

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

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Department of Environmental Quality:
IDAPA 58.01.09 - Rules Regulating Swine and Poultry Facilities (Docket No. 58-0109-1101).

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 and the House Environment, Energy & Technology Committee

FROM: Katharine A. Gerrity, Principal Legislative Research Analyst, LSO

DATE: June 30, 2011

SUBJECT: Department of Environmental Quality

IDAPA 58.01.09 - Rules Regulating Swine & Poultry Facilities (Docket No. 58-0109-1101)

The Department of Environmental Quality submits notice of proposed rule at 58.01.09 - Rules Regulating Swine & Poultry Facilities. According to the Department, the purpose of the rulemaking is to implement House Bill 206 from the 2011 legislative session which placed responsibility and oversight of current and future poultry operations with the Idaho State Department of Agriculture. The Department states that this proposed rule removes references to poultry facilities from DEQ's rules. Due to the nature of the rule, negotiated rulemaking was not conducted. The Department verifies that the rule does regulate an activity not regulated by the federal government, that the federal government does not regulate swine and poultry operations for the state and that therefore, the proposed rule revisions are not broader in scope or more stringent than federal law. The rulemaking appears to be authorized pursuant to Sections 39-104A, 39-105 and 39-107, Idaho Code.

cc: Department of Environmental Quality
Paula Wilson

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.09 - RULES REGULATING SWINE AND POULTRY FACILITIES

DOCKET NO. 58-0109-1101

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 action is authorized by Sections 39-104A, 39-105, and 39-107, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before July 20, 2011. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to implement House Bill 206 (2011), wherein the Idaho Legislature placed the responsibility and oversight of current and future poultry operations with the Idaho State Department of Agriculture. The proposed rule will remove references to poultry facilities from DEQ's "Rules Regulating Swine and Poultry Facilities," IDAPA 58.01.09.

Owners and operators of poultry facilities may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality at the October 2011 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon the adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not applicable.

NEGOTIATED RULEMAKING: Due to the nature of this rulemaking, negotiations were not held.

IDAHO CODE SECTION 39-107D STATEMENT: This rule does regulate an activity not regulated by the federal government. The federal government does not regulate swine and poultry facilities for the state of Idaho; therefore, the proposed rule revisions are not broader in scope or more stringent than federal law or regulations.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Paula Wilson at paula.wilson@deq.idaho.gov or (208)373-0418.

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 August 3, 2011.

DATED this 10th day of June, 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 PROPOSED TEXT FOR DOCKET NO. 58-0109-1101

58.01.09 - RULES REGULATING SWINE ~~AND POULTRY~~ FACILITIES

000. LEGAL AUTHORITY.

The Idaho Legislature has given the Idaho Board of Environmental Quality the authority to promulgate Rules Regulating Swine ~~and Poultry~~ Facilities pursuant to Sections 39-104A, 39-105, and 39-107, Idaho Code.

~~(4-1-00)~~()

001. TITLE AND SCOPE.

01. **Title.** These rules shall be cited as Rules of the Department of Environmental Quality, IDAPA 58.01.09, "Rules Regulating Swine ~~and Poultry~~ Facilities."

~~(4-1-00)~~()

02. **Scope.** These rules establish the procedures and requirements for the issuance of a permit to construct, operate, close or expand swine ~~and poultry~~ facilities of a defined capacity. The intent of these rules is to ensure animal waste from swine ~~and poultry~~ facilities are properly controlled so as not to adversely affect public health or the environment.

~~(4-1-00)~~()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. **Animal Unit.** An animal unit equals two and a half (2.5) swine, each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds), or ten (10) weaned swine, each weighing under twenty-five (25) kilograms, ~~or one hundred (100) poultry~~. Total animal units are calculated by adding the number of swine weighing over twenty-five (25) kilograms multiplied by four-tenths (.4) plus the number of weaned swine weighing under twenty-five (25) kilograms multiplied by one-tenth (.1) ~~plus the number of poultry multiplied by one one-hundredth (.01)~~.

~~(4-1-00)~~()

02. **Animal Waste.** Animal excrement, feed wastes, process wastewater or any other waste associated with the confinement of swine ~~or poultry~~.

~~(4-1-00)~~()

03. **Animal Waste Management System.** Any structure or system that provides for the collection, treatment, disposal, distribution, or storage of animal waste.

(4-1-00)

04. **Certified Planner.** A person who has completed the nutrient management certification in accordance with the Nutrient Management Standard.

