Board Meeting
November 5, 2020
2:00PM (MST)

Virtual meeting set for attendance via telephone and video conferencing

Zoom Meeting (click to join):
https://ideq.zoom.us/j/99723706769?pwd=VXBMREpSS0ZuT3dYTmg4MEIva2lEQT09

If joining by telephone, please call: 1 (253) 215-8782

Meeting ID: 997 2370 6769#
Passcode: 735 193#

One tap mobile (select one):
+16699009128,,99723706769#,,,,,,0#,,735193# US (San Jose)
The Idaho Board of Environmental Quality will convene November 05, 2020, at 2:00 p.m. MST at the DEQ State Office Conference Center at 1410 N Hilton St. in Boise, ID.

Contingent upon current health & safety protocols, the public may attend in person or remotely via the internet and/or telephone. Remote attendance is encouraged.

To request remote access to this meeting, or to request accommodations for language or disability via the internet and/or telephone, contact Darika Barnes by November 2 at darika.barnes@deq.idaho.gov or (208) 373-0240.

**AMENDED AGENDA:**

2:00 p.m. Call to Order and Roll Call

Board Business:

1. **Public Comment Period**
   The board will allow up to 30 minutes for the public to address the board on issues *not specifically shown as agenda items*.

2. **Omnibus Rulemaking – Fee Rules**
   **Docket No. 58-0000-2000F**
   Action Item – Pending Rule Adoption of IDAPA 58 Fee Rule Chapters and Adoption of Temporary Fee Rule Chapter IDAPA 58.01.13
   Promulgation of IDAPA 58 fee rule chapters adopted by the Board as temporary rules in February 2020 and proposed revisions.

   a. **IDAPA 58 fee rule chapters without proposed revisions:**
      IDAPA 58.01.07, Rules Regulating Underground Storage Tank Systems
      IDAPA 58.01.08, Idaho Rules for Public Drinking Water Systems
      IDAPA 58.01.09, Rules Regulating Swine Facilities
      IDAPA 58.01.11, Ground Water Quality Rule
      IDAPA 58.01.14, Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services
      IDAPA 58.01.18, Idaho Land Remediation Rules
b. **IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho**
   Revisions updating federal regulations incorporated by reference
   Tiffany Floyd
   Carl Brown

c. **IDAPA 58.01.05, Rules and Standards for Hazardous Waste**
   Revisions updating federal regulations incorporated by reference
   Michael McCurdy
   Caroline Moores

d. **IDAPA 58.01.06, Solid Waste Management Rules**
   Revisions Negotiated Under Docket No. 58-0106-1901
   Red Tape Reduction
   Michael McCurdy

  e. **IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans**
     Revisions Negotiated Under Docket No. 58-0112-1901
     Red Tape Reduction
     Jerri Henry
     MaryAnna Peavey

  f. **IDAPA 58.01.25, Rules Regulating the Idaho Pollutant Discharge Elimination System Program**
     Revisions Negotiated Under Docket No. 58-0125-2001
     Mary Anne Nelson
     Troy Smith

  g. **IDAPA 58.01.13, Rules for Ore Processing by Cyanidation**
     Revisions Negotiated Under Docket No. 58-0113-1901
     Michael McCurdy
     Don Carpenter
Agenda Item #2

**Omnibus Fee Rulemaking, Docket No. 58-0000-2000F**

I move that the Idaho Board of Environmental Quality adopt as pending fee rules the rules presented in the final proposal under Docket No. 58-0000-2000F, with the rules becoming final and effective, if approved by the Legislature, upon the adjournment sine die of the First Regular Session of the Sixty-sixth Idaho Legislature.

I further move that the Board adopt fee rule chapter IDAPA 58.01.13, Rules for Ore Processing by Cyanidation, as presented in the final proposal, as both a pending fee rule and as a temporary fee rule with an effective date of November 6, 2020. The November 6, 2020, temporary fee rule supersedes the March 20, 2020, temporary fee rule chapter IDAPA 58.01.13 adopted under Docket No. 58-0000-2000F.
MEMORANDUM

TO: Members of the Public

FROM: Alex J. Adams, Administrator
      Bradley A. Hunt, Rules Coordinator

SUBJECT: Overview of September 16th Special Edition of Idaho Administrative Bulletin

The Idaho Legislature adjourned sine die without passing a concurrent resolution approving any pending fee rules as specified under 67-5224, I.C. As a result, the fee rules would not typically take effect.

However, Governor Little had his state agencies take proactive action in February to conditionally re-approve fee rules upon sine die in the event the Legislature did not approve the rules. This action proved prescient and has ensured that all fee rules remain in effect as temporary rules.

This Bulletin publishes the temporary fee rules as proposed rules. The brief time lag between the publication of the temporary and proposed rules is due to the 2019 Novel Coronavirus (COVID-19) pandemic which has created practical challenges for agencies, especially those that may need to schedule public hearings in conjunction with the publication of the proposed rules.

This Bulletin begins the process of ensuring the fee rules are in the process of being finalized for presentation to the Legislature in January 2021. In general, the proposed rules are as they appeared in the April 15th bulletin. In some cases, changes were made to carry out the intent of Executive Order 2020-13, which permanently waives some rules that were waived as a result of the COVID-19 pandemic.

For more information on this special bulletin, please contact:
Alex Adams (Alex.Adams@dfm.idaho.gov; 208-334-3900); or
Brad Hunt (Brad.Hunt@dfm.idaho.gov; 208-854-3096).
IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY
DOCKET NO. 58-0000-2000F (FEE RULE)
NOTICE OF OMNIBUS RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to the following Idaho Code provisions. Citations to any federal statutes that provide the basis of authority or requirement for the rulemaking are also included.

- IDAPA 58.01.01 – Sections 39-105, 39-107, 39-114(4), 39-115(3), and 39-116B, Idaho Code;
  Clean Air Act, 42 U.S.C. § 7401 et seq.
- IDAPA 58.01.05 – Chapters 44 and 58, Title 39, Idaho Code;
- IDAPA 58.01.06 – Sections 39-105, 39-107, and 39-7408C, Idaho Code;
- IDAPA 58.01.07 – Chapters 1 and 88, Title 39, Idaho Code;
  Solid Waste Disposal Act, 42 U.S.C. §§ 6991 – 6991m
- IDAPA 58.01.08 – Chapter 1, Title 39, Idaho Code;
  Chapter 21, Title 37, Idaho Code;
  Safe Drinking Water Act, 42 U.S.C. § 300f et seq.
- IDAPA 58.01.09 – Sections 39-104A, 39-105, and 39-107, Idaho Code
- IDAPA 58.01.11 – Sections 39-105, 39-107, 39-120, and 39-126, Idaho Code
- IDAPA 58.01.12 – Chapters 1 and 36, Title 39, Idaho Code;
- IDAPA 58.01.13 – Chapter 1, Title 39, Idaho Code
- IDAPA 58.01.18 – Sections 39-105, 39-107, 39-4405, and 39-7210, Idaho Code
- IDAPA 58.01.20 – Chapters 1 and 76, Title 39, Idaho Code;
  Safe Drinking Water Act, 42 U.S.C. § 300j et seq.
- IDAPA 58.01.25 – Chapter 1, Title 39, Idaho Code;
  Clean Water Act, 33 U.S.C. §§ 1342 and 1345

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222, Idaho Code, a public hearing has been scheduled and will be held as follows:

PUBLIC HEARING

Contingent upon COVID 19 safety protocols, the public may attend in person or remotely via telephone and video conferencing. Remote attendance is encouraged. Information for signing up is provided below.

Wednesday, October 7, 2020 – 9:30 a.m. (MDT)

In Person:
DEQ State Office
1410 N. Hilton Street
Conference Center
Boise, Idaho 83706

All attendees must comply with current COVID-19 safety protocols for public gatherings.

Via Telephone and Video Conferencing:

To sign up for remote attendance via telephone and video conferencing, contact Paula Wilson by September 30, 2020.
The hearing location will be accessible to persons with disabilities, and language translators will be made available upon request. To request accommodations for language translation, contact the undersigned by September 30, 2020.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of the purpose of the proposed rulemaking:

On February 13, 2020, the Board adopted as temporary fee rules the IDAPA 58 rule chapters as they were presented in the pending rule dockets adopted by the Board in 2019 and submitted to the Second Regular Session of the 65th Idaho Legislature for review (2019 pending rule dockets). The 2019 pending rule dockets are posted in the 2020 Legislative Rules Review Books. The IDAPA 58 fee rule chapters and the 2019 pending rule dockets are listed below.

This proposed rule includes 1) the temporary fee rules adopted by the Board in February 2020, and 2) revisions to several fee rule chapters as described below.

Revisions made to the February 2020 temporary fee rules are not considered changes to existing rules and, therefore, are not shown in strike-out/underline format. For revisions that were negotiated, the strike-out/underline format proposed revisions are available for viewing in the latest posted negotiated rule drafts. The negotiated rulemaking records, including negotiated rulemaking summaries and negotiated rule drafts, are available on the web page links provided below.

More information regarding this rule docket is available at deq.idaho.gov/58-0000-2000F.

- **IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho**
  - Docket No. 58-0101-1903
  - Docket No. 58-0101-1904
  - Docket No. 58-0101-1905
  - Revisions Updating Federal Regulations Incorporated by Reference:
    - These proposed revisions are to ensure that the state rules remain consistent with federal regulations. The Rules for the Control of Air Pollution in Idaho, IDAPA 58.01.01, are updated annually to maintain consistency with federal regulations implementing the Clean Air Act. This proposed rule updates federal regulations incorporated by reference with the July 1, 2020 Code of Federal Regulations (CFR) effective date.

- **IDAPA 58.01.05, Rules and Standards for Hazardous Waste**
  - Docket No. 58-0000-1900F
  - Docket No. 58-0105-1901
  - Revisions Updating Federal Regulations Incorporated by Reference:
    - These proposed revisions are to ensure that the state rules remain consistent with federal regulations. Idaho’s Rules and Standards for Hazardous Waste, IDAPA 58.01.05, are updated annually to maintain consistency with the federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). This proposed rule updates federal regulations incorporated by reference with the July 1, 2020 Code of Federal Regulations (CFR) effective date. The proposed rule also includes minor non-substantive corrections.

- **IDAPA 58.01.06, Solid Waste Management Rules**
  - Docket No. 58-0000-1900F
  - Revisions Negotiated Under Docket No. 58-0106-1901:
    - These revisions are proposed in response to Executive Order No. 2019-02, Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that certain rules are outdated, unnecessary, or redundant. Various sections throughout IDAPA 58.01.06, Solid Waste Management Rules, have been identified for deletion, simplification, or consolidation with other sections. The negotiated rulemaking record is available at deq.idaho.gov/58-0106-1901.

- **IDAPA 58.01.07, Rules Regulating Underground Storage Tank Systems**
  - Docket No. 58-0000-1900F
IDAPA 58.01.08, Idaho Rules for Public Drinking Water Systems
  • Docket No. 58-0000-1900F

IDAPA 58.01.09, Rules Regulating Swine Facilities
  • Docket No. 58-0109-1901

IDAPA 58.01.11, Ground Water Quality Rule
  • Docket No. 58-0111-1901

IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans
  • Docket No. 58-0000-1900F
  • Revisions Negotiated Under Docket No. 58-0112-1901:
    These revisions are proposed in response to Executive Order No. 2019-02, Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program, and merge necessary and relevant sections of IDAPA 58.01.20 with IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans. DEQ has initiated a separate rulemaking for the deletion of IDAPA 58.01.20 (Docket No. 58-0120-1901). The negotiated rulemaking record is available at deq.idaho.gov/58-0112-1901.

IDAPA 58.01.13, Rules for Ore Processing by Cyanidation
  • Docket No. 58-0000-1900F
  • Revisions Negotiated Under Docket No. 58-0113-1901:
    The Idaho Mining Association (IMA) requested, via letter submitted to the Director on March 18, 2019, that DEQ revise the rules to move away from prescriptive design and construction requirements to performance-based outcomes for design, construction and closure. IMA’s letter is posted at deq.idaho.gov/58-0113-1901. The current rules, adopted by the Board in 2005 and approved by the Idaho Legislature in 2006, adopted minimum design and construction criteria for all cyanidation facilities. IMA’s letter to DEQ states that technologies and industry best practices for cyanidation facilities have changed since 2006. DEQ initiated negotiated rulemaking to evaluate such changes and to determine if the rules should be updated.

    The proposed rule includes revisions to account for current best available technologies or best practices for design, construction and closure of cyanidation facilities that can achieve necessary regulatory goals of protecting human health and the environment and addresses the following:

    (1) applicability of the design criteria to different types of cyanidation facilities;
    (2) consideration of a broader range of acceptable materials included in the design;
    (3) broader interpretation of performance and compliance regarding constructability of leak detection systems;
    (4) variability in design approach based on the physical characteristics of impounded materials; and
    (5) variability in design approach based on the chemical characteristics of impounded materials and process water; and
    (6) cyanidation permit application and administration, including recovery of costs incurred by DEQ in processing permit applications and administering issued permits.

    The negotiated rulemaking record is available at deq.idaho.gov/58-0113-1901.

IDAPA 58.01.14, Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services
  • Docket No. 58-0000-1900F

IDAPA 58.01.18, Idaho Land Remediation Rules
  • Docket No. 58-0000-1900F

IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program
  • Docket No. 58-0000-1900F
  • Revisions Negotiated Under Docket No. 58-0120-1901 (Chapter Repeal):
These revisions are proposed in response to Executive Order No. 2019-02, Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program, and merge necessary and relevant sections of IDAPA 58.01.20 with IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans. DEQ has initiated a separate rulemaking for the revisions to IDAPA 58.01.12 (Docket No. 58-0112-1901). The negotiated rulemaking record is available at deq.idaho.gov/58-0120-1901.

- IDAPA 58.01.25, Rules Regulating the Idaho Pollutant Discharge Elimination System Program
  - Docket No. 58-0000-1900F
  - Revisions Negotiated Under Docket No. 58-0125-2001:
    To maintain delegated authority for the IPDES program, state rules need to be updated routinely to maintain consistency with federal regulations implementing the Clean Water Act. The purpose of this rulemaking is to ensure the Rules Regulating the Idaho Pollutant Discharge Elimination System (IPDES) Program, IDAPA 58.01.25, remain consistent with federal regulations and to make clarifications in response to ambiguities identified during DEQ’s administration of the IPDES program.

  In 2015, 2017, 2019, and 2020, updated federal regulations became effective for National Pollutant Discharge Elimination System (NPDES) permitting authorities. These regulations require commensurate changes to portions of the IPDES rules with regard to updating definitions, applications, and reporting requirements for the state and facilities permitted under the program. DEQ is proposing to update those items incorporated by reference impacted by the federal changes. DEQ also proposes changes to the IPDES rules to clarify requirements related to fee payment, public comments, appeals, and other ambiguities identified since implementation of the program in July 2018.

  This proposed rule updates federal regulations incorporated by reference with the July 1, 2020 Code of Federal Regulations (CFR) effective date. To maintain consistency for all federal regulations listed in IDAPA 58.01.25.003, this update includes the regulations that have not been revised since the initial incorporation by reference. DEQ negotiated the original rule language and incorporated by reference federal regulations affecting the program.


  After consideration of public comments, DEQ intends to present the final proposal to the Board in November 2020 for adoption as pending rules. With respect to IDAPA 58.01.13, Ore Processing by Cyanidation, DEQ intends to present the final proposal to the Board for adoption as both an amendment to the temporary rules and as pending rules.

FEE SUMMARY: With the exception of revisions to IDAPA 58.01.13, Rules for Ore Processing by Cyanidation, this rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules. A description of each fee category is provided below.

Listed below are the DEQ fee rule chapters, fee categories, and the statutory authority for imposition of the fees.

IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho - crop residue burn fee, Idaho Code § 39-114(4); application fee for industrial or commercial air pollution source permits, Idaho Code § 39-115(3); motor vehicle inspection fee, Idaho Code § 39-116B

IDAPA 58.01.05, Rules and Standards for Hazardous Waste - hazardous waste siting license fee, Idaho Code § 39-5813(3)

IDAPA 58.01.06, Solid Waste Management Rules - commercial solid waste siting license fee, Idaho Code § 39-7408(C)

IDAPA 58.01.07, Rules Regulating Underground Storage Tank Systems – annual UST program fee, Idaho Code §§ 39-119, 39-8802(d)

IDAPA 58.01.08, Idaho Rules for Public Drinking Water Systems – annual drinking water system fee, Idaho Code § 39-119
IDAPA 58.01.09, Rules Regulating Swine Facilities - permit application fee, Idaho Code § 39-119

IDAPA 58.01.11, Ground Water Quality Rule - point of compliance application fee, Idaho Code § 39-119

IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans – loan fee to offset costs of administering loan program, Idaho Code §§ 39-119, 39-3627(4)

IDAPA 58.01.13, Rules for Ore Processing by Cyanidation – fee for processing permit applications, Idaho Code § 39-118A(2)(c)

Fee Summary - Revisions in IDAPA 58.01.13 Negotiated Under Docket No. 58-0113-1901:
The current rule requires applicants to submit a fee ranging from $5,000 for a pilot facility not processing more than 10,000 tons of ore to $20,000 for a facility processing more than 120,000 tons of ore during the life of the facility. The current rule also includes the option for the applicant to enter into an agreement with the Department for actual costs incurred to process an application and issue a final permit in lieu of paying a fee. This proposed rule eliminates the fee schedule and requires the applicant to enter into an agreement with the Department for actual costs incurred to process an application and issue a final permit. Section 39-118A(2)(c), Idaho Code, authorizes the Director of DEQ to require a reasonable fee for processing permit applications.

IDAPA 58.01.14, Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services – fees for environmental operating permits, licenses, inspection services and waiver application processing, Idaho Code § 39-119

IDAPA 58.01.18, Idaho Land Remediation Rules – voluntary remediation program application fee, Idaho Code § 39-7210(5)

IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program – loan fee to offset costs of administering loan program, Idaho Code §§ 39-119, 39-3627(4)

IDAPA 58.01.25, Rules Regulating the Idaho Pollutant Discharge Elimination System Program – application fee and/or annual fee, Idaho Code § 39-175C

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year:
This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

Fiscal Impact - Revisions in IDAPA 58.01.13 Negotiated Under Docket No. 58-0113-1901:
Section 39-118A(2)(c), Idaho Code, authorizes the Director of DEQ to require a reasonable fee for processing permit applications. The proposed rule includes a fee for processing a permit application but does not include any fees following issuance of the permit. As facilities are permitted, there will be an impact to the state general fund for administration of a cyanidation permit program; however, it would vary based on the number and size of permitted facilities operating in Idaho. The estimated average annual general fund impact is $6,000 per permitted facility.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, agencies shall proceed through negotiated rulemaking whenever it is feasible to do so. DEQ made the following determinations regarding feasibility to conduct negotiated rulemaking:

Negotiated rulemaking was not feasible for the temporary fee rules adopted by the Board in February 2020 because engaging in negotiated rulemaking for the previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

Negotiated rulemaking was not feasible for the revisions updating federal regulations incorporated by reference in IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho, and IDAPA 58.01.05, Rules and Standards for Hazardous Waste, due to the simple nature and because DEQ has no discretion with respect to adopting federal regulations necessary to maintain state primacy of the federal programs. Whenever possible, DEQ incorporates federal regulations by reference to ensure that the state rules are consistent with federal regulations.
Negotiated rulemaking was feasible for revisions in the following rule chapters. These revisions were negotiated with stakeholders and members of the public. The negotiated rulemaking record for each docket is available on the listed web pages.

IDAPA 58.01.06, Solid Waste Management Rules  
Docket No. 58-0106-1901 - deq.idaho.gov/58-0106-1901

IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans  
Docket No. 58-0112-1901 - deq.idaho.gov/58-0112-1901

IDAPA 58.01.13, Rules for Ore Processing by Cyanidation  
Docket No. 58-0113-1901 - deq.idaho.gov/58-0113-1901

IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program (Chapter Repeal)  

IDAPA 58.01.25, Rules Regulating the Idaho Pollutant Discharge Elimination System Program  

INCORPORATION BY REFERENCE: The following rule chapters include revisions updating federal regulations incorporated by reference:

IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho  
IDAPA 58.01.05, Rules and Standards for Hazardous Waste  
IDAPA 58.01.25, Rules Regulating the Idaho Pollutant Discharge Elimination System Program

Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief summary of why the incorporation by reference is necessary:

Adoption of federal regulations is necessary to maintain program primacy. Incorporation by reference allows DEQ to keep its rules up to date with federal regulation changes and simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rules.

In compliance with Idaho Code 67-5223(4), for each fee rule chapter with updates to federal regulations incorporated by reference, DEQ prepared a brief synopsis detailing the substantive differences between the previously incorporated material and the latest revised edition or version of the incorporated material being proposed for incorporation by reference. The Overview of Incorporations by Reference documents are available at deq.idaho.gov/58-0000-2000F.

IDAHO CODE SECTION 39-107D STATEMENT: With the exception of revisions to IDAPA 58.01.13, Rules for Ore Processing by Cyanidation, these rules are either (1) not broader in scope or more stringent than federal law nor propose to regulate an activity not regulated by the federal government, or (2) have previously been approved as meeting the requirements of Section 39-107D, Idaho Code.

IDAHO CODE SECTION 39-107D STATEMENT FOR REVISIONS IN IDAPA 58.01.13 NEGOTIATED UNDER DOCKET NO. 58-0113-1901: IDAPA 58.01.13, Rules for Ore Processing by Cyanidation, regulates activities not regulated by the federal government. The following is a summary of additional information required by Sections 39-107D(2) through (3), Idaho Code, supporting the adoption of these rules. These rules establish the procedures and requirements for the issuance and maintenance of a permit to construct, operate, and close that portion of a cyanidation facility that is intended to contain, treat, or dispose of process water or process-contaminated water containing cyanide.

Section 107D(2)(a), Idaho Code. To the degree that a department action is based on science, in proposing any rule or portions of any rule subject to this section, the department shall utilize the best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices.
The requirements set forth in this proposed rule are based upon best available peer reviewed science provided by participants in the negotiated rulemaking conducted pursuant to Section 67-5220, Idaho Code. In addition, the requirements set forth in this proposed rule are industry accepted standards and proven regulatory requirements shown to be generally protective of human health and the environment.

To the extent practicable, the proposed rule reflects derivations of the standards and evaluation criteria used in the state of Nevada to regulate cyanidation facilities. Nevada’s rules more broadly address mining facilities, not cyanidation facilities specifically. The standards specific to cyanidation facilities were developed based on numerous references providing the best available peer reviewed science. These references are included in the rulemaking record and available at deq.idaho.gov/58-0113-1901.

Section 39-107D(2)(b), Idaho Code. To the degree that a department action is based on science, in proposing any rule or portions of any rule subject to this section, the department shall utilize data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justifies use of the data.

Data was not collected or analyzed as part of this rulemaking process.

Section 39-107D(3)(a), Idaho Code. Identification of each population or receptor addressed by an estimate of public health effects or environmental effects.

The release of contaminants from cyanidation facilities may adversely impact beneficial uses in both surface and ground water. The populations and receptors of contaminants generated by these facilities potentially include, depending on a facility’s location, domestic and community drinking water systems, recreationists, agriculture, and wildlife. Contaminants of concern with the potential of release from cyanidation facilities include, but are not limited to, cyanide, nitrates, chlorine, heavy metals, and sediment.

In Idaho, ground water supplies drinking water to approximately 95% of Idaho’s citizens. Of these consumers, approximately one million rely on regulated public water systems for drinking water. Another 500,000 Idahoans utilize ground water from private wells for drinking water. Protection of this resource is critical to the health of the citizens of Idaho.

Ground water also replenishes surface water supplies throughout Idaho. In areas with degraded ground water, the quality of the interconnected surface water can be negatively impacted. The release of contaminants to surface water either directly or indirectly through the ground water can have adverse environmental effects on aquatic habitats, such as increased algal blooms and systemic or neurological effects in susceptible species. The release of contaminants to surface water may also affect communities or individuals who use surface water as a drinking water source by, for example, making the water unfit for consumption or increasing treatment costs.

Section 107D(3)(b) through (e), Idaho Code. Identification of the expected risk or central estimate of risk for the specific population or receptor and identification of each appropriate upper bound or lower bound estimate of risk, of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty, and studies known to the department that support, are directly relevant to, or fail to support any estimate of public health effect or environmental effects and the methodology used to reconcile inconsistencies in the data.

The proposed rule includes permitting process requirements and criteria for the design, construction, operation, and closure of a cyanidation facility. The design criteria are intended to ensure that cyanidation facilities are constructed, operated, and closed in a manner that complies with Idaho’s existing standards for protection of human health and the environment, including surface and ground water quality standards. Because specific standards for protecting of human health and the environment already exist in other rules, there is no need to duplicate them in this proposed rule. The criteria included as part of this proposed rule are not based on any express estimate or analysis of risk to public health or the environment. Instead, the criteria are based on best available peer reviewed science and generally accepted design principles used by engineers and regulators to safely contain, control, and treat pollutants associated with ore processing by cyanidation consistent with other existing standards. Application of the criteria in this proposed rule and other rules administered by the Department or other state agencies will result in minimal risk of release of contaminants from the cyanidation facility into the environment and appropriate response in the event of a release.
ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proposed rule, contact the undersigned.

SUBMISSION OF WRITTEN COMMENTS: Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before October 16, 2020.

Dated this 19th day of August, 2020.

Paula J. Wilson  
Department of Environmental Quality  
1410 N. Hilton Street  
Boise, Idaho 83706  
Phone: (208) 373-0418  
Fax: (208) 373-0481  
paula.wilson@deq.idaho.gov
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<td>No comments received</td>
<td>N/A</td>
</tr>
<tr>
<td>Comments on 58.01.13</td>
<td>Idaho Mining Association (IMA)</td>
<td>10/16/20</td>
</tr>
<tr>
<td>Comments on 58.01.13</td>
<td>Idaho Conservation League (ICL)</td>
<td>10/16/20</td>
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<tr>
<td>Comments on 58.01.14</td>
<td>No comments received</td>
<td>N/A</td>
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<tr>
<td>Comments on 58.01.18</td>
<td>No comments received</td>
<td>N/A</td>
</tr>
<tr>
<td>Comments on 58.01.25</td>
<td>No comments received</td>
<td>N/A</td>
</tr>
<tr>
<td>Comments on Docket No. 58-0000-2000F</td>
<td>Certificate of Hearing for the October 7, 2020, Public Hearing on Proposed Rule (Members of the public attended the hearing but did not present oral comments.)</td>
<td>N/A</td>
</tr>
</tbody>
</table>
October 16, 2020

Ms. Paula Wilson  
Idaho Department of Environmental Quality  
1410 N. Hilton  
Boise, ID  83706  

Submitted via email: paula.wilson@deq.idaho.gov

Re:  DEQ Negotiated Rulemaking – Ore Processing by Cyanidation  

Dear Ms. Wilson:

The Idaho Mining Association (IMA) provides the following comments to the subject Proposed Rule.

IMA commends IDEQ in their work on modernizing the rules governing minimum design standards for cyanidation facilities to reflect best practices in the industry which is reflected in the subject Proposed Rule. There are a few remaining suggested revisions and clarifications IMA would like addressed set forth before submission of the Proposed rule to the Board.

SPECIFIC COMMENTS
Idaho Code Section 39-107D Statement

In section 107D(3)(a) a reference is made to “chlorine” as a contaminant of concern and later there is a suggestion that algal blooms could be a concern. We do not believe that either of these concerns should be associated with cyanidation facilities.

Section 001. There is a reference in this section to the term “process contaminated water containing cyanide” as well as in other subsections of the Proposed Rule (and in the 107D Statement). This is not a defined term but it clearly is intended to describe something beyond “process water” which is a broadly defined term in the Proposed Rule. We are not sure what is intended by use of this term and we do not think the Rule should be expanded beyond regulating process water. We suggest defining this term or striking it if the intent is to expand the scope of the Proposed rule beyond process water.
Section 007.08.a,ii. Material Modification. Please add the word “Significant” to the beginning of this subsection. Minor changes to the components of a facility can and will occur throughout construction and operations. For a large facility such minor changes can occur hundreds of times throughout construction and operations. Such minor changes should not trigger a permit modification.

Section 200.06.ii. Minimum Plans and Specifications. Please revise that last portion of this subsection for clarity so the focus is on anticipated seismic conditions and it therefore should read “… for each component based on anticipated seismic activity considering the history of seismic events at the site.”

Section 205.01 Alternative Plans. Suggest striking the phrase “supported by best available science”. It should not be an applicant’s responsibility to identify what best available science and would likely invite disputes as to what is the best available science in any given situation.

We look forward to the upcoming board meeting in November 2020 when the board considers both the proposed rule and temporary rule.

Sincerely,

[Signature]

Benjamin J. Davenport

Cc: Director Jess Byrne
October 16, 2020

Paula Wilson
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706

Submitted via email to: paula.wilson@deq.idaho.gov

RE: Idaho Conservation League’s Comments for the Final Draft Rule: Ore Processing by Cyanidation; Docket No. 58-0113-1901

Dear Ms. Wilson:

Thank you for the opportunity to submit the Idaho Conservation League’s comments regarding the final draft of Idaho Department of Environmental Quality’s (IDEQ) negotiated rulemaking for ore processing by cyanidation.

Since 1973, the Idaho Conservation League (ICL) has been Idaho’s leading voice for clean water, clean air, and wilderness - values that are the foundation for Idaho’s extraordinary quality of life. As a 501(c)(3) nonprofit organization, ICL works to protect these values through public education, outreach, advocacy, and policy development. ICL is Idaho’s largest state-based conservation organization and represents over 30,000 supporters, many of whom have a deep personal interest in protecting Idaho’s water quality, aquatic species, and human health.

Our comments are provided in the document following this letter. We appreciate the opportunity to provide comments on this matter and share our perspective. If you have any questions regarding our comments or recommendations, please do not hesitate to contact us through the information provided below. We look forward to working with IDEQ on this and future rulemakings and projects.

Respectfully submitted,

Randy Fox
Austin Walkins
050.01 - Pre-Application Conference
The text currently states, “Any person who intends to apply…should contact the Department during the initial stages of site characterization to schedule a pre-application conference.” We recommend IDEQ change this to read “must contact the Department,” making the pre-application conference a requirement to begin the application process. This allows IDEQ and the application to have open conversations regarding the requirements, which facilitates the design planning, permitting process, and cost recovery agreements, reducing the chances of misinterpretation and providing the benefit of ensuring applications have current and correct information and possess a full understanding of the rule prior to investing time, materials, and funds in an untenable project. This supports the requirements of 050.02 - Information Required for Preliminary Design Report.

200.04 - Siting and Preparation
We recommend adding avalanches and seismic activity such as tremors and earthquakes to the list of “adequately protected against factors.” Several potential mines or their primary access routes are located in avalanche-prone areas and the recent 6.5 magnitude earthquake in Central Idaho demonstrates the need to acknowledge this as a potential ongoing risk. Avalanche prone areas can be identified from previous observations and evidence. The USGS has an Earthquakes Hazards Program that tracks historic and recent earthquake activity.

200.06.v - Minimum Plans and Specifications (wildlife exclusions)
IDEQ is electing to use 50 mg/L WAD as the standard for wildlife protection because it is considered an international standard. Under this justification, IDEQ must incorporate all other aspects of the international standards into this rule. In addition to the 50 mg/L numeric criteria, the International Cyanide Management Code¹ (Cyanide Code) also includes matters such as training staff, QA/QC, water balance contingency, monitoring regimes, real-time WAD cyanide measures, management contingencies in place, etc. In order to be effective, the Cyanide Code should be incorporated in its entirety; anything less would be ineffective at adequately protecting wildlife.

Further, IDEQ adds that they “may require additional measures if wildlife mortality is observed.” Section 4.4 of the Cyanide Code explicitly requires facilities to “[I]mplement measures to protect birds, other wildlife and livestock from adverse effects of cyanide process solutions.”² These requirements are not contingent upon observing wildlife mortality because the general presumption is that adverse effects to wildlife or wildlife mortality will occur. We remind IDEQ that industry standards call for netting over process ponds rather than fencing to provide protections for bats and birds; netting around tailings impoundments is not adequate to protect

¹ Available online:  www.cyanidecode.org
² See Id.
birds and bats. Perimeter netting should be designed to prevent large mammals such as elk and
deer as well as smaller vertebrates such as amphibians from accessing ponds. This may require
incorporating two different netting designs. Further, numerous studies have expounded upon
the difficulties of appropriately monitoring and quantifying the impacts to wildlife at cyanidation
facilities (e.g. Donato et al., 2007; Donato et al., 2017). Given the explicit requirement in the
Cyanide Code, and peer-reviewed studies indicating the difficulties associated with monitoring,
it is inappropriate for IDEQ to rely on reactive policies to wildlife deaths. Instead these rules
should be proactive in requiring wildlife interactions and cyanide monitoring protocols, such as
those implemented in Australia as a leading practice (Griffiths, 2014a; Mel S. Smith et al., 2008;
G.B. Smith et al., 2008; Adams et al., 208; Smith et al., 2010; Donato and Smith, 2007).
Management measures, in addition to specific WAD Cyanide Thresholds are critically important.
These should include closely monitoring inflow into all process wastewater ponds to identify
whether spikes in concentrations occur and to implement specific measures to respond
immediately to any of these events.

According to Dr. David Donato\(^3\), an expert in matters of wildlife toxicology and ecology
associated with mine tailings impoundments and industry risks, there are four industry Best
Management Practices he recommends for cyanide processing:

1. Install Auto Free CN analysers on the tank immediately after the dosage tank, auto FCN
   analyzer installed on the last CI:L tank and the desired set point (in free CN) automates
   the dosage rate in the dosed tank. QA and QC performed by manual 4-hourly titration of
tanks to check on auto analyzer.
2. AutoWAD analyzer sampling and recording every 15 minutes on the last CIL tank or
   thickened underflow is one installed. This represents the Tailings Storage Facility (TSF)
   spigot sample.
3. If the AutoWAD analyzer reaches 45 mg/L (a management trigger value) then they
   implement their controls.
4. Controls can be:
   a. Reduce CN addition by changing dosage tank set point
   b. Introduce the TSF return water back into the discharge stream (diluting effect)
   c. Hydrogen peroxide polishing of TSF return water tan is introduced back into the
      discharge stream (improved diluting effect)
   d. Turn on cyanide destruction circuit if one exists

\(^3\) Dr. Donato is Principal of Donato Environmental Services (DES) and has 25 years’ experience
consulting to industry on a wide range of environmental management issues. Donato is widely regarded
by industry peers as an expert in matters of wildlife toxicology and ecology associated with mine tailings
impoundments and industry risks. Dr. Donato, an accredited environmental auditor (ISO19011), and an
accredited Lead Auditor with the International Cyanide Management Code, has focused on environmental
toxicological risks and Code compliance in industry in Australia, USA, Africa and New Zealand. Over the
last 20 years Donato has published relevant papers on cyanide code management, environmental
auditing, toxicology, mine wastewater management, threatened species management, as well as more
widely on ecology. Through DES, Donato has produced about 100 consult reports and presented at
numerous international conferences.

Idaho Conservation League’s Comments for the Final Draft Rule: Ore Processing by Cyanidation;
Docket No. 58-0113-1901, Page 4 of 6
ICL recommends that IDEQ adopt these four management practices for cyanide processing facilities, placing an emphasis on management practice as opposed to regulatory stipulations. We also recommend incorporating an SO2/INCO cyanide destruct system to help achieve the recommended 45 mg/L management trigger value.

200.12 - Monitoring Wells Siting and Construction Plans
The current language reads, “The applicant is encouraged to submit a report…” This should not be an opt-in requisite, it should be a requirement of the Water Quality monitoring plan. In fact, it forms the foundation for an operators monitoring plan. ICL recommends changing the language to, “The applicant is required to submit a report…” This ties directly to Subsection 151.02.

Further, by submitting a report describing the purpose, objectives, location and proposed construction of monitoring wells, the applicant is further protected from misguided or misinterpreted information distribution, and ensures a line of communication between the applicant and IDEQ to highlight potential problem areas prior to investing capacity, funds, time, and materials, and collectively protects and assures the general public that IDEQ continues working to protect the public’s interests and Idaho’s Water Quality.

201.01 - Minimal Hydraulic Head
We appreciate IDEQ limiting process water hydraulic head to twelve (12) inches or less on the liner systems. However, this sole reference to hydraulic head limits may create confusion in later sections referring to hydraulic head. We recommend IDEQ repeat this standard in appropriate sections of the proposed rule to avoid confusion and misinterpretation.

202.02 - Temporary Containment
IDEQ does not provide liner specifications for temporary containment facilities in this section. ICL recommends the Department include specifications for a potential single-liner here to avoid potential confusion and plainly state the Department expectations. Any liner system or microdrain liner/leak detection configuration should be functional over the length of time that the liner will be needed to protect water quality standards.

203 - Design Criteria for Containers that Confine Process Water
This section contains a grammatical error. The language currently states, “a double liner in not required.” We believe this should read, “a double liner is not required.”

800.01 - Transfer of Permits Allowed
We recommend adding a fourth (4th) stipulation in this section (d), that indicates that a permit cannot be transferred to a new permittee that is currently or in the recent past in violation of Federal or Idaho State Water Quality standards or is involved in ongoing litigation regarding violations of Federal, Idaho State, or local regulations, or if a new permittee has a previously revoked permit for facilities within the U.S. The addition of this stipulation would work towards limiting liability for the original permittee and IDEQ and helps ensure a responsible party receives the transferred permit.
Transparency and Accountability

Inspection reports and permit compliance records need to be publicly available on the IDL website. Posting this already-existing information on the agency webpages will eliminate the need for Public Records Requests and increase both project transparency and applicant accountability.
CERTIFICATE OF HEARING

SUBJECT: Omnibus Proposed Fee Rule Docket 58-0000-2000F

LOCATION: DEQ State Office, 1410 N. Hilton, Boise, Idaho

HEARING DATE: October 7, 2020

The undersigned designated hearing facilitator hereby certifies that on the 7th day of October, 2020, a public hearing was held on Omnibus Proposed Fee Rule Docket 58-0000-2000F at the DEQ State Office in Boise, Idaho, with attendees remotely connected to the hearing and via telephone and video conferencing. Members of the public attended the hearing but did not present oral comments. The hearing commenced at 9:30 a.m. and was adjourned at 10:30 a.m.

Notice of this hearing appeared in the Idaho Administrative Bulletin, as required by Idaho Code Section 67-5221, on September 16, 2020. This publication was timely made and other necessary notice requirements have been met.

DATED this 7th day of October, 2020

[Signature]
Paula J. Wilson
Hearing Facilitator

CERTIFICATE OF HEARING
### PUBLIC HEARING ATTENDEES

**Omnibus Proposed Fee Rule Docket 58-0000-2000F**

Hearing Date and Location: 10/7/20 – Boise, Idaho

<table>
<thead>
<tr>
<th>Name</th>
<th>Affiliation</th>
<th>Provide oral comments?</th>
<th>If so, for which rule chapter(s)?</th>
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<tbody>
<tr>
<td>Ben Davenport</td>
<td>Idaho Mining Association</td>
<td>in writing</td>
<td>58.01.13</td>
</tr>
<tr>
<td>Johanna Bell</td>
<td>Association of Idaho Cities</td>
<td>No</td>
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<tr>
<td>Jessica Joyner</td>
<td>Brown and Caldwell</td>
<td>No</td>
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<tr>
<td>Carl Brown</td>
<td>DEQ</td>
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<td>Caroline Moores</td>
<td>DEQ</td>
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<td>Natalie Creed</td>
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<td>Jessica Brock</td>
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<td>Michael McCurdy</td>
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<td>Tiffany Floyd</td>
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<td>Mary Anne Nelson</td>
<td>DEQ</td>
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<td><strong>Docket Number:</strong> 58-0000-2000F</td>
<td><strong>Public Participation</strong></td>
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<td><strong>Effective Date:</strong> 2021 Sine die</td>
<td><strong>Negotiated Rule Making?</strong></td>
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<td><strong>Rules Title:</strong> IDAPA 58 Fee Rule Chapters Without Proposed Revisions</td>
<td><strong>Proposed Rule:</strong> 9/16/20 Idaho Administrative Bulletin</td>
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<tr>
<td><strong>Agency Contact and Phone:</strong> Jess Byrne (208)373-0114</td>
<td><strong>Public Hearings?</strong></td>
<td>[X] Yes</td>
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<td><strong>Locations and Dates:</strong> 10/7/20, Boise</td>
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<td><strong>Agency Contact and Phone:</strong> Jess Byrne (208)373-0114</td>
<td><strong>Public Comments Received?</strong></td>
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<td><strong>Overview of Rulemaking</strong></td>
<td><strong>Interim Legislative Review of Proposed Rule</strong></td>
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<td><strong>This omnibus proposed rulemaking includes 1) the temporary fee rules adopted by the Board in February 2020, and 2) revisions to several fee rule chapters. The following proposed rule chapters are the same as the temporary fee rules adopted by the Board in February 2020 and include no proposed revisions.</strong></td>
<td><strong>Pursuant to Idaho Code § 67-5223</strong></td>
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<td><strong>IDAPA 58.01.07, Rules Regulating Underground Storage Tank Systems</strong></td>
<td><strong>Meetings Held?</strong></td>
<td>[ ] Yes</td>
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<td><strong>IDAPA 58.01.08, Idaho Rules for Public Drinking Water Systems</strong></td>
<td><strong>Objections Filed?</strong></td>
<td>[ ] Yes</td>
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<td><strong>IDAPA 58.01.09, Rules Regulating Swine Facilities</strong></td>
<td>(information pending)</td>
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<td><strong>IDAPA 58.01.11, Ground Water Quality Rule</strong></td>
<td><strong>Documentation from Legislative Services Office (LSO) attached:</strong></td>
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<td><strong>IDAPA 58.01.14, Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services</strong></td>
<td>10/13/20 Memo from LSO to Germane Joint Subcommittees</td>
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<td><strong>IDAPA 58.01.18, Idaho Land Remediation Rules</strong></td>
<td>10/30/20 Letter from LSO to DEQ (receipt of this letter pending)</td>
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**Costs To the Agency and Regulated Community:** See Fiscal Impact section of Notice of Omnibus Rulemaking – Proposed Rulemaking.
MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Environment, Energy & Technology Committee

FROM: Deputy Division Manager - Katharine Gerrity

DATE: October 13, 2020

SUBJECT: Department of Environmental Quality

IDAPA 58.00.00 - Notice of Omnibus Rulemaking (Fee Rule) - Proposed Rule (Docket No. 58-0000-2000F)

Summary and Stated Reasons for the Rule

The Department of Environmental Quality submits notice of proposed fee rule. According to the department, on February 13, 2020, the Board adopted as temporary fee rules the IDAPA 58 rule chapters as they were presented in the pending rule docket adopted by the board in 2019 and submitted to the Second Regular Session of the 65th Idaho Legislature for review (2019 pending rule docket). The proposed rule includes the temporary fee rules adopted by the board in February 2020 and revisions to these fee rule chapters:

- IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho. The department states that the proposed revisions are to ensure that the state rules remain consistent with federal regulations and that the rules are updated annually to ensure consistency with federal regulations implementing the Clean Air Act.
- IDAPA 58.01.05, Rules and Standards for Hazardous Waste. According to the department, the proposed revisions are to ensure that the state rules remain consistent with federal regulations and that the rules are updated annually to ensure consistency with the federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA).
- IDAPA 58.01.06, Solid Waste Management Rules. According to the department, the revisions are proposed in response to Executive Order No. 2019-02, Red Tape Reduction Act, issued by Governor Little on January 21, 2019. The department notes that it determined that certain rules are outdated, unnecessary, or redundant.
- IDAPA 58.01.07, Rules Regulating Underground Storage Tank Systems.
- IDAPA 58.01.08, Idaho Rules for Public Drinking Water Systems.
- IDAPA 58.01.09, Rules Regulating Swine Facilities
- IDAPA 58.01.11, Ground Water Quality Rule
- IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans. According to the department, revisions are proposed in response to Executive Order No. 2019-02, Red Tape Reduction Act, issued by Governor Little on January 21, 2019. The department notes that it determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter.
- IDAPA 58.01.13, Rules for Ore Processing by Cyanidation. The department states that the Idaho Mining
Association (IMA) requested, via letter submitted to the director on March 18, 2019, that DEQ revise the rules to move away from prescriptive design and construction requirements to performance-based outcomes for design, construction and closure. According to the department, the proposed rule includes revisions to account for current best available technologies or best practices for design, construction and closure of cyanidation facilities that can achieve necessary regulatory goals of protecting human health and the environment and addresses the following: (1) applicability of the design criteria to different types of cyanidation facilities; (2) consideration of a broader range of acceptable materials included in the design; (3) broader interpretation of performance and compliance regarding constructability of leak detection systems; (4) variability in design approach based on the physical characteristics of impounded materials; (5) variability in design approach based on the chemical characteristics of impounded materials and process water; and (6) cyanidation permit application and administration, including recovery of costs incurred by DEQ in processing permit applications and administering issued permits.

- IDAPA 58.01.14, Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services.
- IDAPA 58.01.18, Idaho Land Remediation Rules.
- IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program. According to the department, the revisions are proposed in response to Executive Order No. 2019-02, Red Tape Reduction Act, issued by Governor Little on January 21, 2019. The department states that it determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program, and merge necessary and relevant sections of IDAPA 58.01.20 with IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans.
- IDAPA 58.01.25, Rules Regulating the Idaho Pollutant Discharge Elimination System Program. According to the department, to maintain delegated authority for the IPDES program, state rules need to be updated routinely to maintain consistency with federal regulations implementing the Clean Water Act. The department states that the purpose of this rulemaking is to ensure the rules remain consistent with federal regulations and to make clarifications in response to ambiguities identified during DEQ’s administration of the IPDES program. The department notes that it also proposes changes to the IPDES rules to clarify requirements related to fee payment, public comments, appeals, and other ambiguities identified since implementation of the program in July 2018.

The department states that the fee rules do not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the legislature in the prior rules with the exception of IDAPA 58.01.13, Rules for Ore Processing by Cyanidation. The department states that "(t)he current rule requires applicants to submit a fee ranging from $5,000 for a pilot facility not processing more than 10,000 tons of ore to $20,000 for a facility processing more than 120,000 tons of ore during the life of the facility. The current rule also includes the option for the applicant to enter into an agreement with the Department for actual costs incurred to process an application and issue a final permit in lieu of paying a fee. This proposed rule eliminates the fee schedule and requires the applicant to enter into an agreement with the Department for actual costs incurred to process an application and issue a final permit. Section 39-118A(2)(c), Idaho Code, authorizes the Director of DEQ to require a reasonable fee for processing permit applications.

In part, the department also provides a Section 39-107D, Idaho Code, statement as follows: "With the exception of revisions to IDAPA 58.01.13, Rules for Ore Processing by Cyanidation, these rules are either (1) not broader in scope or more stringent than federal law nor propose to regulate an activity not regulated by the federal government, or (2) have previously been approved as meeting the requirements of Section 39-107D, Idaho Code." The department goes on to state: "IDAPA 58.01.13, Rules for Ore Processing by Cyanidation, regulates activities not regulated by the federal government. The following is a summary of additional information required by Sections 39-107D(2) through (3), Idaho Code, supporting the adoption of these rules. These rules establish the procedures and requirements for the issuance and maintenance of a permit to construct, operate, and close that portion of a cyanidation facility that is intended to contain, treat, or dispose of process water or process-contaminated water containing cyanide... The requirements set forth in this proposed rule are
based upon best available peer reviewed science provided by participants in the negotiated rulemaking conducted pursuant to Section 67-5220, Idaho Code. In addition, the requirements set forth in this proposed rule are industry accepted standards and proven regulatory requirements shown to be generally protective of human health and the environment.

**Negotiated Rulemaking/Fiscal Impact**

The department notes that negotiated rulemaking was not conducted for the temporary fee rules adopted by the board in February 2020 because engaging in negotiated rulemaking for all previously existing rules would inhibit the agency from carrying out its ability to protect health, safety, and welfare. According to the department, negotiated rulemaking was not feasible for revisions in IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho, and IDAPA 58.01.05, Rules and Standards for Hazardous Waste, due to the simple nature and because it has no discretion with respect to adopting federal regulations necessary to maintain state primacy of the federal programs. The department states that negotiated rulemaking was conducted for revisions in the following rule chapters:

IDAPA 58.01.06, Solid Waste Management Rules;
IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans;
IDAPA 58.01.13, Rules for Ore Processing by Cyanidation;
IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program (Chapter Repeal); and
IDAPA 58.01.25, Rules Regulating the Idaho Pollutant Discharge Elimination System Program.

The department also confirms that the rulemaking is not anticipated to have any fiscal impact on the general fund. However, in terms of IDAPA 58.01.13, Rules for Ore Processing by Cyanidation, the department states: "(s)ection 39-118A(2)(c), Idaho Code, authorizes the Director of DEQ to require a reasonable fee for processing permit applications. The proposed rule includes a fee for processing a permit application but does not include any fees following issuance of the permit. As facilities are permitted, there will be an impact to the state general fund for administration of a cyanidation permit program; however, it would vary based on the number and size of permitted facilities operating in Idaho. The estimated average annual general fund impact is $6,000 per permitted facility."

**Statutory Authority**

The rulemaking appears to be authorized as follows:

- IDAPA 58.01.05 – Chapters 44 and 58, Title 39, Idaho Code;
- IDAPA 58.01.06 – Sections 39-105, 39-107, and 39-7408C, Idaho Code;
- IDAPA 58.01.07 – Chapters 1 and 88, Title 39, Idaho Code;
- IDAPA 58.01.08 – Chapter 1, Title 39, Idaho Code; Chapter 21, Title 37, Idaho Code;
- IDAPA 58.01.09 – Sections 39-104A, 39-105, and 39-107, Idaho Code;
- IDAPA 58.01.11 – Sections 39-105, 39-107, 39-120, and 39-126, Idaho Code;
- IDAPA 58.01.12 – Chapters 1 and 36, Title 39, Idaho Code;
- IDAPA 58.01.13 – Chapter 1, Title 39, Idaho Code;
- IDAPA 58.01.18 – Sections 39-105, 39-107, 39-4405, and 39-7210, Idaho Code;
- IDAPA 58.01.20 – Chapters 1 and 76, Title 39, Idaho Code; and
- IDAPA 58.01.25 – Chapter 1, Title 39, Idaho Code.
cc: Department of Environmental Quality  
    Paula J. Wilson

*** PLEASE NOTE ***
Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: 1) Approve the docket in its entirety; 2) Reject the docket in its entirety; or 3) Reject the docket in part.
For the following rule chapters, the proposed rule text is the same as the current rule chapters available at https://adminrules.idaho.gov/rules/current/58/index.html.

IDAPA 58.01.07, Rules Regulating Underground Storage Tank Systems

IDAPA 58.01.08, Idaho Rules for Public Drinking Water Systems

IDAPA 58.01.09, Rules Regulating Swine Facilities

IDAPA 58.01.11, Ground Water Quality Rule

IDAPA 58.01.14, Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services

IDAPA 58.01.18, Idaho Land Remediation Rules
Rulemaking and Public Comment Summary

**Docket Number:** 58-0000-2000F  
**Effective Date:** 2021 Sine die  
**Rules Title:** IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho  
**Agency Contact and Phone:** Tiffany Floyd (208)373-0552

**Public Participation**

- **Negotiated Rule Making?** [ ] Yes  [X] No
- **Proposed Rule:** 9/16/20 Idaho Administrative Bulletin
- **Public Hearings?** [X] Yes  [ ] No
- **Locations and Dates:** 10/7/20, Boise  
- **Written Comment Deadline:** 10/16/20
- **Public Comments Received?** [ ] Yes  [X] No

**Overview of Rulemaking**

This omnibus proposed rulemaking includes 1) the temporary fee rules adopted by the Board in February 2020, and 2) revisions to several fee rule chapters. Revisions to IDAPA 58.01.01 are described below.

**IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho**

Revisions Updating Federal Regulations Incorporated by Reference:

These proposed revisions are to ensure that the state rules remain consistent with federal regulations. The Rules for the Control of Air Pollution in Idaho, IDAPA 58.01.01, are updated annually to maintain consistency with federal regulations implementing the Clean Air Act. This proposed rule updates federal regulations incorporated by reference with the July 1, 2020 Code of Federal Regulations (CFR) effective date.

**Overview of Incorporation by Reference**

Adoption of federal regulations is necessary to maintain program primacy. Incorporation by reference allows DEQ to keep its rules up to date with federal regulation changes and simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rules.

In compliance with Idaho Code 67-5223(4), DEQ prepared a brief synopsis detailing the substantive differences between the previously incorporated material and the latest revised edition or version of the incorporated material being proposed for incorporation by reference. The **Overview of Incorporations by Reference** is attached.

**Costs To the Agency and Regulated Community:** See Fiscal Impact section of Notice of Omnibus Rulemaking – Proposed Rulemaking.
An efficient way to implement new or updated federal regulations is to incorporate them by reference into state rule. Reproducing the Code of Federal Regulations in state rule is impractical and costly. Therefore when possible, and as supported by Idaho industry, DEQ incorporates federal regulations by reference. Sections with no changes are also incorporated to ensure the state rules are consistent with federal regulations and to provide one set of rules for industry to follow. Idaho industry is required to comply with all applicable new and updated federal rules regardless of whether DEQ incorporates them by reference.

In addition, for DEQ to be the implementing authority for the Clean Air Act in the state of Idaho, the agency is required to (1) implement the National Ambient Air Quality Standards (NAAQS) and (2) implement an air quality operating permit program for facilities with significant emissions.

(1) **National Ambient Air Quality Standards Implementation**—If an area in Idaho exceeds a NAAQS, DEQ will develop a state plan to improve air quality in that area. Whenever EPA updates a federal standard, DEQ also must demonstrate to EPA that it can implement the new standard. To obtain the appropriate authority to implement a new standard, DEQ incorporates by reference the following sections from the Code of Federal Regulations: Parts 50, 51, 52, 53, and 58.

(2) **Operating Permit Program**—Operating permit requirements are outlined under Parts 64 and 70 of the Code of Federal Regulations. To write these permits in Idaho, DEQ must have the authority to include all of the applicable federal requirements. These requirements are contained in the Code of Federal Regulations Parts 52, 60, 61, 62, 63, 73, and 82.

To maintain authority for implementing the Clean Air Act in Idaho, DEQ is required to continually demonstrate that our air quality program meets minimum federal requirements.

Note, if DEQ’s air program does not meet EPA’s minimum requirements, EPA could impose sanctions on Idaho as outlined in the Clean Air Act ([42 USC § 7509](https://www.law.cornell.edu/uscode/text/42/7509)). Under certain circumstances, these sanctions could include withholding federal highway funds or DEQ operating funds.
The following table summarizes the Code of Federal Regulations sections the DEQ Air Quality Program incorporates by reference.

**40 CFR 50 - 53, 58, 60 – 64, 70, 72, 73, and 82**

<table>
<thead>
<tr>
<th>40 CFR Part</th>
<th>Title</th>
<th>Changes During Past Year?</th>
<th>Impact on Idaho</th>
<th>Number of pages with changes</th>
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<tbody>
<tr>
<td>50</td>
<td>National primary and secondary ambient air quality standards</td>
<td>No</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>51</td>
<td>Requirements for preparation, adoption, and submittal of implementation plans</td>
<td>No</td>
<td>—</td>
<td>—</td>
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<tr>
<td>52</td>
<td>Subparts A and N and Appendices D and E: Approval and promulgation of implementation plans</td>
<td>Yes</td>
<td>Yes</td>
<td>3</td>
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<td>53</td>
<td>Ambient air monitoring reference and equivalent methods</td>
<td>No</td>
<td>—</td>
<td>—</td>
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<td>58</td>
<td>Ambient air surveillance</td>
<td>Yes</td>
<td>No</td>
<td>1</td>
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<td>60</td>
<td>Standards of performance for new stationary sources</td>
<td>Yes</td>
<td>Yes</td>
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<td>61</td>
<td>National emission standards for hazardous air pollutants</td>
<td>Yes</td>
<td>No</td>
<td>3</td>
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<td></td>
<td>Subpart HHH: Federal plan requirements for hospital/medical/infectious waste incinerators constructed on or before December 1, 2008</td>
<td>No</td>
<td>—</td>
<td>—</td>
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<tr>
<td>62</td>
<td>National emission standards for hazardous air pollutants for source categories</td>
<td>Yes</td>
<td>Yes</td>
<td>127</td>
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<td>64</td>
<td>Compliance assurance monitoring</td>
<td>No</td>
<td>—</td>
<td>—</td>
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<td>70</td>
<td>State operating permit programs</td>
<td>Yes</td>
<td>Yes</td>
<td>3</td>
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<tr>
<td>72</td>
<td>Permits</td>
<td>No</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>73</td>
<td>Sulfur dioxide allowance system</td>
<td>No</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>82</td>
<td>Protection of stratospheric ozone</td>
<td>Yes</td>
<td>Yes</td>
<td>17</td>
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</tbody>
</table>

These changes are discussed in more detail below. The associated Federal Register notices are denoted in parentheses as hyperlinks.
The following parts were revised:

National Ambient Air Quality Standards (NAAQS) Implementation

The NAAQS implementation rules promulgated by EPA in this time period are mostly administrative in nature. These rules mostly affect DEQ, e.g. updates to state implementation plan (SIP) requirements that DEQ will need to follow, or EPA actions in response to DEQ’s SIP submittals.

A more detailed summary of the Code of Federal Register changes that impact NAAQS implementation is given below.

Part 52, Subparts A and N and Appendices D and E: Approval and promulgation of implementation plans

- This section contains general provisions associated with state implementation plans and Idaho-specific state implementation plan actions.
- Subpart N - Idaho: EPA promulgated three changes in this section focused on Idaho’s state implementation plan. One approved Idaho’s Regional Haze 5 year progress report submittal (FR-2019-07-15), one approved Idaho’s SIP updates for the Logan-UT/ID SIP (FR-2020-02-20), and one approved a rule revision focused on timing of crop residue burning fees (FR-2019-12-09).

Part 58: Ambient air surveillance

- This section describes the requirements for states to operate a monitoring program.
- There is one update in this subpart which delays the implementation of a photochemical assessment monitoring network by 2 years (FR-2020-01-08).

Operating Permit Program Implementation

Most of the updates to the subparts associated with DEQ’s operating permit program do not impact the majority of Idaho facilities. The updates impacting Idaho facilities are ones for Municipal Solid Waste Landfills. The changes to these rules update the submittal dates for plans and remove contradictory rule language between different sets of applicable rules. Affected facilities in Idaho include larger landfills throughout the state.

A more detailed summary of the Code of Federal Register changes that impact DEQ’s operating permit program is given below.

Part 60: Standards of performance for new stationary sources

- The section describes the permitting requirements for new facilities of specific industries.
- This year’s revisions included six updates: two focused on Municipal Solid Waste Landfills (FR-2020-03-26, FR-2019-08-26), one updated regulations for power plants (FR-2019-07-08), one updated a reporting address for certain Northeastern states (FR-2019-07-17), one updated rules for woodstoves (FR-2020-04-02) and one updated requirements for engines in remote areas of Alaska (FR-2019-11-13).
Part 61: National emission standards for hazardous air pollutants
- This section addresses the national emission standards for certain hazardous air pollutants.
- There was one change that updated a reporting address for certain Northeastern states (FR-2019-07-17).

