. The *engineering report or facility planning document* can be completed once the final EIS has been approved by the Department. ~~(4-2-08)~~(4-26-11)T

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 reevaluate the project, environmental conditions, and public comments and shall: ~~(3-30-01)~~(4-26-11)T

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 shall 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 *grantee grant recipient*, the grant offer shall become a grant contract agreement. The disbursement of funds pursuant to an agreement is subject to a finding by the Director that the *grantee 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 *grantee 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. ~~(3-30-01)~~(4-26-11)T

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 ~~this chapter~~ these rules and consistent with the scope of the grant project; ~~(5-3-03)~~(4-26-11)T
and

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 engineering reports or facility planning documents; ~~(4-2-08)~~(4-26-11)T

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 03~~3~~2. ~~(5-3-03)~~(4-26-11)T

02. Payments for State Grants. Requests for payment shall be submitted to the Department on a form provided by the Department. The Department shall 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 ~~grantee~~ grant recipient may be reviewed by the Department. ~~(4-2-08)~~(4-26-11)T

06. Final Payment. The final payment consisting of five percent (5%) of the total state grant will not be made until the ~~project review has been completed or deferred, or after final approval of the engineering, or completion of the environmental review process~~ requirements contained in the grant agreement have been satisfied. ~~(4-2-08)~~(4-26-11)T