(4-1-00)

05. **Department.** The Idaho Department of Environmental Quality.

(4-1-00)

06. **Director.** The Director of the Department of Environmental Quality or his designee.

(4-1-00)

07. **Existing Facility.** A facility built and in operation one (1) year or more prior to the original effective date of these rules.

(4-1-00)

08. **Expanding Facility.** A swine ~~or poultry~~ facility of less than two thousand (2,000) animal units that increases its one-time animal unit capacity to two thousand (2,000) or more animal units or an existing facility that increases its one-time animal unit capacity by ten percent (10%).

~~(4-1-00)~~()

09. Facility or Swine ~~or Poultry~~ Facility. Any place, site or location or part thereof where swine ~~or poultry~~ are kept, handled, housed, or otherwise maintained and includes but is not limited to buildings, lots, pens, and animal waste management system, and which has the one-time animal unit capacity of two thousand (2000) or more animal units. (4-1-00)()

10. Land Application. The spreading on or incorporation of animal waste into the soil mantle primarily for beneficial purposes. (4-1-00)

11. Nutrient Management Plan. A plan prepared in compliance with the Nutrient Management Standard or other equally protective standard approved by the Director for managing the amount, source, placement, form, and timing of the land application of nutrients and soil amendments for plant production and to minimize the potential for environmental degradation, particularly impairment of water quality. (4-1-00)

12. Nutrient Management Standard. The United States Department of Agriculture-Natural Resource Conservation Service Code 590 or the Idaho Agricultural Pollution Abatement Plan-Nutrient Management Standard Component Practice. (4-1-00)

13. One-Time Animal Unit Capacity. The maximum number of animal units that a facility is capable of housing at any given point in time. (4-1-00)

14. Operate. Confine, feed, propagate, house, or otherwise sustain swine ~~or poultry~~. (4-1-00)()

15. Permit. A written authorization by the Director to construct, operate, or expand a swine ~~or poultry~~ facility. (4-1-00)()

16. Permittee. The person in whose name a permit is issued. (4-1-00)

17. Person. Any individual, association, partnership, firm, joint stock company, joint venture, trust, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity which is recognized by law as the subject of rights and duties. (4-1-00)

~~**18. Poultry.** This term includes chickens, turkeys, ducks, geese and any other bird raised in captivity. (4-1-00)~~

~~**19. Process Wastewater.** Any water used in the facility that comes into contact with any manure, litter, bedding, raw, intermediate, or final material or product used in or resulting from the production of swine ~~or poultry~~ and any products directly or indirectly used in the operation of a facility, such as spillage or overflow from animal watering systems; washing, cleaning, or flushing pens, barns, manure pits, or spray cooling of animals; and dust control and any precipitation which comes into contact with animals or animal waste. (4-1-00)()~~

~~**20. Unauthorized Discharge.** A release of animal waste to the environment or waters of the state that is not authorized by the permit or the terms of an NPDES permit issued by the federal EPA. (4-1-00)~~

~~**21. Waters of the State.** All the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. (4-1-00)~~

011. -- 099. (RESERVED)

100. APPLICABILITY.

01. Permit Required. No person shall construct, operate, or expand a regulated swine ~~or poultry~~ facility without first obtaining a permit issued by the Director as provided in these rules. (4-1-00)()

02. Regulated Facilities. New swine ~~and poultry~~ facilities having a one-time animal unit capacity of two thousand (2,000) or more animal units and expanding facilities are required to be permitted as provided in these

rules.

~~(4-1-00)~~()

03. Common Control. Two (2) or more swine ~~or poultry~~ facilities under common control of the same person may be considered, for purposes of permitting, to be a single facility, even though separately their capacity is less than two thousand (2,000) animal units, if they use a common animal waste management system or land application site. ~~(4-1-00)~~()

04. Existing Swine ~~and Poultry~~ Facilities. Those swine ~~and poultry~~ facilities built and in operation one (1) year or more prior to the original effective date of these rules are exempt from the requirements of these rules except as provided in Section 210. ~~(4-1-00)~~()

101. -- 199. (RESERVED)

200. PERMIT APPLICATION.

01. Permit Application. Every person requiring a permit under these rules shall submit a permit application to the Department. A permit application will be used to determine if the construction, operation, and closure of a swine ~~or poultry~~ facility will be in conformance with these and other applicable rules. ~~(4-1-00)~~()

02. Preapplication Conference. Prospective applicants are encouraged to meet with the Department to discuss application requirements and procedures. (4-1-00)