Part 63: National emission standards for hazardous air pollutants
- This section addresses national emission standards for hazardous air pollutants for specific sources of pollution.
- There are currently twelve updates to rules in this section that DEQ is incorporating by reference: these apply to facilities that manufacture clay ceramics (FR-2019-11-01), coal power plants (FR-2020-04-15), petroleum refineries (FR-2020-02-04), facilities that surface coat metal cans or coils (FR-2020-02-25), asphalt processing (FR-2020-03-12), combustion turbines (FR-2020-03-09), vegetable oil production (FR-2020-03-18), boat manufacturers (FR-2020-03-20), municipal solid waste landfills (FR-2020-03-26), hydrochloric acid production (FR-2020-04-15), engine test stands (FR-2020-06-03) and one that updated a reporting address for certain Northeastern states (FR-2019-07-17).

Part 70: State operating permit programs
- This section describes the minimum requirements for state permitting programs.
- There was one update to the Title V petition process (FR-2020-02-05).

Part 82: Protection of stratospheric ozone
- The purpose of this section is to implement the Montreal Protocol, which addresses substances that deplete the ozone layer.
- There are currently three updates in this section: one update that changed a reporting address for certain Northeastern states (FR-2019-07-17), one updates refrigerant standards (FR-2020-03-17) and one clarified the requirements for repairs of appliance that use refrigerants (FR-2020-03-11).

*The following parts were not revised:*

Part 50: National primary and secondary ambient air quality standards
- This section contains the air quality standards that EPA promulgates for the criteria pollutants: course and fine particulate matter (PM$_{10}$ and PM$_{2.5}$), ozone, sulfur dioxide (SO$_2$), nitrogen dioxide (NO$_2$), lead, and carbon monoxide (CO).

Part 51: Requirements for preparation, adoption, and submittal of implementation plans
- States are required to have a state implementation plan, which includes the rules and area-specific plans that address NAAQS. This section outlines the state implementation plan requirements for state environmental agencies.
Part 53: Ambient air monitoring reference and equivalent methods
- DEQ is required to implement a NAAQS monitoring program in Idaho. Any updates to approved monitoring methods are included in this section. Approved industrial monitoring methods are also included in this section.

Part 62, Subpart HHH: Federal plan requirements for hospital/medical/infectious waste incinerators constructed on or before December 1, 2008
- This section describes the requirements for hospital/medical/infectious waste incinerators. DEQ took delegation of these federal plan requirements.

Part 64: Compliance assurance monitoring
- This section outlines the compliance assurance monitoring requirements for emission units at major sources of pollution.

Part 72: Permits
- This section establishes permit requirements under the Acid Rain Program.

Part 73: Sulfur dioxide allowance system
- This part establishes the requirements and procedures for an SO$_2$ pollutant trading program.
- Idaho currently does not have any sources participating in a pollutant trading program.
Proposed Rule Docket No. 58-0000-2000F

IDAPA 58.01.01

With the exception of Section 107, the proposed rule text is the same as the current rule chapter IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho, available at https://adminrules.idaho.gov/rules/current/58/580101.pdf. Section 107 includes revisions and is attached.
15. **PL2.** From Phil. Dept. of Air Management Services. Not OEL based one (1) yr. Av. time, uf=10.  

16. **PL3.** From Phil. Dept. of Air Management Services. Not OEL based, one (1) yr. av. time, uf=1000.  

17. **TWA.** Time Weighted Average.  

18. **UF.** Uncertainty Factor.  

19. **URF.** Unit Risk Factor from the US Environmental Protection Agency.  


107. **INCORPORATIONS BY REFERENCE.**  

01. **General.** Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 constitutes 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.  

02. **Availability of Referenced Material.** Copies of the documents incorporated by reference into these rules are available at the following locations:  

a. All federal publications: U.S. Government Printing Office at [http://www.ecfr.gov/cgi-bin/ECFR](http://www.ecfr.gov/cgi-bin/ECFR); and  

b. Statutes of the state of Idaho: [http://legislature.idaho.gov/idstat/TOC/IDStatutesTOC.htm](http://legislature.idaho.gov/idstat/TOC/IDStatutesTOC.htm); and  

c. All documents herein incorporated by reference:  

i. Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373-0502.  

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

03. **Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules:  

a. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR Part 51 revised as of July 1, 2020. The following portions of 40 CFR Part 51 are expressly excluded from any incorporation by reference into these rules:  

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  

ii. Appendix Y to Part 51, Guidelines for BART Determinations Under the Regional Haze Rule.  


c. Approval and Promulgation of Implementation Plans, 40 CFR Part 52, Subparts A and N and
Appendices D and E, revised as of July 1, 2020.


e. Ambient Air Quality Surveillance, 40 CFR Part 58, revised as of July 1, 2020.


k. State Operating Permit Programs, 40 CFR Part 70, revised as of July 1, 2020.

l. Permits, 40 CFR Part 72, revised as of July 1, 2020.

m. Sulfur Dioxide Allowance System, 40 CFR Part 73, revised as of July 1, 2020.


o. Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997).


108. -- 120. (RESERVED)

121. COMPLIANCE REQUIREMENTS BY DEPARTMENT.
Any person engaged in an activity which may violate the air quality provisions of the Act, violate an air quality order issued or entered in accordance with the Act or these rules, or violate any of these rules, may be required by the Department to do any of the following:

01. Schedule. Prepare a proposed schedule whereby the unlawful activity will be brought into compliance over a specified period of time.

02. Report. Submit periodic reports to the Department indicating progress in achieving compliance.

03. Records. Submit, keep and maintain appropriate records.

04. Monitoring. Monitor air pollutants at the source, in the ambient air, or in vegetation to demonstrate compliance.

05. Episode Plans. Develop emergency episode plans to help prevent ambient air pollution concentrations from reaching levels which would cause substantial endangerment to health or the environment.

122. INFORMATION ORDERS BY THE DEPARTMENT.
The Department may issue information orders as follows:
Docket Number: 58-0000-2000F
Effective Date: 2021 Sine die
Rules Title: IDAPA 58.01.05, Rules and Standards for Hazardous Waste
Agency Contact and Phone: Michael McCurdy (208)373-0188

Overview of Rulemaking

This omnibus proposed rulemaking includes 1) the temporary fee rules adopted by the Board in February 2020, and 2) revisions to several fee rule chapters. Revisions to IDAPA 58.01.05 are described below.

IDAPA 58.01.05, Rules and Standards for Hazardous Waste

Revisions Updating Federal Regulations Incorporated by Reference:

These proposed revisions are to ensure that the state rules remain consistent with federal regulations. Idaho’s Rules and Standards for Hazardous Waste, IDAPA 58.01.05, are updated annually to maintain consistency with the federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). This proposed rule updates federal regulations incorporated by reference with the July 1, 2020 Code of Federal Regulations (CFR) effective date. The proposed rule also includes minor non-substantive corrections.

Overview of Incorporation by Reference

Adoption of federal regulations is necessary to maintain program primacy. Incorporation by reference allows DEQ to keep its rules up to date with federal regulation changes and simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rules.

In compliance with Idaho Code 67-5223(4), DEQ prepared a brief synopsis detailing the substantive differences between the previously incorporated material and the latest revised edition or version of the incorporated material being proposed for incorporation by reference. The Overview of Incorporations by Reference document is attached.

Incorporation by reference of federal hazardous waste regulations is a routine procedure that DEQ performs annually to: 1) satisfy the consistency and stringency requirements of the Hazardous Waste Management Act (HWMA – Idaho Code § 39-4404); 2) meet the legislative intent to avoid the existence of duplicative, overlapping or conflicting state and federal regulatory systems; and 3) provide for DEQ to maintain primacy and authorization to operate the federal Resource Conservation and Recovery Act (RCRA) program in lieu of EPA.

This proposed rule is neither broader in scope nor more stringent than federal regulations, and does not regulate an activity that is not regulated by the federal government.
The following table summarizes the Code of Federal Regulations sections the DEQ Hazardous Waste Program incorporates by reference. References are listed in the order listed in IDAPA 58.01.05, Rules and Standards for Hazardous Waste. Excluded provisions are specifically identified in the rules.

### 40 CFR Parts 260, 261, 262, 264, 265, 266, 268, 270, and 273

<table>
<thead>
<tr>
<th>40 CFR Part</th>
<th>Title</th>
<th>Changes During Past Year?</th>
<th>Impact on Idaho</th>
</tr>
</thead>
<tbody>
<tr>
<td>260</td>
<td>Hazardous Waste Management System</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>261</td>
<td>Identification and Listing of Hazardous Waste</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>262</td>
<td>Standards Applicable to Generators of Hazardous Waste</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>263</td>
<td>Standards Applicable to Transporters of Hazardous Waste</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>264</td>
<td>Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities</td>
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<td>Yes</td>
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<tr>
<td>265</td>
<td>Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>266</td>
<td>Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Facilities</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>268</td>
<td>Land Disposal Restrictions</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>270</td>
<td>Hazardous Waste Permit Program</td>
<td>Yes</td>
<td>Yes</td>
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<td>124</td>
<td>Procedures for Decision-Making (State Procedures for RCRA or HWMA Permit Applications)</td>
<td>No</td>
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<td>279</td>
<td>Standards for the Management of Used Oil</td>
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<tr>
<td>273</td>
<td>Standards for Universal Waste Management</td>
<td>Yes</td>
<td>Yes</td>
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<td>278</td>
<td>Criteria for the Management of Granular Mine Tailings (CHAT) in Asphalt Concrete and Portland Cement Concrete in Transportation Construction Projects Funded in Whole or in Part by Federal Funds</td>
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<td>267</td>
<td>Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit</td>
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</table>

These changes are discussed in more detail below.
The following parts were revised and may have an impact on Idaho facilities:

40 CFR Parts 260, 261, 262, 264, 265, 266, 268, 270, and 273

- Universal Waste Regulations: Addition of Aerosol Cans

In this final rule, EPA added hazardous waste aerosol cans to the universal waste program under the Resource Conservation and Recovery Act (RCRA) regulations. Aerosol cans typically have flammable propellant and can contain other constituents that make them characterize as hazardous waste. With this new rule, businesses can manage their waste aerosol cans under the streamlined universal waste regulations instead of the full hazardous waste regulations.

The universal waste regulations include requirements for labeling and marking containers, accumulation time limits, employee training, responses to releases, export requirements, and tracking information. The new rule also includes specific standards for puncturing and draining aerosol cans. Puncturing will be allowed provided the puncturing devices are designed to safely puncture aerosol cans and effectively contain residual contents and emissions. Further the collected contents must be evaluated and managed appropriately.

The rule will benefit a wide variety of businesses by providing a clear, practical system for managing waste aerosol cans while easing regulatory burden. It will also promote the collection and recycling of waste aerosols cans, and encourage the development of municipal and commercial programs to reduce the quantity of these wastes going to municipal solid waste landfills.

- Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine

With this new rule, EPA has finalized a tailored set of management standards specifically designed to reduce the complexity of the RCRA hazardous waste regulations for industries that manage pharmaceutical waste. The rule creates a set of regulations specific to healthcare facilities and retailers, removes duplicative regulation of controlled substances, exempts certain nicotine products from management as acute hazardous waste, and bans sewering hazardous waste pharmaceuticals as a means of disposal. The rule is expected to improve management of hazardous waste pharmaceuticals and decrease regulatory burden for many hazardous waste pharmaceutical generators.

- 40 CFR 266 Subpart P Hazardous Waste Pharmaceuticals

A portion of this new rule is included under 40 CFR 266 Subpart P; Standards for management of specific hazardous waste. The new standards under this section apply only to hazardous waste pharmaceuticals and the entities that generate them. They clarify exemptions, generator size, accumulation limits, training requirements, and disposal options for healthcare facilities, pharmacies, and retailers that generate hazardous waste pharmaceuticals. Large Quantity Generators (LQG) and Small Quantity Generators (SQGs) are required to manage their hazardous waste pharmaceuticals under these standards. Very Small Quantity Generators (VSQGs) are
encouraged but not required to manage hazardous waste pharmaceuticals under these new standards.

- **Reverse Distribution vs Reverse Logistics**
  In the new rule, EPA also clarifies the difference between reverse distribution and reverse logistics. Reverse distribution is the mechanism by which prescription pharmaceuticals are returned from a facility to a reverse distributor to be evaluated for a manufacturer credit. Because the majority of these prescription pharmaceuticals are eventually disposed of, they are considered solid waste while moving through the reverse distribution chain. The generator must count the prescription pharmaceuticals that are hazardous towards their monthly generation regardless of whether they receive manufacturer credit.

  Reverse logistics is the mechanism by which nonprescription pharmaceuticals and other retail products are returned from a facility for resale or reprocessing. These items are not considered solid waste when they leave the generator’s site if there is a reasonable expectation of legitimate use or redistribution.

- **Exception of hazardous waste pharmaceuticals that are also DEA controlled substances.**
  The new rule also provides a conditional exemption from RCRA regulation for hazardous wastes pharmaceuticals that are also listed on a schedule of controlled substances by the Drug Enforcement Administration (DEA). In order to be considered exempt, the hazardous waste pharmaceuticals must be combusted at a permitted large or small municipal waste combustor or at an interim status hazardous waste combustor and they must be managed and disposed of in compliance with all applicable DEA regulations.

- **Amendment to the P075 listing for Nicotine**
  The P-list of hazardous waste contains commercial chemical products that are considered acutely hazardous when discarded. Products with nicotine, P075, as a sole active ingredient are acutely hazardous when waste and businesses that generate over 2.2 pounds of acutely hazardous waste in a calendar month are considered LQGs. This new rule removes US Food and Drug Administration (FDA) approved other-the-counter (OTC) nicotine replacement therapies (NRT), such as gums, lozenges, and patches, from the definition of the P075 waste. This action is expected to significantly alleviate regulatory burden for those facilities that are only classified as LQGs due to generation of OTC NRT.

- **Sewer Ban**
  As part of this new rule, EPA prohibited discharging hazardous waste pharmaceuticals to a sewer that passes through to a publically owned treatment works (POTW). This portion of the rule, commonly called the sewer ban, was promulgated pursuant to the 1984 Hazardous and Solid Waste Amendments (HSWA). HSWA provisions do not require state adoption before becoming effective. The sewer ban became effective nationally on August 21, 2019.
58.01.05 – RULES AND STANDARDS FOR HAZARDOUS WASTE

000. LEGAL AUTHORITY.
These rules are adopted pursuant to the authority vested in the Board of Environmental Quality by the Hazardous Waste Management Act of 1983, as amended (HWMA), Sections 39-4401 et seq., Idaho Code, and the authority vested in the Director of the Department of Environmental Quality by the Hazardous Waste Facility Siting Act of 1985, as amended, Sections 39-5801 et seq., Idaho Code.

001. TITLE.
These rules are titled IDAPA 58.01.05, “Rules and Standards for Hazardous Waste.”

002. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.
Any reference in these rules to requirements, procedures, or specific forms contained in the Code of Federal Regulations (CFR), Title 40, Parts 124, 260 - 268, 270, 273, 278, and 279 shall constitute the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 2020, including any notes and appendices therein, unless expressly provided otherwise in these rules.

01. Exceptions. Nothing in 40 CFR Parts 260 - 268, 270, 273, 278, 279 or Part 124 as pertains to permits for Underground Injection Control (U.I.C.) under the Safe Drinking Water Act, the Dredge or Fill Program under Section 404 of the Clean Water Act, the National Pollution Discharge Elimination System (NPDES) under the Clean Water Act or Prevention of Significant Deterioration Program (PSD) under the Clean Air Act is adopted or included by reference herein.

02. Availability of Referenced Material. The federal regulations adopted by reference throughout these rules are maintained at the following locations:

b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051, (208) 334-3316;
and

003. DEFINITIONS.
For the purpose of these rules and any materials incorporated herein by reference, the following definitions apply unless their application would be inconsistent with the Hazardous Waste Management Act, or unless these rules expressly provide for different definitions.

01. Board. The Idaho Board of Environmental Quality.

02. CFR. The United States Code of Federal Regulations.

03. Department. The Idaho Department of Environmental Quality.

04. Director. When used in the context of 40 CFR, the definition shall be the Director of the Idaho Department of Environmental Quality, or his designee, as the context requires. When used in the context of these rules, the definition shall be the U.S. Environmental Protection Agency Region 10 Regional Administrator.

05. Environmental Appeals Board. When used in the context of 40 CFR, the definition shall be the Idaho Board of Environmental Quality except as set forth in Section 39-4413(2), Idaho Code, or except where noted in these rules. When used in the context of these rules, the definition shall be the U.S. Environmental Appeals Board.

06. U.S. Environmental Protection Agency or EPA, EPA Headquarters, or EPA. When used in the context of 40 CFR, the definition shall be the Idaho Department of Environmental Quality, except when used to refer to an EPA Identification number, EPA hazardous waste number, EPA forms, publications or guidance, and EPA Acknowledgment of Consent, and where noted in these rules. Under the latter circumstances, the definition shall be the U.S. Environmental Protection Agency and the Headquarters of the U.S. Environmental Protection Agency as appropriate. When used in the context of these rules, the definition shall be the U.S. Environmental Protection Agency.


09. IDAPA. The Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code.

10. RCRA. When used in the context of 40 CFR, the definition shall be the comparable sections of the Hazardous Waste Management Act of 1983, Sections 39-4401 et seq., Idaho Code. When used in the context of these rules, the definition shall be The Resource Conservation and Recovery Act, 42 U.S. Code, Sections 6901 et seq.

11. Regional Administrator or Administrator. When used in the context of 40 CFR, the definition shall be the Director of the Idaho Department of Environmental Quality, or his designee, except where noted in these rules. When used in the context of these rules, the definition shall be the U.S. Environmental Protection Agency Administrator or Region 10 Regional Administrator as appropriate.

12. TSD. Treatment, storage or disposal.

13. United States or U.S. When used in the context of 40 CFR, the definition shall be the state of Idaho, except where noted in these rules. When used in the context of these rules, the definition shall be the United States.

004. HAZARDOUS WASTE MANAGEMENT SYSTEM.
40 CFR Part 260 and all Subparts, except 40 CFR 260.2, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020. For the purposes of 40 CFR 260.4(a)(4) and 260.5(b)(2), “EPA” is defined as the U.S. Environmental Protection Agency. For the purposes of 40 CFR 260.10 in the definition of electronic manifest and electronic manifest system, “EPA” is defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 260.10, in the definition of hazardous waste constituent, “Administrator” is defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 260.20, “Federal Register” is defined as the Idaho Administrative Bulletin.

005. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.
40 CFR Part 261 and all Subparts (excluding 261.4(b)(17)), except the language “in the Region where the sample is collected” in 40 CFR 261.4(c)(3)(iii), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020. For purposes of 40 CFR 261.10 and 40 CFR 261.11, “Administrator” is defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 261.4(b)(11)(ii), 40 CFR 261.39(a)(5), 40 CFR 261.41, and 40 CFR 261 Appendix IX, “EPA” is defined as the U.S. Environmental Protection Agency. Copies of annual reports and advance notifications under these sections shall also be sent to the Director.


02. Excluded Wastes. Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) generated by Envirosafe Services of Idaho, Inc. (ESII) at ESII’s facility in Grand View, Idaho using the Super Detox(R) treatment process as modified by ESII and that is disposed of in a Subtitle D or Subtitle C landfill is excluded from the lists of hazardous waste provided ESII implements a program that meets the following conditions:

a. Verification Testing Requirements. Sample Collection and analyses, including quality control procedures, conducted pursuant to Subsections 005.02.b. and 005.02.c., must be performed according to SW-846 methodologies and the RCRA Part B permit, including future revisions.

b. Initial Verification Testing.
For purposes of Subsections 005.02.b., “new source” means any generator of Electric Arc Furnace Dust (EAFD), EPA and Idaho Department of Environmental Quality Hazardous Waste No. KO61, whose waste has not previously been processed by ESII using the Super Detox(R) treatment process resulting in processed EAFD which has been subjected to initial verification testing and has demonstrated compliance with the delisting levels specified in Subsection 005.02.d.

Prior to the initial treatment of any new source of EAFD, ESII must notify the Department in writing. The written notification includes:

1. The waste profile information; and
2. The name and address of the generator.

The first four (4) consecutive batches treated must be sampled in accordance with Subsection 005.02.a. Each of the four (4) samples shall be analyzed to determine if the CSEAFD generated meets the delisting levels specified in Subsection 005.02.d.

If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Subsection 005.02.d., ESII shall submit the operational and analytical test data, including quality control information, to the Department, in accordance with Subsection 005.02.f. Subsequent to such data submittal, the CSEAFD generated from EAFD originating from the new source shall be considered delisted.

CSEAFD generated by ESII from EAFD originating from a new source shall be managed as hazardous waste in accordance with Subtitle C of RCRA until:

1. Initial verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.02.d.; and
2. The operational and analytical test data is submitted to the Department pursuant to Subsection 005.02.b.iv.

For purposes of Subsections 005.02.b. and 005.02.c., “batch” means the CSEAFD that results from a single treatment episode in a full scale mixing vessel.

Subsequent Verification Testing.

ESII shall collect a representative sample, in accordance with Subsection 005.02.a., from each batch of CSEAFD generated by ESII. ESII may, at its discretion, conduct subsequent verification testing on composite samples. In no event shall a composite sample consist of representative samples from more than twenty (20) batches of CSEAFD.

The samples shall be analyzed prior to disposal of each batch of CSEAFD to determine if the CSEAFD meets the delisting levels specified in Subsection 005.02.d.

Each batch of CSEAFD generated by ESII shall be subjected to subsequent verification testing no later than thirty (30) days after it is generated by ESII.

If the levels of constituents measured in a sample, or composite sample, of CSEAFD do not exceed the levels set forth in Subsection 005.02.d., then any batch of CSEAFD which contributed to the sample that does not exceed the levels set forth in Subsection 005.02.d. is non-hazardous and may be managed and/or disposed of in a Subtitle D or Subtitle C landfill.

If the constituent levels in a sample, or composite sample, exceed any of the delisting levels set forth in Subsection 005.02.d., then ESII must submit written notification of the results of the analysis to the Department within fifteen (15) days from receiving the final analytical results, and any CSEAFD which contributed to the sample must be:
(1) Retested, and retreated if necessary, until it meets the levels set forth in Subsection 005.02.d.; or

(2) Managed and disposed of in accordance with Subtitle C of RCRA.

vi. Each batch of CSEAFD shall be managed as hazardous waste in accordance with Subtitle C of RCRA until subsequent verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.02.d.

d. Delisting Levels.

i. All leachable concentrations for these metals must not exceed the following levels (mg/l):

<table>
<thead>
<tr>
<th>Metal</th>
<th>Level (mg/l)</th>
</tr>
</thead>
<tbody>
<tr>
<td>antimony</td>
<td>0.06</td>
</tr>
<tr>
<td>arsenic</td>
<td>0.50</td>
</tr>
<tr>
<td>barium</td>
<td>7.60</td>
</tr>
<tr>
<td>beryllium</td>
<td>0.010</td>
</tr>
<tr>
<td>cadmium</td>
<td>0.050</td>
</tr>
<tr>
<td>chromium</td>
<td>0.33</td>
</tr>
<tr>
<td>lead</td>
<td>0.15</td>
</tr>
<tr>
<td>mercury</td>
<td>0.009</td>
</tr>
<tr>
<td>nickel</td>
<td>1</td>
</tr>
<tr>
<td>selenium</td>
<td>0.16</td>
</tr>
<tr>
<td>silver</td>
<td>0.30</td>
</tr>
<tr>
<td>thallium</td>
<td>0.020</td>
</tr>
<tr>
<td>vanadium</td>
<td>2</td>
</tr>
<tr>
<td>zinc</td>
<td>70</td>
</tr>
</tbody>
</table>

ii. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR Part 261.24.

e. Modification of Treatment Process.

i. If ESII makes a decision to modify the Super Detox(R) treatment process from the description of the process as set forth in ESII’s Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995, ESII shall notify the Department in writing prior to implementing the modification.

ii. After ESII’s receipt of written approval from the Department, and subject to any conditions included with the approval, ESII may implement the proposed modification.

iii. If ESII modifies its treatment process without first receiving written approval from the Department, this exclusion of waste will be void from the time the process was modified.

iv. ESII’s Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995 is available at the Department of Environmental Quality, Waste Management and Remediation Division, 1410 N. Hilton, Boise, Idaho 83706.

f. Records and Data Retention and Submittal.

i. Records of disposal site, operating conditions and analytical data from verification testing must be compiled, summarized, and maintained at ESII’s Grand View facility for a minimum of five (5) years from the date the records or data are generated.

ii. The records and data maintained by ESII must be furnished upon request to the Department or EPA.

iii. Failure to submit requested records or data within ten (10) business days of receipt of a written
request or failure to maintain the required records and data on site for the specified time, will be considered by the Department, at its discretion, sufficient basis to revoke the exclusion to the extent directed by the Department.

iv. All records or data submitted to the Department must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the records or data submitted: “Under civil and/ or criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to any identified sections of this document for which I cannot personally verify the truth and accuracy, I certify as the ESII official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by the Department in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to ESII, I recognize and agree that this exclusion of waste will be void as if it had never had effect or to the extent directed by the Department and that ESII will be liable for any actions taken in contravention of ESII’s RCRA and CERCLA obligations premised upon ESII’s reliance on the void exclusion.”

006. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

01. Incorporation by Reference. 40 CFR Part 262 and all Subparts, except for the language “for the Region in which the generator is located” in 40 CFR 262.42(a)(2) and 40 CFR 262.42(b), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020. For purposes of 40 CFR 262.82, 262.83, and 262.84, “EPA” is defined as the U.S. Environmental Protection Agency. Copies of advance notification, annual reports, and exception reports, required under those sections, shall also be provided to the Director. For purposes of 40 CFR 262.20, 262.21, 262.24, 262.25, and 262.32, EPA or Environmental Protection Agency is defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR Part 262, Subpart H, “United States or U.S.” is defined as the United States.

02. Generator Emergency Notification. In addition to the emergency notification required by 40 CFR 262.16(b)(9)(iv)(C) and 262.265(d)(2), (see 40 CFR 262.17(a)(6), 263.30(c)(1), 264.56(d)(2), and 265.56(d)(2)) the emergency coordinator must also immediately notify the Idaho Office of Emergency Management by telephone, 1-800-632-8000, to file an identical report.

007. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

40 CFR Part 263 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020. For purposes of 40 CFR 263.20(g), 263.20(g)(1), 263.20(g)(4), 263.21(a)(4), and 263.22(d), “United States” is defined as the United States. For the purposes of 40 CFR 263.260(a), “EPA” is defined as U.S. Environmental Protection Agency.

008. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

40 CFR Part 264 and all Subparts (excluding 40 CFR 264.1(f), 264.1(g)(12), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f) and 264.1080(g)) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020. For purposes of 40 CFR Subsection 264.12(a), “Regional Administrator” is defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 264.71 and 264.1082(c)(4)(ii), “EPA” is defined as the U.S. Environmental Protection Agency.

009. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

40 CFR Part 265, and all Subparts (excluding Subpart R, 40 CFR 265.1(c)(4), 265.1(c)(15), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g)), except the language contained in 40 CFR 265.340(b)(2) as replaced with: “The following requirements continue to apply even when the owner or operator has
demonstrated compliance with the MACT requirements of part 63, subpart EEE of this chapter: 40 CFR 265.351 (closure) and the applicable requirements of Subparts A through H, BB and CC of this part,” are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020. For purposes of 40 CFR Subsection 265.12(a), “Regional Administrator” is defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 265.71 and 265.1083(c)(4)(ii), “EPA” is defined as the U.S. Environmental Protection Agency.

010. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE FACILITIES.
40 CFR Part 266 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020.

011. LAND DISPOSAL RESTRICTIONS.
40 CFR Part 268 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020, except for 40 CFR 268.1(e)(3), 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g). The authority for implementing the provisions of these excluded sections remains with the EPA. However, the requirements of Sections 39-4403(17) and 39-4423, Idaho Code, shall be applied in all cases where these requirements are more stringent than the federal standards. If the Administrator of the EPA grants a case-by-case variance pursuant to 40 CFR 268.5, that variance will simultaneously create the same case-by-case variance to the equivalent requirement of these rules. For purposes of 40 CFR 268.2(j) “EPA” is defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 268.40(b), “Administrator” is defined as U.S. Environmental Protection Agency Administrator. In 40 CFR 268.7(a)(9)(iii), “D009” is excluded, (from lab packs as noted in 40 CFR Part 268 Appendix IV.)

012. HAZARDOUS WASTE PERMIT PROGRAM.
40 CFR Part 270 and all Subparts, except 40 CFR 270.1(c)(2)(ix), 270.12(a) and 40 CFR 270.14(b)(18), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020. For purposes of 40 CFR 270.2, 270.5, 270.10(e)(2), 270.10(e)(3), 270.10(f)(2), 270.10(f)(3), 270.10(g), 270.11(a)(3), 270.32(a), 270.32(b)(2), 270.32(c), 270.51, 270.72(a)(5), and 270.72(b)(5), “EPA” and “Administrator” or “Regional Administrator” is defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator respectively.

013. PROCEDURES FOR DECISION-MAKING (STATE PROCEDURES FOR RCRA OR HWMA PERMIT APPLICATIONS).
40 CFR Part 124, Subparts A, B and G are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020, except that the last sentence of 40 CFR 124.10(b)(1), 40 CFR 124.15(b)(2), 40 CFR 124.19, the fourth sentence of 40 CFR 124.31(a), the third sentence of 40 CFR 124.32(a), and the second sentence of 40 CFR 124.33(a) are expressly omitted from the incorporation by reference of each of those subsections. For purposes of 40 CFR 124.6(e), 124.10(b), and 124.10(c)(1)(ii) “EPA” and “Administrator” or “Regional Administrator” is defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator, respectively.

014. (RESERVED)

015. STANDARDS FOR THE MANAGEMENT OF USED OIL.

01. Incorporation by Reference. 40 CFR Part 279 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020. For purposes of 40 CFR 279.43(c)(3)(ii) “Director” is defined as the Director, U.S.DOT Office of Hazardous Materials Regulation.

02. Used Oil as a Dust Suppressant. 40 CFR Part 279 contains a prohibition on the use of used oil as a dust suppressant at 279.82(a), however, States may petition EPA to allow the use of used oil as a dust suppressant. Members of the public may petition the State to make this application to EPA. This petition to the State must:

a. Be submitted to the Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706-1255; and

b. Demonstrate how the requirements of 40 CFR 279.82(b) will be met.
016. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT.

017. CRITERIA FOR THE MANAGEMENT OF GRANULAR MINE TAILINGS (CHAT) IN ASPHALT CONCRETE AND PORTLAND CEMENT CONCRETE IN TRANSPORTATION CONSTRUCTION PROJECTS FUNDED IN WHOLE OR IN PART BY FEDERAL FUNDS.
40 CFR Part 278 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020.

018. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT.

019. -- 354. (RESERVED)

355. HAZARDOUS WASTE FACILITY SITING LICENSE FEE.
An application for a siting license required by HWFSA shall be accompanied by a siting license fee in an amount established by these rules. The license fee shall not exceed seven thousand five hundred dollars ($7,500) and shall be submitted with the siting license application.

01. License Fee Criteria. The siting license fee required by HWFSA and these rules shall be based on the costs to the Department of reviewing the siting license application and the characteristics of the proposed hazardous waste facility, including the projected site size, projected waste volume, and the hydrogeological characteristics surrounding the site.

a. “Projected Waste Volume” means the total actual or potential hazardous waste volume, in gallons or an equivalent measurement, proposed for the hazardous waste facility.

b. “Site Size” means the sum in acres of all proposed “Hazardous Waste Management Unit(s)” as defined in Section 004 (40 CFR 260.10).

02. License Fee Scale. Except as provided in Subsection 355.03, the siting license fee required by HWFSA and these rules shall be determined using the table below.

| LICENSE FEE SCALE - PROJECTED HAZARDOUS WASTE VOLUME (gallons) |
|-----------------|-----------------|-----------------|-----------------|
| Site Size       | Up to 10,000    | 10,000 - 20,000 | More Than 20,000|
| 1 acre or greater | $3,000          | $4,000          | $7,500          |
| Equal to or greater than 1/2 acre, but less than 1 acre | $4,000          | $5,000          | $7,500          |
| Less than 1/2 acre | $5,000          | $6,000          | $7,500          |

03. License Fee for Facilities Required to Submit Engineering or Hydrogeological Information.
For any proposed commercial hazardous waste disposal, treatment or storage facility or any on-site land disposal facility for wastes listed pursuant to Section 201(d)(2) and (e), as modified by Section 209 of the Federal Hazardous and Solid Waste Amendments of 1984, which must submit engineering or hydrogeological information to indicate compliance with technical criteria as adopted in the Hazardous Waste Management Plan, the siting license fee shall be seven thousand five hundred dollars ($7,500).
04. Expansion, Enlargement or Alteration of a Commercial Hazardous Waste Disposal, Treatment or Storage Facility or Any On-Site Land Disposal Facility for Wastes Listed Pursuant to Section 201(D)(2) and (E), as Modified by Section 209 of the Hazardous and Solid Waste Amendments of 1984. The significant expansion, enlargement or alteration of a hazardous waste treatment, storage or disposal facility in existence on July 1, 1985, constitutes a new proposal for which a siting license is required and for which a siting license fee must be paid.

05. Siting License Fee Nonrefundable. The siting license fee required by these rules shall be nonrefundable and may not be applied toward any subsequent application should the siting license application be cancelled or withdrawn, or denied.

356. VARIANCE APPLICATIONS FOR TSD FACILITIES OR SITES.

01. Application Contents and Standard of Review. Applications for variances shall be submitted in triplicate and shall contain such detailed plans, specifications, and information regarding objectives, procedures, controls, and other pertinent data as the Director may require. A variance shall not exceed one (1) year in duration. The Director may grant a variance only if the applicant demonstrates to the Director’s satisfaction that construction and operation of the TSD facility or site in the manner allowed by the variance and any term or condition imposed as part of the variance:

   a. Is required to avert unnecessary and significant hardship;
   b. Is not inconsistent with EPA requirements; and
   c. Will not create a nuisance or a hazard to the public health, safety or the environment.

02. Public Hearings. The Director may hold a public hearing on an initial application for a variance and shall hold a public hearing on any application to renew or extend a variance. The public hearing shall be held at a location in the county where the operations that are the subject of the application for the variance are conducted unless the Director determines that a different location would be more appropriate and convenient for interested members of the public. The Director shall give at least twenty (20) days’ notice of the hearing to the applicant by certified mail and shall cause at least one (1) publication of notice in a newspaper with general circulation in either the county where the operation is conducted or the county where the hearing is to be held. The Director shall cause to be made a complete record of the testimony and the evidence submitted at the hearing.

03. Public Information. All information submitted as part of a variance application shall be treated as public information and shall not be subject to any claim of confidentiality. The Director shall make the application available for public inspection at the Department’s state office and appropriate regional office. The Director shall make available for public inspection at the Department’s state office and all regional offices a current list of pending applications for variances and a current schedule of pending variance hearings.

04. Director’s Decision. No variance shall be issued or denied until the Director has considered the relative interests of the applicant, other persons and property affected by the variance and the public. Any variance granted pursuant to this section shall be for a period specified by the Director but not more than one (1) year. No variance shall be issued or denied without a written order stating the findings upon which the decision is based.

05. Applicant to Bear Costs. The cost of public notice, recording and transcribing of testimony and hearing facilities shall be borne by the applicant, regardless of whether or not a variance is issued.

357. -- 499. (RESERVED)

500. ROUTING OF HAZARDOUS WASTE SHIPMENTS.

01. Transporting. Any person transporting a quantity of hazardous waste which requires a manifest shall, to the extent possible:
a. Use state, United States and interstate highways; and ( )
b. Avoid municipalities and population centers, even when doing so may add miles to the distance traveled. ( )

02. Director's Conditions. The Director may, upon a finding that a shipment or shipments of hazardous waste constitutes a greater than normal risk to the public health, safety or environment, prescribe by order particular conditions for that shipment or shipments including but not limited to special placarding, pilot vehicles, routing restrictions, parking restrictions and timing restrictions. ( )

501. -- 799. (RESERVED)

800. INSPECTION PLAN -- FREQUENCY LEVELS.
The Department may, as time and resources permit, conduct regular inspections of persons or entities subject to these rules, their records, and property at approximately the following frequency levels based upon potential risk to the public health or environment. ( )

01. Commercial TSD Facilities. Commercial TSD facilities or sites or offsite generator TSD facilities or sites, up to every day. ( )
02. Generator On-Site TSD Facilities. Generator on-site TSD facilities or sites -- up to twenty (20) times per year. ( )
03. Transport Vehicles. Transport vehicles as necessary. ( )
04. Transport Facilities. Transport facilities or sites -- up to twelve (12) times per year. ( )
05. Generators. Generators -- up to twelve (12) times per year. ( )
06. Conduct Inspections. Nothing in the preceding schedule of frequency levels may be construed as limiting the Department’s authority to conduct inspections when there is reasonable cause to suspect a violation of HWMA or these rules. The Director may by policy guidance memorandum modify the inspection frequency levels as necessary for the effective or efficient enforcement of HWMA and these rules. ( )

801. -- 849. (RESERVED)

850. ILLEGAL ACTIONS.

01. False Statements or Representations. Any person who makes a false statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained or used for the purpose of complying with these rules or HWMA thereby commits a violation. Each false statement or representation constitutes a separate and distinct violation for which civil penalties may be imposed. Any person who knowingly makes a false statement or representation of the type described above is, in addition to civil penalties, subject to criminal prosecution for the commission of a misdemeanor for each statement or representation. ( )
02. Failure to Comply with These Rules, the HWMA, or Other Requirements. Any person who violates these rules, HWMA, or any permit, standard, condition, requirement, compliance agreement or order issued pursuant to these rules or HWMA thereby commits a violation. Civil penalties may be imposed for each separate violation and for each day of continuing violation. Any person who knowingly commits a violation of the type described above is, in addition to civil penalties, subject to criminal prosecution for the commission of a misdemeanor for each separate violation and for each day of a continuing violation. ( )

851. -- 899. (RESERVED)

900. EXPENDITURES FROM HAZARDOUS WASTE EMERGENCY ACCOUNT.
The Director may declare a hazardous waste emergency if the public health, safety or the environment are threatened by a release or threat of release of a hazardous waste or a substance which has become a hazardous waste. Following
a hazardous waste emergency declaration, the Department may spend or obligate to be spent up to two hundred thousand dollars ($200,000) from the Hazardous Waste Emergency Account to obtain equipment and materials, conduct investigations, test samples, and employ personnel as necessary or eliminate or mitigate the immediate threat and stabilize the situation. The Director may authorize the expenditure or obligation of more than two hundred thousand dollars ($200,000) from this account in any given situation upon a finding by the Board that a greater expenditure or obligation is prudent and necessary to protect the public health, safety or environment.

901. -- 995. (RESERVED)

996. ADMINISTRATIVE PROVISIONS.
Administrative appeals of agency actions shall be governed by IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.”

997. CONFIDENTIALITY OF RECORDS.
Information obtained by the Department under these rules shall be disclosed to the public in accordance with Chapter 1, Title 74, Idaho Code. Information submitted under a trade secret claim may be entitled to confidential treatment by the Department as provided in Section 74-114, Idaho Code, and IDAPA 58.01.21, “Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality.”

998. -- 999. (RESERVED)
### Overview of Rulemaking

This omnibus proposed rulemaking includes 1) the temporary fee rules adopted by the Board in February 2020, and 2) revisions to several fee rule chapters. Revisions to IDAPA 58.01.06 are described below.

### IDAPA 58.01.06, Solid Waste Management Rules

Revisions Negotiated Under Docket No. 58-0106-1901:

These revisions are proposed in response to [Executive Order No. 2019-02](https://www2.legislature.idaho.gov/2020Session/Documents/ExecutiveOrder/2019-02.pdf), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that certain rules are outdated, unnecessary, or redundant. Various sections throughout IDAPA 58.01.06, *Solid Waste Management Rules*, have been identified for deletion, simplification, or consolidation with other sections. The negotiated rulemaking record is available at [deq.idaho.gov/58-0106-1901](https://deq.idaho.gov/58-0106-1901).

### Public Participation

**Negotiated Rule Making?** [X] Yes  [ ] No

**Negotiated Rulemaking Summary** posted at [deq.idaho.gov/58-0106-1901](https://deq.idaho.gov/58-0106-1901)

**Proposed Rule:** 9/16/20 Idaho Administrative Bulletin

**Public Hearings?** [X] Yes  [ ] No

**Locations and Dates:**  10/7/20, Boise

**Written Comment Deadline:**  10/16/20

**Public Comments Received?**  [ ] Yes  [X] No

**Costs To the Agency and Regulated Community:**  See Fiscal Impact section of Notice of Omnibus Rulemaking – Proposed Rulemaking.
000. LEGAL AUTHORITY.
Sections 39-105 and 39-107, Idaho Code, authorize the Board of Environmental Quality to adopt rules and administer programs to protect surface water quality, ground water quality and air quality, and to regulate solid waste treatment or disposal and the licensure and certification requirements pertaining thereto. Section 39-7408C, Idaho Code, authorizes the Board of Environmental Quality to establish by rule municipal solid waste commercial siting license fees.

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 58.01.06, “Solid Waste Management Rules.”

02. Scope. These rules establish requirements applicable to all solid waste and solid waste management facilities in Idaho, except as specifically provided in Subsections 001.03 and 001.04.

03. Wastes Not Regulated Under These Rules.

a. These rules do not apply to the following solid wastes:

i. Liquid wastes when the discharge or potential discharge of the liquid waste is regulated under a federal, state or local water pollution discharge or wastewater land application permit, including management of any solids if management of the solids are addressed in a permit term or condition;

ii. Hazardous wastes regulated by the Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code, and the rules adopted thereunder;

iii. Polychlorinated biphenyl (PCB) waste regulated under the Toxic Substance Control Act, 15 U.S.C. 2601, et seq., and these rules apply to PCB waste authorized by federal law to be disposed of at a nonhazardous waste landfill that is permitted, licensed or registered under Idaho Law;

iv. Slash or slashing areas resulting from the harvesting of timber and the disposal of which is managed pursuant to Chapter 1, Title 38, Idaho Code or log landings or sorting sites;

v. Wastes used, managed, stored and disposed in accordance with The Wood and Mill Yard Debris Technical Guidance Manual, as amended, published by the Department and developed pursuant to Sections 39-171 through 39-174, Idaho Code;

vi. Clean soils and clean dredge spoils as regulated under Section 404 of the federal Clean Water Act provided that they are not hazardous wastes regulated by the Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code and the rules adopted thereunder;

vii. Septage taken to a sewage treatment plant permitted by either the U.S. Environmental Protection Agency or the Department pursuant to IDAPA 58.01.15, “Rules Governing the Cleaning of Septic Tanks”;

viii. All radioactive waste and radioactive materials regulated pursuant to Section 39-4405(9), Idaho Code and rules adopted thereunder and radioactive waste and materials regulated under the authority of the Atomic Energy Act of 1954, as amended;

ix. Petroleum Contaminated Soils (PCS) from a leaking petroleum storage tank system managed as a one (1) time remediation pursuant to IDAPA 58.01.02, “Water Quality Standards”;

x. Asbestos as regulated by the Toxic Substances Control Act, as amended, 15 U.S.C. Sections 2601, et seq., or as asbestos as regulated by the Clean Air Act, as amended, 42 U.S.C. Section 7412;

xi. Nonhazardous wastes disposed in a permitted hazardous waste treatment, storage and disposal unit regulated by the Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code, and rules adopted thereunder; or

xii. Waste otherwise regulated under Department authorities.

b. These rules do not apply to the following solid waste unless these wastes are mixed with more than incidental quantities of regulated waste;
i. Inert wastes;

ii. Manures and crop (plant) residues ultimately returned to the soils at agronomic rates;

iii. Any agricultural solid waste which is managed and regulated pursuant to rules adopted by the Idaho Department of Agriculture. The Department reserves the right to use existing authorities to regulate agricultural waste that impacts human health or the environment;

iv. Overburden, waste dumps, low-grade stockpiles, tailings and other materials uniquely associated with mineral extraction, beneficiation or processing operations;

v. Slag from the production of elemental phosphorus;

vi. Phospho-gypsum from the production of phosphate fertilizers, which includes the production of phosphoric acid; and

vii. Wood waste used for ornamental, animal bedding, mulch and plant bedding, or road building purposes.

04. Solid Waste Management Facilities Not Regulated Under These Rules. These Rules do not apply to the following solid waste management facilities:

a. Solid waste management facilities accepting only solid waste excluded by Subsection 001.03;

b. Recycling centers; or

c. Backyard composting sites.

002. (RESERVED)

003. ADMINISTRATIVE APPEALS.
Persons may be entitled to appeal agency actions authorized under this chapter pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.”

004. APPLICABILITY.
These rules apply to all solid waste unless excluded by Subsection 001.03 and to all solid waste management sites in Idaho unless excluded by Subsection 001.04. Compliance with these rules does not relieve owners and operators from the obligation to comply with other applicable state or federal laws, including but not limited to the IDAPA 58.01.02, “Water Quality Standards,” IDAPA 58.01.11, “Ground Water Quality Rule,” and IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho.”

01. Solid Waste Facility Other Than Municipal Solid Waste Landfills (MSWLF) Applicability. Sections 000 through 060 and Section 999 apply to all solid waste facilities other than MSWLF, as specified therein.

02. Municipal Solid Waste Landfill Applicability. Sections 000 through 007, and Sections 994 through 999 apply to all MSWLFs, as specified therein.

005. DEFINITIONS.

01. Active Portion. That part of a unit where waste had been, or may be, disposed of, treated, or otherwise managed, and that has not been closed in accordance with applicable rules.

02. Backyard Composting. Composting operations used only by the owner or person in control of a residential dwelling unit to process garbage and yard waste generated at that dwelling unit.
03. **Beneficial Use.** Various uses of ground water in Idaho including, but not limited to, domestic water supplies, industrial water supplies and agricultural water supplies. A beneficial use is defined as actual current and projected future uses of ground water.

04. **Commercial Solid Waste Facility.** A MSWLF owned and operated as an enterprise conducted with the intent of making a profit by any individual, association, firm, or partnership for the disposal of solid waste, but excluding a MSWLF owned or operated by a political subdivision, state or federal agency or, municipality or a MSWLF owned or operated by any individual, association, firm, or partnership exclusively for the disposal of solid waste generated by such individual, association, firm, or partnership.

05. **Composting Facility.** See definition of Processing Facility.


07. **Very Small Quantity Generator (VSQG) Management Facility.** A facility or portion thereof where household hazardous waste or VSQG wastes are transferred from a vehicle or container and subsequently transported to another facility. A VSQG management facility does not include temporary drop off locations or other facilities where individuals or businesses are authorized to store waste for ultimate collection and disposal.

08. **Contamination.** The introduction of a substance into the surface or ground water causing:

   a. At or beyond the point of compliance, the concentration of that substance in ground water to result in significant degradation, as determined pursuant to Subsection 400.02.b of IDAPA 58.01.11, “Ground Water Quality Rule,” or in an exceedance of the maximum contamination level (MCL) specified in the Ground Water Quality Rule;

   b. The concentration of that substance in surface water exceeds a numerical criteria or fails to protect designated beneficial uses specified in the “Water Quality Standards,” IDAPA 58.01.02;

   c. A statistically significant increase in the concentration of that substance in the ground water at or beyond the point of compliance, or in surface water, where the existing concentration of that substance exceeds the contamination level specified in Subsections 005.08.a. or 005.08.b. of this rule; or

   d. A statistically significant increase in the concentration of that substance in ground water at the point of compliance, or in surface water, above background of a substance which:

      i. Is not specified in Subsections 005.08.a. or 005.08.b. of this rule; and

      ii. Is a result of the disposal of solid waste; and

      iii. Has been determined by the department to present a substantial risk to human health or the environment in the concentrations found in the ground water at the point of compliance, or in surface water.

09. **Degradation.** The lowering of ground water quality as measured in a statistically significant and reproducible manner.

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

11. **Director.** The Director of the Idaho Department of Environmental Quality.

12. **Disposal.** Discharge, deposit, injection, dumping, spilling, leaking, leaching, migration or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water.

13. **Facility.** Any area used for any solid waste management activity, including, but not limited to,
storage, transfer, processing, separation, incineration, treatment, salvaging, or disposal of solid waste.  

14. **Garbage**. Any waste consisting of putrescible animal and vegetable materials resulting from the handling, preparation, cooking and consumption of food, including wastes materials from households, markets, storage facilities, handling and sale of produce and other food products.  

15. **Ground Water**. Any water of the state that occurs beneath the surface of the earth in a saturated geological formation of rock or soil.  

16. **Household Waste**. Any solid waste, including kitchen wastes, trash and sanitary waste in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas.  

17. **Incinerator**. Any source consisting of a furnace and all appurtenances thereto designed for the destruction of solid waste by burning. “Open Burning” is not considered incineration.  

18. **Inert Waste**. Noncombustible, nonhazardous, and non-putrescible solid wastes that are likely to retain their physical and chemical structure and have a de minimis potential to generate leachate under expected conditions of disposal, which includes resistance to biological attack. “Inert waste” includes, but is not limited to, rock, concrete, cured asphaltic concrete, masonry block, brick, gravel, dirt, inert coal combustion by-products, inert precipitated calcium carbonate and inert component mixture of wood or mill yard debris.  

19. **Landfill**. An area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well or waste pile, as those terms are defined under 40 CFR 257.2.  

20. **Leachate**. A liquid that has passed through or emerged from waste and contains soluble, suspended, or miscible materials removed from such waste.  

21. **Lift**. A vertical rise of compacted solid waste that is complete when it is no longer practical to add additional height without the addition of a cover layer to provide structural stability.  

22. **Modification**. Any change in the physical characteristics, waste types managed, method of operation, or lateral expansion beyond the boundaries of a site. The following is not considered a modification:  
   a. Repair and replacement of existing equipment;  
   b. Increase in production rate that does not exceed the Tier level criteria or approved facility capacity;  
   c. An increase in hours of operation if more restrictive hours of operation are not specified in an approved operating plan; and  
   d. Acquisition of property that is not to be used for the processing or disposal of solid waste.  

23. **Municipal Solid Waste Landfill Unit (MSWLF)**. As regulated under Chapter 74, Title 39, Idaho Code, a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 CFR 257.2. A MSWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, VSQG waste and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion.  

24. **Non-Municipal Solid Waste (NMSW)**. A solid waste that is:  
   a. Not mixed with household waste; or
b. Not excluded from these rules by Subsection 001.03. ( )

25. **Non-Municipal Solid Waste Landfill (NMSWLF)**. A landfill that accepts only non-municipal solid waste. ( )

26. **Open Burning**. The combustion of solid waste without:
   a. Control of combustion air to maintain adequate temperature for efficient combustion; ( )
   b. Containment of the combustion reaction in an enclosed device so as to provide sufficient residence time and mixing for complete combustion; and ( )
   c. Control of the emission of the combustion products. ( )

27. **Operator**. The person(s) responsible for the overall operation of all or part of a site or facility. ( )

28. **Owner**. The person(s) who owns land or a portion of the land on which a site or facility is located. ( )

29. **Person**. Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal government department, agency, or instrumentality, municipality, industry, or any other legal entity which is recognized by law as the subject of rights and duties. ( )

30. **Point of Compliance**. A vertical surface located no more than one hundred fifty (150) yards hydraulically down gradient from the active portion of a facility or site, located at the facility boundary down gradient of the land area, or located at the point of diversion of an identified beneficial use within the site, whichever is the smallest distance from the active portion. ( )

31. **Processing Facility**. A facility that uses biological or chemical decomposition to prepare solid waste for reuse, excluding waste handling at transfer stations or recycling centers. ( )

32. **Projected Waste Volume**. The total actual or potential solid waste volume measured in tons per day, cubic yards per day, or an equivalent measurement, proposed to be received or processed at a solid waste facility. ( )

33. **Pumpable Waste**. Wastes, including non-domestic septage, sludge, wastewater and non-municipal solid wastes, which are pumped from a holding area or container into a watertight tank truck or equivalent and transported for processing or disposal. ( )

34. **Qualified Professional**. Qualified professional means a licensed professional geologist or licensed professional engineer, as appropriate, holding current professional registration in good standing and in compliance with applicable provisions of Chapter 12, Title 54, Idaho Code. ( )

35. **Recyclables**. Used, end, or waste products with useful properties that can be reused. ( )

36. **Recycling**. The reclamation of solid waste and its subsequent introduction into an industrial process by which the materials are transformed into a new product in such a manner that the original identity as a product is lost. ( )

37. **Recycling Center**. A materials recovery facility that receives recyclables, then sorts, bales, loads, or physically alters the material and transports the commodities to markets. ( )

38. **Salvage**. The reclamation of solid waste at a disposal site. ( )

39. **Scavenge**. The unauthorized removal of materials from a facility. ( )
40. **Septage.** A semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a septic tank system.

41. **Site.** Any contiguous geographic area with one (1) or more facilities owned or operated by the same person used for any solid waste management activity, including, but not limited to, storage, transfer, processing, separation, incineration, treatment, salvaging, or disposal of solid waste.

42. **Site Size.** The sum in acres of all proposed or existing facilities.

43. **Solid Waste.** Any garbage or refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

44. **Speculative Accumulation.** Stock piles of materials or recyclables to be processed for reuse or disposal when fifty percent (50%) of the material is not reused or disposed by the end of the following calendar year after the date of first receipt by the facility, and which may create a nuisance or public health impact.

45. **Storm Water.** Accumulation of water from natural precipitation, including snow melt.

46. **Surface Water.** All surface accumulations of water, natural or artificial, public or private, or parts thereof which are wholly or partially within, which flow through or border upon the state, unless such waters are an integral part of the facility’s operation for storm water control and or leachate management.

47. **Tipping Floor.** An area at a transfer station, processing facility, VSGQ management facility or incinerator that receives and contains all waste materials.

48. **Toxic Leachate or Gas.** Concentrations of leachate or gas that will cause contamination, as defined by these rules, or that will exceed standards in the IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho.”

49. **Transfer Station.** A facility or portion thereof where solid wastes are transferred from a vehicle or container and subsequently transported off-site to another facility. A transfer station does not include an authorized rural drop-box or other facilities where persons are authorized to store individual waste for ultimate collection and disposal, or any other facility that stores solid waste generated at the facility for collection and disposal off-site.

50. **Wood or Mill Yard Debris Facility.** A facility that manages exclusively, solid wood, bark, or wood fiber generated from the process of manufacturing wood products that may include ash from the burning of wood waste in amounts and in conformity with the requirements of the Wood & Mill Yard Technical Guidance Manual, components of soil, rock, or moisture.

51. **Yard Waste.** Weeds, straw, leaves, grass clippings, brush, wood, and other natural, organic, materials typically derived from general landscape maintenance activities.

006. **ABBREVIATIONS.**

01. **BRC.** Below Regulatory Concern.

02. **CFR.** Code of Federal Regulations.

03. **EPA.** Environmental Protection Agency.

04. **ISWFA.** Idaho Solid Waste Facilities Act, Chapter 74, Title 39, Idaho Code.
05. **MSWLF.** Municipal Solid Waste Land Fill. ( )

06. **NMSW.** Non-Municipal Solid Waste. ( )

07. **NMSWLF.** Non-Municipal Solid Waste Land Fill. ( )

08. **PCS.** Petroleum Contaminated Soils. ( )

09. **RCRA.** Resource Conservation and Recovery Act. ( )


**007. INCORPORATION BY REFERENCE.**

01. **General.** Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 007.02 shall constitute the full adoption by 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. ( )

02. **Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: ( )

   a. 40 CFR 257.24(a), revised as of July 1, 2001. ( )

   b. 40 CFR 257.9, revised as of July 1, 2001. ( )

03. **Availability of Referenced Material.** Copies of the documents incorporated by reference into these rules are available at the following locations: ( )

   a. Department of Environmental Quality, 1410 N. Hilton, Boise ID 83706-1255. ( )

   b. Idaho State Law Library, 451 W. State Street, P.O. Box 83720, Boise ID 83720-0051. ( )


**008. (RESERVED)**

**009. SOLID WASTE MANAGEMENT FACILITY CLASSIFICATION.**

01. **BRC Facilities.** A facility is below regulatory concern (BRC) provided it is a processing facility that does not manage PCS or pumpable waste, and the cumulative volume of solid waste at the facility at any one (1) time is less than or equal to three hundred (300) cubic yards. ( )

02. **Tier I Facilities.** Tier I facilities shall comply with the requirements identified in Section 011. A facility shall be classified as a Tier I facility if the Department determines the facility is: ( )

   a. A landfill that only accepts for disposal materials that are not likely to produce leachate including, but not limited to, glass, plastic, cardboard, wood, composition roofing material, roofing paper, or ceramics, and which has a total disposal capacity of less than or equal to two thousand (2000) cubic yards. ( )

   b. A processing facility that only processes wastes including, but not limited to, untreated or unpainted wood, yard waste, sheet rock, clean paper products, animal manures, plant or crop residues, or garbage without meats or animal fats, and the cumulative volume of wastes at the facility at any one time is less than or equal to six hundred (600) cubic yards. ( )

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c. A processing facility that only manages PCS not excluded under Subsection 001.03.a.ix. or pumpable wastes and the cumulative volume of material at the facility at any one (1) time is less than or equal to two hundred (200) cubic yards; or

   d. An emergency solid waste management facility that only accepts debris resulting from a natural disaster.

03. **Tier II Facility.** Tier II facilities shall comply with the Tier II general siting, operational and closure requirements and any applicable Tier II facility specific requirements. Tier II facilities are not required to install ground water monitoring wells, leachate collection systems or liners. Facilities shall be classified as a Tier II facility if the Department determines the facility is not: (1) landfilling or disposing of VSQG hazardous waste; (2) landfilling or disposing of materials with a high human pathogenic potential; (3) managing solid waste in a manner or volume that will form toxic leachate or gas; or (4) managing solid waste in a manner or volume that is likely to pose a substantial risk to human health or the environment. A Tier II facility is one that meets the four (4) above criteria and is identified below:

   a. A NMSW landfill which has a total disposal capacity greater than two thousand (2000) cubic yards; or

   b. A processing facility or incinerator that has a cumulative volume of wastes at the facility at any one time that is greater than six hundred (600) cubic yards; or

   c. A processing facility that only manages PCS not excluded under Subsection 001.03.a.ix or pumpable wastes and the cumulative volume of material at the facility at any one (1) time is greater than two hundred (200) cubic yards; or

   d. A transfer station or VSQG waste management facility.

04. **Tier III Facility.** Tier III facilities shall comply with the Tier III general siting, operating and closure requirements, ground water monitoring requirements, install leachate collection systems, liners, air contaminant control systems and any applicable Tier III facility specific requirements. Facilities shall be classified as a Tier III facility if the Department determines the facility is: (1) a facility landfilling or disposing of VSQG hazardous waste; (2) a facility landfilling or disposing of materials with a high human pathogenic potential; (3) a facility managing solid waste in a manner or volume that will form toxic leachate or gas; or (4) a facility managing solid waste in a manner or volume that is likely to pose a substantial risk to human health or the environment.

05. **Wood or Mill Yard Debris Facilities.** All Wood and Mill Yard Debris Facilities that are not exempt from these Rules as provided in Section 001.03 shall be regulated as Tier I Facilities unless, based on site-specific criteria including but not limited to site geology, site soils, groundwater characteristics, distance to surface waters, and site climatic data, the Department determines the facility is more appropriately regulated under a different tier classification. Facilities not regulated as a Tier I Facility shall be regulated as a Tier II Facility unless the Department determines the facility manages waste in a manner that will form toxic leachate or gas.

06. **Site Specific Classification.** An owner or operator of a facility classified as a Tier I, Tier II or Tier III facility may request to be regulated pursuant to the requirements of a lower classification. An owner or operator requesting site specific classification must submit information demonstrating to the Department that, when in compliance with the requirements of a lower classification, the facility would not cause contamination, toxic leachate or gas, or concentrations of a substance that exceed standards in the IDAPA 58.01.01 “Rules for the Control of Air Pollution in Idaho.” The information included in any request under this subsection shall include:

   a. Characterization of waste and expected quantities of waste; ( )

   b. Site characterization including:

      i. Site geology report; ( )

      ii. Site soils report; ( )
iii. Ground water report;  
iv. Site climatic data;  
c. Facility Design Plan;  
d. Operating Plan; and  
e. Closure Plan.