03. Contents of Application. Each application shall include, in the format set forth by the Director and when determined applicable by the Director, the following information in Subsections 200.04 through 200.08 in sufficient detail to allow the Director to make necessary application review decisions concerning design, environmental protection and public health. (4-1-00)

04. Relevant Information. (4-1-00)

- a. Name, mailing address and phone number of the facility owner. (4-1-00)
- b. Name, mailing address and phone number of the facility operator. (4-1-00)
- c. Name and mailing address of the facility. (4-1-00)
- d. Legal description of the facility location. (4-1-00)
- e. The legal structure of the entity owning the facility, including the names and addresses of all directors, officers, registered agents and partners. (4-1-00)

f. The names and locations of all swine ~~or poultry~~ facilities owned and/or operated by the applicant within the last ten (10) years. ~~(4-1-00)~~()

g. The one-time animal unit capacity of the facility. (4-1-00)

h. The type of animals to be confined at the facility. (4-1-00)

i. Evidence that a valid water right exists to supply adequate water for the proposed facility or a copy of either an application for permit to appropriate water or an application to change the point of diversion, place, period and nature of use of an existing water right that has been filed with the Idaho Department of Water Resources which, if approved, will supply adequate water for the proposed operation. (4-1-00)

j. Proof of financial capability to perform remedial actions and to meet the conditions of an approved closure plan for a facility. The mechanism used to demonstrate financial capability must be legally valid, binding and enforceable under applicable law and must insure that the funds necessary to meet the costs of remediation and closure will be available whenever they are needed in accordance with Section 205. The mechanisms include, but are not limited to, trust funds, surety bonds, letters of credit, insurance and corporate guarantees. (3-15-02)

- k.** The facility's biosecurity and sanitary standards. (4-1-00)
- l.** A statement of estimated annual income and operating expenses that demonstrate, to the satisfaction of the Department, financial capability to operate the facility. (3-15-02)
- 05. Construction Plan.** Plans and specifications for the facility's animal waste management system that include the following information: (4-1-00)

 - a.** Vicinity map(s) prepared on one (1) or more seven and one-half minute (7.5') USGS topographic quadrangle maps or a high quality reproduction(s) that includes the following: (4-1-00)

 - i.** Layout of the facility, including buildings and animal waste management system; (4-1-00)
 - ii.** The one hundred (100) year FEMA flood zones or other appropriate flood data for the facility site and land application sites owned or leased by the applicant; (4-1-00)
 - iii.** The location of occupied dwellings, public and private gathering places, such as schools, churches and parks, and incorporated municipalities which are within a two (2) mile radius of the facility; and (4-1-00)
 - iv.** Private and community domestic water wells, irrigation wells, irrigation conveyance and drainage structures, monitoring wells, wetlands, streams, springs, and reservoirs which are within a one (1) mile radius of the facility. (4-1-00)
 - b.** Facility construction specifications including: (4-1-00)

 - i.** A site plan showing: (4-1-00)

 - (1) Building locations; (4-1-00)
 - (2) Waste facilities; (4-1-00)
 - (3) All waste conveyance systems; and (4-1-00)
 - (4) All irrigation systems used for land application, including details of approved water supply protection devices. (4-1-00)
 - ii.** Building plans showing: (4-1-00)

 - (1) All wastewater collection systems in housed units; (4-1-00)
 - (2) All freshwater supply systems, including details of approved water supply protection devices; (4-1-00)
 - (3) Detailed drawings of wastewater collection and conveyance systems and containment construction; and (4-1-00)
 - (4) Detailed construction and installation procedures. (4-1-00)
- 06. Site Characterization.** A characterization of the facility and any land application site(s) owned or operated by the applicant, prepared by a registered professional geologist, a registered professional engineer or a qualified ground water hydrologist, that includes the following information: (4-1-00)

 - a.** A description of monitoring methods, frequency, and reporting components related to either leak detection systems and/or ground water monitoring wells; (4-1-00)
 - b.** The climatic, hydrogeologic, and soil characteristics; (4-1-00)