07. General and Site Specific Classification Process. The Department's review of a request for a site specific classification shall be conducted pursuant to the process set forth in Section 032.

01. Applicable Requirements. The owner and operator of a BRC facility shall comply with the following requirements prior to accepting waste.

a. Prohibited Activities. The following activities are prohibited:
   i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. “Regulated waste” and “decontaminated” for the purpose of Section 010 will have the same meaning as defined at 29 CFR 1910.1030;  
   ii. Speculative accumulation, unless otherwise approved by the Department in writing; and  
   iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code, and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended.

b. Nuisance Control. The owner and operator shall control nuisances, including but not limited to:
   i. Disease or discomfort. Operations at any facility shall not provide sustenance to rodents or insects that cause human disease or discomfort;  
   ii. Vector. Vector control procedures shall prevent or control vectors that may cause health hazards or nuisances;  
   iii. Odor. The facility shall be operated to control malodorous gases; and  
   iv. Litter. Effective measures shall be taken to minimize the loss of debris from the facility. Debris blown from or within the facility shall be collected and properly disposed to prevent objectionable accumulations.

c. Bird Hazards to Aircraft. No facility may handle putrescible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft; and  
d. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by Section 061.

02. Application Content, Review and Approval Requirements. The owner and operator of a BRC
facility are not required to submit an application.

03. Documentation Requirements. The owner and operator shall maintain on site documentation, such as a daily log of the quantity and type of waste received or managed, that verifies the facility’s BRC status.

011. APPLICABLE REQUIREMENTS FOR TIER I FACILITIES.

01. Applicable Requirements. The owner and operator of a Tier I facility shall comply with the following requirements prior to accepting waste.

a. Prohibited Activities. The following activities are prohibited:
   i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. “Regulated waste” and “decontaminated” for the purpose of Section 011 will have the same meaning as defined at 29 CFR 1910.1030;
   ii. Speculative accumulation, unless otherwise approved by the Department in writing; and
   iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code, and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended.

b. Signs. Facilities open to the general public shall clearly post visible and legible signs at each entrance to the facility. The signs shall specify at a minimum the name of the facility, the hours of operation, the waste accepted at the facility and an emergency phone number.

c. Nuisance Control. The owner and operator shall control nuisances, including but not limited to:
   i. Disease or Discomfort. Operations at any facility shall not provide sustenance to rodents or insects that cause human disease or discomfort;
   ii. Vector. Vector control procedures shall prevent or control vectors that may cause health hazards or nuisances;
   iii. Odor. The facility shall be operated to control malodorous gases; and
   iv. Litter. Effective measures shall be taken to minimize the loss of debris from the facility. Debris blown from or within the facility shall be collected and properly disposed to prevent objectionable accumulations.

d. Facility Access. Unauthorized vehicles and persons shall be prohibited access to the facility. A facility open to the public shall accept waste only when an attendant is on duty. The facility shall be fenced or otherwise blocked to access when an attendant is not on duty. The owner and operator shall maintain the fencing or other access controls for a period of ten (10) years after closure, or another timeframe approved in writing by the Department.

e. Bird Hazards to Aircraft. No facility may handle putrescible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft.

f. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by Section 061.
g. Storm Water Run-On/Run-Off Controls. Implement sufficient storm water management provisions, which may incorporate a NPDES storm water pollution prevention plan, to prevent contamination of surface or ground water and prevent the spread and impact of contamination beyond the boundary of the facility.

h. Variance Request. An owner and operator may submit a written variance request for a variance from the requirements listed in Section 011. The owner and operator must demonstrate to the Department that the variance is at least as protective of human health and the environment as the requirements listed in Section 011.

02. **Application Content, Review and Approval Requirements.** The owner and operator of a Tier I facility shall submit notification to the Department prior to operating. The notice shall include: the owners name, operators name, physical location of site, mailing address, facility phone number and type of solid waste management facility.

03. **Documentation Requirements.** The owner and operator shall maintain on site documentation, such as a daily log of the quantity and type of waste received, that verifies the facility’s Tier I status.

012. **APPLICABLE REQUIREMENTS FOR TIER II FACILITIES.**

The owner and operator of a Tier II facility shall establish compliance with the requirements of Section 012 by obtaining Department approval of the applications required in Subsection 012.02 before beginning construction and Subsection 012.04 prior to accepting waste. The owner and operator of a Tier II facility shall meet the requirements of Subsection 012.05 prior to facility closure.

01. **General Siting Requirements.** The owner and operator of a Tier II facility shall comply with the following siting requirements:

a. Flood Plain Restriction. A facility shall not be located within a one hundred (100) year flood plain if the facility will restrict the flow of the one hundred (100) year flood, reduce the temporary water storage capacity of the flood plain, or result in a washout of solid waste so as to pose a hazard to human health and the environment.

b. Endangered or Threatened Species Restriction. The facility shall not cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife or result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in 50 CFR Part 17.

c. Surface Water Restriction. The active portion of a facility shall be located such that the facility shall not cause contamination of surface waters, unless such surface waters are an integral part of the non-municipal solid waste management facility's operation for storm water and/or leachate management.

d. Park, Scenic or Natural Use Restriction. The active portion of a facility shall not be located closer than one thousand (1,000) feet from the boundary of any state or national park, or land reserved or withdrawn for scenic or natural use including, but not limited to, wild and scenic areas, national monuments, wilderness areas, historic sites, recreation areas, preserves and scenic trails.

e. Variance from Siting Requirement. An owner or operator of a facility that cannot meet the siting requirements of Section 012 may apply for a variance from the Department. The Department shall approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of public health and the environment as the siting requirements in Section 012.

02. **Siting Application.** Documentation shall be submitted to the Department demonstrating compliance with the siting requirements and restrictions specified in Subsection 012.01 within the time frames specified in Section 012. If the documentation has been certified by a qualified professional, the Director shall approve the siting application unless the Director finds the evidence supports a contrary opinion. A map indicating the following shall also be submitted to the Department as part of a Siting Application:

a. Highways, roads, and adjacent communities;
b. Property boundaries; 

c. Total acreage of the site; 

d. Off-site and on-site access roads and service roads; 

e. Type(s) of land use adjacent to the facility and a description of all facilities on the site; 

f. All water courses, ponds, lakes, reservoirs, canals, irrigation systems, and existing water supplies, within one-quarter (1/4) mile of the proposed facility property lines; 

g. High tension power line rights-of-way, fuel transmission pipeline rights-of-way, and proposed and existing utilities; 

h. Proposed or existing fencing; 

i. Proposed and existing structures at the facility and within five hundred (500) feet of the facility boundary. This shall include location of employee buildings, and scales (if provided); and 

j. Direction of prevailing winds. 

03. General Operating Requirements. The owner and operator of a Tier II facility shall comply with the following operating requirements: 

a. Prohibited Activities. The following activities are prohibited: 

i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. “Regulated waste” and “decontaminated” for the purpose of Section 012 have the same meaning as defined at 29 CFR 1910.1030; 

ii. Speculative accumulation, unless otherwise approved in an operating plan; and 

iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code, and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended. 

b. Signs. Facilities open to the general public shall clearly post visible and legible signs at each entrance to the facility specifying, at a minimum, the name of the facility, the hours of operation, the waste accepted at the facility and an emergency phone number. 

c. Waste Types. Only the solid waste types listed in the approved operating plan may be accepted for disposal or processing. 

d. Waste Monitoring and Measurement. Provisions shall be made for monitoring or measuring all solid waste delivered to a facility. The waste monitoring program shall include: 

i. A daily written log listing the types and quantities of wastes received; 

ii. A plan for monitoring and handling receipt of unauthorized wastes; 

iii. Routine characterization of the wastes received; and 

iv. Other measures included in an approved Operating Plan. 

e. Communication. Communication devices shall be available or reasonably accessible at the site.
f. Fire Prevention and Control. Adequate provisions shall be made for controlling or managing fires at the site. ( )

g. Facility Access. Unauthorized vehicles and persons shall be prohibited access to the facility. A facility open to the public shall accept waste only when an attendant is on duty. The facility shall be fenced or otherwise blocked to access when an attendant is not on duty. ( )

h. Scavenging and Salvaging. Scavenging by the public at a facility is prohibited; however, salvaging may be conducted in accordance with a written operations plan and only by the owner, operator or an authorized agent. ( )

i. Nuisance Control. The owner and operator shall control nuisances, including but not limited to: ( )

i. Disease or Discomfort. Operations at any facility shall not provide sustenance to rodents or insects that cause human disease or discomfort; ( )

ii. Vector. Vector control procedures shall prevent or control vectors that may cause health hazards or nuisances; ( )

iii. Odor. The facility shall be operated to control malodorous gases; and ( )

iv. Litter. Effective measures shall be taken to minimize the loss of debris from the facility. Debris blown from or within the facility shall be collected and properly disposed to prevent objectionable accumulations. ( )

j. Bird Hazards to Aircraft. No facility may handle putrescible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft. ( )

k. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by Section 061. ( )

l. Storm Water Run-On/Run-Off Controls. The operating plan shall include sufficient storm water management provisions, which may incorporate a NPDES storm water pollution prevention plan, to prevent contamination of surface and ground water and prevent the spread and impact of contamination beyond the boundary of the facility. ( )

m. Variance Request. An owner and operator of a facility may submit to the Department a written variance request for a variance from the operating requirements listed in Section 012. The Department shall approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of human health and the environment as the requirements listed in Section 012. ( )

04. Operating Plan. The owner and operator of a Tier II facility shall submit to the Department an Operating Plan containing that information required by Subsection 012.03, within the time frames stated in Section 012. An Operating Plan shall include a description of the wastes to be accepted, the methods for maintaining compliance with each of the applicable general operating requirements of Subsection 012.03, and complies with any applicable facility specific requirements found in Subsections 012.09 through 012.11. ( )

05. Closure Requirement. The owner and operator of a Tier II facility shall comply with the following closure and post-closure care requirements: ( )

a. Public Notice. For a facility open to the public the owner and operator shall provide public notice of the facility’s closure by publishing a notice in the local newspaper and posting signs at the facility’s entrance. This notice shall be published and the signs posted; ( )
i. At least thirty (30) days and no more than ninety (90) days prior to the date of last receipt of waste for a facility that has reached disposal capacity; or ( )

ii. If the facility has remaining capacity and there is a reasonable likelihood that the facility will receive additional waste, a notice shall be published and signs posted at least thirty (30) days and no more than ninety (90) days prior to closure. ( )

b. Facility Closure. Unless the Department establishes an alternate closure time period, the owner and operator shall close the facility within six (6) months of the Department’s approval of the Closure Plan. The facility shall be closed in accordance with the approved Closure Plan. ( )

c. Clean Site/Access Control. The owner and operator shall close the facility by managing or removing all solid waste to prevent impact to human health or the environment and installing a gate or other device to prevent public access after the last receipt of waste; and ( )

d. Drainage and Erosion Control. The owner and operator shall install appropriate measures to control erosion and install appropriate measures to control the run-on and runoff from a twenty-five (25) year, twenty-four (24) hour storm event and to provide for the diversion of other surface waters from the closed facility. ( )

e. Closure Plan Certification. Within thirty (30) days of closure, the owner and operator shall notify the Department in writing that the facility was closed in accordance with the approved Closure Plan. If closure of the facility is different from the approved Closure Plan, the owner and operator shall submit for Department review and approval documents, such as “as-built” plans, showing the final conditions of the facility. ( )

06. Closure Plan Application. Except as specified in Subsection 012.10, the owner and operator of a Tier II facility shall submit to the Department a Closure Plan Application containing the following information no later than ninety (90) days before the date on which the facility receives the known final receipt of wastes or, if the facility has remaining capacity and there is a reasonable likelihood that the facility will receive additional wastes, no later than one (1) year after the most recent receipt of wastes: ( )

a. A complete and accurate legal description of the facility; ( )

b. A map of the facility, showing pertinent facility features, including: ( )

i. Facility boundaries, drainage patterns, location of fill areas, and location of access control measures; ( )

ii. All water courses, ponds, lakes, reservoirs, canals, irrigation systems, and existing water supplies, within one-quarter (1/4) mile of the facility boundary; ( )

iii. Location of disposal trenches and description of waste disposed; and ( )

iv. Proposed final contours of the closed facility, drawn to a reasonable scale with five (5) foot intervals for the operational area, and ten (10) foot intervals for the remainder of the facility; ( )

c. Estimated date of last receipt of waste; ( )

d. A description of how public access to the closed facility will be controlled; ( )

e. Estimated total cubic yards, or tons, of waste in place; ( )

f. Total acreage of the facility and acres containing waste; ( )

g. Closure equipment and procedures to be used; ( )
h. Texture, depth and permeability of final cover material; ( )
i. Design and construction plan for any necessary final cover; ( )

j. Placement, design, and management of run-on and run-off storm water controls; ( )
k. Types of vegetation and planting procedures to be used for establishing vegetative cover; ( )
l. Other closure information the Department determines is necessary to protect human health and the environment. ( )

07. Documentation Requirements. The owner and operator of a Tier II facility shall maintain on site a copy of each Department-approved Application and Plan required by Section 012. ( )

08. Modification Application. The owner and operator shall submit to the Department for review and approval a Modification Application describing any proposed modification. The owner and operator of a Tier II facility shall not implement the modification prior to Department approval. If a proposed modification alters the classification of a facility, the owner and operator shall comply with the application content, review and approval requirements for the new classification. ( )

09. Tier II Processing Facilities. In addition to the requirements in Subsections 012.01 through 012.08, the owner and operator of a Tier II processing facility shall also comply with the following requirements: ( )

   a. Siting Requirements: ( )
      i. Ground Water. The active portion of a facility shall be located, designed and constructed such that the facility shall not cause contamination to a drinking water source or cause contamination of the ground water. ( )
      ii. Geologic Restrictions. No facility may be located on land that would threaten the integrity of the design. ( )
      iii. Property Line Restriction. The active portion of a facility shall not be located closer than one hundred (100) feet to the property line. ( )

   b. Siting Application. The owner and operator shall provide in the Siting Application documentation that demonstrates compliance with the siting requirements specified in Subsection 012.01 and 012.09.a. ( )

   c. Operating Requirements: ( )
      i. Odor Management Plan. The owner and operator of a Tier II processing facility shall implement a Department approved Odor Management Plan designed to minimize malodorous gases. An Odor Management Plan shall include specific operating criteria for oxygen, moisture and temperature levels appropriate for the wastes to be processed and processing technologies to be employed, methods used to maintain the specific operating criteria and a monitoring strategy that includes the frequency and parameters for monitoring the specific operating criteria. ( )
      ii. Documentation requirement. The owner and operator of a processing facility shall maintain documentation of compliance with Section 012, including an operational log of the methods used to maintain the operating criteria and sampling results. ( )

   d. Operating Plan. The operating plan required in Subsection 012.04 shall identify methods used for maintaining compliance with each applicable operating requirement of Subsection 012.03 and Subsection 012.09.c. ( )

10. Tier II Incinerators, VSQG Management Facility and Transfer Stations. In addition to the requirements in Subsections 012.01 through 012.04 and Subsections 012.07 and 012.08, the owner and operator of a Tier II incinerator, VSQG management facility or transfer station shall comply with the following requirements: ( )
Design Requirements. The owner and operator shall comply with the following design requirements:

i. A tipping floor design constructed of impermeable and durable material and designed to contain, collect, and convey any liquids to a storage or leachate management system; and

ii. A leachate storage or management system.

Design Application. The following information shall be submitted to the Department in a Design Application:

i. A description of the tipping floor design;

ii. A description of the storage or leachate management system design;

iii. Building and construction design blueprints;

iv. A map illustrating a storm water run-on/run-off system designed to prevent contamination of surface and ground water, and prevent the spread and impact of contamination beyond the boundary of the facility; and

v. Operational design and capacity information including a description of the waste types and projected daily and annual waste volumes.

Operating Requirements. The owner and operator of a Tier II facility shall comply with the following operating requirements:

i. Implement cleaning procedures and waste residency times to maintain sanitary conditions on the surface of the tipping floor; and

ii. Implement and operate a leachate storage or management system.

Closure Requirement. The owner and operator of a Tier II facility shall comply with the following closure and post-closure care requirements:

i. Public Notice. For a facility open to the public the owner and operator shall provide public notice of the facility’s closure by publishing a notice in the local newspaper and posting signs at the facility’s entrance. This notice shall be published and the signs posted at least thirty (30) days prior to closure;

ii. Facility Closure. The owner and operator shall close the facility by removing all solid waste to prevent impact to human health or the environment and installing a gate or other device to prevent public access after the last receipt of waste;

iii. Closure Time Period. Unless the Department establishes an alternate closure time period, the owner and operator shall close the facility within two (2) months of the Department’s approval of the Closure Plan. The facility shall be closed in accordance with the approved Closure Plan; and

iv. Closure Plan Certification. Within thirty (30) days of closure, the owner and operator shall notify the Department in writing that the facility was closed in accordance with the approved Closure Plan. If closure of the facility is different from the approved Closure Plan, the owner and operator shall submit for Department review and approval documents, such as “as-built” plans, showing the final conditions of the facility.

Closure Plan Application. The owner and operator shall submit to the Department a Closure Plan Application containing the following information no later than ninety (90) days before the date on which the facility receives the known final receipt of wastes:

i. A complete and accurate legal description of the facility;
ii. A map of the facility, showing pertinent facility features, including facility boundaries, drainage patterns, and location of access control measures; ( )

iii. Estimated date of last receipt of waste; ( )

iv. A description of how public access to the closed facility will be controlled; ( )

v. Closure equipment and procedures to be used; ( )

vi. Anticipated future uses for the facility; and ( )

vii. Other closure information the Department determines is necessary to protect human health and the environment. ( )

11. Tier II NMSWLF. In addition to the requirements in Subsections 012.01 through 012.08, the owner and operator of a Tier II NMSWLF shall also comply with the following requirements: ( )

a. Siting Requirements: ( )

i. Wetlands. A facility shall not be located in wetlands, except as provided in 40 CFR 257.9. ( )

ii. Ground Water. The active portion of a facility shall be located, designed and constructed such that the facility shall not cause contamination to a drinking water source or cause contamination of the ground water. ( )

iii. Geologic Restrictions. No facility may be located on land that would threaten the integrity of the design. ( )

iv. Property Line Restriction. The active portion of a facility shall not be located closer than one hundred (100) feet to the property line. ( )

b. Siting Application. The owner and operator shall provide in the Siting Application documentation that demonstrates compliance with the siting requirements specified in Subsections 012.01 and 012.11.a.; ( )

c. Design Application. The owner and operator shall provide the following information for design approval: ( )

i. A facility map illustrating: ( )

(1) Surface water and erosion control systems; ( )

(2) Proposed fill area, including the location of waste disposal trenches or cells, noting the locations of trenches used for separated wastes such as animal carcasses, tree trunks, stumps, bulky wastes, car bodies, asbestos, and petroleum contaminated soils; ( )

(3) Location of borrow areas; ( )

(4) Design elevation grade of final cover; ( )

(5) Soil and water table test boring holes, wells, or excavations; ( )

(6) Proposed receiving, storage, and processing areas; ( )

(7) Proposed trench layout and development; and ( )

(8) Contour lines at five (5) foot intervals within the operating area and ten (10) foot intervals to the
facility boundary.

d. Operating Requirements: The owner and operator of a NMSWLF shall comply with the following operating requirements:
   
i. Compaction and placement of waste in locations consistent with the approved operating plan;
   
ii. Provision for storage of waste during periods when the NMSWLF is inaccessible;
   
iii. Application of a six (6) inch compacted soil cover layer on exposed waste as necessary to prevent nuisance and vector conditions at periods consistent with the approved operating plan. An owner and operator may request that the Department approve an alternate cover that addresses vectors, litter, fire, odor, and scavenging concerns;
   
iv. Placement of an interim cover layer of twelve (12) inches of compacted soil between lifts to provide erosion control and structural stability. An owner and operator may request that the Department approve an alternate interim cover that addresses erosion and stability for subsequent lifts;
   
v. Preservation of existing vegetation where attainable.
   
e. Operating Plan. The operating plan required in Subsection 012.04 shall identify the methods used for maintaining compliance with each applicable operating requirement of Subsection 012.03 and Subsection 012.11.d.;
   
f. Closure Requirements. The owner and operator of a Tier II NMSWLF shall comply with the following closure requirements:
   
i. Final Cover. Within seven (7) days of the date of last receipt of waste, a cover layer shall be applied to prevent nuisances and vector conditions. Within one hundred and twenty (120) days of the date of last receipt of waste, a final cover layer of eighteen (18) inches of compacted soil with an approved in-place permeability designed to minimize infiltration, or its functional equivalent, and, a six (6) inch soil layer that minimizes erosion and sustains plant growth shall be constructed;
   
ii. Facility Stabilization. All disturbed portions of the facility shall be stabilized. Stabilization practices may include but are not limited to: establishment of vegetation, mulching, geotextiles, and sod stabilization;
   
iii. Slope Stability. Finished grade shall be at a minimum of two percent (2%) and a maximum of thirty-three percent (33%) slope on the final surface of the completed fill area, after settlement; and
   
iv. Drainage Control. The completed landfill shall be graded to prevent surface water ponding and erosion, and to conform to the local topography.
   
g. Closure Plan. The owner and operator shall provide in the Closure Plan documentation that demonstrates compliance with closure requirements specified in Subsections 012.05 and 012.11.f.
   
h. Environmental Covenants:
   
i. After completion and certification of closure of a NMSWLF, the owner and operator shall record an environmental covenant, pursuant to the Uniformed Environmental Covenants Act (UECA) Chapter 30, Title 55, Idaho Code, on the property where the landfill facility is located and its future use may be restricted in accordance with a post-closure care plan. A copy of the environmental covenant shall be sent to the Department after recording with the county clerk;
   
ii. The owner may request permission from the Department to remove the environmental covenant if all wastes are removed from the facility;
iii. Federal agencies with responsibility for management of landfills on federal property shall make an environmental covenant or notation in the federal property records for the affected property. If the subject property is ever sold or transferred by the federal government, a notation on the deed or patent shall be made.

i. Post-Closure Care Plan. Owners and operators of a NMSWLF shall submit, in accordance with the time frames specified in Subsection 012.06, to the Department for review and approval a Post-Closure Care Plan, shall obtain Department approval of the Plan, and shall conduct post-closure care in accordance with the Plan. The Post-Closure Care Plan shall typically contain:

   i. The name and address of an agent authorized to accept communications or service during the post-closure period. The name may be changed during the post-closure period by providing the Department with twenty (20) days advance written notice of the change;

   ii. Provisions to maintain the integrity and effectiveness of the final cover;

   iii. Provisions to continue to maintain and operate the systems required in the operating plan including run-on/run-off control systems;

   iv. Provisions to maintain appropriate security of the closed facility;

   v. Provisions for routine facility inspections by the owner and operator to insure compliance with the Post-Closure Care Plan; and

   vi. A description of the planned use(s) of the property during the post-closure care period:

j. Post-closure care for the NMSWLF shall be conducted for a period of five (5) years, unless the Department establishes in writing an alternate facility-specific post-closure care period.

k. Post-Closure Standards and Inspection. Post-closure use or operation of the site shall not disturb any final cover or storm water control systems in a manner that will increase the potential to threaten human health or the environment.

l. The approved Post-Closure Care Plan shall be maintained and available for review on request by the Department.

013. APPLICABLE REQUIREMENTS FOR TIER III FACILITIES.
The owner and operator of a Tier III facility shall establish compliance with the requirements of Section 013 by obtaining Department approval of the applications required in Subsection 013.02 before beginning construction and Subsection 013.04 prior to accepting waste. The owner and operator of a Tier III facility shall meet the requirements of Subsection 012.07 prior to facility closure.

01. General Siting Requirements. The owner and operator of a Tier III facility shall comply with the following siting requirements:

a. Flood Plain Restriction. A facility shall not be located within a one hundred (100) year flood plain if the facility will restrict the flow of the one hundred (100) year flood, reduce the temporary water storage capacity of the flood plain, or result in a washout of solid waste so as to pose a hazard to human health and the environment.

b. Endangered or Threatened Species Restriction. The facility shall not cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife or result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in 50 CFR Part 17.

c. Surface Water Restriction. The active portion of a facility shall be located such that the facility shall not cause contamination of surface waters, unless such surface waters are an integral part of the non-municipal solid waste management facility's operation for storm water and/or leachate management.
d. Ground Water. The active portion of the facility shall be located, designed and constructed such that the facility shall not cause contamination to a drinking water source or cause contamination of ground water.

e. Geologic Restrictions. No facility may be located on land that would threaten the integrity of the design.

f. Property Line Restriction. The active portion of a facility shall not be located closer than one hundred (100) feet to the property line.

g. Park, Scenic or Natural Use Restriction. The active portion of a facility shall not be located closer than one thousand (1,000) feet from the boundary of any state or national park, or land reserved or withdrawn for scenic or natural use including, but not limited to, wild and scenic areas, national monuments, wilderness areas, historic sites, recreation areas, preserves and scenic trails.

h. Variance from Siting Requirement. Any facility that does not meet the siting requirements of Section 013 may apply for a variance from the Department. The Department may approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of public health and the environment as the siting requirements in Section 013.

02. Siting Application. Documentation shall be submitted to the Department demonstrating compliance with the siting requirements and restrictions specified in Subsection 013.01 within the time frames specified in Section 013. If the documentation has been certified by a qualified professional, the Director shall approve the siting application unless the Director finds the evidence supports a contrary opinion. A map indicating the following shall also be submitted to the Department as part of a Siting Application:

a. Highways, roads, and adjacent communities;

b. Property boundaries;

c. Total acreage of the site;

d. Off-site and on-site access roads and service roads;

e. Type(s) of land use adjacent to the facility and a description of all facilities on the site;

f. All water courses, ponds, lakes, reservoirs, canals, irrigation systems, and existing water supplies, within one-quarter (1/4) mile of the proposed facility property lines;

g. High tension power line rights-of-way, fuel transmission pipeline rights-of-way, and proposed and existing utilities;

h. Proposed or existing fencing;

i. Proposed and existing structures at the facility and within five hundred (500) feet of the facility boundary. This shall include location of employee buildings, and scales (if provided); and

j. Direction of prevailing winds.

03. General Operating Requirements. The owner and operator of a Tier III facility shall comply with the following operating requirements:

a. Prohibited Activities. The following activities are prohibited:

i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. “Regulated waste” and “decontaminated” for the purpose of Section 013 have the same meaning as defined at 29 CFR 1910.1030;
ii. Speculative accumulation, unless otherwise approved in an operating plan; and

iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended.

b. Signs. Facilities open to the general public shall clearly post visible and legible signs at each entrance to the facility specifying, at a minimum, the name of the facility, the hours of operation, the waste accepted at the facility and an emergency phone number.

c. Waste Types. Only the solid waste types listed in the approved operating plan may be accepted for disposal or processing.

d. Waste Monitoring and Measurement. Provisions shall be made for monitoring or measuring all solid waste delivered to a facility. The waste monitoring program shall include:

i. A daily written log listing the types and quantities of wastes received;

ii. A plan for monitoring and handling receipt of unauthorized wastes;

iii. Routine characterization of the wastes received; and

iv. Other measures included in an approved Operating Plan.

e. Communication. Communication devices shall be available or reasonably accessible at the site.

f. Fire Prevention and Control. Adequate provisions shall be made for controlling or managing fires at the site.

g. Facility Access. Unauthorized vehicles and persons shall be prohibited access to the facility. A facility open to the public shall accept waste only when an attendant is on duty. The facility shall be fenced or otherwise blocked to access when an attendant is not on duty.

h. Scavenging and Salvaging. Scavenging by the public at a facility is prohibited; however, salvaging may be conducted in accordance with a written operating plan and only by the owner, operator or an authorized agent.

i. Nuisance Control. The owner and operator shall control nuisances, including but not limited to:

ii. Disease or Discomfort. Operations at any facility shall not provide sustenance to rodents or insects that cause human disease or discomfort;

iii. Vector. Vector control procedures shall prevent or control vectors that may cause health hazards or nuisances;

iv. Odor. The facility shall be operated to control malodorous gases; and

iv. Litter. Effective measures shall be taken to minimize the loss of debris from the facility. Debris blown from or within the facility shall be collected and properly disposed to prevent objectionable accumulations.

j. Bird Hazards to Aircraft. No facility may handle putresible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used
by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft. ( )

k. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by Section 061. ( )

l. Storm Water Run-On/Run-Off Controls. The operating plan shall include sufficient storm water management provisions, which may incorporate a NPDES storm water pollution prevention plan, to prevent contamination of ground or surface water and prevent the spread and impact of contamination beyond the boundary of the facility. ( )

m. Variance Request. An owner and operator may submit to the Department a written variance request for a variance from the operating requirements listed in Section 013. The Department shall approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of human health and the environment as the requirements listed in Section 013. ( )

04. Operating Plan. The owner and operator of a Tier III facility shall submit to the Department an Operating Plan containing that information required by Subsection 013.03, within the time frames stated in Section 013. An Operating Plan shall include a description of the wastes to be accepted, the methods for maintaining compliance with each of the applicable general operating requirements of Subsection 013.03, and complies with any applicable facility specific requirements found in Subsections 013.11 through 013.13. ( )

05. Ground Water Monitoring Requirements. The owner and operator of a Tier III facility shall comply with the following ground water monitoring requirements:

a. Install and maintain ground water monitoring wells at the point of compliance as approved by the Department; ( )

b. Within thirty (30) days of completion of each well, submit a copy of the geologic log and record of well construction to the Department; ( )

c. Monitor the ground water quarterly, unless otherwise directed by the Department. Constituents to be monitored shall be those listed in 40 CFR Part 257.24 unless otherwise authorized by the Department; and ( )

d. The owner and operator of any facility required to monitor ground water pursuant to Section 013 shall continue the approved monitoring schedule for five (5) years following facility closure, unless otherwise approved by the Department upon request of the owner and operator for a modified monitoring schedule. ( )

06. Ground Water Monitoring Application. The following information shall be submitted to the Department in a Ground Water Monitoring Application:

a. A map showing soil types, depth to ground water, ground water flow direction and locations of proposed ground water monitoring wells; and ( )

b. A monitoring schedule indicating sample frequency and constituents to be analyzed. ( )

07. Closure Requirement. The owner and operator of a Tier III facility shall comply with the following closure requirements:

a. Public Notice. For a facility open to the public the owner and operator shall provide public notice of the facility’s closure by publishing a notice in the local newspaper and posting signs at the facility’s entrance. This notice shall be published and the signs posted;

i. At least thirty (30) days and no more than ninety (90) days prior to the date of last receipt of waste for a facility that has reached disposal capacity; or ( )

ii. If the facility has remaining capacity and there is a reasonable likelihood that the facility will
receive additional waste, a notice shall be published and signs posted at least thirty (30) days and no more than ninety (90) days prior to closure.

b. Facility Closure. Unless the Department establishes an alternate closure time period, the owner and operator shall close the facility within six (6) months of the Department’s approval of the Closure Plan. The facility shall be closed in accordance with the approved Closure Plan.

c. Clean Site/Access Control. The owner and operator shall close the facility by managing or removing all solid waste to prevent impact to human health or the environment and shall install a gate or other device to prevent public access after the last receipt of waste;

d. Drainage and Erosion Control. The owner and operator shall install appropriate measures to control erosion and install appropriate measures to control the run-on and runoff from a twenty-five (25) year, twenty-four (24) hour storm event and to provide for the diversion of other surface waters from the closed facility; and

e. Closure Plan Certification. Within thirty (30) days of closure, the owner and operator shall notify the department in writing that the facility was closed in accordance with the approved Closure Plan. If closure of the facility is different from the approved Closure Plan, the owner and operator shall submit for Department review and approval documents, such as “as-built” plans, showing the final conditions of the facility.

08. Closure Plan Application. The owner and operator of a Tier III facility shall submit to the Department a Closure Plan Application containing the information no later than ninety (90) days before the date on which the facility receives the known final receipt of wastes or, if the facility has remaining capacity and there is a reasonable likelihood that the facility will receive additional wastes, no later than one (1) year after the most recent receipt of wastes. The following information shall be submitted to the Department in a Closure Application:

a. A complete and accurate legal description of the facility;

b. A map of the facility, showing pertinent facility features, including:

i. Facility boundaries, drainage patterns, location of fill areas, and location of access control measures;

ii. All water courses, ponds, lakes, reservoirs, canals, irrigation systems, and existing water supplies, within one-quarter (1/4) mile of the facility boundary;

iii. Location of disposal trenches and description of waste disposed; and

iv. Proposed final contours of the closed facility, drawn to a reasonable scale with five (5) foot intervals for the operational area, and ten (10) foot intervals for the remainder of the facility;

c. Estimated date of last receipt of waste;

d. A description of how public access to the closed facility will be controlled;

e. Estimated total cubic yards, or tons, of waste in place;

f. Total acreage of the facility and acres containing waste;

g. Closure equipment and procedures to be used;

h. Texture, depth and permeability of final cover material;

i. Design and construction plan for any necessary final cover;

j. Placement, design, and management of run-on and run-off storm water controls;
k. Types of vegetation and planting procedures to be used for establishing vegetative cover; (        )
l. Details of any proposed changes to any existing groundwater monitoring system; (        )
m. Details of any proposed changes to any existing landfill gas control system; (        )
n. Details of any proposed changes to any existing leachate collection system; and (        )
o. Other closure information the Department determines is necessary to protect human health and the environment. (        )

09. Documentation Requirements. The owner and operator of a Tier III facility shall maintain on site each Department-approved application required by Section 013. (        )

10. Modification Application. The owner and operator shall submit to the Department a Modification Application describing the proposed modification no less than sixty (60) days prior to the proposed modification of the facility. The owner and operator of a Tier III facility shall not implement the modification prior to Department approval. If a proposed modification alters the classification of a facility, the owner and operator shall comply with the application content, review and approval requirements for the new classification. (        )

11. Tier III Processing Facilities. In addition to the requirements in Subsections 013.01 through 013.10, the owner and operator of a Tier III processing facility shall comply with the following requirements: (        )

a. Odor Management Plan. The owner and operator of a Tier III processing facility shall implement a Department approved Odor Management Plan designed to minimize malodorous gases. An Odor Management Plan shall include specific operating criteria for oxygen, moisture and temperature levels appropriate for the wastes to be processed and processing technologies to be employed; methods used to maintain the specific operating criteria and a monitoring strategy that includes the frequency and parameters for monitoring the specific operating criteria; (        )

b. Additional Requirements for PCS. Owners and operators of Tier III PCS processing facilities shall comply with the following applicable requirements: (        )
   i. Leachate collection and control system to prevent contamination of ground and surface waters; (        )
   ii. Liner designed to prevent ground and surface water contamination. The liner design shall account for the types of wastes handled and the potential for migration of liquids and gaseous contaminants to ground water; and (        )
   iii. Air emission control system to prevent discharges of air pollutants. (        )
   iv. An owner and operator of a PCS processing facility may submit a written request for a variance from the leachate control and liner requirements. The owner and operator must demonstrate that the variance is at least as protective of surface and ground water as the leachate collection system and liner. (        )

c. Design Application. The following information shall be submitted to the Department in a Design Application: (        )
   i. Building and construction design blueprints; (        )
   ii. A map illustrating a storm water run-on/run-off system designed to prevent contamination of ground or surface water or prevent contamination beyond the boundary of the facility; (        )
   iii. Operational design and capacity information including a description of the waste types and projected daily and annual waste volumes; and (        )
   iv. Design and Construction Requirements. The owner and operator of a Tier III PCS processing
facility shall submit for Department review and approval the following information as part of the Design Application:

(1) A hydrogeologic evaluation, including the potential for migration of contamination to ground or surface water; ( )

(2) A detailed description of treatment methods to be used; ( )

(3) Design plans for a leachate collection and control system to prevent ground and surface water contamination from the leachate control system; ( )

(4) Design plans for an air emissions control system to prevent discharges of air pollutants; and ( )

(5) Design plans for a liner designed to prevent ground or surface water contamination. The liner design shall account for the types of wastes handled and the potential for migration of liquid and gaseous contaminants to ground water. ( )

d. Operating Plan. The owner and operator of a PCS processing facility shall submit for Department review and approval the following information as part of the Subsection 013.04, Operating Plan:

i. A sampling plan that describes the methods and frequency that the owner and operator will use to sample and analyze the wastes when received, during processing, and on final testing of processed material; and ( )

ii. A description of how the owner and operator will maintain and operate the liner, leachate collection and control system, and air emission control system consistent with the approved design application. ( )

e. Documentation Requirement. The owner and operator of a processing facility shall maintain documentation of compliance with Section 013, including an operational log of the methods used to maintain the operating criteria and sampling results. ( )

12. Tier III Incinerators. In addition to the requirements in Subsections 013.01 through 013.04 and Subsections 013.09 and 013.10, the owner and operator of a Tier III incinerator shall comply with the following requirements:

a. Design Requirements. The owner and operator of an incinerator comply with the following design requirements:

i. A tipping floor constructed of impermeable and durable material and designed to contain, collect, and convey any liquids to a storage or leachate management system. ( )

ii. A storage or leachate management system. ( )

b. Design Application. The following information shall be submitted to the Department in a Design Application:

i. A description of the tipping floor design; ( )

ii. A description of the storage or leachate management system design; ( )

iii. Building and construction design blueprints; ( )

iv. A map illustrating a storm water run-on/run-off system designed to prevent ground or surface water contamination, or contamination from the facility beyond the boundary of the facility; ( )

v. Operational design and capacity information including a description of the waste types and
projected daily and annual waste volumes; and

vi. Any facility specific design elements required by these rules.

c. Operating Requirements. The owner and operator of an incinerator shall comply with the following operating requirements:

i. Maintain and operate the tipping floor to control odors, insects, and rodents;

ii. Implement cleaning procedures and waste residency times used to maintain sanitary conditions on the surface of the tipping floor; and

iii. Implement a storage or leachate management system operation.

d. If it is determined that the tipping floor or leachate management system integrity has been breached, or waste has been handled or stored outside of the containment of the tipping floor, unless allowed in the facility Operating Plan, the owner and operator of the Tier III incinerator shall comply with Subsections 013.05 through 013.08.

13. Tier III NMSWLFs. In addition to the requirements in Subsection 013.01 through 013.10, the owner and operator of a Tier III NMSWLF shall comply with the following requirements:

a. Siting Requirements: A facility shall not be located in wetlands, except as provided in 40 CFR 257.9;

b. Siting Application. The owner and operator shall include in the Siting Application documentation demonstrating compliance with the requirement specified in Subsection 013.13.a.;

c. Design and Construction Requirements: The owner and operator of a NMSWLF shall comply with the following design and construction requirements:

i. Leachate Collection and Control System. A leachate collection and control system shall be constructed to prevent ground and surface water contamination;

ii. Liner. A liner designed to prevent ground or surface water contamination shall be installed. The liner design shall account for the types of wastes handled and the potential for migration of liquid and gaseous contamination to ground or surface water;

iii. Landfill Emission Control System. Appropriate toxic and flammable gas monitoring devices shall be installed where the location, geophysical condition, and waste characteristics indicate that there is a reasonable probability that the facility will generate toxic and flammable gas: exceeding twenty-five (25) percent of the lower explosive limit for gases in facility structures (excluding gas control or gas recovery system components); exceeding the lower explosive limit at the property boundary; or otherwise presenting a potential threat to public health or the environment; and

iv. An owner or operator may submit a written request for a variance from the leachate collection and control system, liner, or emission control system requirements. The Department may approve the variance upon demonstration by the owner or operator that the variance is at least as protective of human health and the environment as the leachate collection and control system, liner, or emission control system.

d. Design Application. The following information shall be submitted to the Department in a Design Application:

i. Design plans shall address the need for and include as required a leachate collection and control system, liner, and emission control systems in Subsection 013.13.c.;

ii. A facility map illustrating:
(1) Surface water and erosion control systems; ( )

(2) Proposed fill area, including the location of waste disposal trenches or cells, noting the locations of trenches used for separated wastes such as animal carcasses, tree trunks, stumps, bulky wastes, car bodies, asbestos, and petroleum contaminated soils; ( )

(3) Location of borrow areas; ( )

(4) Design elevation grade of final cover; ( )

(5) Soil and water table test boring holes, wells, or excavations; ( )

(6) Proposed receiving, storage, and processing areas; ( )

(7) Proposed trench layout and development; and ( )

(8) Contour lines at five (5) foot intervals within the operating area and ten (10) foot intervals to the facility boundary. ( )

(9) Building and construction design blueprints; ( )

(10) Operational design and capacity information including a description of the waste types and projected daily and annual waste volumes; and ( )

e. Operating Requirements: The owner and operator of a NMSWLF shall comply with the following operating requirements:

   i. Compaction and placement of waste in locations consistent with the approved operations plan; ( )

   ii. Provision for storage of waste during periods when the NMSWLF is inaccessible; ( )

   iii. Application of a six (6) inch compacted soil cover layer on exposed waste as necessary to prevent nuisance and vector conditions at periods consistent with the approved operations plan. An owner and operator may request that the Department approve an alternate cover that addresses vectors, litter, fire, odor, and scavenging concerns; ( )

   iv. Placement of an interim cover layer of twelve (12) inches of compacted soil between lifts to provide erosion control and structural stability. An owner and operator may request that the Department approve an alternate interim cover that addresses erosion, and stability for subsequent lifts; ( )

   v. Maintenance and operation of a leachate collection and control system and air emission control system consistent with the approved design application; and ( )

   vi. Preservation of existing vegetation where attainable. ( )

f. Operating Plan. The operating plan required in Section 013 shall identify the methods used for maintaining compliance with each applicable operating requirement of Subsection 013.03. and Subsection 013.13.e. including but not limited to the type, the method of compaction and the frequency of application of respective cover materials; ( )

g. Closure Requirements. The owner and operator of a NMSWLF shall comply with the following closure requirements:

   i. Final Cover. Within seven (7) days of the date of last receipt of waste, a cover layer shall be applied to prevent nuisances and vector conditions. Within one hundred and twenty (120) days of the date of last receipt of
waste, a final cover layer of eighteen (18) inches of compacted soil with an approved in-place permeability designed to minimize infiltration, or its functional equivalent, and, a six (6) inch soil layer that minimizes erosion and sustains plant growth shall be constructed;

ii. Facility Stabilization. All disturbed portions of the facility shall be stabilized. Stabilization practices may include but are not limited to: establishment of vegetation, mulching, geotextiles, and sod stabilization;

iii. Slope Stability. Finished grade shall be at a minimum of two percent (2%) and a maximum of thirty-three percent (33%) slope on the final surface of the completed fill area, after settlement; and

iv. Drainage Control. The completed landfill shall be graded to prevent surface water ponding and erosion, and to conform to the local topography.

h. Environmental Covenants:

i. After completion and certification of closure of a NMSWLF, the owner and operator shall record an environmental covenant, pursuant to the Uniformed Environmental Covenants Act (UECA) Chapter 30, Title 55, Idaho Code, on the property where the landfill facility is located and its future use may be restricted in accordance with a post-closure care plan. A copy of the environmental covenant will be sent to the Department after recording with the county clerk.

ii. The owner may request permission from the Department to remove the environmental covenant if all wastes are removed from the facility.

iii. Federal agencies with responsibility for management of landfills on federal property shall make an environmental covenant or notation in the federal property records for the affected property. If the subject property is ever sold or transferred by the federal government, a notation on the deed or patent shall be made.

i. Closure Plan. The owner and operator shall provide in the Closure Plan documentation that demonstrates compliance with closure requirements specified in Subsections 013.07 and 013.13.g.

j. Post-Closure Care Plan. Owners and operators of a NMSWLF shall submit, in accordance with the time frames specified in Subsection 013.08, to the Department for review and approval a Post-Closure Care Plan, shall obtain Department approval of the Plan, and shall conduct post-closure care in accordance with the Plan:

i. Unless the Department determines otherwise, the Post-Closure Care Plan shall contain:

   (1) The name and address of an agent authorized to accept communications or service during the post-closure period. The name may be changed during the post-closure period by providing the Department with twenty (20) days advance written notice of the change;

   (2) Provisions to maintain the integrity and effectiveness of the final cover;

   (3) Provisions to continue to maintain and operate the systems required in the operating plan, including: run-on/run-off control systems, leachate collection and control systems, groundwater monitoring systems, and gas monitoring systems;

   (4) Provisions to maintain appropriate security of the closed facility;

   (5) Provisions for routine facility inspections by the owner and operator to insure compliance with the Post-Closure Care Plan; and

   (6) A description of the planned use(s) of the property during the post-closure care period.

ii. Post-closure care for the NMSWLF shall be conducted for a minimum of five (5) years, but not
more than thirty (30) years, as necessary to protect human health and the environment.

iii. Post-Closure Standards and Inspection. Post-closure use or operation of the site shall not disturb any final cover, liner or other component of the containment system in a manner that will increase the potential to threaten human health or the environment.

iv. The approved Post-Closure Care Plan shall be maintained and available for review on request by the Department.

v. The requirements in Subsection 013.07 shall apply to owners and operators and their successors and assigns.

014. -- 031. (RESERVED)

032. TIER II AND TIER III APPLICATION AND PLAN REVIEW AND APPROVAL.

01. Application Submittal. The owner and operator shall submit three (3) copies of each required application to the Department. The owner and operator may submit applications for siting, design, operation, or ground water monitoring approval sequentially or concurrently.

02. Preapplication Conference. The owner or operator may request that the Department convene a preapplication conference with any interested federal, state and local entities to discuss the approval procedures, application content, time tables for application processing, siting and design requirements.

03. Application Review.

a. On receipt of an application the Department shall, within thirty (30) days, notify the owner and operator in writing whether the submission is complete and whether the application identifies an appropriate Tier level. The notice shall identify any deficiencies in the application, and the information relied upon in making the determination, and shall state that an applicant may submit additional information in the form of an amended application, withdraw the application or request a conference to discuss the Department’s determination.

b. Upon receipt of the Department’s determination that a siting application is complete, the owner and operator shall publish a notice in a newspaper of general circulation as determined in Section 31-819, Idaho Code, in the county and the immediate vicinity of the proposed facility and shall also provide notice to local government. The notice shall include the name and location of the proposed facility, a general description of the proposed operations, the location where the application may be reviewed, and instructions directing the public to submit comments to the Department within thirty (30) days of the date of publication. The owner and operator shall provide a copy of the published notice and notice to local government to the Department within five (5) business days of publication.

c. The Department shall approve, deny, or approve with conditions each application. Failure to issue a decision within the stated time shall be deemed approval. Approval conditions shall relate to protection of human health and the environment as required in these rules.

i. For a siting application, the Department shall notify the owner and operator in writing of the Department’s decision within thirty (30) days of the date of the close of the public comment period. The Department and the owner and operator may agree, in writing to a longer period of time for the Department’s determination. Design, Operating and Ground Water Monitoring Applications shall not be reviewed until the Siting Application is approved.

ii. For the Design, Operating and Ground Water Monitoring applications, the Department shall notify the owner and operator in writing of the Department’s decision within sixty (60) days from the date the application is determined to be complete.

d. If the Department denies an application, the written decision shall state the basis for the denial, and the information relied upon in making the determination.
04. **Application Valid for Two Years.** Unless otherwise stated in the Department's approval of the facility's application, the Department's approval shall become invalid if the owner and operator fail to begin construction within two (2) years from the date of approval, or if after construction has begun, work is suspended for more than two (2) years. Owners and operators may apply for an extension provided that the written request is received by the Department no less than one (1) month prior to expiration of the approval. Within fifteen (15) days from Department receipt of extension request, the Department shall approve the extension request or deny the extension request and state the basis for denial. ( )

033. -- 059. (RESERVED)

060. **VIOLATIONS.**

01. **Failure to Comply.** Failure by any person to comply with the provisions of these rules shall be deemed a violation of these rules. ( )

02. **Falsification of Statements and Records.** It shall be a violation of these rules for any person to knowingly make a false statement, representation, or certification in any application, document, or record developed, maintained, or submitted pursuant to these rules or the conditions of an approval. ( )

03. **Penalties.** Any person violating any provision of these rules or any approved conditions or order issued thereunder shall be liable for civil penalty in accordance with Title 39, Chapter 1, Idaho Code. ( )

061. **OPEN BURNING AND FIRES.**
Open burning is prohibited at facilities except as authorized by IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho,” and the following:

01. **No Open Burning During an Air Pollution Episode.** No open burning may be conducted during an air pollution episode, declared in accordance with IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho”; ( )

02. **Conditions Under Which Open Burning Authorized.** Open burning is authorized only if it is infrequent and the materials are agricultural wastes, silviculture wastes, land clearing debris, diseased trees, or debris from emergency cleanup operations. Materials burned may not include garbage, dead animals, asphalt, petroleum products, paints, tires or other rubber products, plastics, paper (other than that necessary to start the fire), cardboard, treated wood, construction debris, metal, pathogenic wastes, hazardous wastes, or any other substance (other than natural vegetation) that when burned releases toxic emissions, dense smoke or strong odors; and ( )

03. **Contact Department and Local Fire Authority Prior to Conducting Open Burning.** Open burning may be conducted pursuant to conditions set forth by the Department or local fire authority. The owner and operator of the facility must contact the Department and the local fire authority prior to conducting open burning to report its nature and location. ( )

062. -- 993. (RESERVED)

994. **COMMERCIAL SOLID WASTE SITING LICENSE FEE.**
An application for a commercial solid waste siting license required by the Idaho Solid Waste Facilities Act shall be accompanied by a siting license fee in an amount established by these rules. The license fee shall not exceed seven thousand five hundred dollars ($7,500) and shall be submitted with the siting license application. ( )

01. **Commercial Solid Waste Siting License Fee Criteria.** The commercial solid waste siting license fee required by the Idaho Solid Waste Facilities Act and these rules shall apply to commercial MSWLFs only and shall be based on the cost of the Department's review and the characteristics of the proposed commercial solid waste facility, including the projected site size, projected waste volume, and the hydrogeological and atmospheric characteristics surrounding the site. ( )

02. **Commercial Solid Waste Siting License Fee Scale.** The commercial solid waste siting license fee
required by the Idaho Solid Waste Facilities Act and these rules shall be determined using the table below. The fee determined using the table below may then be adjusted by the Department if necessary to reflect the cost of the Department's review, taking into account the hydrogeological and atmospheric characteristics surrounding the site.

<table>
<thead>
<tr>
<th>Site Size</th>
<th>Up to 20 TPD</th>
<th>20 to 100 TPD</th>
<th>More than 100 TPD</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 acres or less</td>
<td>$3,500</td>
<td>$4,500</td>
<td>$5,500</td>
</tr>
<tr>
<td>5 to 50 acres</td>
<td>$4,500</td>
<td>$5,500</td>
<td>$6,500</td>
</tr>
<tr>
<td>more than 50 acres</td>
<td>$5,500</td>
<td>$6,500</td>
<td>$7,500</td>
</tr>
</tbody>
</table>

03. **Notification of Adjustment of Fee.** Within thirty (30) days of receipt of the application and fee, the Department shall notify the applicant if the fee has been adjusted and the date by which any additional fee must be paid by the applicant.

04. **Expansion or Enlargement of a Commercial Solid Waste Facility.** The expansion or enlargement of a commercial solid waste facility constitutes a new proposal for which a commercial solid waste siting license is required and for which a siting license fee must be paid. All commercial solid waste facilities not in operation on March 20, 1996 must submit a commercial solid waste license application and fee.

05. **Commercial Solid Waste Siting License Fee Not Refundable.** The commercial solid waste siting license fee required by the Idaho Solid Waste Facilities Act and by these rules shall not be refundable and may not be applied toward any subsequent application should the commercial solid waste siting license application be canceled, withdrawn or denied.

995. **COMMERCIAL SOLID WASTE SITING LICENSE APPLICATION.**
In addition to the contents of a Siting License Application as required in the Idaho Solid Waste Facilities Act, these rules require the applicant to include in the application the following items:

01. **Location.** A map indicating the location of the proposed commercial solid waste facility;

02. **Copies of Application.** Ten (10) copies of the completed application; and

03. **Application Format.** A copy of the application in a format prepared for photocopying.

996. -- 998. (RESERVED)

999. **CONFIDENTIALITY OF RECORDS.**
Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 1, Title 74, Idaho Code. Information submitted under a trade secret claim may be entitled to confidential treatment by the Department as provided in Section 74-114, Idaho Code, and IDAPA 58.01.21, “Rules Governing the Protection and Disclosure of Records in the Possession of the Department of Environmental Quality.”
Overview of Rulemaking

This omnibus proposed rulemaking includes 1) the temporary fee rules adopted by the Board in February 2020, and 2) revisions to several fee rule chapters. Revisions to IDAPA 58.01.12 are described below.

IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans

Revisions Negotiated Under Docket No. 58-0112-1901:

These revisions are proposed in response to Executive Order No. 2019-02, Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program, and merge necessary and relevant sections of IDAPA 58.01.20 with IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans. DEQ has initiated a separate rulemaking for the deletion of IDAPA 58.01.20 (Docket No. 58-0120-1901).

The consolidated proposed rule chapter is IDAPA 58.01.12, Rules for Administration of Wastewater and Drinking Water Loan Funds.

The negotiated rulemaking record is available at deq.idaho.gov/58-0112-1901.

Costs To the Agency and Regulated Community: See Fiscal Impact section of Notice of Omnibus Rulemaking – Proposed Rulemaking.
000. LEGAL AUTHORITY.
The Idaho Board of Environmental Quality, pursuant to authority granted in Chapters 1, 36, and 76, Title 39, Idaho Code, did adopt the following rules for the administration of the Wastewater and Drinking Water Loan Funds. ( )

001. TITLE AND SCOPE.
01. Title. These rules are titled IDAPA 58.01.12, “Rules for Administration of Wastewater and Drinking Water Loan Funds.” ( )

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering two (2) state loan programs for providing financial assistance to eligible applicants of wastewater and drinking water projects. The U.S. Environmental Protection Agency provides annual capitalization grants to the state of Idaho for these programs. 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.) and the Safe Drinking Water Act (42 U.S.C. Section 300j et seq.). ( )

002. (RESERVED)

003. ADMINISTRATIVE APPEALS. 
Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” ( )

004. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.
01. Incorporation by Reference. These rules do not contain documents incorporated by reference. ( )


005. CONFIDENTIALITY.
Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 1, Title 74, Idaho Code, and IDAPA 58.01.21, “Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality.” ( )

006. POLICY.
It is the policy of the Idaho Board of Environmental Quality through the Idaho Department of Environmental Quality, to administer the Wastewater Loan Fund for the purpose of protecting and enhancing the quality and value of the water resources of the state of Idaho by financially assisting in the prevention, control and abatement of water pollution and the Drinking Water Loan Fund for the purpose of providing assistance to eligible public drinking water systems for the planning, design, and construction of facilities to ensure safe and adequate drinking water. It is also the intent of the Idaho Board of Environmental Quality to assign a priority rating to those projects that will most significantly improve the quality of the waters of the state and most adequately protect the public health. ( )

007. DEFINITIONS.
For the purpose of the rules contained in this chapter, the following definitions apply: ( )

01. Applicant.
  a. When used in the context of wastewater loan fund, applicant is defined as a municipality or nonpoint source project sponsor that has the ability to establish and maintain a loan repayment source. Individuals and for-profit corporations are not eligible. ( )
  b. When used in the context of drinking water loan fund, applicant is defined as any eligible system making application for drinking water loan funds. ( )

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.

03. **Board.** The Idaho Board of Environmental Quality.

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.

05. **Close or Closing.** The date on which the loan recipient issues and physically delivers to the Department the bond or note evidencing the loan to the loan recipient, specifically determining the principal, interest and fee amounts that shall be repaid and the schedule for payment.

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.

07. **Community Water System.** A public drinking water system that:
   a. Serves at least fifteen (15) service connections used by year round residents of the area served by the system; or
   b. Regularly serves at least twenty-five (25) year-round residents.

08. **Construction.** The erection, building, acquisition, alteration, reconstruction, improvement or extension of wastewater treatment or drinking water facilities, including preliminary planning to determine the economic and engineering feasibility, 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 or drinking water facilities; the inspection and supervision of the construction; and start-up of the associated facilities.

09. **Contaminant.** Any physical, chemical, biological, or radiological substance or matter in water.

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

11. **Director.** The Director of the Idaho Department of Environmental Quality or his/her designee.

12. **Disadvantaged Community.** The service area of a wastewater treatment facility or a public water system that meets affordability criteria established by the Department of Environmental Quality after public review and comment.

13. **Disadvantaged Loans.** Loans made to a disadvantaged community.

14. **Distribution System.** Any combination of pipes, tanks, pumps, and other equipment that delivers water from the source(s), 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.

15. **Eligible Costs.** Costs which are necessary for planning, designing and/or constructing drinking water or 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.

16. **Environmental Impact Statement (EIS).** A document prepared by the applicant 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 Handbooks may be used as
guidance when preparing the EIS.

17. **Environmental Information Document (EID)**. Any written environmental assessment prepared by the applicant describing the environmental impacts of a proposed wastewater or drinking water 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.


19. **Finding of No Significant Impact (FONSI)**. A document prepared by the Department 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.

20. **Handbook(s)**. The “Clean Water State Revolving Fund Handbook” and/or the “Drinking Water Loan Account Handbook.”

21. **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.

22. **Ineligible Costs**. Costs which are not eligible for funding pursuant to these rules.

23. **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.

24. **Loan Recipient**. An applicant who has been awarded a loan.

25. **Managerial Capability**. The capability of the loan applicant to support the proper financial and technical operation of the system.

26. **Maximum Contaminant Level (MCL)**. The maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

27. **Noncommunity Water System**. A public water system that is not a community water system.

28. **Nondomestic Wastewater**. Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin.

29. **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.

30. **Nonpoint Source Project Sponsor**. Any applicant for wastewater loan funds to address nonpoint source pollution.

31. **Operation and Maintenance Manual**. For wastewater or drinking water facilities, a guidance and training manual outlining the optimum operation and maintenance of the facilities and their 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.

32. **Planning Document**. A document which describes the condition of a public wastewater or 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.
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 Handbooks.

33. **Plan of Operation.** A schedule of specific actions and completion dates for construction, start-up and operation of the facility or for implementation of wastewater or drinking water projects.

34. **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.

35. **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.

36. **Priority List.** An integrated list of proposed wastewater treatment facility and nonpoint source pollution control projects rated as described in Section 020; or 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 300j et seq.), population affected, and need on a household basis for protection of Idaho's public drinking water.

37. **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.”

38. **Readiness to Proceed.** The progress which a loan applicant has made towards completion of time-consuming tasks necessary to complete a loan application (e.g. bond election, local improvement district formation, judicial confirmation towards debt authority, completion of facility plan).

39. **Reserve Capacity.** That portion of the facility that is designed and incorporated in the constructed facilities to handle future demand upon the system.

40. **Sewer Use Ordinance/Sewer Use Resolution.** An ordinance or resolution that 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.

41. **State.** The state of Idaho.

42. **Supplemental Grants.** A state funded grant awarded in conjunction with a loan from the water pollution control loan account.

43. **Suspension.** An action by the Director to suspend a loan contract prior to project completion for a specified cause. Suspended contracts may be reinstated.

44. **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.
45. **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. ( )

46. **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. ( )

47. **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. ( )

48. **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. ( )

49. **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. ( )

50. **Water System Protection Ordinance.** An ordinance adopted pursuant to Chapter 32, Title 42, Idaho Code, or other applicable law that 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 that provides for fees for service from users or classes of users. ( )

008. **ELIGIBLE SYSTEMS.**

01. **Basic Drinking Water Considerations.** Public and private community water systems and nonprofit noncommunity water systems. ( )

02. **Basic Wastewater Considerations.** Municipal or non-profit owned wastewater point source treatment facilities, lagoons, reuse facilities, and systems using nonpoint source methodologies of wastewater disposal. ( )

03. **Assistance to Ensure Compliance.** Public water systems not eligible for project loans may receive assistance if:

   a. The use of the assistance will ensure compliance; ( )

   b. The owner or operator of the system agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures); ( )

   c. The Department determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with state and federal drinking water requirements over the long term; and ( )

   d. Prior to providing assistance under this section to a public water system that is in significant noncompliance with any requirement of IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems,” and the Safe Drinking Water Act (42 U.S.C. Section 300j et seq.), the Department conducts a review to determine whether this section applies to the system. ( )
009. INELIGIBLE SYSTEMS.

01. Basic Considerations. Systems not eligible for project loans are described in Subsection 009.02.

02. Systems Not Eligible. The following systems will not be considered eligible for project loans:

a. Wastewater systems that are owned by individuals or for-profits;

b. Drinking water systems in significant noncompliance with any requirement of IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems,” and the Safe Drinking Water Act (42 U.S.C. Section 300j et seq.);

c. Drinking water systems under disapproval designation as outlined in IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems”; or

d. Systems delinquent in payment of fines, state revolving fund loans, penalties, or fee assessments due to DEQ.

010. FINANCIAL AND MANAGEMENT CAPABILITY ANALYSIS.

No loans shall be awarded for projects unless the applicant has demonstrated and certified that it has the legal, technical, managerial, and financial capabilities as provided for in these rules to ensure construction, operation and maintenance, and to repay principal and interest which would be due on a loan.

01. Information Needed. Before an application will be considered complete, the applicant must submit all necessary information on a form prescribed by the Department along with substantiating documentation. The information may include, but not be limited to, demographic information of the applicant, estimated construction or implementation costs, annual operating costs, and information regarding the financing of the project, including the legal debt limit of the applicant and the existence and amount of any outstanding bonds or other indebtedness which may affect the project.

02. Incorporated Nonprofit Applicants.

a. In addition to all other information required to be submitted by these rules, an incorporated nonprofit applicant must demonstrate to the satisfaction of the Department by its articles of incorporation and/or bylaws, that:

i. The corporation is nonprofit and lawfully incorporated pursuant to Chapter 3, Title 30, Idaho Code;

ii. The corporation is authorized to incur indebtedness to construct, improve or repair wastewater or drinking water facilities and/or implement water pollution control nonpoint source projects;

iii. The corporation is authorized to secure indebtedness by pledging corporation assets, including any revenues raised through a user charge system;

iv. The corporation exists either perpetually or for a period long enough to repay a project loan; and

v. The corporation is capable of raising revenues sufficient to repay a loan.

b. The Department may impose conditions on the making of a facility loan or water pollution control nonpoint source project to an incorporated nonprofit applicant which are necessary to carry out the provisions of these rules and the provisions of Chapter 36 or 76, Title 39, Idaho Code.

03. Cost Allocation. An applicant proposing a wastewater, drinking water or nonpoint source project
designed to serve two (2) or more entities must show how the costs will be allocated among the participating entities. Such applicants must provide an executed intermunicipal service agreement which, at a minimum, incorporates the following information:

a. The basis upon which the costs are allocated; ( )
b. The formula by which the costs are allocated; and ( )
c. The manner in which the cost allocation system will be implemented. ( )

04. Waivers. The requirement in Section 010 may be waived by the Department if the applicant can demonstrate:

a. Such an agreement is already in place; ( )
b. There is documentation of a service relationship in the absence of a formal agreement; or ( )
c. An applicant exhibits sufficient financial strength to continue the project if one (1) or more of the applicants fails to participate. ( )

011. -- 019. (RESERVED)

020. PRIORITY RATING SYSTEM.
Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Limited loan funds are awarded to projects based on priority ratings and readiness to proceed. Projects are rated by the Department on a standard priority rating form using public health, sustainability, the condition of the existing system and water quality criteria. ( )

01. Purpose. A priority rating system shall be utilized by the Department to annually allot available funds to wastewater and drinking water projects determined eligible for funding assistance under these rules. ( )

02. Wastewater Priority Rating. The priority rating system shall be based on a numerical point system. Priority criteria shall contain the following points:

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. ( )
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. ( )
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. ( )
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. ( )
e. Preventing impacts to uses (nonpoint source pollution projects) -- up to one hundred (100) points. ( )
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. ( )
g. Affordability (current system user charges exceed state affordability guidelines) -- ten (10) points. ( )

03. Drinking Water Priority Rating. The priority rating system shall be based on a numerical points system. Priority criteria shall contain the following points.

a. Public Health Hazard. Any condition that 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:

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 contaminants); ( )

ii. Documented unresolved violations of pressure requirements; ( )

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

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

v. Documented unregulated contaminants that have been shown by EPA to be a risk to public health. ( )

b. General Conditions of Existing Facilities. Points shall be given based on deficiencies, which would not constitute a public health hazard, for pumping, treating, and delivering drinking water - up to sixty (60) points.

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. 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. ( )

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

04. Rating Forms. Rating criteria for Section 020 set forth in rating forms that are available in the Handbooks. ( )

05. Priority List. A list shall be developed from projects rated according to Section 020, submitted for public review and comment, and submitted to the Board for approval.

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. ( )

b. Project Bypass. A project that does not or will not meet the 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 eligible applicant that is bypassed will be notified in writing of the reasons for being bypassed.

06. Amendment of a Priority List. The Director may amend a 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:

01. Qualifying for a Disadvantaged Loan. In order to qualify for a disadvantaged loan, a loan applicant must have a residential user rate for either drinking water or wastewater services that exceed two percent (2%) of the applicant community’s median household income or, if the user rate is between one and one-half percent (1½%) and two percent (2%) of the applicant community’s median household income, the community must also have: unemployment that exceeds the state average; and a decreasing population. 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. For wastewater loan funding, the length of the repayment period is set at the borrower’s discretion, up to the maximum repayment period of thirty (30) years. For drinking water loan funding, extensions of repayment term to thirty (30) years are only allowed for disadvantaged applicants. Consistent with achieving user rates as per the criteria set forth in Section 021, 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 equaling the criteria set forth in Section 021. 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 the criteria set forth in Section 021, then the principal that causes the user charge to exceed the criteria set forth in Section 021 may be partially forgiven or reduced. The principal reduction cannot exceed fifty percent (50%) of the total loan, unless the user rate will exceed $100 per month (in which case the principal reduction may exceed fifty percent (50%). 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 the criteria set forth in Section 021.

022. 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 loan recipients in the following manner:

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


a. 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:

i. An annual 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 loan recipient’s service area is not within the boundaries of
a municipality, the 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

ii. The annual user rate includes all operating, maintenance, replacement and debt service costs, both
for the existing system and for upgrades.

b. If a loan recipient meets the requirement of Section 022, a supplemental grant may be made for the
amount of the project that causes the annual 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.

023. -- 029. (RESERVED)

030. PROJECT SCOPE AND FUNDING.
Loan funds awarded under this program may be used to prepare a facility planning document which identifies the cost
effective and environmentally sound alternative to achieve or maintain compliance with IDAPA 58.01.08, “Idaho
Rules for Public Drinking Water Systems,” the Safe Drinking Water Act, 42 U.S.C., Sections 300j et seq., 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:

a. Consistent with and implements the Idaho Nonpoint Source Management Plan.

b. Data is used to substantiate a nonpoint source pollutant problem or issue exists and is described or
directly referenced.

c. Completed project implementation plan or work plan.

d. Project commitment documentation through demonstrated ability for loan repayment.

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).

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.

g. The project demonstrates nexus/benefit to municipality through a letter of support from one (1) or
more affected municipalities.

02. Facility Funding. Projects may be funded in steps:

a. Step 1. Planning document prepared in accordance with the Handbook.

b. Step 2. Design which includes the preparation of the detailed engineering plans and specifications
necessary for the bidding and construction of the project.

c. Step 3. Construction, which includes bidding and actual construction of the project.


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.
f. Cost Effective Requirement. 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 planning document and approved by the Department. If the planning document has not been completed pursuant to IDAPA 58.01.22, “Rules for Administration of Planning Grants for Drinking Water and Wastewater Facilities,” 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.

g. Funding for Wastewater 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.

h. Funding for Drinking Water 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.

031. LIMITATION OF PRELOAN ENGINEERING REVIEWS. Preloan 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 Section 050.

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 loan efforts. The loan fee shall not exceed one percent (1%) of the unpaid balance of the loan at the time each loan payment is due.

02. Effect on Loan Interest Rate. The loan interest rate, as described in Section 050, will be reduced by the corresponding percentage of the loan fee.

03. Payment of Loan Fee. The loan fee shall be due and payable concurrently with scheduled loan principal and interest repayments over the repayment period.

033. -- 039. (RESERVED)

040. LOAN APPLICATION AND REVIEW.

01. Submission of Application. Those eligible systems that received high priority ranking and are ready to proceed 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.

02. Application Requirements. Applications shall contain the following documentation, as applicable:

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;

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;
c. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum:

i. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors;

ii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and

iii. Be covered by professional liability insurance in accordance with Section 050 of these rules. A certification of liability insurance shall be included in the application;

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;

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;

f. Step 1 -- Scope of work describing the work tasks to be performed in the preparation of the planning document if required in accordance with Section 030, a schedule for completion of the work tasks and an estimate of staff hours and costs to complete the work tasks;

g. Step 2 -- Design, or Step 4 -- Design and Construction:

i. Planning document, including a final environmental document and decision in accordance with Section 042;

ii. Financial and management capability analysis as provided in Section 010; and

iii. Intermunicipal service agreements between all entities within the scope of the project, if applicable;

h. Step 3 -- Construction:

i. Documented evidence of all necessary easements and land acquisition;

ii. Biddable plans and specifications of the approved wastewater treatment facility alternative;

iii. A plan of operation and project schedule;

iv. A user charge system, sewer use or water system protection ordinance and financial management system; and

v. A staffing plan and budget;

i. Step 4 -- Design and Construction. Loan applicants must submit all documentation specified in Section 040 prior to advertising for bids on construction contracts;

j. Nonpoint Source Implementation Funding:

i. Information demonstrating that the project is consistent with and implements the Idaho Nonpoint Source Management Plan;
041. **DETERMINATION OF ELIGIBILITY OF COSTS.**
The Department will review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding.

01. **Eligible Costs.** Eligible costs are those determined by the Department to be:
   a. Necessary costs;
   b. Reasonable costs; and
   c. Costs that are not ineligible as described in Section 041.

02. **Necessary Costs.** The Department will 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 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.

03. **Reasonable Costs.** Costs will 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.

04. **Examples of Costs That May Be Eligible.** Examples of costs that may be eligible, if determined necessary, reasonable and not ineligible costs include:
   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, commission members, board members, or managers;
   b. Costs under construction contracts bid and executed in compliance with state public works
construction laws;

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;

d. Planning directly related to the projects;

e. System evaluations;

f. Financial and management capability analysis;

g. Preparation of construction drawings, specifications, estimates, and construction contract documents;

h. Landscaping;

i. Removal and relocation or replacement of utilities for which the applicant is legally obligated to pay;

j. Material acquired, consumed, or expended specifically for the project;

k. A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations;

l. Preparation of an operation and maintenance manual;

m. Preparation of a plan of operation;

n. Start-up services;

o. Project identification signs;

p. Public participation for alternative selection;

q. Development of user charge and financial management systems;

r. Development of sewer use or water system protection ordinance;

s. Staffing plans and budget development;

t. Certain direct and other costs as determined eligible by the Department;

u. Costs of complying with the Federal Water Pollution Control Act (P.L. 92-500) as amended, 33 USC Section 1251 et seq. and the Safe Drinking Water Act (42 U.S.C. Section 300j et seq, loan requirements applied to specific projects; and

v. Site acquisition costs, including right of way, plant site, wastewater land application sites and sludge disposal areas. Land purchase shall be from a willing seller.

05. Ineligible Project Costs. Costs which are ineligible for funding include, but are not limited to:

a. Basin or area wide planning not directly related to the project;

b. Bonus payments not legally required for completion of construction before a contractual completion date;
c. Personal injury compensation or damages arising out of the project; ( )

d. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; ( )

e. Costs outside the scope of the approved project; ( )

f. Ordinary operating expenses of local government, such as salaries and expenses of mayors, city council members, attorneys, commissioners, board members, or managers; ( )

g. Construction of privately owned wastewater treatment facilities; ( )
h. Cost of land in excess of that needed for the proposed project; ( )
i. Cost of refinancing existing indebtedness; ( )
j. Engineering costs incurred without professional liability insurance; ( )
k. Costs of condemnation; ( )
l. Reserve funds; and ( )
m. 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 will 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 will also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. ( )

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. ( )

042. ENVIRONMENTAL REVIEW.

01. Environmental Documentation. Guidance on how to complete an environmental review is found in Chapter 5 of the applicable Handbook. For eligible projects funded solely with non-federal funds (e.g. State Revolving Loan Fund repayments), see Section 042. For eligible projects, the loan recipient shall complete an environmental review as part of and in conjunction with a planning document. Projects funded exclusively as nonpoint or estuary management projects may not be required to complete an environmental review. The 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 loan recipient shall complete one (1) of the following per the Department’s instruction: ( )

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

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

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

02. Categorical Exclusions. If the loan recipient requests a CE, the Department will review the request and, based upon the supporting documentation, take one (1) of the following actions: ( )
a. Determine if the action is consistent with categories eligible for exclusion whereupon the Department will 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 planning document can be approved and the loan award can proceed; or

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 will notify the loan recipient to prepare an EID.

03. Environmental Information Document Requirements. When an EID is required, the loan recipient shall prepare the EID in accordance with the following Department procedures:

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;

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

c. The Department will 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).

04. Final Finding of No Significant Impact. The Department will publish the draft FONSI in a local newspaper in the geographical area of the proposed project and will 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 will become final. The Department will 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 planning document.

05. Environmental Impact Statement (EIS) Requirements. If an (EIS) is required, the loan recipient shall:

a. Consult with all affected federal and state agencies, and other interested parties, to determine the required scope of the document;

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment;

c. Conduct a public meeting which may be in conjunction with a planning document meeting; and

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval.

06. Final EIS. Upon completion of the EIS by the loan recipient and approval by the Department of all requirements listed in Section 042, the Department will issue a record of decision, documenting the mitigation measures to be required of the loan recipient. The loan agreement can be completed once the final EIS has been approved by the Department.

07. Partitioning the Environmental Review. Under certain circumstances, the building of a component/partition of a system may be justified in advance of all environment review requirements for the remainder of the system. The Department will approve partitioning the environment review in accordance with established procedures.

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.

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 will reevaluate the project, environmental conditions and public views and will:

   a. Reaffirm the earlier decision; or

   b. Require supplemental information to the earlier EIS, EID, or request for CE. Based upon a review of the updated document, the Department will issue and distribute a revised notice of CE, FONSI, or record of decision.

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 will be delivered to successful applicants by representatives of the Department or by registered mail.

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.

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, an 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.

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.

05. **Terms of Loan Offers.** The loan offer shall contain such terms as are prescribed by the Department including, but not limited to:

   a. Terms consistent with these rules, the project step to be funded under the loan offer, and Title 39, Chapter 36, Idaho Code;

   b. Special clauses as determined necessary by the Department for the successful investigation, design, construction and management of the project;

   c. Terms consistent with applicable state and federal laws pertaining to 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 and Safe Drinking Water Act requirements for projects funded with loan moneys of federal origin;

   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 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;

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

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;

g. The loan fee pursuant to Section 032;

h. All loans must be fully amortized within a period not to exceed thirty (30) years after project
completion. The loan contract will be appended with a schedule of loan repayments stating the due dates and the
amount due upon project completion. The loan recipient may elect for either a schedule of semi-annual or annual
repayments at the time the loan is finalized; and

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.

051. ACCOUNTING AND AUDITING PROCEDURES.
Loan recipients must maintain project accounts in accordance with generally accepted accounting principles. Projects
may be audited on an annual basis according to government auditing standards issued by the U.S. Governmental
Accountability Office.

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.

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.

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.

04. Project Review to Determine Final Eligible Costs. A project review by the Department or a
Department designee will determine the final eligible costs.

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.

061. LOAN CONSOLIDATION.
If two (2) or more loans are consolidated into one (1) loan, the interest rate for the consolidated loan will be at the
same rate as the loan being consolidated with the lowest interest rate.

062. -- 079. (RESERVED)

080. SUSPENSION OR TERMINATION OF LOAN CONTRACTS.
01. **Causes.** The Director may suspend or terminate any loan contract prior to final disbursement for failure by the loan recipient or its agents, including engineering firm(s), contractor(s) or subcontractor(s) to perform. A loan contract may be suspended or terminated for good cause including, but not limited to, the following: ( )

a. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; or ( )

b. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years’ imprisonment or any crime involving or affecting the project; or ( )

c. Violation(s) of any term of the loan contract; or ( )

d. Any willful or serious failure to perform within the scope of the project, plan of operation and project schedule, terms of engineering subagreements, or contracts for construction; or ( )

e. Debarment of a contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. ( )

02. **Notice.** The Director will notify the loan recipient in writing and by certified mail of the intent to suspend or terminate the loan contract. The notice of intent shall state: ( )

a. Specific acts or omissions which form the basis for suspension or termination; and ( )

b. That the loan recipient may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” ( )

03. **Determination.** A determination will be made by the Board pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” ( )

04. **Reinstatement of Suspended Loan.** Upon written request by the loan recipient with evidence that the causes(s) for suspension no longer exists, the Director may, if funds are available reinstate the loan contract. If a suspended loan contract is not reinstated, the loan will be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. ( )

05. **Reinstatement of Terminated Loan.** No terminated loan shall be reinstated. Terminated loans will be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. ( )

081. -- 994. (RESERVED)

995. **WAIVER OF REQUIREMENTS AND AMENDMENT OF PRIORITY LIST.**

The Director may amend the Priority List and grant a waiver from the requirements of these rules on a case-by-case basis upon full demonstration by the loan recipient requesting the waiver that the following conditions exist. See also Section 020 of these rules. ( )

01. **Health Hazard.** A significant public health hazard exists; ( )

02. **Water Contamination.** A significant water contamination problem exists; ( )

03. **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 ( )

04. **Affordability Criteria Exceeded.** The project will exceed affordability criteria adopted by the Department in the event the waiver is not granted. ( )

996. -- 999. (RESERVED)
<table>
<thead>
<tr>
<th><strong>Overview of Rulemaking</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>This omnibus proposed rulemaking includes 1) the temporary fee rules adopted by the Board in February 2020, and 2) revisions to several fee rule chapters. Revisions to IDAPA 58.01.25 are described below.</td>
</tr>
</tbody>
</table>

**IDAPA 58.01.25, Rules Regulating the Idaho Pollutant Discharge Elimination System Program**

Revisions Negotiated Under Docket No. 58-0125-2001:
To maintain delegated authority for the IPDES program, state rules need to be updated routinely to maintain consistency with federal regulations implementing the Clean Water Act. The purpose of this rulemaking is to ensure the Rules Regulating the Idaho Pollutant Discharge Elimination System (IPDES) Program, IDAPA 58.01.25, remain consistent with federal regulations and to make clarifications in response to ambiguities identified during DEQ’s administration of the IPDES program.

In 2015, 2017, 2019, and 2020, updated federal regulations became effective for National Pollutant Discharge Elimination System (NPDES) permitting authorities. These regulations require commensurate changes to portions of the IPDES rules with regard to updating definitions, applications, and reporting requirements for the state and facilities permitted under the program. DEQ is proposing to update those items incorporated by reference impacted by the federal changes. DEQ also proposes changes to the IPDES rules to clarify requirements related to fee payment, public comments, appeals, and other ambiguities identified since implementation of the program in July 2018.

This proposed rule updates federal regulations incorporated by reference with the July 1, 2020 Code of Federal Regulations (CFR) effective date. To maintain consistency for all federal regulations listed in IDAPA 58.01.25.003, this update includes the regulations that have not been revised since the initial incorporation by reference. DEQ negotiated the original rule language and incorporated by reference federal regulations affecting the program.

Idaho DEQ, under the direction of the Legislature in 2014 (HB406), started development of a primacy application package to implement the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) program for the state of Idaho. DEQ undertook rulemaking in 2014 through 2015 and the Legislature approved the Rules Regulating the Idaho Pollutant Discharge Elimination System Program during the 2016 Legislative session. DEQ is now proposing rulemaking to update these rules. This rulemaking includes incorporation by reference of existing federal rules and negotiation of rules that provide the state additional flexibility in implementing the NPDES federal program.

40 CFR 123.62(e) requires that all new Clean Water Act permitting programs comply with the federal regulations upon approval. For Idaho’s program to receive approval of the application submitted August 31, 2016, DEQ must update those references to federal regulations to reflect the most current version, in this case, July 1, 2020. Incorporation by reference allows DEQ to keep its rules up-to-date with federal regulation changes and simplifies compliance for the regulated community.

EPA has updated several rules regulating the permitting of discharges in the last 36 months, including regulations for testing procedures approved for analysis and sampling, best available technology economically achievable (“BAT”) effluent limitations and pretreatment standards for existing sources (“PSES”), technology-based pretreatment standards to reduce discharges of mercury from dental offices into municipal sewage treatment plants, and final rule defining the scope of waters federally regulated under the Clean Water Act.

Reproducing the Code of Federal Regulations (CFR) in state rule is impractical and costly. Therefore when possible, and as supported by Idaho stakeholders, DEQ incorporates federal regulations by reference. Sections with no changes are also incorporated to ensure the state rules are consistent with federal regulations and to provide one set of rules for cities and industry to follow. Idaho entities that discharge treated wastewater to surface waters are required to comply with all applicable new and updated federal rules regardless of whether DEQ incorporates them by reference.

In addition, for DEQ to be the implementing authority for the IPDES program in the state of Idaho, the agency is required to demonstrate that the rules regulating the IPDES program meet minimum federal requirements. Note, if DEQ’s IPDES program does not meet EPA’s minimum requirements, EPA could impose sanctions on Idaho as outlined in the Clean Water Act (33 USC 1342(c)) including the delay in approving the IPDES program and once approved the withdrawal of approval of the IPDES program.
Overview of Incorporations by Reference for the DEQ IPDES Program

The following table summarizes the Code of Federal Regulations (CFR) sections the DEQ IPDES Program incorporates by reference. The federal regulations incorporated by reference will be updated with the July 1, 2020 Code of Federal Regulations (CFR) effective date. The July 1, 2020 CFR is a codification of federal regulations published in the Federal Register as of July 1, 2020.

Table 1: Rules incorporated by reference

<table>
<thead>
<tr>
<th>40 CFR Part</th>
<th>Title</th>
<th>Changes in effect July 1, 2020?</th>
<th>Impact on Idaho</th>
</tr>
</thead>
<tbody>
<tr>
<td>122.2</td>
<td>Definition of Waters of the United States</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>122.21(r)</td>
<td>Application Requirements for Facility with Cooling Water Intake</td>
<td>No</td>
<td>–</td>
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<tr>
<td></td>
<td>Structures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>122.23</td>
<td>Concentrated Animal Feeding Operations</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td>122.24</td>
<td>Concentrated Aquatic Animal Production Facilities</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td>122.25</td>
<td>Aquaculture Projects</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td>122.26</td>
<td>Storm Water Discharges</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td>122.27</td>
<td>Silvicultural Activities</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td>122.29(d)</td>
<td>Effect of Compliance with New Source Performance Standards</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td>122.30 and</td>
<td>Requirements and Guidance for Small Municipal Separate Storm Sewer</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td>122.32 thru</td>
<td>Systems</td>
<td></td>
<td></td>
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<tr>
<td>122.37</td>
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<td></td>
<td></td>
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<tr>
<td>122.42(e)</td>
<td>Additional Conditions Applicable to NPDES Permits for Concentrated</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td></td>
<td>Animal Feeding Operations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appendix A to 122</td>
<td>NPDES Primary Industry Categories</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td>Appendix C to 122</td>
<td>Criteria for Determining a Concentrated Aquatic Animal Production Facility</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td>Appendix D to 122</td>
<td>NPDES Permit Application Testing Requirements</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td>Appendix J to 122</td>
<td>NPDES Permit Testing Requirements for Publicly Owned Treatment Works</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td>125.1 through 125.3</td>
<td>Criteria and Standards for Imposing Technology-Based Treatment Requirements under Section 301(b) and 402 of the Clean Water Act</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td>125.10 and 125.11</td>
<td>Criteria for Issuance of Permits to Aquaculture Projects</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td>125.30 through 125.32</td>
<td>Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A) and 301(b)(2)(A) and (E) of the Clean Water Act</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td>125.70 through 125.73</td>
<td>Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Clean Water Act</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td>125.80 through 125.89</td>
<td>Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Clean Water Act</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td>125.90 through 125.99</td>
<td>Requirements Applicable to Cooling Water Intake Structure for Phase II Existing Facilities Under Section 316(b) of the Clean Water Act</td>
<td>No</td>
<td>–</td>
</tr>
</tbody>
</table>
Overview of Incorporations by Reference for the DEQ IPDES Program

<table>
<thead>
<tr>
<th>Part</th>
<th>Description</th>
<th>Incorporation</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>127.11 through</td>
<td>Electronic Reporting of NPDES Information from NPDES-Regulated Facilities</td>
<td>No</td>
<td>–</td>
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<tr>
<td>127.16</td>
<td></td>
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<tr>
<td>129.1 through</td>
<td>Toxic Pollutant Effluent Standards and Prohibitions</td>
<td>No</td>
<td>–</td>
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<tr>
<td>129.105</td>
<td></td>
<td></td>
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<tr>
<td>133.100 through</td>
<td>Secondary Treatment Regulation</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td>133.105</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>136</td>
<td>Guidelines Establishing Test Procedures for the Analysis of Pollutants,</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>including Appendices A, B, C, and D</td>
<td></td>
<td></td>
</tr>
<tr>
<td>401</td>
<td>General Provisions</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td>403</td>
<td>General Pretreatment Regulations for Existing and New Sources of</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td></td>
<td>Pollution, Including Appendices D, E, and G</td>
<td></td>
<td></td>
</tr>
<tr>
<td>405 through</td>
<td>Effluent Limitations and Guidelines</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>471</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>503.2 through</td>
<td>Sewage Sludge, including Appendices A and B</td>
<td>No</td>
<td>–</td>
</tr>
<tr>
<td>503.48</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

These changes are discussed in more detail below. The associated Federal Register notices are denoted in parentheses as hyperlinks.

**The following parts were revised and may impact on Idaho facilities:**

EPA has updated several parts of the CFR since the Rules Regulating the Idaho Pollutant Discharge Elimination System (IPDES) rules were last updated in 2017. These federal regulatory changes may impact the IPDES program process and procedures. These rulemakings include the:

- **Effluent Limitations Guidelines and Standards for the Dental Category – 40 CFR Part 405 through 471**
  - (82 FR 27154, June 14, 2017) – This final rule controls mercury discharges to POTWs by establishing a performance standard for amalgam process wastewater based on the use of amalgam separator technology. The rule also requires dental dischargers to adopt two BMPs, one which prohibits the discharge of waste (“or scrap”), and the other which prohibits the use of line cleaners that may lead to the dissolution of solid mercury when cleaning chair-side traps and vacuum lines.
  - Specific changes to the rule occur in:
    - 441.10 – Applicability
    - 441.20 – General definitions
    - 441.30 – Pretreatment standards for existing sources (PSES)
    - 441.40 – Pretreatment standards for new sources (PSNS)
    - 441.50 – Reporting and recordkeeping requirements

- **Clean Water Act Methods Update Rule for the Analysis of Effluent – 40 CFR Part 136**
  - (82 FR 40836, August 28, 2017) – This final rule modifies the testing procedures approved for analysis and sampling under the Clean Water Act. The changes fall into the following categories:
New and revised EPA methods (including published by voluntary consensus standard bodies, such as ASTM International and the Standard Methods Committee);
- Updated versions of currently approved methods;
- Methods reviewed under the alternate test procedures (ATP) program;
- Clarifications to the procedures for EPA approval of nationwide and limited use ATPs; and
- Amendments to the procedure for determination of the method detection limit to address laboratory contamination and intra-laboratory variability.

Specific changes to the rule occur in:
- 136.1 – Applicability
- 136.2 – Definitions
- 136.3 – Identification of test procedures
- 136.4 – Application for and approval of alternate test procedures for nationwide use
- 136.5 – Approval of alternate test procedures for limited use
- 136.6 – Method modifications and analytical requirements
- Appendix B to Part 136—Definition and Procedure for the Determination of the Method Detection Limit


(82 FR 43494, September 18, 2017) – This rule postpones the associated compliance dates in the November 3, 2015 Rule. In particular, EPA is postponing the earliest compliance dates for the new, more stringent, BAT effluent limitations and PSES for flue gas desulfurization (FGD) wastewater and bottom ash transport water in the 2015 Rule for a period of two years. However, EPA this does not revise the new, more stringent BAT effluent limitations and pretreatment standards in the 2015 Rule for fly ash transport water, flue gas mercury control wastewater, and gasification wastewater, or any of the other requirements in the 2015 Rule. Specific changes to the rule occur in:
- 423.11 – Specialized definitions
- 423.13 – Pretreatment standards for existing sources (PSES)
- 423.16 – Pretreatment standards for new sources (PSNS)


(85 FR 22250, April 21, 2020) – This final rule defines the scope of waters federally regulated under the Clean Water Act. The Navigable Waters Protection Rule is the second step in a comprehensive, two-step process intended to review and revise the definition of “Waters of the United States.” Specific changes to the rule occur in:
- 122.2 - Definitions
The remaining federal regulations (40 CFR) have not been changed or updated since the previous IPDES negotiate rulemaking. DEQ proposes to update all federal regulations incorporated by reference with the July 1, 2020 CFR effective date, including the regulations that have not been revised since the initial incorporation by reference. This will maintain consistency for all federal regulations listed in IDAPA 58.01.25.003.
000. LEGAL AUTHORITY.
The Department and the Board are authorized to formulate and adopt rules as are necessary to obtain approval of the IPDES program by EPA pursuant to Section 39-175C, Idaho Code. The Department is authorized to implement and enforce the rules in this chapter pursuant to the Sections 39-175A-C and the provisions of the Environmental Protection and Health Act, Sections 39-101 et seq., Idaho Code. The rules in this chapter are not effective until the requirements in Section 39-175C, Idaho Code, have been met and the United States EPA has approved, under 33 U.S.C. 1342(b), Idaho’s administration of the IPDES program.

001. TITLE AND SCOPE.

01. Title. The rules are titled IDAPA 58.01.25, “Rules Regulating the Idaho Pollutant Discharge Elimination System Program.”

02. Scope. These rules establish the procedures and requirements for the issuance and maintenance of permits for facilities or activities for which a person is required by Idaho Code and the Clean Water Act to obtain authorization to discharge pollutants to waters of the United States. These permits are referred to in these rules as “IPDES permits” or “permits.”

002. CONFIDENTIALITY OF RECORDS.

01. Identifying Confidential Information. Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 1, Title 74, Idaho Code, and IDAPA 58.01.21 (Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality). In accordance with Sections 74-101 through 74-119, Idaho Code, any information submitted to the Department pursuant to these rules may be claimed as confidential by the submitter. It is the responsibility of the submitter to give notice of the existence of a claim of confidentiality on each page or other portion of information at the time of submittal and such person has the burden of demonstrating that the information is confidential.

02. Denial of Confidential Claims. In accordance with Section 74-114, Idaho Code, a claim of confidentiality, including but not limited to a claim as to information claimed confidential as a trade secret, will be denied and any person may inspect and copy:

a. The name and address of any IPDES applicant or permittee;

b. The content of any IPDES permit;

c. IPDES permit applications, and information required to be submitted by IPDES application forms under Section 105 (Application for an Individual IPDES Permit), or IPDES General Permit Notice of Intent, and information required to be submitted under Section 130 (General Permits), whether the information is submitted on the application forms themselves or in any attachments used to supply information required by the application forms; and

d. Effluent data as defined in 40 CFR 2.302.

003. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.

01. Availability of Reference Material. Codes, standards and regulations may be incorporated by reference in this rule pursuant to Section 67-5229, Idaho Code. Codes, standards or regulations adopted by reference throughout this rule are available in the following locations:


b. Law Library. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051.


02. Incorporation by Reference. The following documents are incorporated by reference into these
rules. Any reference in these rules to requirements, procedures, or specific forms contained in any section or subsection constitute the full adoption by reference of that section or subsection, including any notes and appendices therein, unless expressly provided otherwise in these rules:

- 40 CFR 122.21(r), revised as of July 1, 2020 (Application Requirements for Facilities with Cooling Water Intake Structures);
- 40 CFR 122.23, revised as of July 1, 2020 (Concentrated Animal Feeding Operations);
- 40 CFR 122.24, revised as of July 1, 2020 (Concentrated Aquatic Animal Production Facilities);
- 40 CFR 122.25, revised as of July 1, 2020 (Aquaculture Projects);
- 40 CFR 122.26(a) through (b) and 40 CFR 122.26(e) through (g), revised as of July 1, 2020 (Storm Water Discharges);
- 40 CFR 122.27, revised as of July 1, 2020 (Silvicultural Activities);
- 40 CFR 122.29(d), revised as of July 1, 2020 (Effect of Compliance with New Source Performance Standards);
- 40 CFR 122.30 and 40 CFR 122.32 through 40 CFR 122.37, revised as of July 1, 2020 (Requirements and Guidance for Small Municipal Separate Storm Sewer Systems);
- 40 CFR 122.42(e), revised as of July 1, 2020 (Additional Conditions Applicable to NPDES Permits for Concentrated Animal Feeding Operations);
- Appendix A to 40 CFR 122, revised as of July 1, 2020 (NPDES Primary Industry Categories);
- Appendix C to 40 CFR 122, revised as of July 1, 2020 (Criteria for Determining a Concentrated Aquatic Animal Production Facility);
- Appendix D to 40 CFR 122, revised as of July 1, 2020 (NPDES Permit Application Testing Requirements);
- Appendix J to 40 CFR 122, revised as of July 1, 2020 (NPDES Permit Testing Requirements for Publicly Owned Treatment Works);
- 40 CFR 125.1 through 40 CFR 125.3 (Subpart A), revised as of July 1, 2020 (Criteria and Standards for Imposing Technology-Based Treatment Requirements Under Sections 301(b) and 402 of the Clean Water Act);
- 40 CFR 125.10 through 40 CFR 125.11 (Subpart B), revised as of July 1, 2020 (Criteria for Issuance of Permits to Aquaculture Projects);
- 40 CFR 125.30 through 40 CFR 125.32 (Subpart D), revised as of July 1, 2020 (Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A) and 301(b)(2)(A) and (E) of the Clean Water Act);
- 40 CFR 125.70 through 40 CFR 125.73 (Subpart H), revised as of July 1, 2020 (Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Clean Water Act);
- 40 CFR 125.80 through 40 CFR 125.89 (Subpart I), revised as of July 1, 2020 (Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Clean Water Act);
s. 40 CFR 125.90 through 40 CFR 125.99 (Subpart J), revised as of July 1, 2020 (Requirements Applicable to Cooling Water Intake Structures for Phase II Existing Facilities Under Section 316(b) of the Clean Water Act); (    )

t. 40 CFR 127.11 through 40 CFR 127.16 (Subpart B), revised as of July 1, 2020 (Electronic reporting of NPDES Information from NPDES-Regulated Facilities); (    )

u. 40 CFR 129.1 through 40 CFR 129.105 (Subpart A), revised as of July 1, 2020 (Toxic Pollutant Effluent Standards and Prohibitions); (    )

v. 40 CFR 133.100 through 40 CFR 133.105, revised as of July 1, 2020 (Secondary Treatment Regulation); (    )

w. 40 CFR Part 136, revised as of July 1, 2020 (Guidelines Establishing Test Procedures for the Analysis of Pollutants, including Appendices A, B, C, and D); (    )

x. 40 CFR Part 401, revised as of July 1, 2020 (General Provisions); (    )

y. 40 CFR 403.1 through 40 CFR 403.3; 40 CFR 403.5 through 40 CFR 403.18, revised as of July 1, 2020 (General Pretreatment Regulations for Existing and New Sources of Pollution, including Appendices D, E, and G); (    )

z. 40 CFR Part 405 through 40 CFR Part 471, revised as of July 1, 2020 (Effluent Limitations and Guidelines); and (    )

aa. 40 CFR 503.2 through 40 CFR 503.48, revised as of July 1, 2020 (Sewage Sludge, including Appendices A and B). (    )

bb. The term “Waters of the United States or waters of the U.S.,” as defined in 40 CFR 122.2, revised as of June 22, 2020, by 85 Federal Register 22250-22342 (April 21, 2020), unless said revision is stayed, overturned or invalidated by a court of law or withdrawn by EPA, in which case the Department incorporates by reference the term “Waters of the United States or waters of the U.S.” as defined in 40 CFR 122.2, revised as of December 23, 2019. (    )

03. Term Interpretation. For the federal regulations incorporated by reference into these rules, unless the context in which a term is used clearly requires a different meaning, terms in this section have the following meanings: (    )

a. The term Administrator or Regional Administrator means the EPA Region 10 Administrator; (    )

b. The term Control Authority means the POTW for a facility with a Department-approved pretreatment program and the Department for a POTW without a Department-approved pretreatment program; (    )

c. The term Director or State Director means the Director of the Department of Environmental Quality with an NPDES permit program approved pursuant to section 402(b) of the Clean Water Act; (    )

d. The term National Pollutant Discharge Elimination System (NPDES) means the Idaho Pollutant Discharge Elimination System (IPDES); (    )

e. The term Permitting Authority (also preceded by the terms NPDES or State) means the Idaho Department of Environmental Quality with an NPDES permit program approved pursuant to section 402(b) of the Clean Water Act. (    )

004. ADMINISTRATIVE PROVISIONS.
Persons may be entitled to appeal final IPDES permit decisions pursuant to Section 204 (Appeals Process) of these
005. WRITTEN INTERPRETATIONS.
As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written
statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and
copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255.

006. OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.
The state office of the Department of Environmental Quality is located at 1410 N. Hilton, Boise, Idaho 83706, (208)
373-0502, www.deq.idaho.gov. The office hours are 8 a.m. to 5 p.m. Monday through Friday.

007. -- 009. (RESERVED)

010. DEFINITIONS.
For the purpose of the rules contained in IDAPA 58.01.25, “Rules Regulating the Idaho Pollutant Discharge
Elimination System Program,” the following definitions apply. Terms not expressly defined in this section have the
meaning provided by IDAPA 58.01.02, Section 010, “Water Quality Standards,” or IDAPA 58.01.16, Section 010,
“Wastewater Rules.”

01. Animal Feeding Operation. A lot or facility (other than an aquatic animal production facility) where the following conditions are met:

a. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12)-month period; and

b. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

02. Applicable Standards and Limitations. All state, interstate, and federal standards and limitations
to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under the Clean Water
Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or
prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal

03. Application. The IPDES forms for applying for a permit or the EPA equivalent standard national
forms when deemed acceptable by the Department, including any additions, revisions or modifications to the forms.

04. Approved Program or Approved State. A state or interstate program which has been approved or
authorized by EPA under 40 CFR Part 123.

05. Aquaculture Project. A defined managed water area which uses discharges of pollutants into that
designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

06. Average Monthly Discharge Limitation. The highest allowable average of daily discharges over
a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the
number of daily discharges measured during that month.

07. Average Weekly Discharge Limitation. The highest allowable average of daily discharges over a
calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number
of daily discharges measured during that week.

08. Background. The biological, chemical or physical condition of waters measured at a point
immediately upstream (up-gradient) of the influence of an individual point or nonpoint source discharge. If several
discharges to the water exist or if an adequate upstream point of measurement is absent, the Department will
determine where background conditions should be measured.
09. **Best Management Practices (BMPs).** Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

10. **Biochemical Oxygen Demand (BOD).** The measure of the amount of oxygen necessary to satisfy the biochemical oxidation requirements of organic materials at the time the sample is collected; unless otherwise specified, this term will mean the five (5) day BOD incubated at twenty (20) degrees C.

11. **Biological Monitoring or Biomonitoring.** The use of a biological entity as a detector and its response as a measure to determine environmental conditions. Toxicity tests and biological surveys, including habitat monitoring, are common biomonitoring methods.

12. **Bypass.** The intentional diversion of wastewater from any portion of a treatment facility.

13. **Chemical Oxygen Demand (COD).** A bulk parameter that measures the oxygen-consuming capacity of organic and inorganic matter present in water or wastewater. It is expressed as the amount of oxygen consumed from a chemical oxidant in a specific test.

14. **Class I Sludge Management Facility.** Any POTW identified under 40 CFR 403.8(a) as being required to have an approved pretreatment program (including such POTWs where the Department has elected to assume local program responsibilities pursuant to 40 CFR 403.10(e)) and any other treatment works treating domestic sewage (TWTDS) classified as a Class I sludge management facility by the Department, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.


16. **Clean Water Act and Regulations.** The Clean Water Act and applicable regulations promulgated thereunder. In the case of an approved IPDES program, it includes Department program requirements.

17. **Compliance Schedule or Schedule of Compliance.** A schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Clean Water Act and these rules.

18. **Concentrated Animal Feeding Operation (CAFO).** Animal feeding operation that is defined as a Large CAFO in accordance with 40 CFR 122.23(b)(4), as a Medium CAFO in accordance with 40 CFR 122.23(b)(6), or that is designated as a CAFO in accordance with 40 CFR 122.23(c). Two (2) or more animal feeding operations under common ownership are considered to be a single animal feeding operation for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

19. **Concentrated Aquatic Animal Production (CAAP).** A hatchery, fish farm, or other facility which meets the criteria in Appendix C of 40 CFR Part 122, or which the Department designates under 40 CFR 122.24(c).

20. **Continuous Discharge.** A discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

21. **Daily Discharge.** The discharge of a pollutant measured during a calendar day or any twenty-four (24)-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.
22. **Department.** The Idaho Department of Environmental Quality. ( )

23. **Design Flow.** The average or maximum point source discharge volume per unit time that a facility or system is constructed to accommodate. ( )

24. **Direct Discharge.** The discharge of a pollutant to waters of the United States. ( )

25. **Director.** The Director of the Idaho Department of Environmental Quality or authorized agent. ( )

26. **Discharge Monitoring Report (DMR).** The facility or activity report containing monitoring and discharge quality and quantity information and data required to be submitted periodically, as defined in the discharge permit. These reports must be submitted to the Department on a Department-approved format. ( )

27. **Discharge.** When used without qualification means the discharge of a pollutant. ( )

28. **Discharge of a Pollutant.** Any addition of any pollutant or combination of pollutants to waters of the United States from any point source. This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger. ( )

29. **Draft Permit.** A document prepared under these rules indicating the Department’s tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in Subsections 107.01 and 203.02, are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination, as discussed in Subsection 201.01, is not a draft permit. A proposed permit is not a draft permit. ( )

30. **Effluent.** Any discharge of treated or untreated pollutants into waters of the United States. ( )

31. **Effluent Limitation.** Any restriction imposed by the Department on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the United States, in accordance with these rules and the Clean Water Act. ( )

32. **Effluent Limitations Guidelines.** A regulation published by the EPA under the Clean Water Act section 304(b) to adopt or revise effluent limitations. ( )

33. **Electronic Signature.** Information in digital form that is included in or associated with an electronic document for the purpose of expressing the same meaning and intention as would a handwritten signature. ( )

34. **Environmental Protection Agency (EPA).** The United States Environmental Protection Agency. ( )

35. **Equivalent Dwelling Unit (EDU).** A measure where one (1) EDU is equivalent to wastewater generated from one (1) single-family residence. For the purposes of assessing fees associated with publicly or privately owned domestic sewage treatment, the number of EDUs is calculated as the population served divided by the average household size as defined in the most recent Census Bureau data (for that municipality, county, or average number of persons per household for the state of Idaho). For fees associated with industrial wastewater treatment owned by a municipality, EDUs are calculated in accordance with the definition of EDU in IDAPA 58.01.16, Section 010, “Wastewater Rules.” ( )

36. **Existing Source.** Any source which is not a new source or a new discharger. ( )

37. **Facilities or Equipment.** Buildings, structures, process or production equipment or machinery.
which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

38. **Facility or Activity.** Any point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the IPDES program.

39. **Fundamentally Different Factors.** The factors relating to a discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national effluent limits.

40. **General Permit.** An IPDES permit issued under Section 130 (General Permits) authorizing a category of discharges within a geographical area.

41. **Hazardous Substance.** Any substance designated under 40 CFR Part 116 pursuant to the Clean Water Act section 311.

42. **Idaho Pollutant Discharge Elimination System (IPDES).** Idaho's program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under these rules and the Clean Water Act sections 307, 402, 318, and 405.

43. **Indian Country.**
   a. All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;
   b. All dependent Indian communities within the borders of the United States, whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of the state; and
   c. All Indian allotments, the Indian titles to which have not been extinguished including rights-of-way running through the same.

44. **Indian Tribe.** Any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a federal Indian reservation.

45. **Indirect Discharger.** A nondomestic discharger introducing pollutants to a privately or publicly owned treatment works.

46. **Industrial Wastewater.** Any waste, together with such water as is present that is the by-product of industrial processes including, but not limited to, food processing or food washing wastewater (see Process Wastewater).

47. **Infiltration.** Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

48. **Inflow.** Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

49. **Interstate Agency.** An agency of two (2) or more states established by or under an agreement or compact, or any other agency of two (2) or more states having substantial powers or duties pertaining to the control of
50. **Load Allocation (LA).** The portion of a receiving water body's loading capacity that is attributed either to one (1) of its existing or future nonpoint sources of pollution or to natural background sources.

51. **Major Facility.** A facility or activity that is:
   a. A publicly or privately owned treatment works with a design flow equal to or greater than one million gallons per day (1 MGD), or serves a population of ten thousand (10,000) or more, or causes significant water quality impacts; or
   b. A non-municipal facility that equals or exceeds the eighty (80) point accumulation as described in the Score Summary of the NPDES Non-Municipal Permit Rating Work Sheet (June 27, 1990) or the Department equivalent guidance document.

52. **Maximum Daily Discharge Limitation.** The highest allowable daily discharge.

53. **Maximum Daily Flow.** The largest volume of flow to be discharged during a continuous twenty-four-hour period expressed as a volume per unit time.

54. **Mixing Zone.** A defined area or volume of the receiving water surrounding or adjacent to a wastewater discharge where the receiving water, as a result of the discharge, may not meet all applicable water quality criteria or standards. It is considered a place where wastewater mixes with receiving water and not as a place where effluents are treated.

55. **Municipality.** A city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under the Clean Water Act section 208.

56. **National Pollutant Discharge Elimination System (NPDES).** The national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under the Clean Water Act sections 307, 402, 318, and 405.

57. **New Discharger.** Any building, structure, facility, or installation:
   a. From which there is or may be a discharge of pollutants;
   b. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
   c. Which is not a new source; and
   d. Which has never received a finally effective NPDES or IPDES permit for discharges at that site.
   e. This definition includes an indirect discharger which commences discharging into waters of the United States after August 13, 1979. It also includes any existing mobile point source such as an aggregate plant, that begins discharging at a site for which it does not have a permit;

58. **New Source.** Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:
   a. After promulgation of standards of performance under the Clean Water Act section 306 which are applicable to such source; or
   b. After proposal of standards of performance in accordance with the Clean Water Act section 306
which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within one hundred twenty (120) days of their proposal.

59. **Notice of Intent to Deny.** A type of draft permit that shall convey to a permit applicant or permittee, the Department’s intent to not issue or renew an IPDES permit.

60. **Notice of Intent to Obtain Coverage under an IPDES General Permit.** An applicant seeking discharge coverage under an IPDES general permit shall submit a notice of intent to obtain coverage for discharges to waters of the United States under general permit classifications, including, but not limited to:
   a. Storm Water Construction General Permit (CGP);
   b. Multi-Sector General Permit (MSGP) for Industrial Storm Water Requirements;
   c. Municipal Separate Storm Sewer System (MS4) General Permit;
   d. Concentrated Animal Feeding Operation (CAFO) General Permit;
   e. Concentrated Aquatic Animal Production (CAAP) Facility General Permit;
   f. Ground Water Remediation General Permit;
   g. Suction Dredge General Permit; or
   h. Pesticide General Permit (PGP).

61. **Notice of Intent to Terminate.** A notice of intent to terminate shall:
   a. Convey to a permittee the Department’s intent to terminate an existing IPDES permit for cause; or
   b. Convey to the Department a permittee’s intent to terminate coverage for an activity under an Individual or General Permit. A construction general permit holder is obligated to submit a notice of intent to terminate upon completion of construction activities and, in the case of storm water control, that final stabilization has been achieved.

62. **Owner or Operator.** The person, company, corporation, district, association, or other organizational entity that is an owner or operator of any facility or activity subject to regulation under the IPDES program.

63. **Pesticide Discharges.** The discharges that result from the application of biological pesticides, and the application of chemical pesticides that leave a residue, from point sources to waters of the United States. In the context of this definition of pesticide discharges, this does not include agricultural storm water discharges and return flows from irrigated agriculture, which are excluded by law (33 U.S.C. 1342(l); 33 U.S.C. 1362(14)).

64. **Pesticide Residue.** For the purpose of determining whether an IPDES permit is needed for discharges to waters of the United States from pesticide application, means that portion of a pesticide application that is discharged from a point source to waters of the United States and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

65. **Permit.** The authorization, license, or equivalent control document issued by the Department to implement the requirements of these rules. This does not include any permit which has not yet been the subject of final Department action, such as a draft permit or a proposed permit.

66. **Person.** An individual, public or private corporation, partnership, association, firm, joint stock company, joint venture, trust, estate, state, municipality, commission, political subdivision of the state, state or federal agency, department or instrumentality, special district, interstate body or any legal entity, or an agent or employee
thereof, which is recognized by law as the subject of rights and duties.

67. **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, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

68. **Pollutant.** Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

a. Sewage from vessels; or

b. Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state in which the well is located, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources.

NOTE: Radioactive materials covered by the Atomic Energy Act are those encompassed in its definition of source, byproduct, or special nuclear materials. Examples of materials not covered include radium and accelerator-produced isotopes. See Train v. Colorado Public Interest Research Group, Inc., 426 U.S. 1 (1976).

69. **Potable Water.** Water which is free from impurities in such amounts that it is safe for human consumption without treatment.

70. **Pretreatment.** The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR 403.6(e).

71. **Primary Industry Category.** Any industry category listed in Appendix A of 40 CFR Part 122.

72. **Privately Owned Treatment Works.** Any device or system which is used to treat wastes and is not a Publicly Owned Treatment Works (POTW).

73. **Process Wastewater.** Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product (see Industrial Wastewater definition).

74. **Proposed Permit.** An IPDES permit prepared after the close of the public comment period (and, when applicable, any public meeting and administrative appeals) which is sent to EPA for review before final issuance by the Department. A proposed permit is not a draft permit.

75. **Proposed Settlement of a State Enforcement Action.** A Department consent order or compliance agreement schedule issued in response to a notice of violation that is to be signed by the Director. This does not include amendments or extensions of consent orders or compliance agreement schedules.

76. **Publicly Owned Treatment Works (POTW).** A treatment works as defined by the Clean Water Act section 212, which is owned by a state or municipality, as defined by the Clean Water Act section 502(4). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal
sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in the Clean Water Act section 502(4), which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

77. **Receiving Waters.** Those waters of the United States to which there is a discharge of pollutants.

78. **Recommencing Discharger.** A source which renews discharges after terminating operations.

79. **Regional Administrator.** The Region 10 Administrator of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

80. **Secondary Industry Category.** Any industry category which is not a primary industry category.

81. **Secondary Treatment.** Technology-based requirements for direct discharging POTWs, based on the expected performance of a combination of physical and biological processes typical for the treatment of pollutants in municipal sewage. Standards are expressed as a minimum level of effluent quality in terms of: BOD5, total suspended solids (TSS), and pH (except as provided by treatment equivalent to secondary treatment and other special considerations).

82. **Secretary.** The Secretary of the Army, acting through the Chief of Engineers.

83. **Septage.** The liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

84. **Severe Property Damage.** Substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

85. **Sewage.** The water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present.

86. **Sewage from Vessels.** Human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under the Clean Water Act section 312.

87. **Sewage Sludge.** Any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 CFR Part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

88. **Sewage Sludge Use or Disposal Practice.** The collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

89. **Significant Industrial User.**

   a. All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Parts 400 through 471; and

   b. Any other industrial user that:
i. Discharges an average of twenty-five thousand (25,000) gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); ( )

ii. Contributes a process waste stream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or ( )

iii. Is designated as such by the Control Authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement (in accordance with 40 CFR 403.8(f)(6)). ( )

90. Silvicultural Point Source. Any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a Clean Water Act section 404 permit. ( )

91. Site. The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity. ( )

92. Sludge. The semi-liquid mass produced and removed by the wastewater treatment process. ( )

93. Sludge-Only Facility. Any TWTDS whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to the Clean Water Act section 405(d) and is required to obtain an IPDES permit. ( )

94. Source. Any building, structure, facility, or installation from which there is or may be discharge of pollutants. ( )

95. Standards for Sewage Sludge Use or Disposal. Regulations promulgated pursuant to the Clean Water Act section 405(d) and these rules which govern minimum requirements for sewage sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person. ( )

96. State. The state of Idaho. ( )

97. State/EPA Agreement. An agreement between the EPA Regional Administrator and the state of Idaho which coordinates EPA and Department activities, responsibilities and programs including those under the Clean Water Act programs. ( )

98. Storm Water. Storm water runoff, snow melt runoff, and surface runoff and drainage. ( )

99. Technology-Based Effluent Limitation (TBEL). Treatment requirements under the Clean Water Act that represent the minimum level of control that must be imposed in a permit issued under section 402 of the Clean Water Act. ( )

100. Total Dissolved Solids. The total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136. ( )

101. Toxic Pollutant. Any substance, material or disease-causing agent, or a combination thereof, which after discharge to waters of the United States and upon exposure, ingestion, inhalation, or assimilation into any organism (including humans), either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, malignancy, genetic mutation, physiological abnormalities (including malfunctions in reproduction) or physical deformations in affected organisms or their offspring. Toxic pollutants include, but are not limited to, the one hundred twenty-six (126) priority pollutants identified by EPA.
pursuant to the Clean Water Act section 307(a), or in the case of sewage sludge use or disposal practices, any pollutant identified in regulations implementing the Clean Water Act section 405(d).

102. **Treatment.** A process or activity conducted for the purpose of removing pollutants from wastewater.

103. **Treatment Facility.** Any physical facility or land area for the purpose of collecting, treating, neutralizing, or stabilizing pollutants including treatment plants; the necessary collecting, intercepting, outfall and outlet sewers; pumping stations integral to such plants or sewers; disposal or reuse facilities; equipment and furnishing thereof; and their appurtenances. For the purpose of these rules, a treatment facility may also be known as a treatment system, a wastewater system, wastewater treatment system, wastewater treatment facility, wastewater treatment plant, or privately or publicly owned treatment works.

104. **Treatment Works Treating Domestic Sewage (TWTDS).** A POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, domestic sewage includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

105. **Upset.** An exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

106. **User.** Any person served by a wastewater system.

107. **Variance.** Any mechanism or provision under the Clean Water Act section 301 or 316 or under 40 CFR Part 125, or in the applicable effluent limitations guidelines allowing modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the Clean Water Act. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on Clean Water Act sections 301(c), 301(g), 301(h), 301(i), or 316(a).

108. **Wasteload Allocation (WLA).** The portion of a receiving water's loading capacity that is allocated to one (1) of its existing or future point sources of pollution.

109. **Wastewater.** Any combination of liquid or water and pollutants from activities and processes occurring in dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any ground water, surface water, and storm water that may be present; liquid or water that is chemically, biologically, physically or rationally identifiable as containing blackwater, gray water or commercial or industrial pollutants; and sewage.

110. **Water Pollution.** Any alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters of the United States, or the discharge of any pollutant into the waters of the United States, which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to fish and wildlife, or to domestic, commercial, industrial, recreational, aesthetic, or other beneficial uses.

111. **Water Quality-Based Effluent Limitation (WQBEL).** An effluent limitation determined by selecting the most stringent of the effluent limits calculated using all applicable water quality criteria (e.g., aquatic life, human health, wildlife, translation of narrative criteria) for a specific point source to a specific receiving water.

112. **Water Transfer.** An activity that conveys or connects waters of the United States without subjecting the transferred water to intervening industrial, municipal, or commercial use.

113. **Wetlands.** Areas inundated or saturated by surface or ground water at a frequency and duration
114. Whole Effluent Toxicity. The aggregate toxic effect of an effluent measured directly by a toxicity test.

011. -- 049. (RESERVED)

050. COMPUTATION OF TIME.

01. Computing Time. In computing any period of time scheduled to begin after or before the occurrence of an act or event, the date of the act or event is not included. The last day of the period is included, unless it is a Saturday, a Sunday, or a legal holiday, in which case the period runs until the end of the next day which is neither a Saturday, a Sunday, nor holiday. The section does not apply to submission deadlines for twenty-four (24) hour reporting, permit applications, or notices of intent for coverage under a general permit.

02. Notice by Mail. Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper and the notice or paper is served upon him or her by mail, three (3) days will be added to the prescribed time.

051. -- 089. (RESERVED)

090. SIGNATURE REQUIREMENTS.

01. Permit Applications and Notices of Intent. All IPDES permit applications and notices of intent must be signed by a certifying official as follows:

a. For a corporation, a responsible corporate officer shall sign the application or notice of intent. In this subsection, a responsible corporate officer means:

i. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or

ii. The manager of one (1) or more manufacturing, production, or operating facilities, if:

(1) The manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental statutes and regulations;

(2) The manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for IPDES permit application requirements; and

(3) Authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship, the general partner or the proprietor, respectively, shall sign the application; and

c. For a municipality, state, or other public agency, either a principal executive officer or ranking elected official shall sign the application. In this subsection, a principal executive officer of an agency means:

i. The chief executive officer of the agency; or

ii. A senior executive officer having responsibility for the overall operations of a principal geographic...
02. Reports and Other Information Submitted. Any report or information required by an IPDES permit, notice of intent, monitoring and reporting provisions, and any other information requested by the Department, must be signed by a person described in Subsection 090.01, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Subsection 090.01;

b. The authorization specifies either:
   i. An individual or a position having responsibility for the overall operation of the regulated facility or activity, including the position of manager, operator, superintendent or position of equivalent responsibility; or
   ii. An individual or position having overall responsibility for environmental matters for the company;
   and

c. The written authorization is submitted to the Department.

03. New Authorization. If an authorization is no longer accurate due to a change in staffing or personnel for the overall operation of the facility, a new authorization satisfying the requirements of Subsection 090.01 must be submitted to the Department before or together with any report, information, or application to be signed by an authorized representative.

04. Certification. Any person signing a document under Subsections 090.01 or 090.02 shall certify as follows: “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

05. Electronic Signatures. The Department may require any signed, certified, or authorized information required under these rules to be submitted electronically, with an electronic signature approved by the Department.

06. Electronic Reporting. When documents described in Subsection 090.01 or 090.02 of this rule are submitted electronically by or on behalf of the IPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section, and shall ensure that all of the relevant requirements of 40 CFR Part 3 (Cross-Media Electronic Reporting) and 40 CFR Part 127 (NPDES Electronic Reporting Requirements) are met for that submission.

091. -- 099. (RESERVED)

100. EFFECT OF A PERMIT.

01. Rights. The issuance of, or coverage under, an IPDES permit does not convey any property rights or any exclusive privilege nor does it authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations. The issuance of, or coverage under, an IPDES permit does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity, and does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits.