- c. The depth to water and a potentiometric map for the uppermost and regional aquifer; (4-1-00)
 - d. The vertical and horizontal conductivity, gradient, and ground water flow direction and velocity; (4-1-00)
 - e. Estimates of recharge to the uppermost aquifer; (4-1-00)
 - f. Information which characterizes the relationship between the ground water and adjacent surface waters; and (4-1-00)
 - g. A summary of local ground water quality data. (4-1-00)
- 07. Nutrient Management Plan.** A plan prepared by a Certified Planner demonstrating compliance with the Nutrient Management Standard for land application. (4-1-00)
- 08. Closure Plan.** A plan describing the procedures for final closure of a facility that ensures no adverse impacts to the environment and waters of the state and that includes: (4-1-00)
- a. The estimated length of operation of the facility; and (4-1-00)
 - b. A description of the procedures, methods, and schedule to be implemented at the facility for final disposal, handling, management and/or treatment of all animal waste. (4-1-00)
- 09. Other Information.** An applicant shall provide any other information relative to Subsections 200.04 through 200.08 deemed necessary by the Director to assess protection of human health and the environment. (4-1-00)
- 10. Application Fee.** A fee shall be submitted with each permit application as follows: (4-1-00)
- a. Three thousand dollars (\$3,000) for facilities that have a one-time animal unit capacity of less than five-thousand (5,000) animal units; (4-1-00)
 - b. Five thousand dollars (\$5,000) for facilities that have a one-time animal unit capacity of five thousand to ten thousand (5,000-10,000) animal units; and (4-1-00)
 - c. Ten thousand dollars (\$10,000) for facilities that have a one-time animal unit capacity over ten thousand (10,000) animal units. (4-1-00)
- 201. -- 204. (RESERVED)**
- 205. FINANCIAL ASSURANCE REQUIREMENTS.**
- 01. Written Estimate of Costs.** The owner of a swine ~~or poultry~~ facility shall submit, as part of the permit application, a detailed written estimate, in current dollars, of the cost of hiring a third party to: ~~(3-15-02)~~ ()
- a. Remediate potential contamination caused by the operation of the facility or of any potential spill or breach, including, without limitation, remediation pursuant to the facility's Spill Contingency Plan; and (3-15-02)
 - b. Close the facility in accordance with an approved closure plan. (3-15-02)
 - c. The Department must approve the cost estimate as reasonable prior to the issuance of a permit. (3-15-02)
- 02. Financial Assurance Mechanisms.** The owner shall submit as part of the permit application evidence of financial assurance to cover the approved remediation and closure cost estimates. However, if the Department has determined, prior to October 19, 2000, that a complete application has been submitted, the owner

shall submit the remediation and closure cost estimates and financial assurance mechanism to the Department for approval prior to the issuance of a permit. The mechanism used to demonstrate financial assurance shall be submitted to the Department for approval and shall ensure that the funds necessary to meet the approved costs of remediation and closure will be available whenever they are needed. The financial assurance mechanisms allowed for swine ~~and poultry~~ facilities shall include any mechanism or a combination of mechanisms meeting the criteria set forth below or other mechanism approved by the Department. (3-15-02)()

a. Trust Fund. (3-15-02)

i. An owner may satisfy the requirements of Subsection 205.02 by establishing a trust fund and submitting an originally signed duplicate of the trust agreement to the Department. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. (3-15-02)

ii. After the trust fund is established, whenever the current remediation and closure cost estimates change, the owner must compare the new estimates with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner, within sixty (60) days after the change in the cost estimate, must either deposit an amount equal into the fund so that its value after this deposit at least equals the amount of the current remediation or closure cost estimate, or obtain other financial assurance as specified in Subsection 205.02 to cover the difference. (3-15-02)

iii. If the value of the trust fund is greater than the total amount of the current remediation or closure cost estimate, the owner may submit a written request to the Department for release of the amount in excess of the current remediation or closure cost estimate. (3-15-02)

iv. If an owner substitutes other financial assurance as specified in Subsection 205.02 for all or part of the trust fund, he may submit a written request to the Department for release of the amount in excess of the current remediation or closure cost estimate covered by the trust fund. (3-15-02)

b. Surety Bond. (3-15-02)

i. An owner may satisfy the requirements of Subsection 205.02 by obtaining a payment or performance surety bond and submitting a certified copy of the bond to the Department. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury. (3-15-02)

ii. The penal sum of the bond must be in an amount at least equal to the current remediation and closure cost estimates. (3-15-02)

iii. Under the terms of the bond, the surety will become liable on the bond obligation when: (3-15-02)

(1) The owner fails to perform as guaranteed by the bond; or (3-15-02)