02. Compliance. Except for any toxic effluent standards and prohibitions imposed under the Clean Water Act section 307, and standards for sewage sludge use or disposal under the Clean Water Act section 405(d),
compliance with an IPDES permit during its term constitutes compliance, for purposes of enforcement, with Clean Water Act sections 301, 302, 306, 307, 318, 403, and 405(a) through (b). However, a permit or coverage under a permit may be modified, revoked and reissued, or terminated during its term for cause as set out in Sections 130 (General Permits), 201 (Modification, or Revocation and Reissuance of IPDES Permits), and 203 (Termination of IPDES Permits).

101. DURATION.

01. Permit Term. IPDES permits shall be issued for a fixed duration not to exceed five (5) years.

a. The Department may issue a permit for a period of less than five (5) years. An explanation of the reasoning behind issuing a permit for a shorter period shall be provided in the fact sheet.

b. The duration of a permit may not be modified to lengthen the effective term of the permit past the maximum five (5) year duration.

c. A permit may be issued to expire on or after the statutory deadline set forth in the Clean Water Act sections 301(b)(2)(A), (C), and (E), if the permit includes effluent limitations to meet the requirements of the Clean Water Act sections 301(b)(2)(A), (C), (D), (E) and (F), whether or not applicable effluent limitations guidelines have been promulgated or approved.

d. A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under Subsection 101.01.c. is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

e. A federally-issued NPDES permit, the administration of which has been transferred to the Department upon or after EPA approval of the IPDES program, shall continue in effect and be enforceable by the Department, subject to Subsections 101.02 and 101.03.

02. Continuation of Individual Permits. The conditions of an expired individual permit, whether a federal NPDES permit (except for permits over which EPA retains authority) or a state-issued IPDES permit, will remain fully effective and enforceable until the effective date of a new permit or the date of the Department’s final decision to deny the application for the new permit, if:

a. The permittee has submitted a timely and complete application for a new permit under Section 105 (Application for an Individual IPDES Permit); and

b. The Department, because of time, resource, or other constraints, but through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

03. Continuation of General Permits. The conditions of an expired general permit, whether a federal NPDES permit or a state-issued IPDES permit, will remain fully effective and enforceable (except for permits over which EPA retains authority) until the date the authorization to discharge under the new permit is determined, if:

a. The permittee has submitted a timely notice of intent to obtain coverage under the new general permit as specified in Section 130 (General Permits); and

b. The Department, because of time, resource, or other constraints, but through no fault of the permittee, does not issue a new general permit with an effective date on or before the expiration date of the previous permit.

04. Continuation of Permits During an Appeal. Whether the conditions of an expired permit remain effective and enforceable during an appeal of a new permit, or an appeal of the denial of a permit application, is...
OBLIGATION TO OBTAIN AN IPDES PERMIT.

01. Persons Who Must Obtain a Permit. Any person who discharges or proposes to discharge a pollutant from any point source into waters of the United States, or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 40 CFR Part 503 or these rules, and who does not have an IPDES or NPDES permit in effect, shall submit a complete IPDES permit application to the Department, unless the discharge, proposed discharge, or TWTDS:

a. Is covered by one (1) or more general permits in compliance with Section 130 (General Permits). Any applicant must complete a notice of intent for any discharge or proposed discharge that is covered by one (1) or more general permits;

b. Is excluded from IPDES permit requirements under Subsection 102.05;

c. Is by a user to a privately owned treatment works, and the Department, under Section 370 (Pretreatment Standards), does not otherwise require the person to apply for a permit; or

d. Is a TWTDS facility that uses or disposes of sewage sludge to which a standard applicable to its sewage sludge use or disposal practices have not been published. Such facilities shall submit limited background information, as specified in Subsection 105.17.o., within one (1) year after publication of applicable standards.

02. Operator’s Duty to Obtain a Permit. When a facility or activity is owned by one person but is operated by another person, it is the operator’s duty to obtain a permit.

03. Permits Under the Clean Water Act Section 405(f). All new and currently permitted TWTDS whose sewage sludge use or disposal practices are regulated by 40 CFR Part 503 must submit permit applications according to the applicable schedule in Subsection 105.17. The Department may require permit applications from any TWTDS at any time if the Department determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

04. Designation of Small Municipal Separate Storm Sewer Systems (MS4s). DEQ shall designate a small MS4 that is not located in an urbanized area, as determined by the latest Decennial Census by the Bureau of Census, as a regulated small MS4 that must be covered by an IPDES permit if the Department determines that:

a. The storm water discharge results in or has the potential to result in exceedance of water quality standards or other significant water quality impacts; or

b. The storm water discharge contributes substantially to the pollutant loadings of a physically interconnected municipal separate storm sewer that is regulated by the IPDES storm water program.

05. Exclusions from Permit. A person shall not discharge pollutants from any point source into waters of the United States without first obtaining an IPDES permit from the Department or coverage under an IPDES general permit, unless the discharge is excluded from IPDES permit requirements or the discharge is authorized by an IPDES or NPDES permit that continues in effect. The Department will not require persons to obtain IPDES permits for facilities or activities that are not required to obtain NPDES permits from EPA under the Clean Water Act and federal Clean Water Act regulations. Discharges excluded from IPDES permit requirements, but that may be regulated by other state or federal regulations include:

a. Any sewage discharge from vessels and any effluent from properly functioning marine engines, laundry, shower and galley sink wastes, or any other discharge incidental to the normal operation of a vessel of the U.S. Armed Forces within the meaning of the Clean Water Act section 312, and a recreational vessel within the meaning of the Clean Water Act section 502(25). None of these exclusions apply to:
i. Rubbish, trash, garbage, or other such materials discharged overboard; nor to

ii. Other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as:

(1) An energy or mining facility;

(2) A storage facility, or when secured to a storage facility; or

(3) When secured to the bed of the waters of the United States for the purposes of mineral or oil exploration or development;

b. Any discharge of dredged or fill material into waters of the United States that is regulated under the Clean Water Act section 404;

c. Sewage, industrial wastes, or other pollutants discharged into publicly owned treatment works (POTWs) by an indirect discharger who has received a will-serve letter authorizing the discharge to the POTW. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the United States are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works;

d. Any discharge in compliance with the instructions of an on-scene coordinator under 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan), or 33 CFR 153.10(e) (Control of Pollution by Oil and Hazardous Substances, Discharge Removal);

e. Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands; however, this exclusion does not apply to discharges from concentrated animal feeding operations (CAFO) as defined in 40 CFR 122.23, discharges from concentrated aquatic animal production (CAAP) facilities, discharges to aquaculture projects, and discharges from silvicultural point sources;

f. Any return flow from irrigated agriculture;

g. Discharges into a privately owned treatment works, except as the Department may otherwise require under Subsection 302.15; and

h. Discharges from a water transfer. This exclusion does not apply to pollutants introduced by the water transfer activity itself to the water being transferred.

103. PERMIT PROHIBITIONS.
The Department will not issue an IPDES permit for a discharge:

01. Clean Water Act Compliance. Unless the conditions of the permit provide for compliance with the applicable requirements of IDAPA 58.01.02, “Water Quality Standards” and 58.01.25 “Rules Regulating the Idaho Pollutant Discharge Elimination System Program”;

02. EPA Objection. When the Department has received written objection pursuant to 40 CFR 123.44 from the EPA Regional Administrator to issuance of the permit and until the objections are resolved according to the process identified in the Memorandum of Agreement between EPA and the Department;

03. Water Quality Requirements. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;

04. Anchorage and Navigation Impaired. When, in the judgment of the Secretary of the United States Army through the Army Corp Chief of Engineers, anchorage and navigation in or on any of the waters of the
United States would be substantially impaired by the discharge;

05. **Banned Content.** Of any radiological, chemical, or biological warfare agent or high level radioactive waste;

06. **Area Wide Waste Treatment Management Plans.** That is inconsistent with a plan or plan amendment approved under the Clean Water Act section 208(b); or

07. **New Sources or New Dischargers.** For a new source or new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards.

a. When the owner or operator of a new source or new discharge proposes to discharge into a water segment that does not meet applicable water quality standards, or that is not expected to meet those standards even after the application of the effluent limitations required by Clean Water Act sections 301(b)(1)(A) and (B), and for which the state or interstate agency has performed a pollutant load allocation for the pollutant to be discharged, then the owner or operator must demonstrate that:

i. There are sufficient remaining pollutant load allocations to allow for the discharge; and

ii. The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards.

b. The Department may waive the submission of the information by the permit applicant required in Subsection 103.07.a. if the Department determines that it already has adequate information to evaluate the request.

c. An explanation of the development of limitations to meet the criteria of this section is to be included in the fact sheet to the permit.

104. **PRE-APPLICATION PROCESS.**
Any person who intends to apply for a permit or who proposes to discharge a pollutant into the waters of the United States should contact the Department to schedule a meeting prior to submitting an application to discuss:

01. **IPDES Permit Applicability.** Whether the actions or facility will require an IPDES permit, and whether other suitable permitting options are available;

02. **Application Content.** The IPDES permit application requirements; and

03. **Application Schedule.** The IPDES permit application submittal schedule.

105. **APPLICATION FOR AN INDIVIDUAL IPDES PERMIT.**

01. **Electronic Submittals.** The Department may require an applicant to electronically submit information required by this section, if the Department approves an electronic method of submittal.

02. **Application Retention Schedule.** An applicant must keep records of all data used to complete a permit application and any supplemental information submitted for a period of at least three (3) years from the date the application is signed.

03. **Time to Apply.** Any person required under Subsections 102.01 through 102.03 to obtain an IPDES permit must submit to the Department a complete application for a permit in compliance with the requirements of this subsection. A permit application must be signed and certified as required by Section 090 (Signature Requirements).

a. A person proposing a new discharge must submit an application at least one hundred eighty (180) days before the date on which the discharge is to commence, unless the Department has granted permission to submit the application on a later date as specified in Subsections 105.03.e. and f. A facility proposing a new discharge of storm water associated with industrial activity must submit an application one hundred eighty (180) days before that
facility commences industrial activity that may result in a discharge of storm water associated with that industrial activity, unless the Department has granted permission to submit the application on a later date as specified in Subsections 105.03.e. and f.

b. Facilities described under 40 CFR 122.26(b)(14)(x) or (b)(15)(i) must submit an application at least ninety (90) days before the date on which construction is to commence unless otherwise required by the terms of an applicable general permit.

c. Any TWTDS that commences operations after promulgation of any applicable “standard for sewage sludge use or disposal” must submit an application to the Department at least one hundred eighty (180) days prior to the date proposed for commencing operations.

d. A person discharging from a permitted facility with a currently effective permit must submit a new application at least one hundred eighty (180) days before the expiration date of the existing permit, unless the Department has granted permission to submit the application on a later date as specified in Subsections 105.03.e. and f.

e. Permission may be granted by the Department for submission of an application in less than one hundred eighty (180) days. The Department’s prior approval must be sought and obtained in advance of the one hundred eighty (180) days before expiration of the existing permit or commencement of new discharge.

f. The application will not be accepted after the expiration date of the existing permit as an application for renewal of the permit. Any applications received after the expiration of the permit will be reviewed as an application for a new source or new discharger.

04. Individual Permit Application Forms. An applicant must submit an application on one (1) or more Department-approved forms appropriate to the number and type of discharge or outfall at the applicant’s facility. A person required by Subsections 102.01 through 102.03 to obtain an individual IPDES permit must submit an application to the Department providing the information required by this subsection and Subsections 105.05 through 105.19, as applicable. The application must be submitted on one (1) or more of the EPA forms listed in this subsection, or on the Department equivalent of the listed EPA form:

a. All applicants, other than a POTW, TWTDS, and pesticide applicators (see Subsection 105.06), EPA Form 1 and the following additional forms, if applicable: ( )

i. Applicants for a concentrated animal feeding operation (CAFO; see Subsection 105.09) or concentrated aquatic animal production (CAAP; see Subsection 105.10) facility, EPA Form 2B; ( )

ii. Applicants for an existing industrial facility, including manufacturing facilities, commercial facilities, mining activities, and silviculture activities (see Subsection 105.07), EPA Form 2C; ( )

iii. Applicants for a new industrial facility that discharges process wastewater (see Subsection 105.16), EPA Form 2D; ( )

iv. Applicants for a new or existing industrial facility that discharges only non-process wastewater (see Subsection 105.08.a.), EPA Form 2E; ( )

v. Applicants for a new or existing facility whose discharge is composed entirely of storm water associated with industrial activity (see Subsection 105.19), EPA Form 2F unless the applicant is exempted by 40 CFR 122.26(c)(1)(ii). If the applicant’s discharge is composed of storm water and non-storm water (see Subsections 105.07, 105.08, and 105.16), EPA Forms 2C, 2D, or 2E, as appropriate, are also required; or ( )

vi. Applicants that operate a sludge-only facility (see Subsection 105.17), that currently does not have and is not applying for, an IPDES permit for a direct discharge to a surface water body, EPA Form 2S; ( )

b. For an applicant that is a new or existing POTW (see Subsections 105.11 through 105.15): ( )
i. EPA Form 2A; and

ii. EPA Form 2S, if applicable.

05. Application Information for All Dischargers. In addition to the application information required for specific dischargers, the Department may require the submittal of any information necessary to ensure compliance with Section 103 (Permit Prohibitions). Such information includes, but is not limited to:

a. Information required to determine compliance with the antidegradation policy and antidegradation implementation provisions set forth in IDAPA 58.01.02.051 and 052, “Water Quality Standards”; ( )

b. Information required to determine compliance with the mixing zone provisions set forth in IDAPA 58.01.02.060, “Water Quality Standards”; or ( )

c. Information necessary for the Department to authorize a compliance schedule under IDAPA 58.01.02.400, “Water Quality Standards.” ( )

06. Application Requirements for Dischargers Other than Treatment Works Treating Domestic Sewage (TWTDS), Publicly Owned Treatment Works (POTWs), and Pesticide Applicators. An applicant for an IPDES permit other than a POTW and other TWTDS, must provide the following information to the Department, using the appropriate forms specified in Subsection 105.04:

a. The applicant’s activity that requires an IPDES permit; ( )

b. The name, mailing address, e-mail address, and location of the facility for which the application is submitted; ( )

c. Up to four (4) Standard Industrial Classification (SIC) codes that best identify the principal products or services provided by the facility; ( )

d. The operator’s name, mailing address, e-mail address, telephone number, ownership status, Employer Identification Number (EIN) or Department equivalent, and status as federal, state, private, public, or other entity; ( )

e. A statement that the facility is located in Indian country, if applicable; ( )

f. A listing of all permits or construction approvals received or applied for under any of the following programs:

i. Hazardous waste management program under IDAPA 58.01.05, “Rules and Standards for Hazardous Waste”; ( )

ii. Underground injection control (UIC) program under the Idaho Department of Water Resources UIC program at IDAPA 37.03.03, “Rules and Minimum Standards for the Construction and Use of Injection Wells”; ( )

iii. IPDES program under IDAPA 58.01.25 “Rules Regulating the Idaho Pollutant Discharge Elimination System Program”; ( )

iv. Prevention of significant deterioration (PSD) program under IDAPA 58.01.01, “Rules for Control of Air Pollution in Idaho”; ( )

v. Nonattainment program under IDAPA 58.01.01, “Rules for Control of Air Pollution in Idaho”; ( )

vi. National emission standards for hazardous pollutants (NESHAPS) preconstruction approval under IDAPA 58.01.01, “Rules for Control of Air Pollution in Idaho”; ( )
vii. Dredge or fill permits under the Clean Water Act section 404; or ( )
viii. Other relevant environmental permits, programs or activities, including those subject to state jurisdiction, approval, and permits; and ( )
g. A topographic map, or other map if a topographic map is unavailable, extending one (1) mile beyond the property boundaries of the source, depicting:
i. The facility and each of its intake and discharge structures; ( )
ii. The location of the facility’s hazardous waste treatment, storage, or disposal areas; ( )
iii. The location of each well where fluids from the facility are injected underground; and ( )
iv. The location of wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known by the applicant to exist in the map area; and ( )
h. A brief description of the nature of the business; ( )
i. An indication of whether the facility uses cooling water and the source of the cooling water; and ( )
j. An indication of whether the facility is requesting any of the variances in Subsection 310.01 if known at the time of application. ( )

07. Application Requirements for Existing Manufacturing, Commercial, Mining and Silviculture Dischargers ( )
a. Except for a facility subject to the requirements in Subsection 105.08, an applicant for an IPDES permit for an existing discharge from a manufacturing, commercial, mining, or silviculture facility or activity must provide the following information to the Department, using the applicable forms specified in Subsection 105.04:

i. For each outfall:

(1) The latitude and longitude to the nearest second and the name of each receiving water; ( )

(2) A narrative identifying each type of process, operation, or production area that contributes wastewater to the effluent from that outfall, including process wastewater, cooling water, and storm water runoff; processes, operations, or production areas may be described in general terms, such as dye-making reactor or distillation tower; ( )

(3) The average flow that each process contributes and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge; ( )

(4) For a privately owned treatment works, the identity of each user of the treatment works; and ( )

(5) The average flow of point sources composed of storm water. For this subsection, the average flow may be estimated, and the basis for the rainfall event with the method of estimation must be submitted; ( )

ii. A description of the frequency, duration, and flow rate of each discharge occurrence for any of the discharges described in Subsections 105.07.a.(2) through (5) that are intermittent or seasonal, except for storm water runoff, spillage, or leaks; ( )

iii. A reasonable measure of the applicant’s actual production reported in the units used in the

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applicable effluent guideline, if an effluent guideline promulgated under the Clean Water Act section 304 applies to the applicant and is expressed in terms of production or other measure of operation. The reported measure must reflect the actual production of the facility as required by Subsection 303.02.b.;

iv. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading, or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates;

v. A listing of any toxic pollutant that the applicant currently uses or manufactures as an intermediate or final product or byproduct, except that the Department may waive or modify this requirement;

(1) If the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant; and

(2) The Department has adequate information to issue the permit;

vi. An identification of any biological toxicity tests that the applicant knows or has reason to believe have been made within the last three (3) years on any of the applicant’s discharges or on a receiving water in relation to a discharge; and

vii. The identity of each laboratory or firm and the analyses performed, if a contract laboratory or consulting firm performed any of the analyses required by Subsection 105.07.c. through m.

b. The owner or operator of a facility subject to this subsection must submit, with an application, a line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units.

i. In the line drawing, similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under Subsections 105.07.a.i(2) through (5).

ii. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units.

iii. If a water balance cannot be determined for certain activities, the applicant may instead provide a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

c. In addition to the items of information listed in Subsections 105.07.a. through 105.07.b., and except for information on storm water discharges required by 40 CFR 122.26, an applicant for an IPDES permit for an existing facility described in Subsection 105.07.a. must:

i. Collect, prepare, and submit information regarding the effluent characteristics and discharge of pollutants specified in this section; and

ii. When quantitative data for a pollutant are required, collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136, except that when no analytical method is approved, the applicant may use any suitable method but must describe the method.

d. An applicant under this subsection must:

i. Use grab samples in providing information regarding cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including E. coli), enterococci (previously known as fecal streptococcus), and volatile organics; temperature, pH, dissolved oxygen, and residual chlorine effluent data may be obtained from grab samples or from calibrated and properly maintained continuous monitors;

ii. For all other pollutants, use twenty-four (24) hour composite samples, unless specified otherwise at 40 CFR Part 136, with a minimum of four (4) grab samples, except that a minimum of one (1) grab sample may be
taken for effluents from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours;

e. For purposes of Subsection 105.07.c., exceptions to testing and data provision requirements for effluent characteristics include:

   i. When an applicant has two (2) or more outfalls with substantially identical effluents, the Department may allow the applicant to test only one (1) outfall and report that the quantitative data also apply to the substantially identical outfall; and

   ii. An applicant’s duty under Subsections 105.07.j., k., and l. to provide quantitative data for certain pollutants known or believed to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report that those pollutants are present.

f. For storm water discharges, associated with an existing facility described in Subsection 105.07.a., from storm events which yield more than one-tenth (0.1) inch of rainfall:

   i. All samples must be collected from the discharge resulting from a storm event and at least seventy-two (72) hours after the previously measurable storm event exceeding one-tenth (0.1) inch rainfall. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed fifty percent (50%) from the average or median rainfall event in that area; and

   ii. For all applicants, a flow-weighted composite sample must be taken for either the entire discharge or for the first three (3) hours of the discharge, except for the following:

      (1) The sampling may be conducted with a continuous sampler or as a combination of a minimum of three (3) sample aliquots taken in each hour of discharge for the entire discharge or for the first three (3) hours of the discharge, with each aliquot being separated by a minimum period of fifteen (15) minutes. If the Department approves, an applicant for a storm water discharge permit under Subsection 105.18 may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots;

      (2) A minimum of one (1) grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours;

      (3) For a flow-weighted composite sample, only one (1) analysis of the composite of aliquots is required;

   iii. For samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty (30) minutes, or as soon thereafter as practicable, of the discharge for all pollutants specified in Subsection 105.19 except that for all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 40 CFR 122.26(a) through (b) and (e) through (g), Subsections 105.18 and 105.19, but not for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including \textit{E. coli}), and enterococci (previously known as fecal streptococcus);

   iv. The Department may, on a case-by-case basis, allow or establish appropriate site-specific sampling procedures or requirements, including:

      (1) Sampling locations;

      (2) The season in which the sampling takes place;

      (3) The minimum duration between the previous measurable storm event and the sampled storm event;

      (4) The minimum or maximum level of precipitation required for an appropriate storm event;
(5) The form of precipitation sampled, whether snow melt or rain fall; ( )
(6) Protocols for collecting samples under 40 CFR Part 136; and ( )
(7) Additional time for submitting data; and ( )

v. An applicant is deemed to know or have reason to believe that a pollutant is present in an effluent if an evaluation of the expected use, production, or storage of the pollutant, or any previous analyses for the pollutant, show that pollutant’s presence. ( )

g. Unless a reporting requirement is waived under Subsection 105.07.h., every applicant subject to this subsection must report quantitative data for the following pollutants for every outfall: ( )
i. 5-day biochemical oxygen demand (BOD5); ( )
ii. Chemical oxygen demand (COD); ( )
iii. Total organic carbon (TOC); ( )
iv. Total suspended solids (TSS); ( )
v. Ammonia, as N; ( )
vi. Temperature (both winter and summer); and ( )
vii. pH. ( )

h. The Department may waive the reporting requirements under Subsection 105.07.g. for individual point sources or for a particular industry category for one (1) or more of the pollutants listed in Subsection 105.07.g. if the applicant demonstrates that information adequate to support issuance of a permit can be obtained with less stringent requirements. ( )
i. Except as provided in Subsection 105.07.o., an applicant with an existing facility described in Subsection 105.07.a. that has processes that qualify in one (1) or more of the primary industry categories shown in Appendix A to 40 CFR Part 122 contributing to a discharge, must report quantitative data for pollutants in each outfall containing process wastewater as follows: ( )
i. Data for the organic toxic pollutants listed in Table II of Appendix D to 40 CFR Part 122 in the fractions designated in Table I of Appendix D to 40 CFR Part 122. For purposes of this subsection: ( )
   (1) Table II of Appendix D to 40 CFR Part 122, lists the organic toxic pollutants in each fraction that result from the sample preparation required by the analytical procedure that uses gas chromatography/mass spectrometry; and ( )
   (2) If the Department determines that an applicant falls within an industrial category for the purposes of selecting fractions for testing, that determination does not establish the applicant’s category for any other purpose; see Notes 2 and 3 to 40 CFR 122.21; and ( )
ii. Data for the toxic metals, cyanide, and total phenols listed in Table III of Appendix D to 40 CFR Part 122. ( )

j. An applicant under this section must disclose whether the applicant knows or has reason to believe that any of the conventional and nonconventional pollutants in Table IV of Appendix D to 40 CFR Part 122 are discharged from each outfall. If an applicable effluent limitations guideline limits the pollutant either directly or indirectly by express limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged that is not limited in an effluent limitations guideline, the applicant must either report quantitative data or
briefly describe the reasons the pollutant is expected to be discharged.

k. An applicant under this subsection must disclose whether the applicant knows or has reason to believe that any of the organic toxic pollutants listed in Table II or the toxic metals, cyanide, or total phenols listed in Table III of Appendix D to 40 CFR Part 122 for which quantitative data are not otherwise required under Subsection 105.07.i., are discharged from each outfall. Unless an applicant qualifies as a small business under Subsection 105.07.o., the applicant must:

i. Report quantitative data for every pollutant expected to be discharged in concentrations of ten (10) parts per billion or greater;

ii. Report quantitative data for acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, if any of these four (4) pollutants are expected to be discharged in concentrations of one hundred (100) parts per billion or greater; and

iii. For every pollutant expected to be discharged in concentrations less than ten (10) parts per billion, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, in concentrations less than one hundred (100) parts per billion, either submit quantitative data, or briefly describe the reasons the pollutant is expected to be discharged and submit any supporting documentation.

l. An applicant under this subsection must disclose whether the applicant knows or has reason to believe that asbestos or any of the hazardous substances listed in Table V of Appendix D to 40 CFR Part 122 are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged and report any quantitative data it has for any pollutant.

m. An applicant under this subsection must disclose and report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7, 8-tetrachlorodibenzo-p-dioxin (TCDD) if the applicant:

i. Uses or manufactures the following:

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T);

(2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP);

(3) 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon);

(4) o,o-dimethyl o-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel);

(5) 2,4,5-trichlorophenol (TCP); or

(6) Hexachlorophene (HCP); or

ii. Knows or has reason to believe that TCDD is or may be present in an effluent.

n. Where quantitative data are required in Subsections 105.07.c. through m., existing data may be used, if available, in lieu of sampling done solely for the purpose of the application, provided that:

i. All data requirements are met; sampling was performed, collected, and analyzed no more than four and one-half (4 ½) years prior to submission;

ii. All data are representative of the discharge; and

iii. All available representative data are considered in the values reported.

o. An applicant under this subsection is exempt from the quantitative data requirements in Subsections 105.07.i. or 105.07.j. for the organic toxic pollutants listed in Table II of Appendix D to 40 CFR Part
122, if the applicant qualifies as a small business under one (1) of the following criteria: ( )

i. The applicant is a coal mine with an expected total annual production of less than one hundred thousand (100,000) tons per year; or ( )

ii. The applicant has gross total annual sales averaging less than two hundred eighty-seven thousand, three hundred dollars ($287,300) per year in 2014 dollars. ( )

p. In addition to the information reported on the application form, an applicant under this subsection must provide at the Department’s request, any other information that may be reasonably required to assess the discharges of the facility and to determine whether to issue an IPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and information required to determine the cause of the toxicity. ( )

08. Application Requirements for New or Existing Manufacturing, Commercial, Mining, and Silviculture Facilities that Discharge only Non-Process Wastewater. ( )

a. An applicant that is a manufacturing, commercial, mining, or silvicultural discharger that discharges only non-process wastewater not regulated by an effluent limitations guideline or new source performance standard must provide the following information to the Department for all discharges, except for storm water discharges, using the applicable forms specified in Subsection 105.04: ( )

i. The number of each outfall, the latitude and longitude to the nearest second, and the name of each receiving water; ( )

ii. For a new discharger, the date of expected commencement of discharge; ( )

iii. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or non-contact cooling water; ( )

iv. An identification of cooling water additives, if any, that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available; ( )

v. Effluent characteristics prepared and submitted as described in Subsections 105.08.b. and 105.08.c.; ( )

vi. A description of the frequency of flow and duration of any seasonal or intermittent discharge, except for storm water runoff, leaks, or spills; ( )

vii. A brief description of any treatment system used or to be used; ( )

viii. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits under Subsection 303.07; and ( )

ix. The signature of the certifying official under Section 090 (Signature Requirements). ( )

b. Except as otherwise provided in Subsections 105.08.d. through g., an application for a discharger described in Subsection 105.08.a. must include quantitative data for the following pollutants or parameters: ( )

i. 5-day biochemical oxygen demand (BOD5); ( )

ii. Total suspended solids (TSS); ( )

iii. Fecal coliform (including E. coli), if believed present or if sanitary waste is or will be discharged; ( )
iv. Total residual chlorine (TRC), if chlorine is used; ( )
v. Oil and grease; ( )
vi. Chemical oxygen demand (COD), if non-contact cooling water is or will be discharged; ( )
vii. Total organic carbon (TOC), if non-contact cooling water is or will be discharged; ( )
viii. Ammonia, as N; ( )
ix. Discharge flow; ( )
x. pH; and ( )
xi. Temperature, both in winter and summer, respectively. ( )
c. For purposes of the data required under Subsection 105.08.b.: ( )
i. Grab samples must be used for oil and grease, fecal coliform (including \textit{E. coli}), and volatile organics. Temperature, pH, and TRC effluent data may be obtained from grab samples or from calibrated and properly maintained continuous monitors; ( )

ii. Twenty-four (24) hour composite samples must be used for pollutants listed in Subsection 105.08.b., other than those specified in Subsection 105.08.c.i, unless specified otherwise at 40 CFR Part 136. Twenty-four (24) hour composite samples must, at a minimum, be composed of four (4) grab samples unless specified otherwise at 40 CFR Part 136. For a composite sample, only one (1) analysis of the composite aliquots is required; ( )

iii. The quantitative data may be collected over the past three hundred sixty-five (365) days, as long as the data is representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken; and ( )

iv. The applicant must collect and analyze samples in accordance with 40 CFR Part 136. ( )
d. The Department may waive the testing and reporting requirements for any of the pollutants or flow listed in Subsection 105.08.c. if the applicant requests a waiver with its application or earlier, and demonstrates that information adequate to support permit issuance can be obtained through less stringent requirements. ( )
e. If the applicant is a new discharger, the applicant must: ( )

i. Complete and submit Item IV of EPA Form 2E, or the Department equivalent, according to Subsection 105.04.a.iv., by providing quantitative data in compliance with that section no later than two (2) years after the discharge commences, except that the applicant need not complete those portions of Item IV requiring tests that the applicant has already performed and reported under the discharge monitoring requirements of its IPDES or NPDES permit; and ( )

ii. Include estimates and the source of each estimate instead of sampling data for the pollutants or parameters listed in Subsection 105.08.b.; ( )
f. For purposes of the data required under this subsection, all pollutant levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature. Submittal of all estimated data must be accompanied by documents supporting the estimated value. ( )
g. An applicant’s duty, under Subsections 105.08.b., c., and e., to provide quantitative data or estimates of certain pollutants does not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report the presence of those pollutants. If the requirements of Subsection 303.07 are met, net credit may be provided for the presence of pollutants in intake water. ( )
09. Application Requirements for New and Existing Concentrated Animal Feeding Operations (CAFO). An applicant for an IPDES permit for a new or existing CAFO, as defined in 40 CFR 122.23(b) must provide the following information to the Department, using the applicable forms specified in Subsection 105.04:

   a. The name of the owner or operator; ( )
   b. The facility location and mailing addresses; ( )
   c. Latitude and longitude of the production area to the nearest second, measured at the entrance to the production area; ( )
   d. A topographic map of the geographic area in which the concentrated animal feeding operation is located, showing the specific location of the production area; ( )
   e. Specific information about the number and type of animals, including, if applicable: beef cattle, broilers, layers, swine weighing fifty-five (55) pounds or more, swine weighing less than fifty-five (55) pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, or other animals, whether in open confinement or housed under roof; ( )
   f. The type of containment and total capacity in tons or gallons of any anaerobic lagoon, roofed storage shed, storage pond, under-floor pit, above-ground storage tank, below-ground storage tank, concrete pad, impervious soil pad, or other structure or area used for containment and storage of manure, litter, and process wastewater; ( )
   g. The total number of acres available and under the applicant’s control for land application of manure, litter, or process wastewater; ( )
   h. Estimated amounts of manure, litter, and process wastewater generated per year in tons or gallons; ( )
   i. Estimated amounts of manure, litter, and process wastewater transferred to other persons per year in tons or gallons; and ( )
   j. A nutrient management plan that has been completed and will be implemented upon the date of permit coverage. A nutrient management plan must meet, at a minimum, the requirements specified in 40 CFR 122.42(e), including for all CAFOs subject to 40 CFR 412.30 through 412.37, 412.40 through 412.47, or the requirements of 40 CFR 412.4(c), as applicable. ( )

10. Application Requirements for New and Existing Concentrated Aquatic Animal Production (CAAP) Facilities. An applicant for an IPDES permit for a new or existing CAAP facility must provide the following information, using the applicable forms specified in Subsection 105.04:

   a. The maximum daily and average monthly flow from each outfall; ( )
   b. The number of ponds, raceways, and similar structures; ( )
   c. The name of the receiving water and the source of intake water; ( )
   d. For each species of aquatic animal, the total yearly and maximum harvestable weight; and ( )
   e. The calendar month of maximum feeding and the total mass of food fed during that month. ( )

11. Application Requirements for New and Existing POTWs and Other Dischargers Designated by the Department.

( )
a. Except as provided in Subsection 105.11.b., an applicant that is a POTW and any other discharger designated by the Department must provide the information in this subsection, using the applicable forms specified in Subsection 105.04.b. An applicant under this subsection must submit all information available at the time of application; however, they may provide information by referencing information previously submitted to the Department.

b. The Department may waive any requirement of this subsection if it has access to substantially identical information or if that information is not of material concern for a specific permit, if approved by the EPA Regional Administrator. The waiver request to the Regional Administrator must include the Department’s justification for the waiver. A Regional Administrator’s disapproval of a Department’s proposed waiver does not constitute final agency action, but does provide notice to the state and permit applicant(s) that EPA may object to any state-issued permit issued in the absence of the required information.

c. An applicant under this subsection must provide:

i. Name, mailing address, and location of the facility for which the application is submitted;

ii. Name, mailing address, e-mail address, EIN or Department equivalent, and telephone number of the applicant, and a statement whether the applicant is the facility's owner, operator, or both;

iii. A list of all environmental permits or construction approvals received or applied for, including dates, under any of the following programs or types of activities:

   (1) Hazardous waste management program under IDAPA 58.01.05, “Rules and Standards for Hazardous Waste”;

   (2) Underground injection control (UIC) program under the Idaho Department of Water Resources UIC program at IDAPA 37.03.03, “Rules and Minimum Standards for the Construction and Use of Injection Wells”;

   (3) IPDES program under IDAPA 58.01.25, “Rules Regulating the Idaho Pollutant Discharge Elimination System Program”;

   (4) Prevention of significant deterioration (PSD) program under IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho”;

   (5) Nonattainment program under IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho”;

   (6) National emission standards for hazardous pollutants (NESHAPS) preconstruction approval under IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho”;

   (7) Dredge or fill permits under the Clean Water Act section 404;

   (8) Sludge Management Program under IDAPA 58.01.16.650, “Wastewater Rules,” and Section 380 (Sewage Sludge) of these rules; and

   (9) Other relevant environmental permits, programs, or activities, including those subject to state jurisdiction, approval, and permits;

iv. The name, population, and EDUs of each municipal entity served by the facility, including unincorporated connector districts, a statement whether each municipal entity owns or maintains the collection system and, if the information is available, whether the collection system is a separate sanitary sewer or a combined storm and sanitary sewer;

v. A statement whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;
vi. The facility’s design flow rate, or the wastewater flow rate the plant was built to handle, annual average daily flow rate, and maximum daily flow rate for each of the previous three (3) years;

vii. A statement identifying the types of collection systems, either separate sanitary sewers or combined storm and sanitary sewers, used by the treatment works, and an estimate of the percent of sewer line that each type comprises;

viii. The following information for outfalls to waters of the United States and other discharge or disposal methods:

(1) For effluent discharges to waters of the United States, the total number and types of outfalls including treated effluent, combined sewer overflows, bypasses, constructed emergency overflows;

(2) For wastewater discharged to surface impoundments, the location of each surface impoundment, the average daily volume discharged to each surface impoundment, and a statement whether the discharge is continuous or intermittent;

(3) For wastewater applied to the land, the location of each land application site, the size in acres of each land application site, the average daily volume in gallons per day applied to each land application site, and a statement whether the land application is continuous or intermittent;

(4) For effluent sent to another facility for treatment prior to discharge, the means by which the effluent is transported, the name, mailing address, e-mail address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant, the name, mailing address, e-mail address, contact person, phone number, and IPDES or NPDES permit number, if any, of the receiving facility, and the average daily flow rate from this facility into the receiving facility in million gallons per day (MGD); and

(5) For wastewater disposed of in a manner not included in Subsections 105.11.c.viii(1) through (4), including underground percolation and underground injection, a description of the disposal method, the location and size of each disposal site, if applicable, the annual average daily volume in gallons per day disposed of by this method, and a statement whether disposal by this method is continuous or intermittent;

ix. The name, mailing address, e-mail address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the POTW facility.

x. An indication of whether applicant is operating under or requesting to operate under a variance as specified in Subsection 310.02 if known at the time of application.

d. In addition to the information described in Subsection 105.11.c., an applicant under this subsection with a design flow greater than or equal to zero point one (0.1) million gallons per day (MGD) must provide:

i. The current average daily volume in gallons per day of inflow and infiltration, and a statement describing steps the facility is taking to minimize inflow and infiltration;

ii. A topographic map, or other map if a topographic map is unavailable, extending at least one (1) mile beyond property boundaries of the treatment plant including all unit processes, and showing:

(1) The treatment plant area and unit processes;

(2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant, including outfalls from bypass piping, if applicable;

(3) Each well where fluids from the treatment plant are injected underground;
(4) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within one-quarter (1/4) mile of the property boundaries of the treatment works; ( )

(5) Sewage sludge management facilities including on-site treatment, storage, and disposal sites; and ( )

(6) Each location at which waste classified as hazardous under IDAPA 58.01.05, “Rules and Standards for Hazardous Waste,” enters the treatment plant by truck, rail, or dedicated pipe; ( )

iii. A process flow diagram or schematic as follows: ( )

(1) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system, including a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points and approximate daily flow rates between treatment units; and ( )

(2) A narrative description of the diagram; and ( )

iv. The following information regarding scheduled improvements:

(1) The outfall number of each affected outfall; ( )

(2) A narrative description of each required improvement; ( )

(3) Scheduled dates for commencement and completion of construction, commencement of discharge and attainment of operational level, and actual completion date for any event listed in this subsection that has been completed; and ( )

(4) A description of permits and authorizations concerning other federal and state requirements. ( )

e. An applicant under this subsection must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable: ( )

i. For each outfall:

(1) The outfall number; ( )

(2) The county, and city or town in which the outfall is located; ( )

(3) The latitude and longitude, to the nearest second; ( )

(4) The distance from shore and depth below surface; ( )

(5) The average daily flow rate, in million gallons per day (MGD); ( )

(6) If the outfall has a seasonal or periodic discharge, the number of times per year the discharge occurs, the duration of each discharge, the flow of each discharge, and the months in which discharge occurs; and ( )

(7) A statement whether the outfall is equipped with a diffuser and the type of diffuser used, such as high-rate; ( )

ii. For each outfall discharging effluent to waters of the United States, the following receiving water information, if the information is available:

(1) The name of each receiving water; ( )
(2) The critical flow of each receiving stream; and

(3) The total hardness of the receiving stream at critical low flow; and

iii. For each outfall discharging to waters of the United States, the following information describing the treatment of the discharges:

(1) The highest level of treatment, including primary, equivalent to secondary, secondary, advanced, or other treatment level provided for:

   (a) The design biochemical oxygen demand removal percentage;

   (b) The design suspended solids removal percentage;

   (c) The design phosphorus removal percentage;

   (d) The design nitrogen removal percentage; and

   (e) Any other removals that an advanced treatment system is designed to achieve; and

(2) A description of the type of disinfection used, and a statement whether the treatment plant de-chlorinates, if disinfection is accomplished through chlorination.

f. In addition to Subsection 105.11.a., and except as provided in Subsection 105.11.h., an applicant under this subsection must undertake sampling and analysis and submit effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the United States, except for combined sewer overflows, including the following if applicable:

   i. Sampling and analysis for the pollutants listed in Appendix J, Table 1A to 40 CFR Part 122;

   ii. For an applicant with a design flow greater than or equal to zero point one (0.1) million gallons per day (MGD), sampling and analysis for the pollutants listed in Appendix J, Table 1 to 40 CFR Part 122, except that a facility that does not use chlorine for disinfection, does not use chlorine elsewhere in the treatment process, and has no reasonable potential to discharge chlorine in the facility’s effluent, is not required to sample or analyze chlorine;

   iii. Sampling and analysis for the pollutants listed in Appendix J, Table 2 to 40 CFR Part 122 and for any other pollutants for which the state or EPA has established water quality standards applicable to the receiving waters if the facility is:

      (1) A POTW that has a design flow rate equal to or greater than one (1) million gallons per day (MGD);

      (2) A POTW that has an approved pretreatment program;

      (3) A POTW that is required to develop a pretreatment program; or

      (4) Any POTW, as required by the Department to ensure compliance with these rules;

   iv. Sampling and analysis for additional pollutants, as the Department may require, on a case-by-case basis;

   v. Data from a minimum of three (3) samples taken within four and one-half (4 ½) years before the date of the permit application; to meet this requirement:
(1) Samples must be representative of the seasonal variation in the discharge from each outfall; ( )

(2) Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application; and ( )

(3) Additional samples may be required by the Department on a case-by-case basis; and ( )

vi. All existing data for pollutants specified in Subsections 105.11.f.i. through iv. collected within four and one-half (4 ½) years of the application. This data must be included in the pollutant data summary submitted by the applicant, except that if the applicant samples for a specific pollutant on a monthly or more frequent basis, only the data collected for that pollutant within one (1) year of the application must be provided. ( )

g. To meet the information requirements of Subsection 105.11.f., an applicant must: ( )

i. Collect samples of effluent and analyze the samples for pollutants in accordance with analytical methods approved under 40 CFR Part 136 unless an alternative is specified in the existing IPDES or NPDES permit; ( )

ii. Use the following methods: ( )

(1) Grab samples for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including \textit{E. coli}), and volatile organics. Temperature, pH, dissolved oxygen, and residual chlorine data may be obtained from grab samples or from calibrated and properly maintained continuous monitors; ( )

(2) Twenty-four (24) hour composite samples for all other pollutant, unless specified otherwise at 40 CFR Part 136, using a minimum of four (4) grab samples; for a composite sample, only one (1) analysis of the composite of aliquots is required; and ( )

iii. Provide at least the following information for each parameter: ( )

(1) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values; ( )

(2) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value; ( )

(3) The analytical method used; and ( )

(4) The threshold level, such as the method detection limit, minimum level, or other designated method endpoint for the analytical method used; and ( )

iv. Report metals as total recoverable, unless the Department requires otherwise. ( )

h. When an applicant under this subsection has two (2) or more outfalls with substantially identical effluent discharging to the same receiving water segment, the Department may, on a case-by-case basis, allow the applicant to submit sampling data for only one (1) outfall. The Department may also allow an applicant to composite samples from one (1) or more outfalls that discharge into the same mixing zone, pursuant to IDAPA 58.01.02, “Water Quality Standards.” For POTWs applying prior to commencement of discharge, data must be submitted no later than twenty-four (24) months after the commencement of discharge. ( )

12. Whole Effluent Toxicity (WET) Monitoring for POTWs.

a. An applicant for a permit under Subsection 105.11 must submit information on effluent monitoring for WET, including an identification of any WET tests conducted during the four and one-half (4 ½) years before the date of the application on any of the applicant's discharges or on any receiving water near the discharge. For POTWs applying prior to commencement of discharge, data must be submitted no later than twenty-four (24) months after the
commencement of discharge.

b. An applicant under Subsection 105.11 must submit to the Department, in compliance with Subsections 105.12.c. through f., the results of valid WET tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows, if the applicant:

i. Has a design flow rate greater than or equal to one (1) million gallons per day (MGD); 

ii. Has an approved pretreatment program or is required to develop a pretreatment program; or

iii. Is required to comply with this subsection by the Department, based on consideration of the following factors:

   (1) The variability of the pollutants or pollutant parameters in the POTW effluent based on chemical-specific information, the type of treatment plant, and types of industrial contributors; 

   (2) The ratio of effluent flow to receiving stream flow; 

   (3) Existing controls on point or non-point sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW; 

   (4) Receiving water characteristics, including possible or known water quality impairment, and whether the POTW discharges to a water designated as an outstanding natural resource water; or 

   (5) Other considerations, including the history of toxic impacts and compliance problems at the POTW that the Department determines could cause or contribute to adverse water quality impacts.

c. When an applicant under Subsection 105.11 has two (2) or more outfalls with substantially identical effluent discharging to the same receiving water segment, the Department may, on a case-by-case basis, allow the applicant to submit whole effluent toxicity data for only one (1) outfall. The Department may also allow an applicant to composite samples from one (1) or more outfalls that discharge into the same mixing zone.

d. An applicant under Subsection 105.12.b. that is required to perform WET testing must provide:

i. Results of a minimum of four (4) quarterly tests for a year, from the year preceding the permit application or results from four (4) tests performed at least annually in the four and one-half (4 ½) year period before the application, if the results show no appreciable toxicity using a safety factor determined by the Department; 

ii. The number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance; 

iii. The results using the form provided by the Department, or test summaries, if available and comprehensive, for each WET test conducted under this subsection for which the information has not been reported previously to the Department; 

iv. For WET data submitted to the Department within four and one-half (4 ½) years before the date of the application, the dates on which the data were submitted and a summary of the results; and 

v. Any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any WET test conducted within the past four and one-half (4 ½) years revealed toxicity.

e. An applicant under Subsection 105.11 must conduct tests with no less than two (2) species, including fish, invertebrate, or plant, and test for acute or chronic toxicity, depending on the range of receiving water
dilution. Unless the Department directs otherwise, an applicant must conduct acute or chronic testing based on the following dilutions:

i. Acute toxicity testing if the dilution of the effluent is greater than a ratio of one thousand to one (1,000:1) at the edge of the mixing zone;

ii. Acute or chronic toxicity testing, if the dilution of the effluent is between a ratio of one hundred to one (100:1) and one thousand to one (1,000:1) at the edge of the mixing zone; acute testing may be more appropriate at the higher end of this range (one thousand to one (1,000:1)), and chronic testing may be more appropriate at the lower end of this range (one hundred to one (100:1)); or

iii. Chronic testing if the dilution of the effluent is less than a ratio of one hundred to one (100:1) at the edge of the mixing zone.

f. For purposes of the WET testing required by this section, an applicant must conduct testing using methods approved under 40 CFR Part 136.

13. Application Requirements for POTWs Receiving Industrial Discharges.

a. An applicant for an IPDES permit as a POTW under Subsection 105.11 must state in its application the number of significant industrial users (SIU) and non-significant categorical industrial users (NSCIU), as defined at 40 CFR 403.3(v), including SIUs and NSCIUs that truck or haul waste, discharging to the POTW. A POTW with one (1) or more SIUs must provide the following information for each SIU that discharges to the POTW:

i. The name and mailing address of the SIU;

ii. A description of all industrial processes that affect or contribute to the SIU’s discharge;

iii. The principal products and raw materials of each SIU that affects or contributes to that SIU’s discharge;

iv. The average daily volume of wastewater discharged by the SIU, indicating the amount attributable to process flow and non-process flow;

v. A statement whether the SIU is subject to local limits;

vi. A statement whether the SIU is subject to one (1) or more categorical standards, and if so, under which category and subcategory; and

vii. A statement whether any problems at the POTW, including upsets, pass-through, or interference have been attributed to the SIU in the past four and one-half (4 ½) years.

b. The information required in Subsection 105.13.a. may be waived by the Department for a POTW with a pretreatment program if the applicant has submitted either of the following that contains information substantially identical to the information required in Subsection 105.13.a.:

i. An annual report submitted within one (1) year of the application; or

ii. A pretreatment program.

14. Application Requirements for POTWs Receiving Discharges from Hazardous Waste Generators and from Waste Cleanup or Remediation Sites.

a. A POTW receiving hazardous or corrective action wastes or wastes generated at another type of cleanup or remediation site must provide the following information:

i. If the POTW receives, or has been notified that it will receive by truck, rail, or dedicated pipe, any
wastes that are regulated as hazardous wastes under 40 CFR Part 261 and IDAPA 58.01.05, “Rules and Standards for Hazardous Waste,” the applicant must report the following:

(1) The method of delivery, including by truck, rail, or dedicated pipe, by which the waste is received; (        )

(2) The applicable hazardous waste number designated in IDAPA 58.01.05, “Rules and Standards for Hazardous Waste” for the transported waste, and the amount received annually of each hazardous waste; and (        )

ii. If the POTW receives, or has been notified that it will receive, wastewater that originates from remedial activities, including those undertaken under Comprehensive Environmental Response, Compensation, and Liability Act, and the Resource Conservation and Recovery Act sections 3004(u) or 3008(h), the applicant must report the following:

(1) The identity and description of each site or facility at which the wastewater originates; (        )

(2) The identity of any known hazardous constituents specified in IDAPA 58.01.05, “Rules and Standards for Hazardous Waste,” in the wastewater; and (        )

(3) The extent of any treatment the wastewater receives or will receive before entering the POTW. (        )

b. An applicant under this subsection is exempt from the requirements of Subsection 105.14.a.ii. if the applicant receives no more than fifteen (15) kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in IDAPA 58.01.05, “Rules and Standards for Hazardous Waste.” (        )

15. Application Requirements for POTWs with Combined Sewer Systems and Overflows. A POTW applicant with a combined sewer system must provide the following information on the combined sewer system and outfalls:

a. A system map indicating the location of:

i. All combined sewer overflow discharge points; (        )

ii. Any sensitive use areas potentially affected by combined sewer overflows including beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems; (        )

iii. Outstanding national resource waters potentially affected by combined sewer overflows; and (        )

iv. Waters supporting threatened and endangered species potentially affected by combined sewer overflows; (        )

b. A system diagram of the combined sewer collection system that includes the locations of:

i. Major sewer trunk lines, both combined and separate sanitary; (        )

ii. Points where separate sanitary sewers feed into the combined sewer system; (        )

iii. In-line and off-line storage structures; (        )

iv. Flow-regulating devices; and (        )

v. Pump stations; (        )

c. Information on each outfall for each combined sewer overflow discharge point covered by the permit application, including: (        )
i. The outfall number; ( )

ii. The county and city or town in which the outfall is located; ( )

iii. The latitude and longitude, to the nearest second; and ( )

iv. The distance from shore and depth below surface; ( )

d. A statement whether the applicant monitored any of the following in the past year for a combined sewer overflow: ( )

i. Rainfall; ( )

ii. Overflow volume; ( )

iii. Overflow pollutant concentrations; ( )

iv. Receiving water quality; ( )

v. Overflow frequency; and ( )

vi. The number of storm events monitored in the past year; ( )

e. Information regarding the number of combined sewer overflows from each outfall in the past year and, if available: ( )

i. The average duration per event; ( )

ii. The average volume for each event; and ( )

iii. The minimum rainfall that caused a combined sewer overflow event in the last year; ( )

f. The name of each receiving water; ( )

g. A description of any known water quality impact caused by the combined sewer overflow operations, including permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or the exceedance of any applicable state water quality standard, on the receiving water; and ( )

h. All applicants must provide the name, mailing address, e-mail address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility. ( )

16. Application Requirements for New Sources and New Discharges. ( )

a. An applicant for an IPDES permit for a new manufacturing, commercial, mining, silviculture, or other discharge, except for a new discharge from a facility subject to the requirements of Subsection 105.08 or a new discharge of storm water associated with industrial activity that is subject to the requirements of Subsection 105.19, except as provided by Subsection 105.19.c., must provide the following information to the Department, using the applicable forms specified in Subsection 105.04.b.: ( )

i. The latitude and longitude to the nearest second of the expected outfall location and the name of each receiving water; ( )

ii. The expected date the discharge will commence; ( )

iii. The following information on flows, sources of pollution, and treatment technologies: ( )
(1) A narrative describing the treatment that the wastewater will receive, identifying all operations contributing wastewater to the effluent, stating the average flow contributed by each operation, and describing the ultimate disposal of any solid or liquid wastes not discharged;

(2) A line drawing of the water flow through the facility with a water balance as described in Subsection 105.07.b.; and

(3) If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration, and maximum daily flow rate of each discharge occurrence, except for storm water runoff, spillage, or leaks;

iv. If a new source performance standard promulgated under the Clean Water Act section 306 or an effluent limitation guideline applies to the applicant and is expressed in terms of production or other measure of operation, a reasonable calculation of the applicant’s expected actual production reported in the units used in the applicable effluent guideline or new source performance standard, as required by Subsection 303.02.b., for each of the first three (3) years. The applicant may submit alternative estimates if production is likely to vary;

v. The effluent characteristics information as described in Subsection 105.16.b.;

vi. The existence of any technical evaluation concerning the applicant’s wastewater treatment, along with the name and location of similar plants of which the applicant has knowledge;

vii. Any optional information the permittee wishes the Department to consider.

b. An applicant under this section must provide the following effluent characteristics information:

i. Estimated daily maximum, daily average, and the source of that information for each outfall for the following pollutants or parameters:

   (1) Five (5)-day biochemical oxygen demand (BOD5);
   (2) Chemical oxygen demand (COD);
   (3) Total organic carbon (TOC);
   (4) Total suspended solids (TSS);
   (5) Flow;
   (6) Ammonia, as N;
   (7) Temperature, in both winter and summer; and
   (8) pH.

ii. Estimated daily maximum, daily average, and the source of that information for each outfall for all the conventional and nonconventional pollutants in Table IV of Appendix D to 40 CFR Part 122, if the applicant knows or has reason to believe any of the pollutants will be present or if any of the pollutants are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant;

iii. Estimated daily maximum, daily average, and the source of that information for the following pollutants for each outfall, if the applicant knows or has reason to believe the pollutants will be present in the discharge from any outfall:
(1) All pollutants in Table IV of Appendix D to 40 CFR Part 122;
(2) The toxic metals, total cyanide, and total phenols listed in Table III of Appendix D to 40 CFR Part 122;
(3) The organic toxic pollutants in Table II of Appendix D to 40 CFR Part 122 except bis(chloromethyl) ether, dichlorofluoromethane, and trichlorofluoromethane; however, this requirement is waived for:
   (a) An applicant with expected gross sales of less than two hundred eighty-seven thousand three hundred dollars ($287,300) per year in 2014 dollars for the next three (3) years (see also Subsection 105.07.o.ii.); or
   (b) A coal mine with expected average production of less than one hundred thousand (100,000) tons of coal per year (see also Subsection 105.07.o.i.);
iv. The information that 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) may be discharged if the applicant uses or manufactures one (1) of the following compounds, or if the applicant knows or has reason to believe that TCDD will or may be present in an effluent:
   (1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); Chemical Abstract Service (CAS) #93-76-5;
   (2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);
   (3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);
   (4) o,o-dimethyl o-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);
   (5) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or
   (6) Hexachlorophene (HCP) (CAS #70-30-4);
   (7) Any other compounds identified by the District or the Department as requiring control.
v. The potential presence of any of the pollutants listed in Table V of Appendix D to 40 CFR Part 122 if the applicant believes these pollutants will be present in any outfall, except that quantitative estimates are not required unless they are already available at the time the applicant applies for the permit.

 c. No later than twenty-four (24) months after the commencement of discharge from the proposed facility, the applicant is required to complete and submit Items V and VI of EPA application Form 2C or the Department equivalent. The applicant need not complete those portions of Item V or the Department equivalent requiring tests already performed and reported under the discharge monitoring requirements of its permit.

d. The effluent characteristics requirements in Subsections 105.08.b., c., and e. that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report that a pollutant is present. For purposes of this subsection, net credits may be provided for the presence of pollutants in intake water if the requirements of Subsection 303.07 are met, and (except for discharge flow, temperature, and pH) all levels must be estimated as concentration and as total mass.

e. The Department may waive the reporting requirements for any of the pollutants and parameters in Subsection 105.16.b. if the applicant requests a waiver with its application, or earlier, and demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

17. Application Requirements for Treatment Works Treating Domestic Sewage (TWTDS). All TWTDS with a currently effective NPDES or IPDES permit must submit a permit application at the time of the next IPDES permit renewal application, using Form 2S or another application form approved by the Department. New applicants must submit all information available at the time of permit application. The information may be provided...
by referencing information previously submitted to the Department.

a. The Department may waive any requirement of this subsection if there is access to substantially identical information. The Department may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the EPA Regional Administrator. The waiver request to the Regional Administrator must include the Department’s justification for the waiver. A Regional Administrator's disapproval of a Department’s proposed waiver does not constitute final agency action, but does provide notice to the state and permit applicant(s) that EPA may object to any state-issued permit issued in the absence of the required information.

b. All applicants must submit the following information:
   i. The name, mailing address, and location of the TWTDS for which the application is submitted;
   ii. The name, mailing address, e-mail address, EIN or Department equivalent, and telephone number of the applicant and indication whether the applicant is the owner, operator, or both;
   iii. Whether the facility is a Class I Sludge Management Facility;
   iv. The design flow rate in million gallons per day (MGD);
   v. The total population and equivalent dwelling units (EDU) served; and
   vi. The TWTDS's status as federal, state, private, public, or other entity.

c. All applicants must submit the facility's NPDES or IPDES permit number, if applicable, and a listing of all other federal, state, and local permits or construction approvals received or applied for under any of the following programs:
   i. Hazardous waste management program under IDAPA 58.01.05, “Rules and Standards for Hazardous Waste”;
   ii. Underground injection control (UIC) program under the Idaho Department of Water Resources UIC program at IDAPA 37.03.03, “Rules and Minimum Standards for the Construction and Use of Injection Wells”;
   iii. IPDES program under IDAPA 58.01.25, “Rules Regulating the Idaho Pollutant Discharge Elimination System Program”;
   iv. Prevention of significant deterioration (PSD) program under IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho”;
   v. Nonattainment program under IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho”;
   vi. National emission standards for hazardous pollutants (NESHAPs) preconstruction approval under IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho”;
   vii. Dredge or fill permits under the Clean Water Act section 404;
   viii. Sludge Management Program under IDAPA 58.01.16.650, “Wastewater Rules,” and Section 380 (Sewage Sludge) of these rules; and
   ix. Other relevant environmental permits, programs or activities, including those subject to state jurisdiction, approval, and permits.
d. All applicants must identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs in Indian country.

e. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one (1) mile beyond property boundaries of the facility and showing the following information:
   i. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and
   ii. Wells, springs, and other surface water bodies that are within one-quarter (¼) mile of the property boundaries and listed in public records or otherwise known to the applicant.

f. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge, the destination(s) of all liquids and solids leaving each such unit, and all processes used for pathogen reduction and vector attraction reduction.

g. The applicant must submit sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in 40 CFR Part 503 for the applicant’s use or disposal practices on the date of permit application.
   i. The Department may require sampling for additional pollutants, as appropriate, on a case-by-case basis;
   ii. Applicants must provide data from a minimum of three (3) samples taken within four and one-half (4 ½) years prior to the date of the permit application. Samples must be representative of the sewage sludge and should be taken at least one (1) month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application;
   iii. Applicants must collect and analyze samples in accordance with analytical methods approved under SW-846 (Test Methods for Evaluating Solid Waste, Physical/Chemical Methods) unless an alternative has been specified in an existing sewage sludge permit; and
   iv. The monitoring data provided must include at least the following information for each parameter:
      (1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;
      (2) The analytical method used; and
      (3) The method detection level.

h. If the applicant is either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge, the following information must be provided:
   i. If the applicant’s facility generates sewage sludge, the total dry metric tons per three hundred sixty-five (365)-day period generated at the facility;
   ii. If the applicant’s facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received:
      (1) The name, mailing address, and location of the other facility;
      (2) The total dry metric tons per three hundred sixty-five (365)-day period received from the other facility; and
(3) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics; ( )

   iii. If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information must be submitted:

   (1) Whether the Class A pathogen reduction requirements in 40 CFR 503.32(a) or the Class B pathogen reduction requirements in 40 CFR 503.32(b) are met, and a description of any treatment processes used to reduce pathogens in sewage sludge; ( )

   (2) Whether any of the vector attraction reduction options of 40 CFR 503.33(b)(1) through (b)(8) are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and ( )

   (3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge; ( )

   iv. If sewage sludge from the applicant's facility meets the ceiling concentrations in 40 CFR 503.13(b)(1), the pollutant concentrations in 40 CFR 503.13(b)(3), the Class A pathogen requirements in 40 CFR 503.32(a), and one (1) of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (b)(8), and if the sewage sludge is applied to the land, the applicant must provide the total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to this subsection that is applied to the land; ( )

   v. If sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to Subsection 105.17.h.iv., the applicant must provide the following information:

   (1) The total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to this subsection that is sold or given away in a bag or other container for application to the land; and ( )

   (2) A copy of all labels or notices that accompany the sewage sludge being sold or given away; and ( )

   vi. If sewage sludge from the applicant's facility is provided to another person who generates sewage sludge during the treatment of domestic sewage in a treatment works or a person who derives a material from sewage sludge, and the sewage sludge is not subject to Subsection 105.17.h.iv., the applicant must provide the following information for each facility receiving the sewage sludge:

   (1) The name, e-mail address, and mailing address of the receiving facility; ( )

   (2) The total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to this subsection that the applicant provides to the receiving facility; ( )

   (3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic; ( )

   (4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 40 CFR 503.12(g); and ( )

   (5) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge. ( )

   i. If sewage sludge from the applicant's facility is applied to the land in bulk form, and is not subject to Subsection 105.17.h.iv., v., or vi., the applicant must provide the following information:

   (1) The total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to
this subsection that is applied to the land;

ii. If any land application sites are located in states other than the state where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the state(s) where the land application sites are located;

iii. The following information for each land application site that has been identified at the time of permit application:

   (1) The name (if any), and location for the land application site;

   (2) The site's latitude and longitude to the nearest second, and method of determination;

   (3) A topographic map (or other map if a topographic map is unavailable) that shows the site's location;

   (4) The name, mailing address, e-mail address, and telephone number of the site owner, if different from the applicant;

   (5) The name, mailing address, e-mail address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant;

   (6) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined under 40 CFR 503.11;

   (7) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation;

   (8) Whether either of the vector attraction reduction options of 40 CFR 503.33(b)(9) or (b)(10) is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and

   (9) Other information that describes how the site will be managed, as specified by the permitting authority.

iv. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) to the site:

   (1) Whether the applicant has contacted the permitting authority in the state where the bulk sewage sludge subject to 40 CFR 503.13(b)(2) will be applied, to ascertain whether bulk sewage sludge subject to 40 CFR 503.13(b)(2) has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name, phone number, and e-mail address, if available, of a contact person at the permitting authority;

   (2) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) to the site since July 20, 1993, if, based on the inquiry in Subsection 105.17.i.iv(1) bulk sewage sludge subject to cumulative pollutant loading rates in 40 CFR 503.13(b)(2) has been applied to the site since July 20, 1993;

v. If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum:

   (1) Describes the geographical area covered by the plan;

   (2) Identifies the site selection criteria;

   (3) Describes how the site(s) will be managed;
(4) Provides for advance notice to the permit authority of specific land application sites and reasonable
time for the permit authority to object prior to land application of the sewage sludge; and

(5) Provides for advance public notice of land application sites in the manner prescribed by state and
local law. When state or local law does not require advance public notice, it must be provided in a manner reasonably
calculated to apprise the general public of the planned land application.

j. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must
provide the following information:

i. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface
disposal sites per three hundred sixty-five (365)-day period;

ii. The following information for each surface disposal site receiving sewage sludge from the
applicant's facility that the applicant does not own or operate:

(1) The site name or number, contact person, mailing address, e-mail address, and telephone number
for the surface disposal site; and

(2) The total dry metric tons from the applicant's facility per three hundred sixty-five (365)-day period
placed on the surface disposal site;

iii. The following information for each active sewage sludge unit at each surface disposal site that the
applicant owns or operates:

(1) The name or number and the location of the active sewage sludge unit;

(2) The unit's latitude and longitude to the nearest second, and method of determination;

(3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that
shows the unit's location;

(4) The total dry metric tons placed on the active sewage sludge unit per three hundred sixty-five
(365)-day period;

(5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;

(6) A description of any liner for the active sewage sludge unit, including whether it has a maximum
permeability of $1 \times 10^{-7}$ cm/sec;

(7) A description of any leachate collection system for the active sewage sludge unit, including the
method used for leachate disposal, and any federal, state, and local permit number(s) for leachate disposal;

(8) If the active sewage sludge unit is less than one hundred fifty (150) meters from the property line of
the surface disposal site, the actual distance from the unit boundary to the site property line;

(9) The remaining capacity (dry metric tons) for the active sewage sludge unit;

(10) The date on which the active sewage sludge unit is expected to close, if such a date has been
identified;

(11) The following information for any other facility that sends sewage sludge to the active sewage
unit:

(a) The name, contact person, and mailing address of the facility; and

(b) Available information regarding the quality of the sewage sludge received from the facility,
including any treatment at the facility to reduce pathogens or vector attraction characteristics; ( )

(12) Whether any of the vector attraction reduction options of 40 CFR 503.33(b)(9) through (b)(11) is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge; ( )

(13) The following information, as applicable to any ground water monitoring occurring at the active sewage sludge unit:

(a) A description of any ground water monitoring occurring at the active sewage sludge unit; ( )

(b) Any available ground water monitoring data, with a description of the well locations and approximate depth to ground water; ( )

(c) A copy of any ground water monitoring plan that has been prepared for the active sewage sludge unit; and ( )

(d) A copy of any certification that has been obtained from a qualified ground water scientist that the aquifer has not been contaminated; and ( )

(14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request. ( )

k. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:

i. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per three hundred sixty-five (365)-day period; ( )

ii. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate:

(1) The name and/or number, contact person, mailing address, e-mail address, and telephone number of the sewage sludge incinerator; and ( )

(2) The total dry metric tons from the applicant's facility per three hundred sixty-five (365)-day period fired in the sewage sludge incinerator; ( )

iii. The following information for each sewage sludge incinerator that the applicant owns or operates:

(1) The name and/or number and the location of the sewage sludge incinerator; ( )

(2) The incinerator's latitude and longitude to the nearest second, and method of determination; ( )

(3) The total dry metric tons per three hundred sixty-five (365)-day period fired in the sewage sludge incinerator; ( )

(4) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Beryllium in 40 CFR Part 61 will be achieved; ( )

(5) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Mercury in 40 CFR Part 61 will be achieved; ( )

(6) The dispersion factor for the sewage sludge incinerator, as well as modeling results and supporting documentation; ( )
(7) The control efficiency for parameters regulated in 40 CFR 503.43, as well as performance test results and supporting documentation;

(8) Information used to calculate the risk specific concentration (RSC) for chromium, including the results of incinerator stack tests for hexavalent and total chromium concentrations, if the applicant is requesting a chromium limit based on a site-specific RSC value;

(9) Whether the applicant monitors total hydrocarbons (THC) or Carbon Monoxide (CO) in the exit gas for the sewage sludge incinerator;

(10) The type of sewage sludge incinerator;

(11) The maximum performance test combustion temperature, as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies;

(12) The following information on the sewage sludge feed rate used during the performance test:

(a) Sewage sludge feed rate in dry metric tons per day;

(b) Identification of whether the feed rate submitted is average use or maximum design; and

(c) A description of how the feed rate was calculated;

(13) The incinerator stack height in meters for each stack, including identification of whether actual or creditable stack height was used;

(14) The operating parameters for the sewage sludge incinerator air pollution control device(s), as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies;

(15) Identification of the monitoring equipment in place, including (but not limited to) equipment to monitor the following:

(a) Total hydrocarbons or Carbon Monoxide;

(b) Percent Oxygen;

(c) Percent moisture; and

(d) Combustion temperature; and

(16) A list of all air pollution control equipment used with this sewage sludge incinerator.

I. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:

i. The name, contact person, mailing address, e-mail address location, and all applicable permit numbers of the MSWLF;

ii. The total dry metric tons per three hundred sixty-five (365)-day period sent from this facility to the MSWLF;

iii. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and
iv. Information, if known, indicating whether the MSWLF complies with criteria set forth in 40 CFR Part 258.

m. All applicants must provide the name, mailing address, e-mail address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal.

n. At the request of the Department, the applicant must provide any other information necessary to determine the appropriate standards for permitting under 40 CFR Part 503 and any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements.

o. TWTDS facilities using or disposing of sewage sludge to which a standard applicable to its sewage sludge use or disposal practices have been published must submit the following information on EPA Form 2S, Part I, or on the Department equivalent form:

i. The TWTDS’s name, mailing address, location, and status as federal, state, private, public, or other entity;

ii. The applicant’s name, address, e-mail address, telephone number, and ownership status;

iii. A description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the requirements of Subsection 105.17.h.iv., the description must include the name and address of any facility where sewage sludge is sent for treatment or disposal, and the location of any land application sites;

iv. Annual amount of sewage sludge generated, treated, used or disposed (estimated dry weight basis); and

v. The most recent data the TWTDS may have on the quality of the sewage sludge.

18. Application Requirements for Municipal Separate Storm Sewer Discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Department under 40 CFR 122.26(a)(1)(v), may submit a jurisdiction-wide or system-wide permit application. Where more than one (1) public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a co-applicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under 40 CFR 122.26 (a)(1)(v) must include:

a. In Part 1 of the application

i. The applicants' name, address, e-mail address, EIN or Department equivalent, telephone number of contact person, ownership status and status as a state or local government entity;

ii. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in Subsection 105.18.b.i., the description must list additional authorities as will be necessary to meet the criteria and include a schedule and commitment to seek such additional authority that will be needed to meet the criteria;

iii. A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any POTW serving the same area as the municipal separate storm sewer system, include all of the following:

(1) A USGS seven point five (7.5) minute topographic map (or equivalent topographic map with a scale between one to ten thousand (1:10,000) and one to twenty-four thousand (1:24,000) if cost effective) extending one (1) mile beyond the service boundaries of the municipal storm sewer system covered by the permit application;
(2) The location of known municipal storm sewer system outfalls discharging to waters of the United States; 
( )

(3) A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agricultural and industrial uses) accompanied with estimates of population densities and projected growth for a ten (10) year period within the drainage area served by the separate storm sewer and an estimate of an average runoff coefficient for each land use type; 
( )

(4) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste; 
( )

(5) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a NPDES or IPDES permit; 
( )

(6) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and 
( )

(7) The identification of publicly owned parks, recreational areas, and other open lands. 
( )

iv. A description of the discharge including:

(1) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events; 
( )

(2) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used; 
( )

(3) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts must include a description of whether the water bodies receiving such discharges have: 
( )

(a) Assessed and reported in the Clean Water Act section 305(b) reports submitted by the Department, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act goals (fishable and swimmable waters), and causes of nonsupport of designated uses; 
( )

(b) Listed under the Clean Water Act section 304(l)(1)(A)(i), 304(l)(1)(A)(ii), or 304(l)(1)(B) that is not expected to meet water quality standards or water quality goals; 
( )

(c) Listed in state Nonpoint Source Assessments required by the Clean Water Act section 319(a), without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards); 
( )

(d) Identified and classified according to eutrophic condition of publicly owned lakes listed in state reports required under the Clean Water Act section 314(a) (include the following: A description of those publicly owned lakes for which uses are known to be impaired, a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes, and a description of methods and procedures to restore the quality of such lakes); 
( )

(e) Recognized by the applicant as highly valued or sensitive waters; 
( )

(f) Defined by the state as wetlands; and 
( )

(g) Found to have pollutants in bottom sediments, fish tissue, or biosurvey data. 
( )
(4) Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis includes a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two (2) grab samples are to be collected during a twenty-four (24)-hour period with a minimum period of four (4) hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping must be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) must be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR Part 136, the applicant must provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points are either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points are established using the following guidelines and criteria:

(a) Overlay a grid system consisting of perpendicular north-south and east-west lines spaced one-quarter (¼) mile apart on a map of the municipal storm sewer system, creating a series of cells;

(b) Identify all cells that contain a segment of the storm sewer system; select one (1) field screening point in each cell; major outfalls may be used as field screening points;

(c) Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

(d) Locate field screening points to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

(e) Hydrological conditions, total drainage area of the site, population density of the site, traffic density, age of the structures or buildings in the area, history of the area, and land use types;

(f) For medium municipal separate storm sewer systems, no more than two hundred fifty (250) cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than five hundred (500) cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than two hundred fifty (250) cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system are subject to field screening (unless access to the separate storm sewer system is impossible); and

(g) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in Subsection 105.18.a.iv(4)(a) through (f), because a sufficiently detailed map of the separate storm sewer systems is unavailable, must field screen no more than five hundred (500) or two hundred fifty (250) major outfalls respectively (or all major outfalls in the system, if less). In such circumstances, the applicant must establish a grid system consisting of north-south and east-west lines spaced one-quarter (¼) mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells. The applicant will then select major outfalls in as many cells as possible until at least five hundred (500) major outfalls (large municipalities) or two hundred fifty (250) major outfalls (medium municipalities) are selected; a field screening analysis must occur at these major outfalls; and

(5) Information and a proposed program to meet the requirements of Subsection 105.18.b.iii., including at least: the location of outfalls or field screening points appropriate for representative data collection under Subsection 105.18.b.iii(1), a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (see Subsection 105.18.a.iv(3)) to the extent practicable;
v. A description of the existing management programs to control pollutants from the municipal separate storm sewer system including existing source controls and operation and maintenance measures for structural controls that are currently being implemented. Such controls may include, but are not limited to: procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under state law as well as local requirements; (        )

vi. A description of the existing program to identify illicit connections to the municipal storm sewer system, that includes inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented; and (        )

vii. A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs. (        )

b. In Part 2 of the application: (        )

i. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance, or series of contracts which authorizes or enables the applicant at a minimum to: (        )

(1) Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity; (        )

(2) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer; (        )

(3) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water; (        )

(4) Control through interagency agreements among co-applicants the contribution of pollutants from a portion of the municipal system to another portion of the municipal system; (        )

(5) Require compliance with conditions in ordinances, permits, contracts or orders; and (        )

(6) Carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer. (        )

ii. The location of any major outfall that discharges to waters of the United States that was not reported under Subsection 105.18.a.iii(2). Provide an inventory, organized by watershed of the name and address, and a description (such as Standard Industrial Classification (SIC) codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity; (        )

iii. When quantitative data for a pollutant are required under Subsection 105.18.b.iii(1)(c), the applicant must collect a sample of effluent in accordance with Subsection 105.07.c. through 105.07.m. and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including: (        )

(1) Quantitative data from representative outfalls designated by the Department developed as follows (based on information received in part 1 of the application. The Department will designate between five (5) and ten (10) outfalls or field screening points as representative of the commercial, residential and industrial land use activities
of the drainage area contributing to the system or, where there are less than five (5) outfalls covered in the application, the Department will designate all outfalls):

(a) For each outfall or field screening point designated under this subsection, samples must be collected of storm water discharges from three (3) storm events occurring at least one (1) month apart in accordance with the requirements at Subsection 105.07.c. through 105.07.m. (the Department may allow exemptions to sampling three (3) storm events when climatic conditions create good cause for such exemptions);

(b) A narrative description must be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than one-tenth (0.1) inch rainfall) storm event;

(c) For samples collected and described under Subsections 105.18.b.iii(1)(a) and (b), quantitative data will be provided for the organic pollutants listed in Table II and the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of Appendix D of 40 CFR Part 122, and for the following pollutants:

(i) Total suspended solids (TSS);
(ii) Total dissolved solids (TDS);
(iii) Chemical oxygen demand (COD);
(iv) Five (5)-day biochemical oxygen demand (BOD5);
(v) Oil and grease;
(vi) Fecal coliform (including *E. coli*);
(vii) Enterococci (previously known as fecal streptococcus);
(viii) pH;
(ix) Total Kjeldahl nitrogen;
(x) Nitrate plus nitrite;
(xi) Total ammonia plus organic nitrogen;
(xii) Dissolved phosphorus; and
(xiii) Total phosphorus;

(d) Additional limited quantitative data required by the Department for determining permit conditions (the Department may require that quantitative data be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representativeness);

(2) Estimates of the annual pollutant load of the cumulative discharges to waters of the United States from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the United States from all identified municipal outfalls during a storm event for BOD5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates must be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods;

(3) A proposed schedule to provide estimates for each major outfall identified in either Subsection 105.18.b.ii. or 105.18.a.iii(2) of the seasonal pollutant load and of the event mean concentration of a representative
storm for any constituent detected in any sample required under Subsection 105.18.b.iii(1); and

(4) A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment;

iv. A proposed management program covering the duration of the permit, that includes a comprehensive planning process involving public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program must also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each co-applicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Department when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs must describe priorities for implementing controls. Such programs must be based on:

(1) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description must include:

(a) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

(b) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan must address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed (controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in Subsection 105.18.b.iv(4));

(c) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

(d) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible;

(e) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage, or disposal facilities for municipal waste that identifies priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under Subsection 105.18.b.iv(3)); and

(f) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides, and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities;

(2) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate IPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program must include:

(a) A description of a program, including inspections, to implement and enforce an ordinance, orders
or similar means to prevent illicit discharges to the municipal separate storm sewer system. This program description must address all types of illicit discharges; however, the following categories of non-storm water discharges or flows must be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the United States: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined in Section 010) to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions must address discharges or flows from firefighting only where such discharges or flows are identified as significant sources of pollutants to waters of the United States);

(b) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

(c) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform (including \( E. coli \)), enterococci (previously known as fecal streptococcus), surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description must include the location of storm sewers that have been identified for such evaluation);

(d) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

(e) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

(f) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

(g) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

(3) A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program must:

(a) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges; and

(b) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in Subsection 105.18.b.iv(3), to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing NPDES or IPDES permit for a facility; oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under Subsections 105.07.j. through l.;

(4) A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system that includes:

(a) A description of procedures for site planning which incorporate consideration of potential water quality impacts;
(b) A description of requirements for nonstructural and structural best management practices; ( )

c) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

d) A description of appropriate educational and training measures for construction site operators; ( )

v. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment must also identify known impacts of storm water controls on ground water; ( )

vi. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under Subsections 105.18.b.iii. and iv. Such analysis must include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds; ( )

vii. Where more than one (1) legal entity submits an application, the application must contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination; and ( )

viii. Where requirements under Subsections 105.18.a.iv(5), 105.18.b.ii., 105.18.b.iii.(2), and 105.18.b.iv. are not practicable or are not applicable, the Department may exclude any operator of a discharge from a municipal separate storm sewer which is designated under 40 CFR 122.26(a)(1)(v), (b)(4)(ii) or (b)(7)(ii) from such requirements. The Department must not exclude the operator of a discharge from a municipal separate storm sewer identified in Appendix F, G, H or I of 40 CFR Part 122, from any of the permit application requirements under this subsection except where authorized under this section. ( )

19. Application Requirements for Industrial and Construction Storm Water Discharges.

Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity.

a. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit or any discharge of storm water which the Department is evaluating for designation (see Section 130, General Permits) under 40 CFR 122.26(a)(1)(v) and is not a municipal storm sewer, must submit an IPDES application in accordance with the requirements of Section 105 (Application for an Individual IPDES Permit) as modified and consistent with this subsection. ( )

b. Except as provided in Subsections 105.19.c. through e., the operator of a storm water discharge associated with industrial activity subject to this section must provide:

i. A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including:

(1) Each of its drainage and discharge structures; ( )

(2) The drainage area of each storm water outfall; ( )

(3) Paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a Resource Conservation and Recovery Act permit which is used for accumulating hazardous waste under 40 CFR 262.34); ( )
(4) Each well where fluids from the facility are injected underground; and

(5) Springs, and other surface water bodies which receive storm water discharges from the facility;

ii. An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following:

(1) Significant materials that in the three (3) years prior to the submittal of this application have been treated, stored, or disposed in a manner to allow exposure to storm water;

(2) Method of treatment, storage or disposal of such materials; materials management practices employed, in the three (3) years prior to the submittal of this application, to minimize contact by these materials with storm water runoff;

(3) Materials loading and access areas;

(4) The location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied;

(5) The location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and

(6) A description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

iii. A certification that all outfalls containing storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by an IPDES permit, including a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test. Tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests.;

iv. Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three (3) years prior to the submittal of this application;

v. Quantitative data based on samples collected during storm events and collected in accordance with Subsection 105.07 from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

(1) Any pollutant limited in an effluent guideline to which the facility is subject;

(2) Any pollutant listed in the facility's NPDES or IPDES permit for its process wastewater (if the facility is operating under an existing NPDES or IPDES permit);

(3) Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

(4) Any information on the discharge required under Subsections 105.07.j. through l.;

(5) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

(6) The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration (in hours) between the storm event sampled and the end of the previous measurable (greater than one-tenth (0.1) inch rainfall) storm event;
vi. Operators of a discharge which is composed entirely of storm water are exempt from the requirements of Subsections 105.07.b., 105.07.a.(2) through (5), 105.07.a.ii., 105.07.a.iii., 105.07.g., 105.07.h., 105.07.i., and 105.07.m.; and

vii. Operators of new sources or new discharges (as defined in Section 010, Definitions) which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in Subsection 105.19.b.v. instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in Subsection 105.19.b.v. within two (2) years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the IPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of Subsections 105.16.a.(2) and (3), and 105.16.b.

c. An operator of an existing or new storm water discharge that is associated with industrial activity solely under 40 CFR 122.26(b)(14)(x) or is associated with small construction activity solely under 40 CFR 122.26(b)(15), is exempt from the requirements of Subsection 105.07 and Subsection 105.19.b. Such operator must provide a narrative description of:

i. The location (including a map) and the nature of the construction activity;

ii. The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

iii. Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable state and local erosion and sediment control requirements;

iv. Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable state or local erosion and sediment control requirements;

v. An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

vi. The name of the receiving water.

d. The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with Subsection 105.19.b., unless the facility:

i. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at any time since November 16, 1987; or

ii. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or

iii. Contributes to a violation of a water quality standard.

e. The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

f. Applicants must provide such other information the Department may reasonably require under
Subsection 105.07.o. to determine whether to issue a permit and may require any facility subject to Subsection 105.19.c. to comply with Subsection 105.19.b.

106. **INDIVIDUAL PERMIT APPLICATION REVIEW.**

01. **Completeness Criteria.** The Department will not begin processing or issue an individual IPDES permit application before receiving a complete application. An application is complete when an application form and any supplemental information are completed and submitted to the Department's satisfaction. The Department will not consider a permit application to be complete until all applicable fees required under Section 110 (Permit Fee Schedule for IPDES Permitted Facilities) are paid.

02. **Sufficiently Sensitive Methods.** Except as specified in Subsection 106.02.c., a permit application shall not be considered complete unless all required quantitative data are collected in accordance with sufficiently sensitive analytical methods approved under 40 CFR Part 136 or required under 40 CFR Parts 400 through 471 and 501 through 503.

   a. A method approved under 40 CFR Part 136 or required under 40 CFR Parts 400 through 471 and 501 through 503 is “sufficiently sensitive” when:

      i. The method minimum level (ML) is at or below the level of the applicable water quality criterion for the measured pollutant or pollutant parameter; or

      ii. The method ML is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility's discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or

      iii. The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR Parts 400 through 471 and 501 through 503 for the measured pollutant or pollutant parameter.

   b. For Subsection 106.02.a., consistent with 40 CFR Part 136, applicants have the option of providing matrix or sample specific minimum levels rather than the published levels. Further, where an applicant can demonstrate that, despite a good faith effort to use a method that would otherwise meet the definition of “sufficiently sensitive,” the analytical results are not consistent with the QA/QC specifications for that method, then the Department may determine that the method is not performing adequately and the applicant should select a different method from the remaining EPA-approved methods that is sufficiently sensitive consistent with Subsection 106.02.a. Where no other EPA-approved methods exist, the applicant should select a method consistent with Subsection 106.02.c.

   c. When there is no analytical method that has been approved under 40 CFR Part 136, required under 40 CFR Parts 400 through 471 and 501 through 503, and is not otherwise required by the Department, the applicant may use any suitable method but shall provide a description of the method. When selecting a suitable method, other factors such as a method's precision, accuracy, or resolution, may be considered when assessing the performance of the method.

03. **Independence.** The Department shall judge the completeness of any IPDES permit application independently of any other permit application or permit.

04. **Schedule.** The Department will notify an applicant in writing whether the application is deemed complete for purposes of this section within:

   a. Thirty (30) days if the application is for a new source or new discharger under the IPDES program,

   b. Sixty (60) days if the application is for an existing source or sludge-only facility.

05. **Additional Information.** Notification that an application is complete does not preclude the
Department from requiring the applicant submit additional information for the Department’s use in processing the application. This additional information may only be requested when necessary to clarify, modify, or supplement previously submitted material.

    a. Requests for additional information will not render an application incomplete.

    b. If the Department decides that a site visit is necessary for any reason in connection with the processing of an application, the Department shall notify the applicant and a date shall be scheduled. Failure to schedule or refusal of a requested site visit are grounds for permit denial.

    c. The applicant’s failure or refusal to correct deficiencies, or supply requested information may result in permit denial, and appropriate enforcement actions may be initiated, if warranted.

06. Incomplete Due to Waiver Denial. The Department will not consider a permit application to be complete if the Department waived application requirements under Subsection 105.11 or 105.17 and the EPA has disapproved the waiver.

07. Impact of Waiver Delay. If a person required to reapply for a permit submits a waiver request to the Department more than two hundred ten (210) days before an existing permit expires, and the EPA does not disapprove the waiver request one hundred eighty-one (181) days before the permit expires, the Department will consider the permit application to be complete without the information that is the subject of the waiver request.

08. Application Completeness Date. The completeness date of an application is the date on which the Department notifies the applicant that the application is complete.

107. DECISION PROCESS.
After the Department has determined that a permit application is complete the Department will decide whether to tentatively deny the application, or prepare an IPDES draft permit.

01. Application Denial. If the Department decides to tentatively deny the application:

    a. A notice of intent to deny the permit application shall be issued. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit and shall be made available for public comment, and the Department shall give notice of opportunity for a public meeting, as specified in Section 109 (Public Notification and Comment);

    b. The Department shall generate a response to public comment; and

    c. Issue a final decision. The final decision may:

        i. Be to withdraw the notice of intent to deny the application, and proceed to prepare a draft permit and fact sheet as defined in Section 108 (Draft Permit and Fact Sheet); or

        ii. Confirm the decision to deny the application.

    d. The applicant may appeal the final decision to deny the application by adhering to the requirements of Section 204 (Appeals Process).

02. Draft Permit. If the Department decides to generate a draft permit and fact sheet it will comply with Section 108 (Draft Permit and Fact Sheet).

    a. Upon completion of the draft permit and fact sheet the Department shall issue a public notification as required in Subsection 109.01.

    b. An opportunity for the public to comment and request a public meeting shall be provided.

    c. The Department shall generate a response to public comment as stipulated in Subsection 109.03.
03. **Proposed Permit.** After the close of the public comment period on a draft permit, the Department will make appropriate changes in response to comments, and generate a proposed permit and fact sheet.

04. **Final Permit.** After the close of the public comment period on a draft permit, and after receipt of comments on the proposed permit, if any, from EPA, the Department shall issue a final permit decision and fact sheet. A final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

   a. The Department shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision.

   b. A final permit decision shall become effective twenty-eight (28) days after the service of notice of the decision unless:

      i. A later effective date is specified in the decision; or

      ii. A Petition for Review is filed with the Department as specified in Section 204 (Appeals Process).

108. **DRAFT PERMIT AND FACT SHEET.**

01. **Draft Permit.**

   a. If the Department decides to prepare a draft permit, it shall contain the following information:

      i. All conditions established under Section 300 (Conditions Applicable to All Permits);

      ii. All conditions for specific categories established under Section 301 (Permit Conditions for Specific Categories) and 40 CFR 122.42(e).

      iii. All conditions established under Section 302 (Establishing Permit Provisions);

      iv. All conditions established under Section 303 (Calculating Permit Provisions);

      v. All monitoring requirements established under Section 304 (Monitoring and Reporting Requirements);

      vi. Schedules of compliance established under Section 305 (Compliance Schedules); and

      vii. Any variances that are approved.

   b. General and individual proposed permits shall be available to the EPA Region 10 Administrator for comment as specified in Subsections 107.03 (Proposed Permit) and 107.04 (Final Permit).

02. **Fact Sheets.**

   a. A fact sheet containing the information required in Subsection 108.02.b. must accompany the draft permit prepared for:

      i. A major IPDES facility or activity;

      ii. A Class I sludge management facility;
iii. An IPDES general permit; ( )

iv. A permit that incorporates a variance or requires an explanation under Subsection 108.02.b.ix. through 108.02.b.x.; ( )

v. A permit that includes a sewage sludge land application plan under 40 CFR 501.15(a)(2)(ix); and ( )

vi. A permit that the Department finds is the subject of wide-spread public interest or raises major issues. ( )

b. A fact sheet must briefly set out the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit and must include, if applicable, the following information: ( )

i. A brief description of the type of facility or activity that is the subject of the draft permit; ( )

ii. The type and quantity of wastes, fluids, or pollutants that are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged; ( )

iii. A brief summary of the basis for the draft permit conditions, including references to applicable statutes or regulations and appropriate supporting references to the administrative record; ( )

iv. Reasons for the Department’s tentative decision on any requested variances or alternatives to required standards; ( )

v. A description of the procedures for reaching a final decision on the draft permit, including: ( )

(1) The beginning and ending dates of the comment period under Subsection 109.02 and the address where comments should be submitted; ( )

(2) The procedure for requesting a public meeting and the nature of that meeting; and ( )

(3) Any other procedures by which the public may participate in the final decision; ( )

vi. The name and telephone number of a person to contact for additional information; ( )

vii. The justification for waiver of any application requirements under Section 105 (Application for an Individual IPDES Permit) for new and existing POTWs; ( )

viii. Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guideline or performance standard as required by Section 302 (Establishing Permit Provisions), and reasons why the effluent limitations and conditions are applicable, or an explanation of how any alternate effluent limitation was developed; ( )

ix. If applicable, an explanation of why the draft permit contains the following conditions or waivers: ( )

(1) Limitations to control toxic pollutants under Subsection 302.07; ( )

(2) Limitations on internal waste streams under Section 304 (Monitoring and Reporting Requirements); ( )

(3) Limitations on indicator pollutants under 40 CFR 125.3(g); ( )

(4) Limitations established on a case-by-case basis under 40 CFR 125.3 (c)(2) or (c)(3) or pursuant to the Clean Water Act section 405(d)(4); ( )
(5) Limitations to meet the criteria for permit issuance under Subsection 103.07; or

(6) Waivers from monitoring requirements granted under Subsection 302.03;

x. For a draft permit for a treatment works owned by a person other than a state or municipality, an explanation of the Department’s decision on regulation of users under Subsection 302.15;

xi. If appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application; and

xii. For permits that include a sewage sludge land application plan under 40 CFR 501.15(a)(2)(ix), a brief description of how each of the required elements of the land application plan are addressed in the permit.

109. PUBLIC NOTIFICATION AND COMMENT.

01. Public Notification.

a. The Department will give notice to the public that:

i. A draft permit has been prepared under Subsection 108.01;

ii. The Department intends to deny a permit application under Subsection 107.01;

iii. A public meeting is scheduled; or

iv. An IPDES new source determination has been made.

b. A public notice may describe more than one (1) permit or permit action.

c. The Department will allow at least thirty (30) days for public comment on the items in the notice, and will provide at least thirty (30) days’ notice before the public meeting. Notice of the draft permit and the meeting may be combined and given at the same time.

d. Public notice that a draft permit has been prepared, and any public meeting on the draft permit must be given by the following methods:

i. By mailing a copy of the notice to the following persons, unless any person entitled to receive notice under this subsection waives that person’s right to receive notice for any classes and categories of permits:

(1) The applicant, unless there is no applicant for an IPDES general permit;

(2) Any other agency (including EPA when the draft permit is prepared by the state) that the Department knows has issued or is required to issue a permit for the same facility or activity under the following laws and programs:

(a) Resource Conservation and Recovery Act, under IDAPA 58.01.05, “Rules and Standards for Hazardous Waste”;

(b) Underground Injection Control (UIC) Program under Idaho Department of Water Resources as authorized under Idaho Code Title 42 Chapter 39 and regulated under IDAPA 37.03.03, “Rules and Minimum Standards for the Construction and Use of Injection Wells”;

(c) Clean Air Act, under IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho”;

...
(d) Idaho Pollution Discharge Elimination System Program, under IDAPA 58.01.25, “Rules Regulating the Idaho Pollutant Discharge Elimination System Program”; or ( )

(e) Sludge Management Program, under IDAPA 58.01.16.650, “Wastewater Rules”; and ( )

(f) Dredge and Fill Permit Program (Clean Water Act section 404); ( )

(3) Affected federal and state agencies with jurisdiction over fish, shellfish, wildlife, and other natural resources, state historic preservation officers, and any affected Indian tribe; ( )

(4) Any state agency responsible for plan development under the Clean Water Act sections 208(b)(2), 208(b)(4), or 303(e), and the United States Army Corps of Engineers, the United States Fish and Wildlife Service, and the National Marine Fisheries Service; ( )

(5) Any user identified in the permit application of a privately owned treatment works; ( )

(6) Persons on a mailing list developed by:

(a) Recording those who request in writing to be on the list; ( )

(b) Soliciting persons for area lists from participants in past permit proceedings in that area; and ( )

(c) Publishing notice of the opportunity to be on the mailing list on the Department’s website and through periodic publication in the local press and in regional and state-funded newsletters, environmental bulletins, state law journals or similar publications. The Department may update the mailing list from time to time by requesting written indication of continued interest from those listed, and may delete from the list the name of any person who fails to respond to the Department’s request; ( )

(7) Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and ( )

(8) Each state agency having any authority under state law with respect to the construction or operation of the facility; ( )

ii. For a major facility permit, a general permit, and a permit that includes sewage sludge land application plans, by publishing a notice in a daily or weekly newspaper within the area affected by the facility or activity; and ( )

iii. By any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or use of any other forum or media to elicit public participation. For IPDES major permits and general permits, in lieu of the requirement for publication of a notice in a daily or weekly newspaper, the Department may publish all notices of activities described in Subsection 109.01.a. to the Department’s website. If the Department selects this option for a draft permit, in addition to meeting the requirements in Subsection 109.01.e., the Department will post the draft permit and fact sheet on the website for the duration of the public comment period. The Department will ensure the methods of public notice effectively inform all interested communities and allow access to the permitting process for those seeking to participate. ( )

e. A public notice issued under this subsection must contain at least the following information:

i. Name and address of the office processing the permit action for which notice is being given and where comments may be submitted; ( )

ii. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of IPDES draft general permits; ( )

iii. A brief description of the business conducted at the facility or activity described in the permit
application, or for general permits when there is no application, in the draft permit;

iv. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, fact sheet, and the application;

v. A brief description of the comment and public meeting procedures required by this subsection and the time and place of any meeting that will be held; if no meeting has already been scheduled, a statement of procedures to request a meeting and other procedures by which the public may participate in the final permit decision;

vi. A general description of the location of each existing or proposed discharge point and the name of the receiving water;

vii. The sludge use and disposal practices and the location of each sludge TWTDS and use or disposal sites known at the time of permit application;

viii. A description of requirements applicable to cooling water intake structures under the Clean Water Act section 316(b), in accordance with 40 CFR 125.80 through 89, 125.90 through 99, and 125.130 through 139; and

ix. Directions to the Department’s website where interested parties can obtain copies of the draft permit, fact sheet, and the permit application, if any; and

f. In addition to the information required by Subsection 109.01.e., the public notice for a draft permit for a discharge for which a request has been filed under the Clean Water Act section 316(a) must include:

i. A statement that the thermal component of the discharge is subject to effluent limitations under the Clean Water Act sections 301 or 306, and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under the Clean Water Act sections 301 or 306; and

ii. A statement that a request has been filed under the Clean Water Act section 316(a), that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under the Clean Water Act section 316(a), and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and

iii. If the applicant has filed an early screening request under 40 CFR 125.72 for a variance under the Clean Water Act section 316(a), a statement that the applicant has submitted that early screening request.

g. In addition to the general public notice described in Subsection 109.01.e., the public notice of a meeting under this section must contain the following information:

i. Reference to the date of previous public notices relating to the permit;

ii. Date, time, and place of the meeting; and

iii. A brief description of the nature and purpose of the meeting, including the applicable rules and procedures.

h. The Department will mail a copy of the general public notice described in Subsection 109.01.e. to all persons identified in Subsections 109.01.d.(1), (2), (3), and (4).

i. The Department will hold a public meeting whenever the Department finds, on the basis of requests, a significant degree of public interest in a draft permit. The Department may also hold a public meeting if a meeting might clarify one (1) or more issues involved in the permit decision or for other good reason in the Department’s discretion.
02. Public Comment.

a. During the public comment period, any interested person may submit written comments on the draft permit. Written comments must be submitted to the person identified in the notice and as specified in Subsection 109.01.e.

b. During the public comment period, any interested person may request a public meeting if no public meeting has been scheduled. The Department will schedule and hold a public meeting if the Department determines that significant public interest exists in the draft permit.

i. A request for a public meeting must be in writing and be submitted to the Department within fourteen (14) days after the date of the public notice required by Subsection 109.01.

ii. If a public meeting is held for the purpose of receiving comments, the Department will make an audio recording or hire a court reporter to record the meeting and will prepare a transcript of the meeting if an appeal is filed.

c. If, during the comment period for an IPDES draft permit, the district engineer of the United States Army Corps of Engineers advises the Department in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the Department will deny the permit and notify the applicant of the denial. If the district engineer advises the Department that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, the Department will include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the district engineer must be sought through the applicable procedures of the United States Army Corps of Engineers and not through the state procedures. If a court of competent jurisdiction stays the conditions or if applicable procedures of the United States Army Corps of Engineers result in a stay of the conditions, those conditions must be considered stayed in the IPDES permit for the duration of the stay.

d. If, during the comment period for an IPDES draft permit, the United States Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the Department in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Department may include the specified conditions in the permit to the extent the Department determines they are necessary to comply with the provisions of the Clean Water Act.

e. In some cases, the Department may confer with one (1) or more of the agencies referred to in Subsections 109.02.c. and 109.02.d. before issuing a draft permit and may set out an agency’s view in the fact sheet or the draft permit.

f. The Department will consider all comments in making the final decision and will answer the comments as provided in this subsection.

g. Requests for extending a public comment period must be received in writing by the Department prior to the last day of the period.

h. After the close of the public comment period and prior to the issuance of the final permit decision, the Department will afford the permit applicant an opportunity to provide additional information to respond to public comments. In addition, in order to respond to comments, the Department may request the applicant provide additional information.

03. Response to Comments. When the Department issues a final permit, the Department will issue a response to comments, that will be available to the public. The response must:

a. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

b. Briefly describe and respond to all significant comments on the draft permit raised during the
110.  FEE SCHEDULE FOR IPDES PERMITTED FACILITIES.

01.  Effective Date. Annual fees must be paid for each fee year beginning one (1) year after the
effective date of the IPDES program for the affected category of discharger and continuing for each succeeding year.

02.  Fee Schedule.

a.  Publicly and privately owned treatment works, and any other discharger designated by the
Department (Subsection 105.11.a.), must pay an annual fee based on the number of equivalent dwelling units (EDUs). The fee is $1.74 per EDU. EDUs and the appropriate annual fee will be calculated according to the
definition of EDUs in Section 010 by the following:

i.  The Department calculates facility EDUs; or

ii.  Existing facilities may annually report to the Department the number of EDUs served; or

iii.  New facilities may report to the Department the number of EDUs to be served, based on the facility
planning design as part of the IPDES permit application.

b.  All other permitted IPDES dischargers, excluding small scale suction dredges, must pay an annual
fee, an application fee, or both according to the following schedule:

<table>
<thead>
<tr>
<th>Permit Type</th>
<th>Application</th>
<th>Annual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-POTW Individual Permits</td>
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<td></td>
</tr>
<tr>
<td>Major</td>
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</tr>
<tr>
<td>Minor</td>
<td>$0</td>
<td>$4,000</td>
</tr>
<tr>
<td>Storm Water General Permits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction (CGP)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1-10 acres</td>
<td>$200</td>
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<td>$100</td>
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<td>$100</td>
</tr>
<tr>
<td>Other General Permits</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

1This includes NOIs for construction that will disturb one or more acres of land, or will disturb less than one acre of
land but are part of a common plan of development or sale that will ultimately disturb one or more acres of land.

03.  Fee Assessment.

a.  An annual fee assessment will be generated for each IPDES-permitted facility for which an annual
fee is required as set forth in Subsection 110.02. Annual fees will be determined based on the twelve (12) months between October 1 and September 30 of the following calendar year.

b. Application Fees and Annual Fees.

i. Application fees, as identified in Subsection 110.02.b., are assessed at the time of application for coverage under an individual permit, or notice of intent for coverage under a general permit.

ii. Owners or operators of multi-year storm water facilities or construction projects are subject to annual fees that will be assessed in the year (October through September) immediately following the receipt of the application or notice of intent for coverage.

c. Assessment of annual fees will consider the number of months a permittee was covered under either a general or an individual permit in a given year (October through September of the following calendar year). If the permittee was covered for less than a full twelve (12) months, the assessed fee will be pro-rated to account for less than a full year’s coverage under the permit.

04. Billing. For those permitted facilities subject to an annual fee, the annual fee will be assessed and a statement will be mailed by the Department on or before July 1 of each year.

05. Payment.

a. Payment of the annual fee is due on October 1, unless it is a Saturday, Sunday, or legal holiday, in which event the payment is due on the successive business day.

b. If a POTW serves five hundred seventy-five (575) EDUs or more, the facility may request to divide its annual fee payment into equal monthly or quarterly installments by submitting a request to the Department on the proper request form provided with the initial billing statement.

i. The Department will notify an applicable POTW, in writing, of approval or denial of a requested monthly or quarterly installment plan within ten (10) business days of the Department receiving such a request.

ii. If a POTW has been approved to pay monthly installments then each installment is due by the first day of each month, unless it is a Saturday, a Sunday, or a legal holiday, in which event the installment is due on the next business day.

iii. If a POTW has been approved to pay quarterly installments then each installment is due by the first day of the month of each quarter (October 1, January 1, April 1, and July 1), unless it is a Saturday, a Sunday, or a legal holiday, in which event the installment is due on the next business day.

c. Payment of the application fee is due with the application for an individual permit or notice of intent for coverage under a general permit.

06. Delinquent Unpaid Fees. A permittee covered under either a general permit or an individual permit will be delinquent in payment if the annual fee assessed has not been received by the Department by November 1; or if having first opted to pay monthly or quarterly installments, its monthly or quarterly installment has not been received by the Department by the last day of the month in which the monthly or quarterly payment is due.

07. Suspension of Services and Disapproval Designation. For any permittee delinquent in payment of fees assessed under Subsections 110.02 and 110.06:

a. In excess of ninety (90) days, the Department will suspend all technical services it provides. The permittee will receive a warning letter that identifies administrative enforcement actions the Department may pursue if the permittee does not comply with the terms of the permit.
b. In excess of one hundred and eighty (180) days, the Department will consider the permittee in non-compliance with permit conditions and these rules, and subject to provisions described in Section 500 (Enforcement) of these rules.

08. Reinstatement of Suspended Services and Approval Status. For any permittee for which delinquency of fee payment pursuant to Subsection 110.07 has resulted in the suspension of technical services, determination of non-compliance of permit condition, or both, the continuation of technical services, determination of compliance based on payment of fee, or both will occur upon payment of delinquent annual fee assessments.

09. Enforcement Action. Nothing in Section 110 (Fee Schedule for IPDES Permitted Facilities) waives the Department’s right to undertake a non-fee related enforcement action at any time, including seeking penalties, as provided in Sections 39-108, 39-109, and 39-117, Idaho Code.

10. Responsibility to Comply. Subsection 110.07 does not relieve any permittee from its obligation to comply with all applicable state and federal statutes, rules, regulations, permits, or orders.

111. -- 119. (RESERVED)

120. NEW SOURCES AND NEW DISCHARGES.

01. Criteria for New Source Determination. Except as otherwise provided in an applicable new source performance standard, a source is a new source if it meets the definition in Section 010 (Definitions), and:

   a. Is constructed at a site at which no other source is located; or

   b. Totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

   c. Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the Department shall consider such factors as:

      i. The extent to which the new facility is integrated with the existing plant; and

      ii. The extent to which the new facility is engaged in the same general type of activity as the existing source.

02. New Source vs. New Discharger. A source meeting the requirements of Subsection 120.01 is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger, as defined in Section 010 (Definitions).

03. Modification vs. New Source/Discharger. Construction on a site at which an existing source is located, results in a modification subject to Subsection 201.02, rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of Subsection 120.01, but otherwise alters, replaces, or adds to existing process or production equipment.

04. New Source Construction. Construction of a new source has commenced if the owner or operator has:

   a. Begun, or caused to begin as part of a continuous on-site construction program:

   i. Any placement, assembly, or installation of facilities or equipment; or

   ii. Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Items which do not constitute contractual obligations under this section include:

i. Options to purchase or contracts which can be terminated or modified without substantial loss;

ii. Contracts for feasibility engineering; and

iii. Design studies.

130. GENERAL PERMITS.

01. Coverage. The Department may issue a general permit in accordance with the following:

a. Within a geographic area, the general permit will be written to cover one (1) or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under Subsection 130.01.b.i., except those covered by individual permits within a geographic area. The area should correspond to existing geographic or political boundaries such as:

i. Designated planning areas under the Clean Water Act sections 208 and 303;

ii. Sewer districts or sewer authorities;

iii. City, county, or state political boundaries;

iv. State highway systems;

v. Standard metropolitan statistical areas as defined by state or federal agencies;

vi. Urbanized areas as designated by the U.S. Census Bureau; or

vii. Any other appropriate division or combination of boundaries.

b. The general permit may be written to regulate one (1) or more categories or subcategories of discharges or sludge use or disposal practices or facilities, within the area described in Subsection 130.01.a., where the sources within a covered subcategory of discharges are either:

i. Storm water point sources; or

ii. One (1) or more categories or subcategories of point sources other than storm water point sources or TWTDS, if the point sources or TWTDS within each category or subcategory all:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;

(3) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;

(4) Require the same or similar monitoring; and

(5) In the opinion of the Department, are more appropriately controlled under a general permit than under individual permits.
c. Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed pursuant to Section 302 (Establishing Permit Provisions), the sources in that specific category or subcategory are subject to the same water quality-based effluent limitations.

d. Other requirements:

i. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or TWTDS covered by the permit; and

ii. The general permit may exclude specified sources or areas from coverage.

iii. For general permits issued under Subsection 130.01.b., the Department must establish the terms and conditions necessary to meet the requirements of 40 CFR 122.34 using one (1) of the two (2) permitting approaches described in Subsections 130.01.d.iii(1) and (2). The Department must indicate in the permit or fact sheet which approach is being used.

(1) Comprehensive general permit. The Department includes all required permit terms and conditions in the general permit; or

(2) Two-step general permit. The Department includes required permit terms and conditions in the general permit applicable to all eligible small MS4s and, during the process of authorizing small MS4s to discharge, establishes additional terms and conditions not included in the general permit to satisfy one (1) or more of the permit requirements in 40 CFR 122.34 for individual small MS4 operators.

(a) The general permit must require that any small MS4 operator seeking authorization to discharge under the general permit submit a Notice of Intent (NOI) consisting of the minimum required information in Subsection 130.05.b., and any other information the Director identifies as necessary to establish additional terms and conditions that satisfy the permit requirements of 40 CFR 122.34, such as the information required under Subsection 130.05.b. The general permit will explain any other steps necessary to obtain permit authorization.

(b) The Department must review the NOI submitted by the small MS4 operator to determine whether the information in the NOI is complete and to establish the additional terms and conditions necessary to meet the requirements of 40 CFR 122.34. The Department may require the small MS4 operator to submit additional information. If the Department makes a preliminary decision to authorize the small MS4 operator to discharge under the general permit, the Department must give the public notice of and opportunity to comment and request a public meeting on its proposed authorization and the NOI, the proposed additional terms and conditions, and the basis for these additional requirements. The public notice, the process for submitting public comments and meeting requests, and the meeting process if a request for a meeting is granted, must follow the procedures applicable to draft permits set forth in Sections 108 and 109 except Subsection 109.01.d. The Department must respond to significant comments received during the comment period as provided in Subsection 109.03.

(c) Upon authorization for the MS4 to discharge under the general permit, the final additional terms and conditions applicable to the MS4 operator become effective. The Department must notify the permittee and inform the public of the decision to authorize the MS4 to discharge under the general permit and of the final additional terms and conditions specific to the MS4.

02. Electronic Submittals. As of December 21, 2020, all notices of intent submitted in compliance with this section must be submitted electronically by the discharger (or treatment works treating domestic sewage) to the Department unless waived pursuant to 40 CFR 127.15.

03. Information Retention Schedule. An applicant must keep records of all data used to complete a notice of intent and any supplemental information submitted for a period of at least three (3) years from the date the notice of intent is signed.

04. Notice of Intent.
a. Any person required under Subsections 102.01 through 102.03 must submit a notice of intent to the Department for coverage under an IPDES general permit as set out in Subsection 130.05.

b. A notice of intent must be signed and certified as required by Section 090 (Signature Requirements).

05. Administration.

a. General permits may be issued, modified, revoked and reissued, or terminated in accordance with Sections 201 (Modification, or Revocation and Reissuance of IPDES Permits) and 203 (Termination of IPDES Permits).

b. Authorization to discharge, or authorization to engage in sludge use and disposal practices will follow these procedures:

i. Except as provided in Subsections 130.05.b.xi. and 130.05.b.xii., a discharger must submit, in accordance with general permit requirements, a complete and timely notice of intent which will fulfill the requirements for permit applications;

ii. A discharger (or TWTDS) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge (or in the case of sludge disposal permit, to engage in a sludge use or disposal practice) under the terms of the general permit unless:

(1) The general permit, in accordance with Subsections 130.05.b.xi., contains a provision that a notice of intent is not required; or

(2) The Department notifies a discharger (or TWTDS) that it is covered by a general permit in accordance with Subsection 130.05.b.xii.;

iii. All notices of intent must be signed as required in Section 090 (Signature Requirements);

iv. The general permit will specify the contents of the notice of intent and require the submission of information necessary for adequate program implementation, including at a minimum:

(1) The legal name, address, and EIN or Department equivalent of the owner or operator;

(2) The facility name and address;

(3) Type of facility or discharges; and

(4) The receiving stream(s);

v. Coverage under a general permit may be terminated or revoked in accordance with Subsection 130.05.c. through e.;

vi. Notices of intent for coverage under a general permit for CAFOs must include the information specified in Subsection 105.09 and 40 CFR 122.21(i)(1), including a topographic map;

vii. A CAFO owner or operator may be authorized to discharge under a general permit only in accordance with the process described in 40 CFR 122.23(h);

viii. General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative notice of intent requirements;

ix. General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit;
x. General permits shall specify whether a discharger (or TWTDS), who has submitted a complete and timely notice of intent to be covered in accordance with the general permit and is eligible for coverage under the permit, is authorized to discharge (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice) in accordance with the permit either:

- (1) Upon receipt of the notice of intent by the Department;
- (2) After a waiting period specified in the general permit;
- (3) On a date specified in the general permit; or
- (4) Upon receipt of notification of inclusion by the Department;

xi. Discharges other than discharges from POTWs, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Department, be authorized to discharge under a general permit without submitting a notice of intent where the Department finds that a notice of intent requirement would be inappropriate. The Department shall provide in the public notice of the general permit the reasons for not requiring a notice of intent. In making such a finding, the Department shall consider:

- (1) The type of discharge;
- (2) The expected nature of the discharge;
- (3) The potential for toxic and conventional pollutants in the discharges;
- (4) The expected volume of the discharges;
- (5) Other means of identifying discharges covered by the permit; and
- (6) The estimated number of discharges to be covered by the permit; and

xii. The Department may notify a discharger (or TWTDS) that it is covered by a general permit, even if the discharger (or TWTDS) has not submitted a notice of intent to be covered. A discharger (or TWTDS) so notified may request an individual permit as specified in Subsection 130.05.d.

c. The Department may terminate, revoke, or deny coverage under a general permit, and require the discharger or applicant to apply for and obtain an individual IPDES permit. Any interested person may petition the Department to take action under this subsection. Cases where an individual IPDES permit may be required include the following:

- i. The discharger or TWTDS is not in compliance with the conditions of the general permit;
- ii. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or TWTDS;
- iii. Effluent limitation guidelines are promulgated for point sources covered by the general permit;
- iv. A Water Quality Management plan containing requirements applicable to such point sources is approved;
- v. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
vi. Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general IPDES permit; or

vii. The discharge(s) is a significant contributor of pollutants. In making this determination, the Department may consider the following factors:

(1) The location of the discharge with respect to waters of the United States;
(2) The size of the discharge;
(3) The quantity and nature of the pollutants discharged to waters of the United States; and
(4) Other relevant factors.

d. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit.

i. The owner or operator shall submit an application under Section 105 (Application for an Individual IPDES Permit), with reasons supporting the request, to the Department no later than ninety (90) days after the publication of the general permit.

ii. The Department shall process the request under Sections 106 (Individual Permit Application Review), 107 (Decision Process), 108 (Draft Permit and Fact Sheet) and 109 (Public Notification and Comment).

iii. The Department shall grant a request by issuing an individual permit if the reasons cited by the owner or operator are adequate to support the request.

e. When an individual IPDES permit is issued to an owner or operator otherwise subject to a general IPDES permit, the applicability of the general permit to the individual IPDES permittee is automatically terminated on the effective date of the individual permit.

f. A source excluded from a general permit, solely because it already has an individual permit, may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

06. Case-by-Case Requirements for Individual Permits.

a. The Department may require any owner or operator authorized by a general permit to apply for an individual IPDES permit as provided in Subsection 130.05.c., only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, a statement that on the effective date of the individual IPDES permit, the general permit as it applies to the individual permittee shall automatically terminate, and a statement that the owner or operator may appeal the Department’s decision as provided in Section 204 (Appeals Process). The Department may grant additional time upon request of the applicant.

b. Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this section (see 40 CFR 122.26(a)(1)(v), (a)(9)(iii), and Subsection 105.19), the Department may require the discharger to submit a permit application or other information regarding the discharge described in the Clean Water Act section 308.

i. In requiring such information, the Department shall notify the discharger in writing and shall send an application form with the notice.

ii. The discharger must apply for a permit within one hundred eighty (180) days of notice, unless permission for a later date is granted by the Department.
131. -- 199. (RESERVED)

200. RENEWAL OF IPDES PERMITS.

01. Interim Effluent Limits. Except as provided in Subsection 200.02, when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was based:

a. Have materially and substantially changed since the time the permit was issued; and

b. Would constitute cause for permit modification or revocation and reissuance under Subsection 201.02.

02. Final Clean Water Act Section 402(a)(1)(B) Effluent Limits. In the case of effluent limitations established by the Department on the basis of the Clean Water Act section 402(a)(1)(B), a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under Clean Water Act section 304(b) after the original issuance of a permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit, except a permit may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if:

a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance, which justify the application of a less stringent effluent limitation;

b. Information is available:

i. Which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

ii. Which the Department determines indicates that technical mistakes or mistaken interpretations of law were made in issuing the permit under the Clean Water Act section 402(a)(1)(b);

c. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

d. The permittee has received a permit modification under the Clean Water Act section 301(c), 301(g), 301(i), 301(k), 301(n), or 316(a); or

e. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

03. Final Clean Water Act Section 301(b)(1)(C) or 303 Effluent Limits. In the case of effluent limitations established on the basis of Clean Water Act section 301(b)(1)(C) or section 303(d) or (e), a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except when:

a. One of the exceptions in Subsection 200.02 apply; or

b. The water to which the discharge occurs is identified as impaired on Idaho’s Integrated Report and the effluent limitation is based on a total maximum daily load or other waste load allocation established under Clean Water Act section 303, if the cumulative effect of all revised effluent limitations based on such total maximum daily load or waste load allocation will assure the attainment of applicable water quality standards; or
c. The water quality in the water to which the discharge occurs meets or exceeds levels required by applicable water quality standards and the effluent limitation is based on a total maximum daily load or other waste load allocation established under Clean Water Act section 303, any water quality standard, or any permitting standard, if such revision is subject to and consistent with the antidegradation policy and implementation procedures in the water quality standards.

04. **Effluent Limits and Water Quality Standards.** In no event may a permit with respect to which Subsection 200.02 or 200.03 applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters of the United States be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under IDAPA 58.01.02, “Water Quality Standards.”

201. **MODIFICATION, OR REVOCATION AND REISSUANCE OF IPDES PERMITS.**

01. **Procedures to Modify, or Revoke and Reissue Permits.**

   a. Permits may be modified, or revoked and reissued either at the request of any interested person (including the permittee) or upon the Department’s initiative. However, permits may only be modified or revoked and reissued for the reasons specified in Subsection 201.02. All requests shall be in writing and shall contain facts or reasons supporting the request.

   i. The Department may request additional information and, in the case of a modified permit, may require the submission of an updated application. If the tentative decision is to revoke and reissue a permit, the Department shall require the submission of a new application.

   ii. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit.

   iii. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

   iv. Minor modifications, as defined in Subsection 201.03, do not require the development of a draft permit, fact sheet, nor must minor modifications be subjected to public notification and comment.