(2) The Department notifies the owner that he has failed to meet requirements of these rules. (3-15-02)

iv. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and the Department one hundred twenty (120) days in advance of cancellation. Cancellation may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by the Department, as evidenced by the return receipt. The surety shall remain liable on the bond for costs of remediation and closure unless the owner obtains a replacement financial assurance mechanism, approved by the Department in accordance with Subsection 205.02.f., that covers both the existing and future costs of remediation and closure. (3-15-02)

c. Letter of Credit. (3-15-02)

i. An owner may satisfy the requirements of Subsection 205.02 by obtaining an irrevocable standby letter of credit and submitting a certified copy of the letter to the Department. The issuing institution must be an entity

which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency. (3-15-02)

ii. The letter of credit must be accompanied by a letter from the owner referring to the letter of credit by number, issuing institution, and date, and providing the following information: the type of facility, name and address of the facility, and the amount of funds assured for remediation and closure of the facility by the letter of credit. (3-15-02)

iii. The letter of credit must be irrevocable and issued for a period of at least one (1) year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner and the Department by certified mail of a decision not to extend the expiration date. Cancellation may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by the Department, as evidenced by the return receipt. The issuing institution shall remain liable on the letter of credit for costs of remediation and closure unless the owner obtains a replacement financial assurance mechanism, approved by the Department in accordance with Subsection 205.02.f., that covers both the existing and future costs of remediation and closure. (3-15-02)

iv. The letter of credit must be issued in an amount at least equal to the current remediation and closure cost estimates. (3-15-02)

d. Insurance. (3-15-02)

i. An owner may satisfy the requirements of Subsection 205.02 by obtaining remediation and closure insurance and submitting a certificate of such insurance to the Department. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states. (3-15-02)

ii. The insurance policy must be issued for a face amount at least equal to the current remediation and closure cost estimates. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments. (3-15-02)

iii. Each insurance policy must contain a provision allowing assignment of the policy to a successor. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused. (3-15-02)

iv. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. The insurer may cancel the policy by sending notice by certified mail to the owner and the Department one hundred twenty (120) days in advance. Cancellation may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by the Department, as evidenced by the return receipt. The insurer shall remain liable on the policy for costs of remediation and closure unless the owner obtains a replacement financial assurance mechanism, approved by the Department in accordance with Subsection 205.02.f., that covers both the existing and future costs of remediation and closure. (3-15-02)

e. Corporate Guarantee. (3-15-02)

i. An owner may satisfy the requirements of Subsection 205.02 by obtaining a written guarantee and submitting a certified copy of the guarantee and appropriate letter from the guarantor. The guarantor must be the direct or higher-tier parent corporation of the owner, a firm whose parent corporation is also the parent corporation of the owner, or a firm with a "substantial business relationship" with the owner. (3-15-02)

ii. If the guarantor's parent company is also the parent corporation of the owner, a letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. (3-15-02)

iii. If the guarantor is a firm with a "substantial business relationship" with the owner, the letter must

describe the “substantial business relationship” and the value received in consideration of the guarantee. (3-15-02)

iv. The terms of the guarantee shall provide that if the owner fails to perform remediation or closure of a facility covered by the guarantee, the guarantor will: (3-15-02)

(1) Perform, or pay a third party to perform, remediation and closure as required (performance guarantee); or (3-15-02)

(2) Establish a fully funded trust fund as specified in Subsection 205.02.a. in the name of the owner (payment guarantee). (3-15-02)

v. The guarantee shall remain in force for as long as the owner must comply with the applicable financial assurance requirements of Subsection 205.02 unless the guarantor sends notice of cancellation by certified mail to the owner and to the Department one hundred twenty (120) days in advance. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice by the Department, as evidenced by the return receipt. The guarantor shall remain liable on the guarantee for costs of remediation and closure unless the owner obtains a replacement financial assurance mechanism, approved by the Department in accordance with Subsection 205.02.f., that covers both the existing and future costs of remediation and closure. (3-15-02)

f. If a financial assurance mechanism is cancelled by the issuing entity, the owner shall obtain alternate financial assurance, within sixty (60) days of receipt of notice of cancellation by the Department, which shall be submitted to the Department for approval. The alternate financial assurance must become effective not later than the effective date of cancellation or termination of the existing financial assurance. An owner may only cancel a financial assurance mechanism after first obtaining an alternative mechanism approved by the Department. (3-15-02)

03. Continuous Coverage. The owner shall provide continuous coverage for remediation and closure until released from financial assurance requirements by the Department. (3-15-02)