02. **Causes to Modify, or Revoke and Reissue Permits.** When the Department receives any pertinent information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance under Subsection 201.01, or conducts a review of the permit file), the Department may determine whether or not one (1) or more of the causes listed in Subsections 201.02.c. and 201.02.d. for modification or revocation and reissuance or both exist.

   a. If cause exists, the Department may modify or revoke and reissue the permit accordingly, subject to the limitations of Subsection 201.01.b., and may request a new or updated application, if necessary.

   b. If cause does not exist under this section, the Department shall not modify or revoke and reissue the permit.

   c. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees:

      i. There are material and substantial alterations or additions to the permitted facility or activity
(including a change or changes in the permittee's sludge use or disposal practice), which occurred after permit issuance, and which justify the application of permit conditions that are different or absent in the existing permit.

ii. The Department has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance:

(1) For IPDES general permits (Section 130) this cause includes any information indicating that cumulative effects on the environment are unacceptable; and

(2) For new source or new discharger IPDES permits (Section 120), this cause shall include any significant information derived from effluent testing required under Subsection 105.08 or 105.16 after issuance of the permit.

iii. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

(1) For promulgation of amended standards or regulations, when:

(a) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations under 40 CFR Part 133;

(b) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a state action with regard to a water quality standard on which the permit condition was based; and

(c) A permittee requests modification in accordance with Subsection 201.01 or 203.01 within ninety (90) days after notice of the action on which the request is based; and

(2) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA or Idaho promulgated regulations or effluent limitation guidelines, if the remand and stay concerns that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with Subsection 201.01 or 203.01 within ninety (90) days of judicial remand.

iv. The Department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an IPDES compliance schedule be modified to extend beyond an applicable Clean Water Act statutory deadline.

v. When the permittee has filed a request for a variance under Clean Water Act section 301(c), 301(g), 301(i), 301(k), or 316(a) or for fundamentally different factors within the time specified in Section 310 (Variances).

vi. When required to incorporate an applicable Clean Water Act 307(a) toxic effluent standard or prohibition, under Subsection 302.04.

vii. When required by the reopener conditions in a permit, which are established in the permit under Subsection 302.05 or 40 CFR 403.18(e) (Pretreatment Standards).

viii. Upon request of a permittee who qualifies for effluent limitations on a net basis, or when a discharger is no longer eligible for net limitations, as provided in Subsection 303.07.

ix. As necessary under 40 CFR 403.8(e) (Pretreatment Program Requirements: Development and
x. Upon failure of an approved state to notify, as required by the Clean Water Act section 402(b)(3), another state whose waters may be affected by a discharge from the approved state. ( )

xi. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c). ( )

xii. To establish a notification level as provided in Subsection 302.08. ( )

xiii. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a loan under IDAPA 58.01.12, “Rules for Administration of Water Pollution Control Loans.” In no case shall the compliance schedule be modified to extend beyond an applicable Clean Water Act statutory deadline. ( )

xiv. For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in 40 CFR 122.34(b) when:

(1) The permit does not include such measure(s) based upon the determination that another entity was responsible for implementation of the requirement(s), and ( )

(2) The other entity fails to implement measure(s) that satisfy the requirement(s). ( )

xv. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions. ( )

xvi. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under the Clean Water Act section 402(a)(1) and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline). ( )

taxvii. The incorporation of the terms of a CAFO’s nutrient management plan into the terms and conditions of a general permit when a CAFO obtains coverage under a general permit in accordance with 40 CFR 122.23(h) and Section 130 (General Permits) is not a cause for modification pursuant to the requirements of this section. ( )

xviii. When required by a permit condition to incorporate a land application or sludge disposal plan for beneficial reuse of sewage sludge, to revise an existing land application or sludge disposal plan, or to add a land application or sludge disposal plan as required by IDAPA 58.01.16.650, “Wastewater Rules,” and Section 380 (Sewage Sludge) of these rules. ( )

The following are causes to modify or, alternatively, revoke and reissue a permit:

i. Cause exists for termination under Subsection 203.03, and the Department determines that modification or revocation and reissuance is appropriate; ( )

ii. The Department has received notification, as required in the permit, of a proposed transfer of the permit; or ( )

iii. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (Subsection 202.02) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee. ( )

03. Minor Modifications of Permits. Upon the consent of the permittee, the Department may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this subsection without
following the procedures of Sections 108 (Draft Permit and Fact Sheet), 109 (Public Notification and Comment), and Subsection 201.01. Any permit modification not processed as a minor modification under this subsection must be made for cause and must meet the requirements of Section 108 (Draft Permit and Fact Sheet) and Section 109 (Public Notification and Comment). Minor modifications may:

a. Correct typographical errors;

b. Require more frequent monitoring or reporting by the permittee;

c. Change an interim compliance date in a schedule of compliance, provided the new date is not more than one hundred twenty (120) days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

d. Allow for a change in ownership or operational control of a facility where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department;

e. Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under Section 120 (New Sources and New Discharges), and 40 CFR 122.29(d);

f. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits;

g. Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR 403.11 or a modification that has been approved in accordance with the procedures in 40 CFR 403.18 as enforceable conditions of the POTW's permits;

h. Incorporate changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements of 40 CFR 122.42(e)(6); or

i. Require electronic reporting requirements (to replace paper reporting requirements) including those specified in 40 CFR Part 127 (NPDES Electronic Reporting).

202. TRANSFER OF IPDES PERMITS.

01. Transfers by Modification. Except as provided in Subsection 202.02, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued under Subsection 201.02.d., or a minor modification made under Subsection 201.03, to identify the new permittee and incorporate such other requirements as may be necessary under the Clean Water Act.

02. Automatic Transfers. As an alternative to transfers by modification, any IPDES permit may be automatically transferred to a new permittee if:

a. The current permittee notifies the Department at least thirty (30) days in advance of the proposed transfer date;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee; and

c. The Department does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. A modification under this subsection may also be a minor modification under Subsection 201.03. If this notice is not received, the transfer is effective on the date specified in the agreement.
203. TERMINATION OF IPDES PERMITS.

01. Request to Terminate or Termination Initiated by the Department. Permits may be terminated either at the request of any interested person (including the permittee) or upon the Department’s own initiative. However, permits may only be terminated for the reasons specified in Subsection 203.03 or 203.04.

a. Request for termination by persons other than the permittee must be submitted in writing to the Department.

b. As of December 21, 2020, all NOTs submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, the permittee may be required to report electronically if specified by a particular permit.

02. Tentative Permit Termination. Except as provided in Subsection 203.04, if the Department tentatively decides to terminate a permit under Subsection 203.03, the Department will issue a notice of intent to terminate. A notice of intent to terminate will be available for public comment, and the Department will give notice of an opportunity for public meetings, as specified in Section 109 (Public Notification and Comment).

03. Cause to Terminate Permits. The following are causes for terminating a permit during its term, or for denying a permit renewal application:

a. Noncompliance by the permittee with any condition of the permit;

b. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

c. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

d. A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW), or other situations where the Department has sufficiently reliable basis for determining discharge will cease.

04. Expedited Termination Process for Terminated or Eliminated Discharge. If the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW (but not by land application or disposal into a well), the Department may terminate the permit by notice to the permittee.

a. Termination by notice becomes effective thirty (30) days after notice is sent (expedited permit termination), unless the permittee objects within that time.

b. If the permittee objects during that period, the Department will follow procedures for termination in Subsection 203.02.

c. Expedited permit termination procedures are not available to permittees that are subject to pending state and/or federal enforcement actions including citizen suits brought under federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under federal law.

204. APPEALS PROCESS.

01. Petition for Review of a Permit Decision. Appeal of a final IPDES permit decision, issued under Section 107 (Decision Process), to the Hearing Authority is commenced by filing a Petition for Review with the Department’s Hearing Coordinator within the time prescribed in Subsection 204.01.b. The “Hearing Authority” shall
be a Hearing Officer appointed by the Director from a pool of Hearing Officers approved by the Board. ( )

a. Any person who is aggrieved by the final permit decision may file a Petition for Review as provided in this section. A person aggrieved is limited to the permit holder or applicant, and any person or entity who filed comments or who participated in the public meeting on the draft permit. ( )

b. A Petition for Review must be filed with the Department’s Hearing Coordinator within twenty-eight (28) days after the Department serves notice of the final permit decision under Section 107 (Decision Process). A petition is filed when it is received by the Department’s Hearing Coordinator at the address specified in Subsection 204.13. ( )

c. In addition to meeting the requirements in Subsection 204.06, a Petition for Review must: ( )

i. Be confined to the issues raised during the public comment process or to changes made to the permit by the Department after the close of the public comment period; ( )

ii. Identify the permit condition or other specific aspect of the permit decision that is being challenged; ( )

iii. Set forth the legal and factual basis for the petitioner’s contentions; ( )

iv. Set forth the relief sought; and ( )

v. Set forth the basis for asserting that the petitioner is an aggrieved person. ( )

02. Public Notice of the Petition for Review. Within fourteen (14) days of the date a Petition for Review has been filed, the Hearing Authority must give reasonable notice to the public of the petition. ( )

03. Administrative Record Filed By the Department. The Department shall file a certified copy of the administrative record, as identified in Section 600 (Administrative Records and Data Management), with an index within twenty-eight (28) days of the date the Petition for Review was filed. ( )

04. Participation by the Permit Applicant or Permit Holder. A permit applicant or permit holder who did not file a petition but who wishes to participate in the appeal process must file a notice of appearance within twenty-eight (28) days of the date the Petition for Review was filed. ( )

05. Petition to Intervene. Any person who has a direct and substantial interest in the outcome of the Petition for Review may file a Petition to Intervene. ( )

a. The Petition to Intervene must set forth the interest of the intervener, and why intervention would not unduly broaden the issues and cause delay or prejudice to the parties. ( )

b. Petitions to Intervene must be filed within fourteen (14) days of the notice of filing of the Petition for Review. ( )

c. Any party opposing a Petition to Intervene must file objections within seven (7) days after service of the Petition to Intervene and serve the objection upon all parties of record and upon the person petitioning to intervene. ( )

d. If a Petition to Intervene shows direct and substantial interest in the outcome of the Petition for Review, does not unduly broaden the issues, and will not cause delay or prejudice to the parties, the Hearing Authority shall grant intervention. ( )

06. Content and Form Requirements for Petitions and Briefs. All petitions and briefs filed under this section must: ( )

a. Identify, in the caption, the permit applicant or holder, the permitted facility, and the permit number.
The caption should also include the case number, if available at the time of filing, and the title of the document, and

b. Specify on the upper left corner of the first page, the name, address, telephone number, e-mail address and facsimile number, if any, of the person filing the document. If the person filing the document is a representative of a party as provided in Subsection 204.11, the document must identify the name of the person or entity represented. No more than two (2) representatives for service of documents may be listed.

07. Augmenting the Administrative Record. Consideration of the Petition for Review by the Hearing Authority is limited to the certified administrative record unless, upon the request of a party, the Hearing Authority allows the record to be augmented. A request to augment the record must be filed within fourteen (14) days of the filing of the certified administrative record, unless intervention is granted, in which case the request to augment must be filed within fourteen (14) days of the date the order granting intervention is issued. The Hearing Authority may allow the record to be augmented if the requesting party shows that the additional information is material, is relevant to the issues raised in the appeal and that:

a. There were good reasons for failure to present the information during the permitting proceeding; or

b. There were alleged irregularities in the permitting proceeding and the party wishes to introduce evidence of the alleged irregularities.

08. Brief of the Petitioner. Once all requests to augment the record and motions to intervene have been determined, the Hearing Authority shall issue an order notifying the parties that the administrative record has been settled and of the date by which the petitioner must file petitioner’s brief in support of the Petition for Review. In addition to meeting the requirements of Subsection 204.06, the brief must include:

a. The legal arguments and citations to legal authority that support the allegations in the Petition for Review; and

b. The factual support for the allegations in the Petition for Review, including citations to the administrative record.

c. A statement regarding whether the party desires an opportunity for oral argument.

09. Response Briefs. Unless an alternative date is set by the Hearing Authority, the Department and all other parties must file response briefs within twenty-eight (28) days of the service of the petitioner’s brief. In addition to meeting the requirements of Subsection 204.06, the response briefs must include:

a. A response to the arguments and assertions in the petitioner’s brief (either in support or opposed);

b. A citation to all legal authorities and facts in the administrative record relied upon; and

c. A statement regarding whether the party desires an opportunity for oral argument.

10. Reply Briefs by the Petitioner. Unless an alternative date is set by the Hearing Authority, the petitioner may file a reply brief within fourteen (14) days after service of response briefs. A petitioner may not raise new issues or arguments in the reply.

11. Representation of Parties. Unless otherwise authorized or required by law, appearances and representation of parties or other persons shall be as follows:

a. A natural person may represent himself or herself or be represented by an attorney or, if the person lacks full legal capacity to act for himself or herself, then by a legal guardian or guardian ad litem or representative of an estate;
b. A general partnership may be represented by a partner or an attorney; (    )
c. A corporation, or any other business entity other than a general partnership, must be represented by an attorney; (    )
d. A municipal corporation, local government agency, unincorporated association or nonprofit organization must be represented by an attorney; or (    )
e. A state, federal or tribal governmental entity or agency must be represented by an attorney. (    )

12. Substitution and Withdrawal of Representatives. A party's representative may be changed and a new representative may be substituted by notice to all parties so long as the proceedings are not unreasonably delayed. Representatives who wish to withdraw from a proceeding must immediately file a motion to withdraw representation and serve that motion on the party represented and all other parties. (    )

13. Filing and Service Requirements. (    )

a. All documents concerning actions governed by these rules must be filed with the Hearing Coordinator at the following address: Hearing Coordinator, Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706. Documents may also be filed by fax or may be filed electronically. The Hearing Coordinator’s fax number and email address for filing electronically are available at www.deq.idaho.gov/petitions-for-review. The documents are deemed to be filed on the date received by the Hearing Coordinator. Upon receipt of the filed document, the Hearing Coordinator will provide confirmation to the originating party. (    )

b. All documents subsequent to the petition must be served on all parties or representatives, unless otherwise directed by the Hearing Authority. (    )

c. Service of documents on the named representative is valid service upon the party for all purposes in the proceeding. (    )

14. Proof of Service. Every document meeting the requirements for service must be attached to or accompanied by proof of service containing the following certificate:

I hereby certify that on this (insert date), a true and correct copy of the foregoing (insert name of document) was served on the following as indicated below:

(insert names and addresses of parties and method of delivery (first class U.S. mail, facsimile, hand-delivery, or overnight express))

(Signature) (    )

15. Motions. A request for an interlocutory or procedural order or other relief must be made by written motion unless these rules prescribe another form. (    )

a. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support the motion. In advance of filing a motion, parties must attempt to ascertain whether the other parties concur or object to the motion and must indicate in the motion the attempt made and the response obtained. (    )

b. Any party may file a response to a motion. Responses must state with particularity the grounds for opposition and the legal argument necessary to support the motion. The response must be filed within fifteen (15) days after service of the motion unless the Hearing Authority shortens or extends the time for response. (    )

c. Any reply to a response must be filed within ten (10) days after service of the response. A reply must not introduce any new issues or arguments and may respond only to matters presented in the response. (    )
d. The Hearing Authority may act on a motion for a procedural order at any time without awaiting a response.

e. Parties must file motions for extensions of time sufficiently in advance of the due date to allow other parties to have a reasonable opportunity to respond to the request for more time and to provide the Hearing Authority with a reasonable opportunity to issue an order prior to the due date.

16. Oral Argument. The Hearing Authority may hold oral argument on its own initiative or at its discretion in response to a request by one or more of the parties.

17. Withdrawal of Permit or Portions of Permit by the Department. The Department may, at any time, upon notification to the Hearing Authority and all parties, withdraw the permit or specified portions of the permit and prepare a new draft permit under Section 108 (Draft Permit and Fact Sheet) addressing the portions so withdrawn. The new draft permit must proceed through the same process of public comment and opportunity for a public meeting as would apply to any other draft permit. If applicable, any portions of the permit that are not withdrawn continue to apply, unless stayed under Sections 205 (Contested Permit Conditions) and 206 (Stays of Contested Permit Conditions). The appeal shall continue with respect to those portions of the permit that are contested in the appeal that the Department does not withdraw.

18. Request to Dismiss Petition. The petitioner, by motion, may request to have the Hearing Authority dismiss its appeal. The motion must briefly state the reason for its request.

19. Burden of Proof. The petitioner has the burden of proving the allegations in the Petition for Review. Factual allegations must be proven by a preponderance of the evidence.

20. Appointment of Hearing Officers. The Hearing Authority shall be a Hearing Officer appointed by the Director from a pool of Hearing Officers approved by the Board. Hearing Officers should be persons with technical expertise or experience in the issues involved in IPDES appeals. Notice of appointment of a Hearing Officer shall be served on all parties. No Hearing Officer shall be appointed that has a conflict of interest as defined in 40 CFR 123.25(c).

21. Scope of Authority of the Hearing Authority. The Hearing Authority shall have the following authority:

a. The authority to set schedules and take such other actions to ensure an efficient and orderly adjudication of the issues raised in the Petition for Review;

b. The authority to hear and decide motions; and

c. The authority to issue an order that decides the issues raised in the appeal and includes findings of fact and conclusions of law. The required contents of an order are set forth in Subsection 204.24.

22. Ex Parte Communications. The Hearing Authority shall not communicate, directly or indirectly, regarding any substantive issue in the permit appeal with any party, except upon notice and opportunity for all parties to participate in the communication. The Hearing Authority may communicate ex parte with a party concerning procedural matters (e.g., scheduling). When the Hearing Authority becomes aware of a written ex parte communication regarding any substantive issue from a party or representative of a party during an appeal, the Hearing Authority shall place a copy of the communication in the file for the case and order the party providing the written communication to serve a copy of the written communication upon all parties of record. Written communications from a party showing service upon all other parties are not ex parte communications.

23. Alternative Dispute Resolution. Parties to the permit appeal may agree to use a means of alternative dispute resolution.

24. Final Orders.

a. Final orders are issued by the Hearing Authority upon review of the petitions, briefs and the
b. Every final order shall contain the following:
   i. A reasoned statement in support of the decision;
   ii. Findings of fact, with reference to the portions of the administrative record that support the findings. The findings of fact must be based exclusively on the administrative record, or if augmented during the appeal, the augmented record;
   iii. Conclusions of law with respect to legal issues raised in the appeal;
   iv. The final order shall either affirm the permitting decision, or vacate and remand the decision to the Department with instructions; and
   v. A statement of the right to judicial review as set forth in Section 204.26.

25. Final Agency Action for Purposes of Judicial Review.
   a. Filing a Petition for Review is a prerequisite to seeking judicial review of the Department’s permitting decision.
   b. For purposes of judicial review under Sections 39-107 and 67-5270, Idaho Code, final agency action or determination regarding an appeal of a permit occurs when a final order that affirms the Department’s permitting decision is issued.
   c. An order that vacates and remands the decision to the Department with instructions is not a final agency action for purposes of judicial review.

   a. Any person aggrieved by a final agency action or determination by the Department as defined in Subsection 204.25 has a right to judicial review by filing a petition for judicial review.
   b. The petition for judicial review must be filed with the Hearing Coordinator as set out in Subsection 204.13 and with the district court and served on all parties. The petition for judicial review shall also be served upon the Hearing Authority, the Director of the Department, and upon the Attorney General of the State of Idaho. Pursuant to Section 67-5272, Idaho Code, petitions for judicial review may be filed in the District Court of the county in which:
      i. The hearing was held;
      ii. The final agency action was taken;
      iii. The party seeking review of the agency action resides; or
      iv. The real property or personal property that was the subject of the agency action is located.
   c. Pursuant to Section 67-5273, Idaho Code, a petition for judicial review of a final agency action must be filed within twenty-eight (28) days of the service date of a final order issued by the Hearing Authority.

27. IPDES General Permits.
   a. Persons affected by an IPDES general permit may not file a petition under this section or otherwise
challenge the conditions of a general permit in further Department proceedings. Instead, they may do either of the following:

i. Challenge the conditions in a general permit by filing an action in court; or ( )

ii. Apply for an individual IPDES permit under Section 105 (Application for an Individual IPDES Permit), as authorized in Section 130 (General Permits), and may then petition the Hearing Authority to review the individual permit as provided by in these rules. ( )

b. As provided in Subsection 130.05.c., any interested person may also petition the Department to require an individual IPDES permit for any discharger eligible for authorization to discharge under an IPDES general permit. ( )

c. The Department’s decision to terminate, revoke or deny coverage under a general permit and to require application for an individual permit may be appealed pursuant to the provisions of Section 204 (Appeals Process). ( )

28. Appeals of Variances.

a. When the Department issues a permit on which EPA has made a variance decision, separate appeals of the Department permit and of the EPA variance decision are possible. If the owner or operator is challenging the same issues in both proceedings, the EPA Region 10 Administrator will decide, in consultation with the Department, which case will be heard first. ( )

b. Variance decisions made by EPA may be appealed under the provisions of 40 CFR 124.19. ( )

c. Stays for variances other than Clean Water Act section 301(g) variances are governed by Section 205 (Contested Permit Conditions) and 206 (Stays of Contested Permit Conditions). ( )

205. CONTESTED PERMIT CONDITIONS.

01. Force and Effect of Conditions. As provided in Subsection 206.01, if an appeal of a permit decision is filed under Section 204 (Appeals Process), the force and effect of the contested conditions of the permit are stayed until final Department action. The Department must notify the discharger and all interested parties of the uncontested conditions of the permit that are enforceable obligations of the discharger in accordance with Subsection 206.01.c. ( )

02. Control Technologies. When effluent limitations are contested, but the underlying control technology is not, the notice must identify the installation of the technology in accordance with the permit compliance schedules as an uncontested, enforceable obligation of the permit. ( )

03. Combination of Technologies. When a combination of technologies is contested, but a portion of the combination is not contested, that portion must be identified as uncontested if compatible with the combination of technologies proposed by the requester. ( )

04. Inseverable Conditions. Uncontested conditions, if inseverable from a contested condition, must be considered contested. ( )

05. Enforceable Dates. Uncontested conditions become enforceable thirty (30) days after the date of notice under Subsection 205.01. ( )

06. Uncontested Conditions. Uncontested conditions include:

a. Preliminary design and engineering studies or other requirements necessary to achieve the final permit conditions which do not entail substantial expenditures; and ( )

b. Permit conditions which will have to be met regardless of the outcome of the appeal under Section 204. ( )
206. STAYS OF CONTESTED PERMIT CONDITIONS.

01. Stays.

a. If a Petition for Review of an IPDES permit under Section 204 (Appeals Process) is filed, the effect of the contested permit conditions are stayed pending final Department action. Uncontested permit conditions are stayed only until the date specified in Subsection 206.01.b. If the permit involves a new facility or new injection well, new source, new discharger or a recommencing discharger, the applicant will not be issued a permit for the proposed new facility, injection well, source or discharger pending final Department action.

b. Uncontested conditions which are not severable from those contested are stayed together with the contested conditions. The Department must identify the stayed provisions of permits for existing facilities, injection wells, and sources. All other provisions of the permit for the existing facility, injection well, or source become fully effective and enforceable thirty (30) days after the date of the notification required in Subsection 206.01.c.

c. As soon as possible after receiving notification from the Hearing Coordinator of the filing of a Petition for Review, the Department must notify the Hearing Authority, the applicant, and all other parties of the uncontested (and severable) conditions of the final permit that will become fully effective enforceable obligations of the permit as of the date specified in Subsection 206.01.b., and the notice must comply with the requirements of Section 205 (Contested Permit Conditions).

02. Stays Based on Cross Effects.

a. The Department may grant a stay based on the grounds that an appeal to the Hearing Authority under Section 204 (Appeals Process) of one permit may result in changes to another Department-issued IPDES permit only when each of the permits involved has been appealed to the Department.

b. No stay of an EPA-issued NPDES permit may be granted based on the staying of any Department-issued IPDES permit except at the discretion of the EPA Region 10 Administrator and only upon written request from the Department.

03. Permittee Responsibilities. Any facility or activity holding an existing permit must:

a. Comply with the conditions of that permit during any modification or revocation and reissuance proceeding under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits); and

b. To the extent conditions of any new permit are stayed under this section, comply with the conditions of the existing permit which correspond to the stayed conditions, unless compliance with the existing conditions would be technologically incompatible with compliance with other conditions of the new permit which have not been stayed.

207. -- 299. (RESERVED)

300. CONDITIONS APPLICABLE TO ALL PERMITS.
The following conditions apply to all IPDES permits. Additional conditions applicable to IPDES permits are in Sections 301 ( Permit Conditions for Specific Categories), 302 (Establishing Permit Provisions), and 40 CFR 122.42(e). All conditions applicable to IPDES permits will be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation must be given in the permit.

01. Duty to Comply. The permittee must comply with all conditions of the permit.

a. Any permit noncompliance constitutes a violation of Idaho law, the Clean Water Act, and grounds for:

i. Enforcement action;
ii. Permit termination, revocation and reissuance, or modification; or

iii. Denial of a permit renewal application.

b. The permittee shall comply with effluent standards or prohibitions established under the Clean Water Act section 307(a) for toxic pollutants and with standards for sewage sludge use or disposal established under the Clean Water Act section 405(d), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, “Wastewater Rules,” within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

02. Duty to Reapply. If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must apply for and obtain a new permit. If the permittee complies with the application requirements of Section 105 (Application for an Individual IPDES Permit), or the notice of intent requirements of Section 130 (General Permits) for a general permit, and a permit is not issued prior to the permit’s expiration date, the permit shall remain in force as stipulated in Subsections 101.02 and 101.03.

03. Need to Halt or Reduce Activity. In an enforcement action, a permittee may not assert as a defense that compliance with the conditions of the permit would have made it necessary for the permittee to halt or reduce the permitted activity.

04. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment.

05. Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit.

a. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures.

b. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit or are required by IDAPA 58.01.16 “Wastewater Rules.”

06. Permit Actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

07. Property Rights. The permit does not convey any property rights of any sort, or any exclusive privilege.

08. Duty to Provide Information. The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The permittee shall also furnish to the Department upon request, copies of records required to be kept by the permit.

09. Inspection and Entry. The permittee shall provide the Department’s inspectors, or authorized representatives, including authorized contractors acting as representatives of the Department, upon presentation of credentials and other documents as may be required by law, access to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

b. Any records that must be kept under the conditions of the permit and, at reasonable times, to copy
such records;

c. Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit, and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

10. Monitoring and Records. A permittee must comply with the following monitoring and recordkeeping conditions:

a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

b. The permittee shall retain the following records:

i. All monitoring information, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time; and

ii. The permittee's sewage sludge use and disposal activities shall be retained for a period of at least five (5) years or longer as required by 40 CFR Part 503.

c. Records of monitoring information shall include:

i. All calibration and maintenance records;

ii. All original strip chart recordings for continuous monitoring instrumentation or other forms of data approved by the Department;

iii. Copies of all reports required by the permit;

iv. Records of all data used to complete the application or notice of intent for the permit;

v. The date, exact place, and time of sampling or measurements;

vi. The name of any individual(s) who performed the sampling or measurements;

vii. The date(s) any analyses were performed;

viii. The name of any individual(s) who performed the analyses;

ix. The analytical techniques or methods used; and

x. The results of the analysis.

d. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another test method is required by 40 CFR Part 401 through 471 or Part 501 through 503.
i. The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source as defined in Section 120 (New Sources and New Discharges) and 010 (Definitions); ( )

ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Subsection 301.01.a.; or ( )

iii. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites:

   (1) Not reported during the permit application process, or ( )

   (2) Not reported pursuant to an approved land application or sludge disposal plan. ( )

b. The permittee must give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

c. The permit is not transferable to any person except after notice to the Department. The Department may modify or revoke and reissue a permit to change the name of the permittee and incorporate such other requirements as may be necessary under Section 202 (Transfer of IPDES Permits).

d. Monitoring results must be reported at the intervals specified in the permit and meet the following requirements:

i. Monitoring results will be reported on a Discharge Monitoring Report (DMR) or forms (which may be electronic) provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices. All reports and forms submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, permittees may be required to report electronically if specified by a particular permit.

ii. If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136, or another method required for an industry-specific waste stream specified in the permit or under 40 CFR Part 401 through 471 or Part 501 through Part 503, the results of such monitoring will be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department.

iii. Calculations for all limitations which require averaging of measurements will utilize an arithmetic mean unless otherwise specified by the Department in the permit.

e. A permittee must submit reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit no later than fourteen (14) days following each schedule date of each requirement. As of December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

f. The permittee must report to the Department any noncompliance which may endanger health or the environment as follows:
i. Within twenty-four (24) hours from the time the permittee becomes aware of the circumstances, provide any information orally;

ii. Within five (5) days from the time the permittee becomes aware of the circumstances, provide a written submission that contains a description of:

   (1) The noncompliance and its cause;
   (2) The period of noncompliance, including exact dates and times;
   (3) If the noncompliance has not been corrected, the anticipated time it is expected to continue; and
   (4) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance;
   (5) For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described in Subsections 300.12.f.ii(1) through (4), as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), type of sewer overflow structure (e.g., manhole, combine sewer overflow outfall), discharge volumes untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the sewer overflow event, and whether the noncompliance was related to wet weather.
   (6) As of December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

iii. The following information must be reported within twenty-four (24) hours:

   (1) Any unanticipated bypass which exceeds any effluent limitation in the permit (see Subsection 300.07, Property Rights);
   (2) Any upset which exceeds any effluent limitation in the permit; and
   (3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within twenty-four (24) hours (see Subsection 302.09, Twenty-Four Hour Reporting);

iv. The Department may waive the written report on a case-by-case basis for reports under Subsection 300.12.f.iii. if the oral report has been received within twenty-four (24) hours.

The permittee must report all instances of noncompliance not reported under Subsections 300.12.d., e., and f., at the time monitoring reports are submitted. The reports of noncompliance must contain the information listed in Subsection 300.12.f. As of December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.
h. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it must promptly submit such facts or correct information.


a. Bypass, as defined in Section 010 (Definitions), is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:

i. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

iii. The permittee submitted a notice of a bypass to the Department in accordance with Subsections 300.13.c. and d. As of December 21, 2020, all notices submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of CFR Part 127, permittees may be required to report electronically if specified by a particular permit.

b. The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three (3) conditions listed in Subsection 300.13.a.

c. If the permittee knows in advance of the need for a bypass, it shall submit prior notice to the Department, if possible at least ten (10) days before the date of the bypass.

d. The permittee shall submit notice of an unanticipated bypass as required in Subsection 300.12.f. (24-hour notice).

e. Bypasses not exceeding limitations, are allowed to occur, and are not subject to Subsection 300.13.a. or 300.13.d. if:

i. The bypass does not cause effluent limitations to be exceeded, and

ii. Only if it also is for essential maintenance to assure efficient operation.


a. In any enforcement action for noncompliance with technology-based permit effluent limitations, a permittee may claim upset, as defined in Section 010 (Definitions), as an affirmative defense. A permittee seeking to establish the occurrence of an upset has the burden of proof.

b. Any determination made in administrative review of a claim that noncompliance was caused by upset, before an action for noncompliance is commenced, is not final administrative action subject to judicial review.

c. The following conditions are necessary for a permittee to demonstrate that an upset occurred. A permittee who wishes to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

i. An upset occurred and that the permittee can identify the cause(s) of the upset;
ii. The permitted facility was at the time being properly operated; 

iii. The permittee submitted twenty-four (24)-hour notice of the upset as required Subsection 300.12.f.iii(2); and 

iv. The permittee complied with any remedial measures required under Subsection 300.04. 

15. Penalties and Fines. Permits must include penalty and fine requirements pursuant to Section 500 (Enforcement). 

301. PERMIT CONDITIONS FOR SPECIFIC CATEGORIES. 
In addition to conditions set forth in Section 300 (Conditions Applicable to all Permits), conditions identified in this section apply to all IPDES permits within the categories specified below. 

01. Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers. In addition to the reporting requirements under Subsection 300.12, all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Department as soon as they know or have reason to believe: 

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit if that discharge will exceed the highest of the following notification levels: 

i. One hundred micrograms per liter (100 µg/L); 

ii. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; 

iii. Five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and 

iv. One milligram per liter (1 mg/L) for antimony; 

v. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Subsection 105.07; or 

vi. The level established by the Department in accordance with Subsection 302.08; and 

b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit if that discharge will exceed the highest of the following notification levels: 

i. Five hundred micrograms per liter (500 µg/L); 

ii. One milligram per liter (1 mg/L) for antimony; 

iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Subsection 105.07; or 

iv. The level established by the Department in accordance with Subsection 302.08. 

02. Publicly Owned Treatment Works. All POTWs must provide adequate notice to the Department of the following: 

a. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to the Clean Water Act section 301 or 306 if it were directly discharging those pollutants; and 

b. Any substantial change in the volume or character of pollutants being introduced into that POTW
by a source introducing pollutants into the POTW at the time of issuance of the permit. For purposes of this subsection, adequate notice shall include information on:

i. The quality and quantity of effluent introduced into the POTW, and

ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

03. Municipal Separate Storm Sewer Systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Department under 40 CFR 122.26(a)(1)(v) must submit an annual report by the anniversary of the date of the issuance of the permit for such system. As of December 21, 2020, all reports submitted in compliance with this section must be submitted electronically by the owner, operator, or the duly authorized representative of the MS4 to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, the owner, operator, or the duly authorized representative of the MS4 may be required to report electronically if specified by a particular permit. The report shall include:

a. The status of implementing the components of the storm water management program that are established as permit conditions;

b. Proposed changes to the storm water management programs that are established as permit conditions. Such proposed changes shall be consistent with Subsection 105.18.b.iii.;

c. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under Subsection 105.18.b.iv. and 105.18.b.v.;

d. A summary of data, including monitoring data, that is accumulated throughout the reporting year;

e. Annual expenditures and budget for the year following each annual report;

f. A summary describing the number and nature of enforcement actions, inspections, and public education programs; and

g. Identification of water quality improvements or degradation.

04. Storm Water Dischargers. The initial permits for discharges composed entirely of storm water issued pursuant to 40 CFR 122.26(e)(7) shall require compliance with the conditions of the permit as expeditiously as practicable but in no event later than three (3) years after the date of issuance of the permit.

05. Concentrated Animal Feeding Operations (CAFOs). Any applicable permit must include provisions pursuant to 40 CFR 122.42(e).

302. ESTABLISHING PERMIT PROVISIONS.
The Department will establish conditions, as required on a case-by-case basis, to provide for and ensure compliance with all applicable requirements of the Clean Water Act and state rules, including conditions under Section 101 (duration of permits), Section 305 (compliance schedules), Section 304 (monitoring), and electronic reporting requirements identified under 40 CFR Part 127. An IPDES permit must include conditions meeting the following requirements, when applicable, in addition to other applicable sections of these rules.

01. Incorporation. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

02. Applicable Requirements. The Department shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the Clean Water Act and Section
101 (Duration), and Subsections 304.01, and 305.01 of these rules.

   a. Applicable requirements include all statutory or regulatory requirements which take effect prior to final administrative disposition of the permit.

   b. Applicable requirements also include any requirement which takes effect prior to the modification or revocation and reissuance of a permit under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits).

   c. New or reissued permits, and to the extent allowed under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits) for modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in Sections 200 (Renewal of IPDES Permits), and 302 (Establishing Permit Provisions) through 304 (Monitoring and Reporting Requirements).

03. Technology-Based Effluent Limitations and Standards.

   a. Technology-based effluent limitations and standards shall be based on:
      i. Effluent limitations and standards promulgated under the Clean Water Act section 301;
      ii. New source performance standards promulgated under the Clean Water Act section 306;
      iii. Effluent limitations determined on a case-by-case basis under the Clean Water Act section 402(a)(1); or
      iv. A combination of the three (3), in accordance with 40 CFR 125.3.

   b. For new sources or new dischargers, these technology based limitations and standards are subject to the provisions of 40 CFR 122.29(d).

   c. The Department may authorize a discharger, subject to technology-based effluent limitations guidelines and standards in an IPDES permit, to forgo sampling of a pollutant found at 40 CFR Parts 401 through 471, if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

      i. This waiver is good only for the term of the permit and is not available during the term of the first NPDES or IPDES permit issued to a discharger.

      ii. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

      iii. Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet.

      iv. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

04. Other Effluent Limitations and Standards.

   a. If any applicable toxic effluent limitations and standards under the Clean Water Act sections 301, 302, 303, 307, 318, and 405 or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under the Clean Water Act section 307(a) for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Department shall initiate
proceedings under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits) to modify or revoke
and reissue the permit to conform to the more stringent toxic effluent standard or prohibition (see also Subsection
300.01).

b. Standards for sewage sludge use or disposal under the Clean Water Act section 405(d), Section 380
(Sewage Sludge) of these rules, and IDAPA 58.01.16.650, “Wastewater Rules,” shall be applied, unless those
standards have been included in a permit issued under the appropriate provisions of:

i. Subtitle C of the Solid Waste Disposal Act;

ii. Part C of Safe Drinking Water Act;

iii. The Clean Air Act; or

iv. State permit programs approved by the EPA.

c. When there are no applicable standards for sewage sludge use or disposal, the permit may include
requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects
which may occur from toxic pollutants in sewage sludge.

d. If any applicable standard for sewage sludge use or disposal is promulgated under the Clean Water
Act section 405(d), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, “Wastewater Rules,” that
standard is more stringent than any limitation on the pollutant or practice in the permit, the Department may initiate
proceedings under these regulations to modify or revoke and reissue the permit, in compliance with Section 201
(Modification, or Revocation and Reissuance of IPDES Permits), to conform to the standard for sewage sludge use or
disposal.

e. Include any requirements applicable to cooling water intake structures under the Clean Water Act
section 316(b), in accordance with 40 CFR 125.80 through 125.99.

05. Reopener Clause. For any permit issued to a TWTDS (including sludge-only facilities), the
Department shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal
promulgated under the Clean Water Act section 405(d). The Department may promptly modify or revoke and reissue
any permit containing the reopener clause required by this subsection if the standard for sewage sludge use or
disposal:

a. Is more stringent than any requirements for sludge use or disposal in the permit, or

b. Controls a pollutant or practice not limited in the permit.

06. Water Quality Standards and Requirements. Any requirements in addition to or more stringent
than promulgated effluent limitations guidelines or standards under the Clean Water Act sections 301, 304, 306, 307,
318 and 405 shall be included in a permit if they are necessary to:

a. Achieve water quality standards established in IDAPA 58.01.02, “Water Quality Standards,”
including narrative criteria for water quality and antidegradation provisions.

i. Effluent limitations in a permit must control all pollutants or pollutant parameters (either
conventional, nonconventional, or toxic pollutants) which the Department determines are or may be discharged at a
level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality
standard, including narrative criteria for water quality.

ii. When the Department determines whether a discharge causes, has the reasonable potential to cause,
or contributes to an in-stream excursion above a narrative or numeric criteria within a water quality standard, the
Department shall use procedures which account for:

(1) Existing controls on point and nonpoint sources of pollution;
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(2) The variability of the pollutant or pollutant parameter in the effluent;

(3) The sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity); and where appropriate,

(4) The dilution of the effluent in the receiving water;

iii. When the Department determines, using the procedures in Subsection 302.06.a.ii., that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a state numeric criteria within a state water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

iv. When the Department determines, using the procedures in Subsection 302.06.a.ii., that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity.

v. Except as provided in this subsection, when the Department determines, using the procedures in Subsection 302.06.a.ii., toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the Department demonstrates in the fact sheet of the IPDES permit, using the procedures in Subsection 302.06.a.ii., that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative state water quality standards.

vi. When the state has not established a numeric water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable state water quality standard, the Department must establish effluent limits using one (1) or more of the following options:

(1) Establish effluent limits using a calculated numeric water quality target or concentration value for the pollutant which the Department demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a target or concentration value may be derived:

(a) Using a proposed criterion, or an explicit policy or regulation interpreting its narrative water quality criterion, and

(b) Supplemented with other relevant information which may include EPA’s Water Quality Standards Handbook, as currently revised, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration (FDA), and current EPA criteria documents;

(2) Establish effluent limits on a case-by-case basis, using EPA’s water quality criteria, published under the Clean Water Act section 304(a), supplemented where necessary by other relevant information; or

(3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(b) The required fact sheet sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and
(d) The permit contains a reopener clause allowing the Department to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

vii. When developing water quality-based effluent limits under this subsection, the Department shall ensure that:

1. The level of water quality to be achieved by limits on point sources established under this subsection is derived from, and complies with all applicable water quality standards; and

2. Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the state and approved by EPA pursuant to 40 CFR 130.7;

b. Attain or maintain a specified water quality through water quality related effluent limits established under the Clean Water Act section 302;

c. Conform to applicable water quality requirements under the Clean Water Act section 402(b)(5) when the discharge affects a state other than Idaho;

d. Incorporate any more stringent limitations, treatment standards, or schedules of compliance requirements established under federal or state law or regulations in accordance with the Clean Water Act section 301(b)(1)(C);

e. Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under the Clean Water Act section 208(b); or

f. Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 CFR 125.30 through 125.32.

07. Technology-Based Controls for Toxic Pollutants.

a. In determining whether to include limitations on toxic pollutants in a permit under this section, the Department will establish limits in accordance with Subsections 302.03, 302.04, and 302.06 and in a notification under Section 301 (Permit Conditions for Specific Categories), or other relevant information. The fact sheet must explain the development of limitations included in the permit.

b. An IPDES permit must include limitations to control all toxic pollutants which the Department determines (based on information reported in a permit application under Subsection 105.07 and 301.01.a., or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c).

c. The requirement that the limitations control the pollutants meeting the criteria of Subsection 302.07.b. will be satisfied by:
   i. Limitations on those toxic pollutants; or
   ii. Limitations on other pollutants which, in the judgment of the Department, will provide treatment of the pollutants under Subsection 302.07.b. to the levels required by 40 CFR 125.3(c).

08. Notification Level. An IPDES permit must include a condition requiring a notification level which exceeds the notification level of Subsection 301.01.a., upon a petition from the permittee or on the Department’s initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c).

09. Twenty-Four (24) Hour Reporting. A permit will list pollutants for which the permittee is
required to report violations of maximum daily discharge limitations within twenty-four (24) hours under Subsection 300.12.f.iii(3), including any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

10. **Permit Durations.** Permits must include permit durations pursuant to Subsection 101.01.

11. **Monitoring Requirements.** Permits must include monitoring requirements pursuant to Section 304 (Monitoring and Reporting Requirements).

12. **Pretreatment Program for POTWs.** A POTW permit must include pretreatment program conditions requiring the permittee to:
   
   a. Identify, in terms of character and volume of pollutants, any Significant Industrial Users discharging into the POTW subject to Pretreatment Standards under the Clean Water Act section 307(b) and 40 CFR Part 403;
   
   b. Submit a local program when required by and in accordance with 40 CFR Part 403, to ensure compliance with pretreatment standards to the extent applicable under the Clean Water Act section 307(b):
      
      i. The local program shall be incorporated into the permit as described in 40 CFR Part 403, and
   
      ii. The program must require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR Part 403;
   
   c. Provide written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1), following permit issuance or reissuance; and
   
   d. POTWs which are sludge-only facilities, are required to develop a pretreatment program under 40 CFR Part 403, when the Department determines that a pretreatment program is necessary to assure compliance with the Clean Water Act section 405(d).

13. **Best Management Practices.** An IPDES permit must include best management practices (BMPs) to control or abate the discharge of pollutants when:
   
   a. Authorized under the Clean Water Act section 304(e) for the control of toxic pollutants and hazardous substances from ancillary industrial activities;
   
   b. Authorized under the Clean Water Act section 402(p) for the control of storm water discharges;
   
   c. Numeric effluent limitations are infeasible; or
   
   d. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Clean Water Act.

14. **Reissued Permits.** When a permit is renewed or reissued, it must include provisions pursuant to Section 200 (Renewal of IPDES Permits).

15. **Privately-Owned Treatment Works.** For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this section.
   
   a. Alternatively, the Department may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user.
   
   b. The Department’s decision to issue a permit with no conditions applicable to any user, to impose
conditions on one (1) or more users, to issue separate permits, or to require separate applications, and the basis for
that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

16. **Grants.** An IPDES permit must include any conditions imposed in grants made by the EPA to
POTWs under the Clean Water Act sections 201 and 204, which are reasonably necessary for the achievement of
effluent limitations under the Clean Water Act section 301.

17. **Sewage Sludge.** An IPDES permit must include any requirements under the Clean Water Act
section 405 governing the disposal of sewage sludge from POTWs or any other TWTDS for any use for which
regulations have been established, in accordance with any applicable regulations.

18. **Navigation.** An IPDES permit must include any conditions that the Secretary of the Army
considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with
Subsection 103.04 and 109.02.

19. **Qualifying State or Local Programs.**

   a. For storm water discharges associated with small construction activity disturbing one (1) acre or
   more, but less than five (5) acres as specified in 40 CFR 122.26(b)(15), the Department may include permit
   conditions that incorporate by reference qualifying state or local erosion and sediment control program requirements.
   Where a qualifying state or local program does not include one (1) or more of the elements in this subsection, then the
   Department must include those elements as conditions in the permit.

   b. A qualifying state or local erosion and sediment control program is one that includes:

      i. Requirements for construction site operators to implement appropriate erosion and sediment
         control best management practices;

      ii. Requirements for construction site operators to control waste such as discarded building materials,
         concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to
         water quality;

      iii. Requirements for construction site operators to develop and implement a storm water pollution
         prevention plan, which must include:

            (1) Site descriptions;

            (2) Descriptions of appropriate control measures;

            (3) Copies of approved state or local requirements;

            (4) Maintenance procedures;

            (5) Inspection procedures;

            (6) Identification of non-storm water discharges; and

      iv. Requirements to submit a site plan for review that incorporates consideration of potential water
         quality impacts.

   c. For storm water discharges from a construction activity disturbing five (5) acres or more, including
   activities that disturb less than acres (5) acres but are part of a larger common plan of development or sale that will
   ultimately disturb five (5) acres or more, as specified in 40 CFR 122.26(b)(14)(x), the Department may include
   permit conditions that incorporate by reference qualifying state or local erosion and sediment control program requirements.
   A qualifying state or local erosion and sediment control program is one that includes the elements
   listed in Subsections 302.19.a. and b. and any additional requirements necessary to achieve the applicable
   technology-based standards of best available technology and best conventional technology based on the best
professional judgment of the permit writer.

20. **Water Quality Trading**. The Department may include provisions in IPDES permits that allow for compliance with water quality based permit limits to be achieved through water quality trading.

303. **CALCULATING PERMIT PROVISIONS.**

01. **Outfalls and Discharge Points.** All permit effluent limitations, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under Subsection 302.13, (Best Management Practices,) and Subsection 303.08, (Internal Waste Streams.)

02. **Production-Based Limitations.**

a. In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow.

b. Except in the case of POTWs or as provided in Subsection 303.02.b.ii., calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based upon a reasonable measure of actual production of the facility.

i. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

ii. The Department may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

iii. For the automotive manufacturing industry only, the Department shall establish an alternate condition under 303.02.b.ii., if the applicant satisfactorily demonstrates to the Department, at the time the application is submitted, that:

   1. Its actual production, as indicated in Subsections 303.02.b. and 303.02.b.i. is substantially below maximum production capability, and

   2. There is a reasonable potential for an increase above actual production during the duration of the permit.

iv. If the Department establishes permit conditions under Subsection 303.02.b.ii.:

   1. The permit shall require the permittee to notify the Department at least two (2) business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify:

      a. The anticipated level, and the period during which the permittee expects to operate at the alternate level; and

      b. If the notice covers more than one (1) month, the notice shall specify the reasons for the anticipated production level increase; and

      c. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two (2) consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice;

   2. The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Department under Subsection
303.02.b.ii., in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice; and

(3) The permittee shall submit, with the Discharge Monitoring Report, the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

03. Metals. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of total recoverable metal as defined in 40 CFR Part 136, unless:

a. An applicable effluent standard or limitation has been promulgated under the Clean Water Act and specifies the limitation for the metal in the dissolved or valent or total form;

b. In establishing permit limitations on a case-by-case basis under 40 CFR 125.3, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the Clean Water Act; or

c. All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

04. Continuous Discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall, unless impracticable, be stated as:

a. Maximum daily and average monthly discharge limitations for all dischargers other than POTWs;

or

b. Average weekly and average monthly discharge limitations for POTWs.

05. Noncontinuous Discharges. Discharges which are not continuous, as defined in Section 010 (Definitions), shall be particularly described and limited, considering the following factors, as appropriate:

a. Frequency (for example, a batch discharge shall not occur more than once every three (3) weeks);

b. Total mass (for example, not to exceed one hundred (100) kilograms of zinc and two hundred (200) kilograms of chromium per batch discharge);

c. Maximum rate of discharge of pollutants during the discharge (for example, not to exceed two (2) kilograms of zinc per minute); and

d. Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than one-tenth (0.1) mg/L zinc or more than two hundred fifty (250) grams (one-fourth (¼) kilogram) of zinc in any discharge).

06. Mass Limitations.

a. All pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:

i. pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

ii. When applicable standards and limitations are expressed in terms of other units of measurement; or

iii. If in establishing permit limitations on a case-by-case basis under 40 CFR 125.3, limitations...
expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

b. Pollutants limited in terms of mass, may also be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

07. Pollutant Credits for Intake Water.

a. The following definitions apply to the consideration of intake credits in determining reasonable potential and establishing technology based and water quality based effluent limits for IPDES permits.

i. An intake pollutant is the amount of a pollutant that is present in waters of the United States (including ground water as provided in Subsection 303.07.a.iv.) at the time water is removed from the same body of water by the discharger or other facility supplying the discharger with intake water.

ii. An intake pollutant must be from the same body of water as the discharge in order to be eligible for an intake credit. An intake pollutant is considered to be from the same body of water as the discharge if the Department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. This finding will be established if:

(1) The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water;
(2) There is a direct hydrological connection between the intake and discharge points; and
(3) Water quality characteristics (e.g., temperature, pH, hardness) are similar in the intake and receiving waters.

iii. The Department may also consider other site-specific factors relevant to the transport and fate of the pollutant to make the finding in a particular case that a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

iv. An intake pollutant from ground water may be considered to be from the same body of water if the Department determines that the pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee, except that such a pollutant is not from the same body of water if the ground water contains the pollutant partially or entirely due to human activity, such as industrial, commercial, or municipal operations, disposal actions, or treatment processes.

v. The determinations made under Subsections 303.07.b. and c. will be made on a pollutant-by-pollutant and outfall-by-outfall basis.

vi. These provisions do not alter Department's obligation under Subsection 302.06.a.vii(2) to develop effluent limitations consistent with the assumptions and requirements of any available waste load allocations for the discharge, that is part of a TMDL prepared by the Department and approved by EPA pursuant to 40 CFR 130.7, or prepared by EPA pursuant to 40 CFR 130.7(d).

b. Consideration of intake pollutants for technology based effluent limitations:

i. Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

(1) The applicable effluent limitations and standards contained in 40 CFR Part 401 through 471, specifically provide that they shall be applied on a net basis; or
(2) The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and
standards in the absence of pollutants in the intake waters.  

ii. Credit for generic pollutants such as BOD or TSS should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

iii. Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

iv. Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Department may waive this requirement if the Department finds that no environmental degradation will result.

v. This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

c. Consideration of intake pollutants for water quality based effluent limitations:

i. The Department will evaluate if there is reasonable potential for the discharge of an identified intake pollutant to cause or contribute to an exceedance of a narrative or numeric water quality criterion. If the Department determines that an intake pollutant in the discharge does not have the reasonable potential to cause or contribute to an exceedance of an applicable water quality standard, the Department is not required to include a water quality-based effluent limit for the identified intake pollutant in the facility's permit.

ii. If a reasonable potential exists, then water quality-based effluent limits may be established that reflect a credit for intake pollutants where a discharger demonstrates that the following conditions are met:

1. The facility removes the intake water containing the pollutant from the same body of water into which the discharge is made;

2. The ambient background concentration of the pollutant does not meet the most stringent applicable water quality criterion for that pollutant;

3. The facility does not alter the identified intake pollutant chemically or physically in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutants had not been removed from the body of water;

4. The timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the identified intake pollutant had not been removed from the body of water;

5. For the purpose of determining water quality-based effluent limits, the facility does not increase the identified intake pollutant concentration at the point of discharge as compared to the pollutant concentration in the intake water.

iii. Where the conditions in Subsection 303.07.c.i. and ii are met, the Department may establish a water quality-based effluent limitation allowing a facility to discharge a mass and concentration of the intake pollutant that are no greater than the mass and concentration found in the facility’s intake water. A discharger may add mass of the pollutant to its waste stream if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water.

iv. Where intake water for a facility is provided by a municipal water supply system and the supplier provides treatment of the raw water that removes an intake water pollutant, the concentration of the intake water pollutant will be determined at the point where the water enters the water supplier’s distribution system.

v. Where a facility discharges intake pollutants from multiple sources that originate from the...
receiving water body and from other water bodies, the Department may derive an effluent limit reflecting the flow-weighted amount of each source of the pollutant provided that conditions in 303.07.c.ii. of this subsection are met and adequate monitoring to determine compliance can be established and is included in the permit. ( )

vi. The permit will specify how compliance with mass and concentration-based limitations for the intake water pollutant will be assessed. This may be done by basing the effluent limitation on background concentration data. Alternatively, the Department may determine compliance by monitoring the pollutant concentrations in the intake water and in the effluent. This monitoring may be supplemented by monitoring internal waste streams or by a Department evaluation of the use of best management practices. ( )

vii. Effluent limitations must be established to comply with all other applicable state and federal laws and regulations including technology-based requirements and anti-degradation policies. ( )

viii. When determining whether water quality based effluent limitations are necessary, information from chemical-specific, whole effluent toxicity and biological assessments will be considered independently. ( )

ix. Permit limits must be consistent with the assumptions and requirement of waste load allocations or other provisions in a TMDL that has been approved by the EPA. ( )

08. Internal Waste Streams. ( )

a. When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by Section 304 (Monitoring and Reporting Requirements) shall also be applied to the internal waste streams. ( )

b. Limits on internal waste streams will be imposed only when the fact sheet sets forth the exceptional circumstances which make such limitations necessary, such as: ( )

i. When the final discharge point is inaccessible (for example, under ten (10) meters of water); ( )

ii. The wastes at the point of discharge are so diluted as to make monitoring impracticable; or ( )

iii. The interferences among pollutants at the point of discharge would make detection or analysis impracticable. ( )

09. Disposal of Pollutants into Wells, into POTWs, or by Land Application. ( )

a. When part of a discharger’s process wastewater is not being discharged into waters of the United States because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the United States, applicable effluent standards and limitations for the discharge in an IPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one (1) of the following methods: ( )

i. If none of the waste from a particular process is discharged into waters of the United States, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards; or ( )

ii. In all cases other than those described in Subsection 303.09.a.i., effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the United States, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under 40 CFR Part 125, subpart D, to make them more or less stringent if discharges to wells, POTWs, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method may be algebraically expressed as:
b. Subsection 303.09.a. does not apply to the extent that promulgated effluent limitations guidelines:
   i. Control concentrations of pollutants discharged but not mass; or
   ii. Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

c. Subsection 303.09.a. does not alter a discharger’s obligation to meet any more stringent requirements established under Sections 300 (Conditions Applicable to all Permits), 301 (Permit Conditions for Specific Categories), 40 CFR 122.42(e), and 302 (Establishing Permit Provisions).

d. Disposal of discharge into injection wells is regulated by:
   i. Idaho Department of Water Resources, in compliance with the IDAPA 37.03.03, “Rules and Minimum Standards for the Construction and Use of Injection Wells,” for a Class I injection well; or

e. Disposal of discharge onto the surface of the land is regulated by the Department under IDAPA 58.01.17, “Recycled Water Rules.”

304. MONITORING AND REPORTING REQUIREMENTS.

01. Monitoring Requirements. A permit must include the following requirements for monitoring:

   a. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

   b. The type, intervals, and frequency of monitoring sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

   c. Provisions for reporting the results of monitoring, including frequency, appropriate for the regulated activity based on the impact of that activity and as specified in 40 CFR Part 127 (NPDES Electronic Reporting). Reporting shall be no less frequent than specified in 40 CFR 122.44;

   d. The mass (or other measurement specified in the permit) for each pollutant limited in the permit;

   e. The volume of effluent discharged from each outfall;

   f. Other measurements as appropriate, including:
      i. Pollutants in internal waste streams under Subsection 303.08;
      ii. Pollutants in intake water for net limitations under Subsection 303.07;
      iii. Frequency, rate of discharge, etc., for non-continuous discharges under Subsection 303.05;
iv. Pollutants subject to notification requirements under Subsection 301.01; and

v. Pollutants in sewage sludge or other monitoring as specified in 40 CFR Part 503; or as determined to be necessary on a case-by-case basis pursuant to the Clean Water Act section 405(d)(4), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, “Wastewater Rules”;  

g. According to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 for the analysis of pollutants or pollutant parameters, or another method required under 40 CFR Part 401 through 471 or Part 501 through 503. Consistent with 40 CFR Part 136, applicants or permittees have the option of providing matrix or sample specific minimum levels rather than the published levels. Further, where an applicant or permittee can demonstrate that, despite a good faith effort to use a method that would otherwise meet the definition of “sufficiently sensitive,” the analytical results are not consistent with the QA/QC specifications for that method, then the Department may determine that the method is not performing adequately and the Department should select a different method from the remaining EPA-approved methods that is sufficiently sensitive consistent with provisions outlined in Subsections 304.01.g.i. and ii. For the purposes of this section, a method is “sufficiently sensitive” when:

i. The method minimum level (ML) is at or below the level of the effluent limit established in the permit for the measured pollutant or pollutant parameter; or

ii. The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapter N or O, for the measured pollutant or pollutant parameter; and

h. In the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR Part 136, or methods are not otherwise required under 40 CFR Part 401 through 471 or Part 501 through 503, monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters.

02. Reporting Monitoring Results.

a. Except as provided in Subsections 304.02.d. and 304.02.e., the Department will establish requirements to report monitoring results on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. All results must be electronically reported in compliance with 40 CFR Part 127.

b. For sewage sludge use or disposal practices, the Department will establish requirements to monitor and report results on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in 40 CFR Part 503, Section 380 (Sewage Sludge) of these rules, and Idaho’s Wastewater Rules, IDAPA 58.01.16.650, “Wastewater Rules,” (where applicable), but in no case less than once a year. All results must be electronically reported in compliance with 40 CFR Part 127.

c. The Department will establish requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

d. The Department will establish requirements to report monitoring results for storm water discharges associated with industrial activity, other than those addressed in Subsection 304.02.c., on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require the discharger to:

i. Conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity;

ii. Evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;
iii. Maintain for a period of three (3) years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance; ( )

iv. Sign the report and certification in accordance with Section 090 (Signature Requirements); and ( )

v. Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification that the facility is in compliance with the permit, or alternative requirements, once every three (3) years by an Idaho licensed professional engineer. ( )

e. A permit that does not require monitoring results reports at least annually must require the permittee to report, at least annually, all instances of noncompliance not reported under Subsection 300.12. ( )

305. COMPLIANCE SCHEDULES.

01. General. An IPDES permit may, when appropriate, specify a schedule of compliance leading to compliance with the Clean Water Act and these rules. ( )

a. Any schedules of compliance under this section shall require compliance as soon as possible. ( )

b. The first IPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction, but less than three (3) years before commencement of the relevant discharge. ( )

c. For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three (3) years before recommencement of discharge. ( )

d. If a permit establishes a schedule of compliance under this section that exceeds one (1) year from the date of permit issuance, the schedule must set out interim requirements and dates for achievement of the interim requirements. If the schedule includes interim requirements: ( )

i. The time between interim dates shall not exceed one (1) year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six (6) months; or ( )

ii. If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than one (1) year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date. ( )

e. Within fourteen (14) days following each interim and final date of compliance, the permittee shall notify the Department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if Subsection 305.01.d.ii. is applicable. ( )

f. Permits may incorporate compliance schedules which allow a discharger to phase in, over time, compliance with water quality-based effluent limitations in accordance with IDAPA 58.01.02.400, “Water Quality Standards.” ( )

02. Alternative Schedules of Compliance. An IPDES permit applicant or permittee may cease conducting regulated activities (by terminating direct discharge for point sources) rather than continuing to operate and meet permit requirements as follows:
a. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:
   
   i. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or ( )

   ii. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit. ( )

b. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline. ( )

c. If the permittee is undecided whether to cease conducting regulated activities, the Department may issue or modify a permit to contain two (2) schedules, as follows:

   i. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities; ( )

   ii. One (1) schedule shall lead to timely compliance with applicable requirements, no later than the statutory deadline; ( )

   iii. The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements no later than the statutory deadline; and ( )

   iv. Each permit containing two (2) schedules shall include a requirement that after the permittee has made a final decision under Subsection 305.02.c., it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities. ( )

d. The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Department, such as a resolution of the board of directors of a corporation. ( )

306. -- 309. (RESERVED)

310. VARIANCES.

   01. Variance Requests by non-POTWs.

   a. A discharger which is not a POTW may request a variance from otherwise applicable effluent limitations under the following statutory or regulatory provisions, within the times specified in this subsection. ( )

      i. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based must be filed as follows:

         (1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period under Section 109 (Public Notification and Comment); or ( )

         (2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than one hundred eighty (180) days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987. ( )

      ii. The request must explain how the requirements of the applicable regulatory and/or statutory criteria
b. An applicant may request a variance for non-conventional pollutants under this section for the following:

i. A variance from the BAT requirements for Clean Water Act section 301(b)(2)(F) pollutants (commonly called non-conventional pollutants) pursuant to the Clean Water Act section 301(c) because of the economic capability of the owner or operator; or

ii. A variance pursuant to the Clean Water Act section 301(g) provided:

   (1) The variance may only be requested for ammonia; chlorine; color; iron; total phenols (4AAP), when determined by the EPA Administrator to be a pollutant covered by the Clean Water Act section 301(b)(2)(F); and

   (2) Any other pollutant which the EPA Administrator lists under the Clean Water Act section 301(g)(4).

c. The request for variance as outlined in Subsection 310.01.b. must be made as follows:

i. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline, by submitting an initial request to the Department no later than two hundred seventy (270) days after promulgation of the applicable effluent limitation guideline followed by a completed request no later than the close of the public comment period under Section 109 (Public Notification and Comment).