04. Adjustment of Financial Assurance Amounts. The following provisions apply to the adjustment of the amount of financial assurance: (3-15-02)

a. The owner shall increase the remediation and closure cost estimates and the amount of financial assurance if changes to the closure plan or facility conditions or operations increase the cost estimates at any time during the active life of the facility. The cost estimates and financial assurance shall also be adjusted to reflect inflation. Increased cost estimates and financial assurance shall be submitted to the Department for approval. (3-15-02)

b. The owner may reduce the remediation and closure cost estimates and the amount of financial assurance if the cost estimates exceed the maximum cost of remediation or closure at any time during the active life of the facility. The owner shall first notify the Department and obtain its approval of the justification for the reduction of the remediation and closure cost estimates. (3-15-02)

05. Release from Financial Assurance Requirements. When remediation and closure conditions required by a permit are complete, financial assurance shall be released by the Department as follows: (3-15-02)

a. When the Department determines that initial closure activities have been completed, financial assurance, less identified retainages, shall be released. (3-15-02)

b. A sufficient amount of financial assurance shall be retained by the Department, up to five (5) years after closure, to ensure proper remediation and closure of a facility. (3-15-02)

c. Release of any amount of financial assurance shall not release the owner from any responsibility for meeting remediation or closure requirements. (3-15-02)

06. Owner Liability. Nothing in these rules shall relieve the owner of liability for remediation and closure costs. The use of all financial assurance shall not relieve the owner from responsibility and liability for

remediation and closure costs.

(3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

300. APPLICATION PROCESSING PROCEDURE.

01. Application Completeness. Within thirty (30) days of receipt of an application, the Director shall provide written notice to the applicant as to whether the application meets all the requirements of Section 200. The Department shall provide public notice of the receipt of a complete application. An application which does not, on its face, meet all the requirements of Section 200 of these rules shall be returned to the applicant by the Director with a written list of the deficiencies. The Director will not process an application until it is determined to be complete in accordance with these rules. (4-1-00)

02. Notice of Environmental Suitability of Facility Location. Within thirty (30) days of the Director's notice that the application is complete, the Director shall determine whether the facility is environmentally suitable for the selected location. In making this decision, the Director shall review the location of the facility relative to flood zones, dwellings, wells, surface and ground water and those other items the applicant must identify on the vicinity map. Written notice of the Director's determination will be sent to the applicant, with a copy sent to the appropriate county and city officials for the selected location, along with a Department analysis that includes the following: (4-1-00)

a. A brief description of the proposed facility, its animal waste management system and its nutrient management plan; (4-1-00)

b. A brief summary of the basis for the determination on environmental suitability including references to applicable requirements and supporting materials; (4-1-00)

c. A description of the schedule for issuing a permit; and (4-1-00)

d. The name and phone number of the Department staff to contact for additional information. (4-1-00)

03. Draft Permit. Within sixty (60) days of the Director's determination that a facility is environmentally suitable for its proposed location, the Director shall either issue a draft permit or a notice of denial of a permit to the applicant. The draft permit shall be in the same form as a final permit and shall specify conditions of construction, operation and closure. (4-1-00)

04. Public Comments. The Department shall provide notice to the public of its issuance of a draft permit. The public may provide written comments for a time period and in a manner specified in the Department's notice. The Department may, in its discretion, provide an opportunity for the public to provide oral comments. (4-1-00)

05. Permit Denial. The Director may deny a permit if: (4-1-00)

a. The owner of a facility is not in substantial compliance with a final agency order or any final order or judgement of a court secured by any state or federal agency relating to the operation of a swine ~~or poultry~~ facility; (4-1-00) ()

b. The application is inaccurate; (4-1-00)

c. The facility as proposed cannot meet the requirements set forth in these rules or cannot be constructed, operated and closed in a manner that protects human health and the environment; or (4-1-00)

d. The appropriate county or city does not approve the location of the facility. (4-1-00)

06. Final Permit. Within sixty (60) days of the issuance of a draft permit, the Director shall issue a final permit to the applicant, however, a permit shall not be issued by the Director until the applicant has received final approval from the appropriate county or city for the location of the facility and has received approval for a water right from the Department of Water Resources. The permit shall be effective for a fixed term of not more than five (5) years, and may be reissued upon receipt of an updated application and demonstration of compliance with the rules and permit requirements existing at the time of reissuance. (4-1-00)

07. Additional Information. At any time during the application process an applicant shall provide the Director with additional information the Director deems necessary to process a permit, within thirty (30) days of the Director's request. The time period within which the Director must act with regard to the permit shall be stayed until the information requested is provided. If an applicant fails to provide the information within this time period, unless a longer time period is allowed by the Director, the Director may cease the application process and require the applicant to submit a new application. (4-1-00)