   (1) The initial request to the Department must contain:

      (a) The name of the discharger; 

      (b) The permit number; 

      (c) The outfall number(s); 

      (d) The applicable effluent guideline; and 

      (e) Whether the discharger is requesting a Clean Water Act section 301(c) or section 301(g) modification or both.

   (2) The completed request must demonstrate that the applicable requirements of 40 CFR Part 125 have been met. Notwithstanding this provision, the complete application for a request under Clean Water Act section 301(g) must be filed one hundred eighty (180) days before the Department must make a decision (unless the Department establishes a shorter or longer period).

ii. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with Subsection 310.01.c.i(2) and need not be preceded by an initial request under Subsection 310.01.c.i(1).

d. A modification under the Clean Water Act section 302(b)(2) of requirements under the Clean Water Act section 302(a) for achieving water quality related effluent limitations may be requested no later than the close of the public comment period under Section 109 (Public Notification and Comment) on the permit from which the modification is sought.

e. A variance under the Clean Water Act section 316(a) for the thermal component of any discharge must be filed with a timely application for a permit under Section 105 (Application for an Individual IPDES Permit), except that if thermal effluent limitations are established under the Clean Water Act section 402(n)(1) or are based on water quality standards, the request for a variance may be filed by the close of the public comment period under Section 109 (Public Notification and Comment).
02. **Variance Requests by POTWs.** A discharger which is a POTW may request a variance from water quality based effluent limitations. A modification under the Clean Water Act section 302(b)(2) of the requirements under the Clean Water Act section 302(a) for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period under Section 109 (Public Notification and Comment) on the permit from which the modification is sought.

03. **Permit Variance Decision Process.**

a. The Department may deny requests for variances. A variance that has been denied by the Department may be appealed according to the process identified in Section 204 (Appeals Process).

b. The Department may grant (subject to EPA objection under Subsection 103.02 or 40 CFR 123.44):
   - Variances for extensions under the Clean Water Act section 301(i) based on delay in completion of a POTW;
   - Variances after consultation with EPA, extensions under the Clean Water Act section 301(k) based on the use of innovative technology;
   - Variances under the Clean Water Act section 316(a) for thermal pollution; or
   - Variances from water quality standards under IDAPA 58.01.02.260, “Water Quality Rules.”

c. The Department may forward to EPA with or without a recommendation:
   - A variance based on the economic capability of the applicant under the Clean Water Act section 301(c); or
   - A variance based on water quality related effluent limitations under the Clean Water Act section 302(b)(2).

d. The Department may forward to EPA with a written concurrence:
   - A variance based on the presence of fundamentally different factors from those on which an effluent limitations guideline was based (Clean Water Act section 301(n)); or
   - A variance based upon certain water quality factors under the Clean Water Act section 301(g).

e. The EPA may grant or deny a request for a variance that is forwarded by the Department. If the EPA Administrator (or his delegate) approves the variance, the Department shall prepare a draft permit incorporating the variance.

f. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision under Section 204 (Appeals Process).

04. **Expedited Variance Procedures and Time Extensions.**

a. Notwithstanding the time requirements in Subsections 310.01 and 310.02, the Department may notify a permit applicant before a draft permit is issued under Section 108 (Draft Permit and Fact Sheet) that the draft permit will likely contain limitations which are eligible for variances.

i. In the notice, the Department may require the applicant, as a condition of consideration of any
potential variance request, to submit a request explaining how the requirements of 40 CFR Part 125, applicable to the variance, have been met and may require its submission within a specified reasonable time after receipt of the notice.

ii. The Department may send the notice before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

b. A discharger who cannot file a timely complete request required under Subsections 310.01.c.i.(2) or 310.01.c.ii. may request an extension.

i. The extension may be granted or denied at the discretion of the Department.

ii. The extension shall be no more than six (6) months in duration.

05. Special Procedures for Decisions on Thermal Variances.

a. The only issues connected with issuance of a particular permit on which the Department will make a final decision before the final permit is issued, are whether alternative effluent limitations would be justified under the Clean Water Act section 316(a) or whether cooling water intake structures will use the best available technology under section 316(b).

i. Permit applicants who wish an early decision on these issues should make a request to the Department, furnished with supporting reasons at the time their permit applications are filed.

ii. The Department will then decide whether or not to make an early decision. If it is granted, both the early decision on Clean Water Act section 316 (a) or (b) issues and the grant of the balance of the permit shall be:

(1) Considered permit issuance under these regulations, and

(2) Subject to the same requirements of public notice and comment and the same opportunity for an appeal.

b. If the Department, on review of the administrative record, determines that the information necessary to decide whether or not the Clean Water Act section 316(a) issue is not likely to be available in time for a decision on permit issuance, the Department may issue a permit for a term up to five (5) years.

i. The permit shall require achievement of the effluent limitations initially proposed for the thermal component of the discharge, no later than the date otherwise required by law.

ii. However, the permit shall also afford the permittee an opportunity to file a demonstration under Clean Water Act section 316(a), after conducting such studies as are required under 40 CFR 125.70 through 125.73.

iii. A new discharger may not exceed the thermal effluent limitation which is initially proposed unless and until its Clean Water Act section 316(a) variance request is finally approved.

c. Any proceeding held under Subsection 310.05.a. shall be:

i. Publicly noticed as required by Section 109 (Public Notification and Comment), and

ii. Conducted at a time allowing the permittee to take necessary measures to meet the final compliance date in the event its request for modification of thermal limits is denied.

d. Whenever the Department defers the decision under the Clean Water Act section 316(a), any decision under the Clean Water Act section 316(b) may be deferred.
311. -- 369. (RESERVED)

370. PRETREATMENT STANDARDS.

01. Purpose and Applicability. This section and 40 CFR Part 403 apply to:
   a. Pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined in Subsection 370.04 and 40 CFR 403.3;
   b. POTWs which receive wastewater from sources subject to National Pretreatment Standards; and
   c. Any new or existing source subject to Pretreatment Standards. National Pretreatment Standards do not apply to sources which discharge to a sewer which is not connected to a POTW Treatment Plant.

02. Objectives of General Pretreatment Regulations. This section and 40 CFR Part 403 fulfill three objectives:
   a. To prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge;
   b. To prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and
   c. To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

03. Department Program in Lieu of a POTW Program. 40 CFR 403.8(a) requires certain POTWs develop a pretreatment program. The Department may, however, assume responsibility for implementing the POTW pretreatment program requirements set forth in 40 CFR 403.8(f) in lieu of requiring the POTW to develop a pretreatment program. This does not preclude POTWs from independently developing pretreatment programs.

04. Term Interpretation. When used in the context of 40 CFR Part 403, unless the context in which a term is used clearly requires a different meaning, terms 40 CFR Part 403 that are incorporated by reference in these rules have the following meanings:
   a. The terms Administrator or Regional Administrator mean the EPA Region 10 Administrator;
   b. The term Approval Authority means the Department of Environmental Quality;
   c. The term Approved POTW Pretreatment Program or Program or POTW Pretreatment Program means a program administered by a POTW that meets the criteria established in 40 CFR 403.8 and 403.9, and which has been approved by the Department in accordance with 40 CFR 403.1;
   d. The term Control Authority means the POTW for a facility with a Department-approved pretreatment program and the Department for a POTW without a Department-approved pretreatment program;
   e. The term Director means the Department of Environmental Quality with an NPDES permit program approved pursuant to the Clean Water Act section 402(b);
   f. The terms National Pretreatment Standard, Pretreatment Standard, or Standard mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act,
which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to 40 CFR 403.5; and

g. The term Water Management Division Director means a Director of the Water Management Division within the Region 10 office of the Environmental Protection Agency or this person's delegated representative.

05. Exceptions to Incorporation by Reference. The following sections of 40 CFR Part 403 are excluded from the incorporation by reference in Section 003 (Incorporation by Reference) of these rules.

a. 40 CFR 403.4 (State or Local Law).

b. 40 CFR 403.19 (Provisions of Specific Applicability to the Owatonna Wastewater Treatment Facility).


371. -- 379. (RESERVED)

380. SEWAGE SLUDGE.

01. Purpose. The purpose of this section and 40 CFR Part 503 is to:

a. Establish standards, which consist of general requirements, pollutant limits, management practices, and operational standards, for the final use or disposal of sewage sludge.

   i. Include standards for sewage sludge applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator.

   ii. Include:

   (1) Pathogen and alternative vector attraction reduction requirements for sewage sludge applied to the land or placed on a surface disposal site; and

   (2) On a case-by-case basis, controls for storm water runoff from lands where sewage sludge or septage has been placed for treatment or disposal.

b. Include the frequency of monitoring and recordkeeping requirements when sewage sludge is:

   i. Applied to the land;

   ii. Placed on a surface disposal site; or

   iii. Fired in a sewage sludge incinerator; and

c. Include reporting requirements for:

   i. Class I sludge management facilities;

   ii. POTWs with a design flow rate equal to or greater than one million gallons per day (1 MGD); and

   iii. POTWs that serve ten thousand (10,000) people or more.

02. Applicability. This section and 40 CFR Part 503 applies to:
a. Any person, who prepares sewage sludge, applies sewage sludge to the land, or fires sewage sludge in a sewage sludge incinerator and to the owner or operator of a surface disposal site;

b. Sewage sludge applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator;

c. The exit gas from a sewage sludge incinerator stack; or

d. Land where sewage sludge is applied, to a surface disposal site, and to a sewage sludge incinerator.

03. Term Interpretation. When used in the context of 40 CFR Part 503, unless the context in which a term is used clearly requires a different meaning, terms in the 40 CFR Part 503 that are incorporated by reference in these rules have the following meanings:

a. The terms Administrator or Regional Administrator mean the EPA Region 10 Administrator;

b. The terms Director or State Program Director mean the Department of Environmental Quality as the agency designated by the Governor as having the lead responsibility for managing or coordinating the approved IPDES program; and

c. The term permitting authority is the Department of Environmental Quality.

04. Exceptions to Incorporation by Reference. 40 CFR 503.1 (Purpose and Applicability) is excluded from the incorporation by reference found in Section 003 (Incorporation by Reference) of these rules.

381. -- 399. (RESERVED)

400. COMPLIANCE EVALUATION.

01. Non-Compliance Actions. When the permittee is not in compliance with any condition of the existing or expired permit that has been administratively continued, the Department may choose to do one (1) or more of the following:

a. Initiate an enforcement action;

b. Issue a notice of intent to deny the new application. If the application is denied and the expired permit is no longer effective as provided in Subsection 101.02, the owner or operator must cease the activities authorized by the permit or be subject to enforcement action for operating without a permit;

c. Issue a new permit with appropriate conditions; or

d. Take other actions authorized by state law.

401. -- 499. (RESERVED)

500. ENFORCEMENT.

01. General Enforcement and Penalties. Any person who violates any permit condition, filing or reporting requirement, duty to allow or carry out inspections, entry or monitoring requirements or any other provision in these rules shall be subject to administrative, civil or criminal enforcement and those remedies authorized in the Environmental Protection and Health Act, Sections 39-101 et seq., Idaho Code, including without limitation, civil and criminal penalties as provided in Sections 39-108 and 39-117, Idaho Code.

02. Truth in Reporting. It is a violation of these rules for any person to falsify, tamper with, or
knowingly render inaccurate any monitoring device or method required to be maintained under an IPDES permit. In addition to any other remedy available to the Department, such a violation is punishable by a fine as provided in Section 39-117, Idaho Code.

03. False Statements. It is a violation of these rules for any person to knowingly make any false statement, representation, or certification in any record or other document submitted or required to be maintained under an IPDES permit, including monitoring reports or reports of compliance or non-compliance. In addition to any other remedy available to the Department, such a violation is punishable by a fine as provided in Section 39-117, Idaho Code.

04. Public Participation in Enforcement. The Department shall provide for public participation in the state enforcement process by:
   a. Investigating and providing written responses to citizen complaints;
   b. Not opposing intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and
   c. Publishing notice of and providing at least thirty (30) days for public comment on any proposed settlement of a state enforcement action.

501. -- 599. (RESERVED)

600. ADMINISTRATIVE RECORDS AND DATA MANAGEMENT.

01. Administrative Record for Draft Permits. The provisions of a draft permit prepared by the Department under Subsection 108.01 shall be based on the administrative record defined in this section.
   a. For preparing a draft permit, the record shall consist of:
      i. The application, if required, and any supporting data furnished by the applicant;
      ii. The draft permit or notice of intent to deny the application or to terminate the permit;
      iii. The fact sheet;
      iv. All documents cited in the fact sheet; and
      v. Other documents contained in the supporting file for the draft permit.
   c. Material readily available at the Department or published material that is generally available, and that is included in the administrative record under Subsection 600.01, need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet.
   d. This subsection applies to all draft permits when public notice was given after the effective date of these rules.

02. Administrative Record for Final Permits. The Department shall base final permit decisions on the administrative record defined in this section.
   a. The administrative record for any final permit, including issuance, denial, transfer, modification, revocation and reissuance, or termination shall consist of the administrative record for the draft permit and fact sheet, as defined in Subsection 600.01, the proposed permit and associated information, and the following:
i. All comments received during the public comment period provided under Section 109 (Public Notification and Comment); 

ii. The record of, and any written materials submitted as part of, any meeting(s) held under Section 109 (Public Notification and Comment); 

iii. The application or notice of intent to obtain coverage under a general permit, notice of intent to deny the application, or to terminate the permit, and any supporting data furnished by the applicant; 

iv. The response to comments required by Subsections 109.02 and 109.03 and any new material placed in the record under that section; and 

v. Any other relevant correspondence and documents. 

c. The final permit and fact sheet shall become part of the administrative record after the final permit is issued. 

d. The additional documents identified under Subsection 600.02.b., 107.03, and 109.02 should be added to the record as soon as possible after their receipt or publication by the Department. The record shall be complete on the date the final permit is issued. 

e. This subsection applies to all IPDES permits when the draft permit was included in a public notice. 

f. Material readily available from the Department or published materials which are generally available and which are included in the administrative record under Subsection 600.02 or Section 109 (Public Notification and Comment), need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the fact sheet or in the response to comments. 

03. Electronic Submittals. Any information which the Department requires to be submitted electronically, with an electronic signature approved by the Department, will become part of the Administrative Record in accordance with Subsections 600.01 and 02.
Overview of Rulemaking
This omnibus proposed rulemaking includes 1) the temporary fee rules adopted by the Board in February 2020, and 2) revisions to several fee rule chapters. Revisions to IDAPA 58.01.13 are described below.

IDAPA 58.01.13, Rules for Ore Processing by Cyanidation
Revisions Negotiated Under Docket No. 58-0113-1901:
The Idaho Mining Association (IMA) requested, via letter submitted to the Director on March 18, 2019, that DEQ revise the rules to move away from prescriptive design and construction requirements to performance-based outcomes for design, construction and closure. IMA’s letter is posted at deq.idaho.gov/58-0113-1901. The current rules, adopted by the Board in 2005 and approved by the Idaho Legislature in 2006, adopted minimum design and construction criteria for all cyanidation facilities. IMA’s letter to DEQ states that technologies and industry best practices for cyanidation facilities have changed since 2006. DEQ initiated negotiated rulemaking to evaluate such changes and to determine if the rules should be updated.

The proposed rule includes revisions to account for current best available technologies or best practices for design, construction and closure of cyanidation facilities that can achieve necessary regulatory goals of protecting human health and the environment and addresses the following:

1. applicability of the design criteria to different types of cyanidation facilities;
2. consideration of a broader range of acceptable materials included in the design;
3. broader interpretation of performance and compliance regarding constructability of leak detection systems;
4. variability in design approach based on the physical characteristics of impounded materials; and
5. variability in design approach based on the chemical characteristics of impounded materials and process water; and
6. cyanidation permit application and administration, including recovery of costs incurred by DEQ in processing permit applications and administering issued permits.

The negotiated rulemaking record is available at deq.idaho.gov/58-0113-1901.
DEQ’s Response to Comments
Proposed Rule Docket 58-0000-2000F

IDAPA 58.01.13, Rules for Ore Processing by Cyanidation

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<td>Idaho Mining Association (IMA)</td>
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<td>Idaho Conservation League (ICL)</td>
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1. IMA

**Section 001.**
There is a reference in this section to the term “process contaminated water containing cyanide” as well as in other subsections of the Proposed Rule (and in the 107D Statement). This is not a defined term but it clearly is intended to describe something beyond “process water” which is a broadly defined term in the Proposed Rule. We are not sure what is intended by use of this term and we do not think the Rule should be expanded beyond regulating process water. We suggest defining this term or striking it if the intent is to expand the scope of the Proposed rule beyond process water.

**DEQ Response**
The Department of Environmental Quality’s (DEQ’s) statutory authority under Idaho Code § 39-118A includes review and approval of cyanidation facility designs and permitting the construction, operation, and closure of cyanidation facilities. This statutory authority is not limited to process water. The potential for any water contaminated by the cyanidation process to impact human health and the environment makes it a legitimate matter of concern within DEQ’s statutory authority.

The text referring to “process-contaminated water containing cyanide” has been included in the rule since at least December 31, 1991. Only limited changes to Section 001 have occurred since this time, and changes to this specific text were not proposed by rulemaking participants during the ten rulemaking meetings held between May 2019 and June 2020. The scope of the proposed rule is no different than previous versions of the rule, and the scope of the rule was not expanded. The requested change was not incorporated into the rule.

2. IMA

**Section 007.08.a.ii. Material Modification.**
Please add the word “Significant” to the beginning of this subsection. Minor changes to the components of a facility can and will occur throughout construction and operations. For a large facility such minor changes can occur hundreds of times throughout construction and operations. Such minor changes should not trigger a permit modification.
DEQ Response

Section 007.08.a.ii. has been amended to clarify that a significant change to the capacity, location, or process of an existing cyanidation facility qualifies as a “material modification or material expansion.” The word “significant” was incidentally omitted from the requirement while addressing Idaho Division of Financial Management comments to streamline, clarify, and simplify the rule.

3. ICL

050.01 - Pre-Application Conference
The text currently states, “Any person who intends to apply….should contact the Department during the initial stages of site characterization to schedule a pre-application conference.” We recommend IDEQ change this to read “must contact the Department,” making the pre-application conference a requirement to begin the application process. This allows IDEQ and the application to have open conversations regarding the requirements, which facilitates the design planning, permitting process, and cost recovery agreements, reducing the chances of misinterpretation and providing the benefit of ensuring applications have current and correct information and possess a full understanding of the rule prior to investing time, materials, and funds in an untenable project. This supports the requirements of 050.02 - Information Required for Preliminary Design Report.

DEQ Response
The rule provides recommended timing for coordination with the Department prior to submittal of the preliminary design report and permit application. It is the responsibility of the applicant to coordinate with the Department before these mandatory submittals. The requested change was not incorporated into the rule.

4. ICL

200.04 - Siting and Preparation
We recommend adding avalanches and seismic activity such as tremors and earthquakes to the list of “adequately protected against factors.” Several potential mines or their primary access routes are located in avalanche-prone areas and the recent 6.5 magnitude earthquake in Central Idaho demonstrates the need to acknowledge this as a potential ongoing risk. Avalanche prone areas can be identified from previous observations and evidence. The USGS [United States Geological Survey] has an Earthquakes Hazards Program that tracks historic and recent earthquake activity.

DEQ Response
The list is illustrative only and not intended to be exhaustive. The recommended additions are not necessary because the concept is covered by the existing language “at a minimum” siting must ensure facilities are structurally sound and can be adequately protected. Avalanches and
seismic activity will be a significant consideration in evaluating if the facility is adequately protected. In addition, seismic activity is specifically addressed in Section 200.06.a.ii. of the proposed rule. The requested change was not incorporated into the rule.

5. IMA

IMA - Section 200.06.a.ii. Minimum Plans and Specifications.
Please revise that last portion of this subsection for clarity so the focus is on anticipated seismic conditions and it therefore should read “… for each component based on anticipated seismic activity considering the history of seismic events at the site.”

DEQ response

The following changes were incorporated into Section 200.06.a.ii. for clarification:

ii. Preclude any differential movement or shifting of the subgrade, soil layer, liner or contained material that endangers containment integrity as a result of the proposed range of operating conditions for each component and the history of anticipated seismic activity events at the site.

The commenters proposed change eliminates the application of the requirement to facility components as a result of facility operation and limits the requirement strictly to seismic activity. The intent of the requirement is to preclude any differential movement or shifting of the subgrade, soil layer, liner or contained material as a result of both facility operation and seismic activity. This intent is consistent with the text of the rule prior to revisions addressing Idaho Division of Financial Management comments to streamline, clarify, and simplify the rule.

6. ICL

200.06.a.v. - Minimum Plans and Specifications (wildlife exclusions)

IDEQ is electing to use 50 mg/L [milligrams per liter] WAD [weak acid dissociable] as the standard for wildlife protection because it is considered an international standard. Under this justification, IDEQ must incorporate all other aspects of the international standards into this rule. In addition to the 50 mg/L numeric criteria, the International Cyanide Management Code¹ (Cyanide Code) also includes matters such as training staff, QA/QC [Quality Assurance/Quality Control], water balance contingency, monitoring regimes, real-time WAD cyanide measures, management contingencies in place, etc. In order to be effective, the Cyanide Code should be incorporated in its entirety; anything less would be ineffective at adequately protecting wildlife.

¹Available online: www.cyanidecode.org

Further, IDEQ adds that they “may require additional measures if wildlife mortality is observed.” Section 4.4 of the Cyanide Code explicitly requires facilities to “Implement
measures to protect birds, other wildlife and livestock from adverse effects of cyanide process solutions.\textsuperscript{2} These requirements are not contingent upon observing wildlife mortality because the general presumption is that adverse effects to wildlife or wildlife mortality will occur. We remind IDEQ that industry standards call for netting over process ponds rather than fencing to provide protections for bats and birds; netting around tailings impoundments is not adequate to protect birds and bats. Perimeter netting should be designed to prevent large mammals such as elk and deer as well as smaller vertebrates such as amphibians from accessing ponds. This may require incorporating two different netting designs. Further, numerous studies have expounded upon the difficulties of appropriately monitoring and quantifying the impacts to wildlife at cyanidation facilities (e.g. - Donato et al., 2007; Donato et al., 2017). Given the explicit requirement in the Cyanide Code, and peer-reviewed studies indicating the difficulties associated with monitoring, it is inappropriate for IDEQ to rely on reactive policies to wildlife deaths. Instead these rules should be proactive in requiring wildlife interactions and cyanide monitoring protocols, such as those implemented in Australia as a leading practice (Griffiths, 2014a; M.E. Smith et al., 2008; G.B. Smith et al., 2008; Adams et al., 2008; Smith et al., 2010; Donato and Smith, 2007). Management measures, in addition to specific WAD Cyanide Thresholds are critically important. These should include closely monitoring inflow into all process wastewater ponds to identify whether spikes in concentrations occur and to implement specific measures to respond immediately to any of these events.

\textsuperscript{2} See Id.

According to Dr. David Donato\textsuperscript{\textsuperscript{}}, an expert in matters of wildlife toxicology and ecology associated with mine tailings impoundments and industry risks, there are four industry Best Management Practices he recommends for cyanide processing:

1. Install Auto Free CN (Cyanide) analysers on the tank immediately after the dosage tank, auto FCN analyzer installed on the last CI:L tank and the desired set point (in free CN) automates the dosage rate in the dosed tank. QA and QC performed by manual 4-hourly titration of tanks to check on auto analyzer.
2. AutoWAD analyzer sampling and recording every 15 minutes on the last CIL tank or thickened underflow is one installed. This represents the Tailings Storage Facility (TSF) spigot sample.
3. If the AutoWAD analyzer reaches 45 mg/L (a management trigger value) then they implement their controls.
4. Controls can be:
   a. Reduce CN addition by changing dosage tank set point
   b. Introduce the TSF (Tailings Storage Facility) return water back into the discharge stream (diluting effect)
   c. Hydrogen peroxide polishing of TSF return water tan is introduced back into the discharge stream (improved diluting effect)
   d. Turn on cyanide destruction circuit if one exists

ICL recommends that IDEQ adopt these four management practices for cyanide processing facilities, placing an emphasis on management practice as opposed to regulatory stipulations. We also recommend incorporating an SO2/INCO cyanide destruct system to help achieve the recommended 45 mg/L management trigger value.
Dr. Donato is Principal of Donato Environmental Services (DES) and has 25 years’ experience consulting to industry on a wide range of environmental management issues. Donato is widely regarded by industry peers as an expert in matters of wildlife toxicology and ecology associated with mine tailings impoundments and industry risks. Dr. Donato, an accredited environmental auditor (ISO19011), and an accredited Lead Auditor with the International Cyanide Management Code, has focused on environmental toxicological risks and Code compliance in industry in Australia, USA, Africa and New Zealand. Over the last 20 years Donato has published relevant papers on cyanide code management, environmental auditing, toxicology, mine wastewater management, threatened species management, as well as more widely on ecology. Through DES, Donato has produced about 100 consult reports and presented at numerous international conferences.

DEQ Response

DEQ adopted a WAD cyanide threshold concentration of 50 mg/L for wildlife exclusion based on multiple references, including the International Cyanide Code, that indicate this concentration is generally protective of wildlife. Rulemaking participants did not provide any additional supporting information suggesting that a higher or lower concentration would be more appropriate. Although the WAD cyanide threshold concentration is generally thought to be protective of wildlife, the proposed rule requires the implementation of measures to protect birds, other wildlife, and livestock, and DEQ may require additional measures if wildlife mortality is observed. This approach will be protective of wildlife without prescribing exclusion measures that may not be appropriate for every cyanidation facility.

The cyanide code is for the manufacture, transport and use of cyanide in the production of gold, and addresses matters outside DEQ’s statutory authority to issue permits for cyanidation facility design, construction, operation, and closure. Therefore, DEQ cannot incorporate all aspects of the international code into these rules. Idaho’s proposed rule already includes many of the provisions for the protection of wildlife included in the international cyanide management code and described by ICL in the comment.

- Section 200.15 of the proposed draft rule includes requirements for Employee Education Programs.
- QA/QC requirements for facility construction and monitoring are included in many sections including Sections 200.12; 100.03.r.xvii and 200.11.h.
- Sections 100.03.s. and 200.05 require a water management plan that includes contingency plans for managing excesses process water.
- Section 200.11 requires water quality monitoring and reporting.
- Section 200.06.a.v. requires exclusion of wildlife from impoundments containing more than 50mg/L WAD cyanide in the liquid fraction and allows for additional measures if wildlife mortality is observed below 50mg/L.
- Section 200.11.a. requires monitoring and reporting of wildlife and bird mortality.
- Section 200.06.vi. requires measures to protect birds, other wildlife and livestock from adverse effects of cyanide process water and other pollutants.

In addition the proposed rule includes several proactive provisions to protect wildlife.
Section 200.06.a.v. requires measures for preventing wildlife contact with process water having a WAD cyanide concentration in liquid fraction exceeding fifty 50 mg/L.

Section 200.06.a.vi. requires measures to protect birds, other wildlife and livestock from adverse effects of cyanide process water and other pollutants.

Section 200.11 requires DEQ approval of a water quality monitoring and reporting plan.

Section 200.11.b. requires the water quality monitoring and reporting plan to include sampling locations and frequency

Section 200.11.e. requires the water quality monitoring and reporting plan to include compliance points and water quality compliance criteria.

Section 200.11.f. requires inclusion of monitoring points and threshold concentrations that will provide for early detection of discharge of pollutants.

Section 200.10.e. requires response plans that detail specific threshold concentrations and actions that will result in mitigation of an exceedance of any threshold concentration. This additional text was added to the rule as a result of comments provided by ICL in December 2019.

ICL requests that the rule require four additional management practices for all cyanidation facilities. These prescriptive measures may not be necessary or appropriate for all facilities, however. Compliance points, threshold concentrations and corrective actions are required as part of the permit application and will be addressed in any permit approved by DEQ. DEQ will review the permit application in the context of the site specific operations and determine if the proposed monitoring and operational plans are consistent with the rules and requirements for protection of wildlife. The public has the opportunity to comment on permit applications and can raise concerns with the specific facility monitoring and operations plans at that time.

The cyanide destruction methods identified in the comment are prescriptive and may not be necessary or appropriate for all facilities. There are a number of technologies available for cyanide destruction and its metal complexes. The choice of the best method for a particular application is complex. Inclusion of prescriptive requirement eliminates the flexibility to select approach that may provide better results.

No changes were incorporated into the rule as a result of this comment.

7. ICL

200.12 - Monitoring Wells Siting and Construction Plans

The current language reads, “The applicant is encouraged to submit a report…” This should not be an opt-in requisite, it should be a requirement of the Water Quality monitoring plan. In fact, it forms the foundation for an operators monitoring plan. ICL recommends changing the language to, “The applicant is required to submit a report…” This ties directly to Subsection 151.02.

Further, by submitting a report describing the purpose, objectives, location and proposed
construction of monitoring wells, the applicant is further protected from misguided or misinterpreted information distribution, and ensures a line of communication between the applicant and IDEQ to highlight potential problem areas prior to investing capacity, funds, time, and materials, and collectively protects and assures the general public that IDEQ continues working to protect the public’s interests and Idaho’s Water Quality.

DEQ Response

The proposed rule provides recommended timing for coordination with the Department prior to application submittal but it is not mandatory because it may not be appropriate, necessary, or possible for all applicants. A monitoring well siting and construction plan must be provided upon submittal of the preliminary design report required under Section 050.02. It is the responsibility of the applicant to coordinate with the Department before applying for a permit. The requested change was not incorporated into the proposed rule.

8. ICL

201.01 - Minimal Hydraulic Head
We appreciate IDEQ limiting process water hydraulic head to twelve (12) inches or less on the liner systems. However, this sole reference to hydraulic head limits may create confusion in later sections referring to hydraulic head. We recommend IDEQ repeat this standard in appropriate sections of the proposed rule to avoid confusion and misinterpretation.

DEQ Response
The hydraulic head limits referenced in the comment are only applicable to Section 201, which provides the design criteria for leach pads and other non-impounding surfaces that contain and promote horizontal flow of process water. The hydraulic head limits applicable to each facility type are specified separately in each respective section unless otherwise specified under Section 200. The requested change was not incorporated into the rule.

9. ICL

202.02 - Temporary Containment
IDEQ does not provide liner specifications for temporary containment facilities in this section. ICL recommends the Department include specifications for a potential single-liner here to avoid potential confusion and plainly state the Department expectations. Any liner system or microdrain liner/leak detection configuration should be functional over the length of time that the liner will be needed to protect water quality standards.

DEQ Response
Use of a single liner for ponds used to temporarily contain excess quantities of process water as a result of storm events requires the approval of the Department. The operation and use of the pond must be described by the applicant in the water management plan required in Section 100.03.s.ii. DEQ will evaluate the information submitted to support the use of a single liner and determine if the proposed single liner system is appropriate based on the site-specific
circumstances. The requested change was not incorporated into the rule.

10. ICL

203 - Design Criteria for Containers that Confine Process Water
This section contains a grammatical error. The language currently states, “a double liner in not required.” We believe this should read, “a double liner is not required.”

DEQ Response
DEQ appreciates the comment; the correction was incorporated into the proposed rule.

11. IMA

Section 205.01 Alternative Plans.
Suggest striking the phrase “supported by best available science”. It should not be an applicant’s responsibility to identify what best available science and would likely invite disputes as to what is the best available science in any given situation.

DEQ Response
The prescriptive requirements included in section 200 through 204 of the rules were developed during the negotiated rulemaking process and are supported by best available science. At the request of the Idaho Mining Association and its members, Section 205 was incorporated into the rule to provide additional operational flexibility by allowing applicants to propose an alternative approach to the prescriptive requirements. If an applicant chooses to take the alternative approach to facility design it is incumbent upon the applicant to demonstrate that the proposed alternative design is appropriate for protection of water quality and human health. The requirement that the alternative design be supported by best available science is necessary to ensure the proposed design meets the same standard established for the prescriptive requirements of the rule. The rule encourages applicants considering alternative design proposals to provide details of the design during the pre-application conference. The use of best available science in demonstrating the protectiveness of the design can be addressed at this time. The requested change was not incorporated into the rule.

12. ICL

800.01 - Transfer of Permits Allowed
We recommend adding a fourth (4th) stipulation in this section (d), that indicates that a permit cannot be transferred to a new permittee that is currently or in the recent past in violation of Federal or Idaho State Water Quality standards or is involved in ongoing litigation regarding violations of Federal, Idaho State, or local regulations, or if a new permittee has a previously revoked permit for facilities within the U.S. The addition of this stipulation would work towards limiting liability for the original permittee and IDEQ and helps ensure a responsible party receives the transferred permit.
DEQ Response

The requested limitations on transfers to new permittees are unnecessary. The mere existence of litigation—regardless of the litigation’s status, forum, outcome, or specific subject matter—is not a sound basis for denying a cyanidation permit transfer. Likewise, the previous revocation of a permit for a facility within the United States—regardless of the nature of the permit, the cause for revocation, or the nature of the permitted facility—is not a sound basis for denying a cyanidation permit transfer. The requested change was not incorporated into the proposed rule.

13. ICL

Transparency and Accountability

Inspection reports and permit compliance records need to be publicly available on the IDL (Idaho Department of Lands) website. Posting this already-existing information on the agency webpages will eliminate the need for Public Records Requests and increase both project transparency and applicant accountability.

DEQ Response

DEQ has no control over the information posted on IDL’s website. In addition, the existing public records request process is the appropriate way for the public to seek inspection reports and permit compliance records. This comment does not request any change to the proposed rule and no change was made in response.

14. IMA

Idaho Code Section 39-107D Statement

In section 107D(3)(a) reference is made to “chlorine” as a contaminant of concern and later there is a suggestion that algal blooms could be a concern. We do not believe that either of these concerns should be associated with cyanidation facilities.

DEQ response

Alkaline chlorination is a method used to detoxify cyanide. This process may leave residual chlorine in solution which could be a concern if not properly treated. Similarly the end result of some methods used to detoxify cyanide can result in residual nitrate. Release of nitrate to surface water is linked to algal blooms. The information provided in the 39-107D statement is within the scope of 107D(3)(a) and the potential environmental effects associated with cyanidation facilities. This comment does not request any change to the proposed rule and no change was made in response.
58.01.13 – RULES FOR ORE PROCESSING BY CYANIDATION

000. LEGAL AUTHORITY.
Title 39, Chapter 1, Idaho Code, grants the authority to the Board of Environmental Quality to adopt rules, regulations and standards to protect the environment and the health of the State; grants authority to the Director to issue permits as prescribed by law and by the rules of the Board; and requires Department of Environmental Quality review and approval of plans and specifications for all new facilities, or for modifications or expansions to existing facilities, that process ore by cyanidation; and authorizes the Director to require reasonable fees for processing permit applications and for services rendered by the Department.

001. TITLE, SCOPE AND INTENT.
01. Title. These rules are titled IDAPA 58.01.13, “Rules for Ore Processing by Cyanidation.”
02. Scope and Intent.
a. These rules establish the procedures and requirements for the issuance and maintenance of a permit to construct, operate and close that portion of a cyanidation facility that is intended to contain, treat or dispose of process water or process-contaminated water containing cyanide. The provisions of these rules also establish requirements for water quality that address performance, construction, operation and closure of that portion of any cyanidation facility that is intended to contain, treat, or dispose of process water. These rules are intended to ensure that process water and process-contaminated water generated in ore processing operations that utilize cyanide as a primary leaching agent and pollutants associated with the cyanidation process are safely contained, controlled, and treated so that they do not interfere with the beneficial uses of waters and do not endanger public safety or the environment.
b. Compliance with a permit issued under these rules does not release the permittee from liability for any unauthorized discharge to or any unauthorized degradation of waters caused by the facility.

003. ADMINISTRATIVE PROVISIONS.
Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.”

006. CONFIDENTIALITY OF RECORDS.
Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Title 74, Chapter 1, Idaho Code, and IDAPA 58.01.21, “Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality.”

007. DEFINITIONS.
The terms “cyanidation,” “cyanidation facility,” “Department,” “Director,” “State,” and “Waters” have the meaning provided for that term in Section 39-103, Idaho Code. The term “ground water” has the meaning provided in Section 39-121, Idaho Code.
01. Beneficial Use. As defined in IDAPA 58.01.02, “Water Quality Standards,” Section 010, as amended.
03. Degradation. When referring to surface water, “degradation” has the meaning provided in IDAPA 58.01.02, “Water Quality Standards,” Section 010. When referring to ground water, “degradation” has the meaning provided in IDAPA 58.01.11, “Ground Water Quality Rule,” Section 007.
04. Discharge. When used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into waters.
05. Idaho Pollutant Discharge Elimination System (IPDES) Permit. A permit issued by the Department for the purpose of regulating discharges into surface waters.
06. Land Application. A process or activity involving application of liquids or slurries potentially containing cyanide from the cyanidation facility to the land surface for the purpose of treatment, neutralization, disposal, or ground water recharge.
07. **Liner.** A continuous layer of natural or man-made materials beneath and, if applicable, on the sides of ponds, tailings impoundments, or leach pads that restricts the downward and lateral movement of liquids.

08. **Material Modification or Material Expansion.**

a. Any change to a permitted cyanidation facility, except as provided in Subsection 007.08.b., that the Department determines will:

i. Cause or increase the potential to cause degradation of waters, such as a new cyanidation process or cyanidation facility component;

ii. Change the capacity, location, or process of an existing cyanidation facility component; or

iii. Change the site condition in a manner that is not adequately described in the original permit application.

b. Reclamation and closure related activities at a cyanidation facility with an existing permit that did not actively add cyanide after January 1, 2005 is not material modification or material expansion of the cyanidation facility.

09. **Material Stabilization.** Managing or treating spent ore, tailings or other solids and/or sludges resulting from the cyanidation process to minimize water or all other applied solutions from migrating through the material and transporting pollutants associated with the cyanidation facility to ensure that all discharges comply with all applicable standards and criteria.

10. **Neutralization or Neutralized.** Treatment of process water such that discharge or final disposal of the process water does not, or will not, violate any applicable standards and criteria.

11. **Outstanding Resource Water (ORW).** A high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been designated by the legislature and subsequently listed in IDAPA 58.01.02, “Water Quality Standards.” ORW constitutes an outstanding national or state resource that requires protection from point and nonpoint source activities that may lower water quality.

12. **Permanent Closure.** Those activities that result in neutralization, material stabilization and decontamination of cyanidation facilities and the facilities’ final reclamation.

13. **Permanent Closure Plan.** A description of the procedures, methods, and schedule that will be implemented to treat and dispose of cyanide-containing materials including spent ore, tailings, and process water and in controlling and monitoring discharges and potential discharges for a reasonable period of time based on site-specific conditions in manner that meets the intent and purpose of Section 39-118A, Idaho Code; Chapter 15, Title 47, Idaho Code; and all applicable rules.

14. **Permit.** When used without qualification, any written authorization by the Director, issued pursuant to the application, public participation and appeal procedures in these rules, governing location, operation and maintenance, monitoring, seasonal and permanent closure, discharge response, and design and construction of a new cyanidation facility or a material expansion or material modification to a cyanidation facility.

15. **Permittee.** The person in whose name a permit is issued and who is to be the principal party responsible for compliance with these rules and the conditions of a permit.

16. **Person.** An individual, corporation, partnership, association, state, municipality, commission, federal agency, special district or interstate body.

17. **Pollutant.** Chemicals, chemical waste, process water, biological materials, radioactive materials, or other materials that, when discharged, cause or contribute adverse effects to any beneficial use, or for any other reason, may impact waters.
18. **Pond.** A process component that stores, confines, or otherwise significantly impedes the horizontal and downward movement of process water. This term does not include tailings impoundments or non-earthenn containers such as vats and tanks.

19. **Post-Closure.** The period of time after completion of permanent closure when the permittee is monitoring the effectiveness of the closure activities. Post-closure lasts a minimum of twelve (12) months but may extend until the cyanidation facility is shown to be in compliance with the stated permanent closure objectives and requirements of Chapter 15, Title 47, Idaho Code, and all applicable rules.

20. **Process Water.** Any liquid intentionally or unintentionally introduced into any portion of the cyanidation process. Such liquid may contain cyanide or other minerals, meteoric water, ground or surface water, elements and compounds added to the process solutions for leaching or the general beneficiation of ore, or hazardous materials that result from the combination of these materials.

21. **Seasonal Closure.** Annual cessation of operations that is due to weather.

22. **Sensitive Resource Aquifer.** Any aquifer or portion of an aquifer listed in IDAPA 58.01.11, Ground Water Quality Rule, Subsection 300.01.

23. **Tailings Impoundment.** A process component that is the final depository for processed ore from the mining, milling, or chemical extraction process.

24. **Temporary Closure.** Any cessation of operations exceeding thirty (30) days, other than seasonal or permanent.

25. **Treatment or Treated.** Any method, technique or process, including neutralization, that changes the physical, chemical, or biological character or composition of a waste for the purpose of disposal, or the end result of such action.

26. **Water Balance.** An inventory and accounting process, capable of being reconciled, that integrates all potential sources of water that are entrained in the cyanidation facility or may enter into or exit from the cyanidation facility. The inventory must include the water holding capacity of specific structures within the facility that contain process water. The water balance is used to ensure that all process water and other pollutants can be contained as engineered and designed within a factor of safety as determined in the permanent closure plan.

27. **Water Management Plan.** A document that describes the results of the water balance and the methods that will be used to ensure that pollutants are not discharged from a cyanidation facility into waters unless permitted or otherwise approved by the Department.

28. **Weak Acid Dissociable (WAD) Cyanide.** The cyanide concentration as determined by Method C, Weak Acid Dissociable Cyanide, D2036 of American Society of Testing Materials Book of Standards, “Standard Methods for the Examination of Water and Wastewater,” Method 4500-CN-1, or other methods accepted by the scientific community and deemed appropriate by the Department.

008. -- 009. (RESERVED)

010. **APPLICABILITY TO FACILITIES WITH EXISTING PERMITS.**
A cyanidation facility with an existing permit approved by the Department prior to July 1, 2005 is subject to the applicable laws and rules for ore processing by cyanidation in effect on June 30, 2005. Material modifications or material expansions of such facilities are subject to Section 39-118A, Idaho Code.

011. -- 049. (RESERVED)

050. **PRE-APPLICATION PROCESS AND PRELIMINARY DESIGN.**

01. **Pre-application Conference.** Any person who intends to apply for a permit or proposes to
construct or operate a facility that is intended to contain, treat, or dispose of process water and process-contaminated water generated in ore processing operations that utilize cyanide as a primary leaching agent should contact the Department during the initial stages of site characterization to schedule a pre-application conference. Prospective applicants are encouraged to begin meeting with agents of the Department at least one (1) year in advance of preliminary design submittal to discuss, at a minimum, the following:

- Environmental baseline data requirements; waste characterization requirements; siting requirements; operation and maintenance plans; emergency and spill response plans; quality assurance/quality control plans; required contents for permit applications; agency cyanidation facility visits.

- The proposed water quality monitoring and reporting required in Subsection 200.11 and the monitoring well siting and construction plans required in Subsection 200.12. The applicant is encouraged to submit a report describing the purpose, objectives, location and proposed construction of monitoring wells to the Department for review and comment during the initial stages of site characterization.

- The preliminary design report and alternative design proposals required prior to application submittal under Subsection 050.02.

- The permitting process, application procedures, public review and comment periods, and permit schedule.

- The timing of additional pre-application meetings. The pre-application conference may trigger a period of collaborative effort between the applicant, the Department, and the Idaho Department of Lands to develop an application that complies with rule requirements and ensures the facility will not interfere with the beneficial uses of waters and will not endanger public safety or the environment.

- The cost recovery agreement required under Subsection 100.04.

02. Information Required for Preliminary Design Report. Submittal of a preliminary design report is mandatory. Upon submittal, the preliminary design report must include sufficient detail to determine the following:

- The general framework and design criteria for the project;

- How the project will address each applicable requirement in Subsection 100.03 and Sections 200 through 205, or why a specific requirement in Subsection 100.03 and Sections 200 through 205 is not applicable;

- How the design criteria were identified, or the approach the applicant will use to determine design criteria for which insufficient data is available at the time of the preliminary design;

- How the requirements of these rules will be met in the final permit application; and

- How design, construction, operation and closure will ensure the facility will not interfere with the beneficial uses of waters and will not endanger public safety or the environment.

03. Notice of Preliminary Design Approval or Disapproval. Unless otherwise provided in this Subsection 050.03, the Director will notify the applicant in writing of the decision to approve or disapprove a preliminary design report within thirty (30) days after the Department receives all information required by Subsection 050.02. For alternative design proposals submitted under Section 205, the Director will notify the applicant in writing of the decision for alternative design approval or disapproval within ninety (90) days after the Department receives all information required by Section 205. The time required to review and, if appropriate, approve the preliminary design report is separate from and not included as part of the one hundred eighty (180) day period for issuing notice of rejection or notice of approval of the permit under Section 39-118A(2)(b), Idaho Code. Approval of the preliminary design report does not authorize the construction, modification, or operation of the cyanidation facility.

051. -- 099. (RESERVED)
100. PERMIT AND PERMIT APPLICATION.

01. Permit Required. No person may construct a new cyanidation facility prior to obtaining a permit from the Director. No person may materially expand or materially modify a cyanidation facility prior to obtaining a modified permit for such expansion or modification pursuant to Section 750.

02. Permit Application. The owner or proposed operator of a cyanidation facility or the owner’s or operator’s authorized representative must:

a. Make application to the Director in writing and in a manner or form prescribed herein; and
b. Provide five (5) paper copies of the application to the Director, unless otherwise agreed to by the Department and the applicant.

03. Contents of Application. A permit application and its contents will be used to determine if an applicant can locate, construct, operate, maintain, close and monitor the proposed cyanidation facility in conformance with these and other applicable rules including, but not limited to, IDAPA 58.01.02, “Water Quality Standards”; IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems”; IDAPA 58.01.05, “Rules and Standards for Hazardous Waste”; IDAPA 58.01.06, “Solid Waste Management Rules”; IDAPA 58.01.11, “Ground Water Quality Rule”; and IDAPA 58.01.25, “Rules Regulating the Idaho Pollutant Discharge Elimination System Program.” The application must include all of the following information in sufficient detail to allow the Director to make necessary application review decisions concerning compliance with Sections 200 through 205 as applicable and protection of human health and the environment:

a. Name, location, and mailing address of the cyanidation facility.
b. Name, mailing address, and phone number of the applicant, and a registered agent.
c. Land ownership status of the cyanidation facility (federal, state, private or public).
d. Name, mailing address, and phone number of the applicant’s construction and operations manager.
e. The legal structure (corporation, partnership, etc.) and residence of the applicant.
f. The legal description, to the quarter-quarter section, of the location of the proposed cyanidation facility.
g. Evidence the applicant is authorized by the Secretary of State to conduct business in the State of Idaho.
h. A general description of the operational plans for the cyanidation facility from construction through permanent closure. This description must include any proposed phases for construction, operations, and permanent closure.
i. The design maximum daily throughput of ore through the cyanidation facility and the total projected volume of material to be processed during the life of the operation.
j. Cyanidation facility layouts including water management systems designed to segregate storm water from process water.
k. A geotechnical evaluation of all process water and process chemical containment systems within the proposed cyanidation facility.
l. A preconstruction topographic site map or aerial photos extending at least one (1) mile beyond the outer limits of the cyanidation facility, identifying and showing the location and extent of the following features:
i. All wells, perennial and intermittent springs, adit discharges, wetlands, surface waters and irrigation ditches that may be affected by the cyanidation facility; ( )

ii. All process water supply source(s); ( )

iii. All public and private drinking water supply source(s) within at least one (1) mile of the cyanidation facility; ( )

iv. Identified floodplain areas (shown on USGS sectional Quadrangle maps); ( )

v. All service roads and public roads; ( )

vi. All buildings and structures within a half (1/2) mile of the cyanidation facility; ( )

vii. All outstanding resource waters and sensitive resource aquifers within one (1) mile of the cyanidation facility; and ( )

viii. All Clean Water Act Section 303(d) listed streams, and their listed impairments, within ten (10) miles of the site boundary that may be affected by the cyanidation facility. ( )

m. To the extent such information is available, a description and location of underground mine workings and adits and a description of the structural geology that may influence groundwater flow and direction. ( )

n. A description of the proposed land application site. The description must include a potentiometric map, surface and subsurface soil characteristics, geology, hydrogeology and groundwater quality. The description of these characteristics must be sufficient to determine anticipated impacts to the affected soils, associated vadose zone as well as anticipated changes in geochemistry that may affect surface and groundwater quality. ( )

o. Siting diagram for land application sites, monitoring wells, lysimeters, surface or ground water discharge sites, or surface water monitoring locations. ( )

p. A description of measures to protect wildlife that may be affected by the facility. ( )

q. Proposed post-construction topographic maps. ( )

r. Engineering plans and specifications for all portions of the cyanidation facility must be submitted to the Department for review and approval. Preliminary designs for future phases of the cyanidation facility may be submitted as part of the permit application, provided that, pursuant to Subsection 500.02, the Department review and approval of final plans and specifications is required before construction of those phases may begin. All cyanidation facility engineering plans and specifications must bear the imprint of an Idaho licensed professional engineer that is both signed and dated by the engineer. These plans and specifications must, at a minimum, include all of the following information applicable to the proposed facility.

i. Designs meeting applicable criteria in Sections 200 through 204. ( )

ii. Any alternative design approved by the Department under Section 205. ( )

iii. The water balance, ore flow and processing calculations demonstrating the logic behind sizing of facilities. ( )

iv. The general ore processing overview and analyses of chemical compatibility of containment materials with process chemicals and wastes, including a chemical mass balance at inputs and outputs from the cyanidation facility. ( )

v. Geotechnical data and analyses demonstrating the logic for plans and specifications of foundation
materials and placement.

vi. Requirements for site preparation.

vii. Pumping and dewatering requirements.

viii. Procedures for materials selection and placement for backfilling foundation areas.

ix. Criteria for caps and covers used as source control measures.

x. Criteria for ensuring stability of embankments for pads, ponds and tailings impoundments.

xi. Procedures to classify and modify, if necessary, excavated fill, bedding and cover materials for buildings, pads, ponds, and tailings impoundments.

xii. Plumbing and conveyance schematics and component specifications.

xiii. Plan views and cross-section drawings of leach pad, permanent heaps, vats, process water storage ponds, tailings impoundments and spent ore disposal areas.

xiv. Leak detection and collection system plans and specifications including, but not limited to, schematics and narratives describing liner and geotextile material specifications, sumping capacity and layout, location of monitoring port(s), monitoring port components, construction operation and maintenance procedures for monitoring ports and pumping systems, including backup system, triggers for containment repairs, replacement or other contingency mitigation, frequency of monitoring, and monitoring parameters.

xv. Provisions to protect containment systems from heavy equipment, fires, earthquakes and other natural phenomena.

xvi. Quality assurance/quality control procedures.

xvii. The identity and qualifications of the person(s) directly responsible for supervising construction and quality assurance/quality control.

s. Operation and maintenance plans that include all of the following.

i. Maintenance plans, including routine service procedures for containment systems, process chemical storage, and disposal of contaminated water or soils, including petroleum-contaminated soils.

ii. A water management plan that provides for handling and containment of process water including the methods to manage and/or treat all process water and pollutants, run-off or run-on water, emergency releases, and excess water due to flood, rain, snowmelt, or other similar events. The plan must include the basis for the designed containment volumes and estimations of the need for and operation of a land application site, injection wells, infiltration galleries or leach fields, or the need for an IPDES permit. The permittee will update the plan on a regular basis to reflect the reconciliation of the water balance changes in the project through construction, operation, maintenance, and permanent closure, including modifications to the cyanidation facility.

iii. A proposed water quality monitoring plan.

iv. An emergency and spill response plan that describes procedures and methods to be implemented for the abatement and clean up of any pollutant that may be discharged from the cyanidation facility during use, handling or disposal of processing chemicals, petrochemicals and/or fuels, and any other deleterious materials.

v. A seasonal/temporary closure plan, if applicable, that describes the procedures, methods, and schedule to be implemented for the treatment and disposal of process water and pollutants, the control of drainage
from the cyanidation facility during the period of closure, the control of drainage from the surrounding area, and the secure storage of process chemicals.

t. The permanent closure plan must be the same as the plan submitted to the Idaho Department of Lands pursuant to the Idaho Mind Land Reclamation Act, Chapter 15, Title 47, Idaho Code, and the rules promulgated thereunder.

u. Characterization of pollutants contained in or released from the cyanidation facility, including the potential for the pollutants to cause degradation of waters.

04. Cost Recovery Agreement. Prior to submittal of the preliminary design report, an applicant must enter into an agreement with the Department for actual costs incurred to review the preliminary design report, process the permit application or any permit modification requests, issue a final permit or permit modification, and review final facility designs prior to construction if such designs were not included in the permit application. The cost recovery agreement may provide for actual costs incurred by the Department for any other service rendered pursuant to these rules or a permit so long as agreed to in advance by the applicant.

101. -- 199. (RESERVED)

200. REQUIREMENTS FOR WATER QUALITY PROTECTION.
The following design and performance standards are intended as the minimum criteria for protection of public health and waters. These standards apply to all facilities unless the Department determines that other site-specific criteria, including an alternative design approved under Section 205, are appropriate to protect water quality and the public health.

01. Professional Engineer. Plans and specifications for construction, alteration or expansion of any cyanidation facility must be prepared by or under the supervision of an Idaho licensed professional engineer and bear the imprint of the engineer’s seal. Construction must be observed by an Idaho licensed professional engineer or a person under the supervision of an Idaho licensed professional engineer.

02. Plans and Specifications. Final plans and specifications for the construction of a cyanidation facility must be submitted to and approved by the Department before construction may begin. All construction must be in compliance with the plans and specifications approved by the Department. Within thirty (30) days of the completion of such construction, modification or expansion, complete and accurate plans and specifications depicting that actual construction, modification or expansion does not deviate from the original approved plans and specifications must be submitted to the Department.

03. Manufacturer’s Specifications. Manufacturer’s specifications for materials and equipment necessary to meet the requirements of Subsection 100.03.r. and Sections 200 through 205 for containment of process water must be submitted to the Department with the plans and specifications required in Subsection 200.02 before construction may begin.

04. Siting and Preparation. All cyanidation facilities including, but not limited to, the process building, laboratories, process chemical storage and containment facilities, plumbing fixtures that support process water, untreated or treated process water ponds, tailings impoundments, ore stock piles, and spent ore disposal areas must be appropriately sited and prepared for construction. Siting criteria must ensure that, at a minimum, the facilities are structurally sound and that containment systems can be adequately protected against factors such as wild fires, floods, land slides, storm water run-on, erosion, migrating stream channels, high ground water table, equipment operation, subsidence of underground workings, public access and public activities. All sites must be properly prepared prior to construction of foundations and facilities. Vegetation, roots, brush, large woody debris and other deleterious materials, top soil, historic foundations and plumbing, or other materials that may adversely affect appropriate construction and long term stability, must be removed from the footprint of the cyanidation facility unless approved by the Department.

05. Process Water Storage Sizing Criteria. All aspects of the cyanidation facility that entrain, utilize, treat, discharge, pump, convey, or otherwise contain process water, treated process water, or run-off water from any portion of the cyanidation facility must be included in the water balance. Each pond, tailings impoundment, and ditch

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containing process water must be designed to maintain a minimum two (2) foot freeboard during storage or conveyance of the design climatic events plus maximum expected normal operating levels. Leach pad design must provide containment of the maximum expected operating flows plus storm flows from the design climatic event. At a minimum, a cyanidation facility must be designed to contain the maximum expected normal operating water balance and the volume of run-on and run-off water associated with a climatic event that has a one percent (1%) annual exceedance probability. Snowmelt events will be considered in determining the maximum flow volume during the design climatic event. Contingency plans for managing excesses of all water included as a part of the water balance must be described in the water management strategy. Each structure that impounds process water or process contaminated water must include a means of passing excess water unless otherwise approved by the Department.

06. Minimum Plans and Specifications. Unless the Department approves an alternative design under Section 205, the plans and specifications for any portion of a cyanidation facility that will contain process water must satisfy the applicable general design criteria in Subsection 200.06 and the design criteria in Sections 201 through 204 for the type of facility receiving process water. These provisions establish minimum pollutant control technologies and define the site and operating conditions that must be evaluated.

a. Cyanidation facility design must:

i. Minimize releases of pollutants into ground water or subsurface migration pathways so that any release will not cause unauthorized degradation of waters.

ii. Preclude any differential movement or shifting of the subgrade, soil layer, liner or contained material that endangers containment integrity as a result of the proposed range of operating conditions for each component and the history of seismic events at the site.

iii. Include additional containment of process water, as requested by the Department, in areas where ground water is considered to be near the surface. Ground water is considered to be near the surface if:

(1). The depth from the surface to ground water is less than one hundred (100) feet and the top one hundred (100) feet of the existing formation has a hydraulic conductivity greater than 10^-5 cm/sec;

(2). Open fractured or faulted geologic conditions exist in the bedrock from the surface to the ground water; or

(3). There is an inability to document that all borings beneath the cyanidation facility have been adequately abandoned.

iv. Not locate new process component containing process water within one thousand (1,000) feet of any dwelling that is occupied at least part of the year and not owned by the permittee. This does not apply to modifications at a facility that predates such a dwelling.

v. Include measures for preventing wildlife contact with process water having a WAD cyanide concentration in liquid fraction exceeding fifty (50) mg/L. The Department may require additional measures if wildlife mortality is observed.

vi. Implement measures to protect birds, other wildlife and livestock from adverse effects of cyanide process water and other pollutants.

vii. Include a quality assurance/quality control plan for the construction of containment systems that provides a process for documenting owner acceptance of all underlying components of the containment system prior to construction of the overlying components.

b. Liner systems must:

i. Have a structurally stable subgrade for the overlying components and contained material. The subgrade should be constructed to resist consolidation, excessive differential settlement that compromises liner
performance, and uplift resulting from pressures inside or outside the containment unit to prevent distortion of overlying components.

ii. Have a smooth rolled and compacted soil layer, or equivalent layer approved by the Department, in intimate contact with the overlying geomembrane liner with the following characteristics:

1. A minimum thickness of twenty-four (24) inches compacted to ninety-five percent (95%) of maximum dry density according to Standard Proctor Test ASTM D698 or Modified Proctor Test ASTM D1557;

2. Soil placed in a minimum of four (4) lifts that each have a compacted thickness of six (6) inches and a hydraulic conductivity less than or equal to $10^{-6}$ cm/sec;

3. An uppermost lift of soil that does not contain particles in excess of point seven five (0.75) inches (nineteen (19) mm) in largest dimension unless larger particles are consistent with the manufacturer’s specifications for the overlying liner and approved by the Department;

4. No putrescible, frozen or other deleterious materials.

5. No angular, sharp material regardless of diameter; and

6. Soil placed within two percent (2%) of optimum moisture content to achieve the specified compaction and hydraulic conductivity.

iii. Include the following if an equivalent layer replacing the soil layer described in Subsection 200.06.b.ii is proposed:

1. A layer that is not a geomembrane and has a liquid flow rate no greater than that of twenty-four (24) inches of compact soil with a hydraulic conductivity less than or equal to $10^{-6}$ cm/sec;

2. Materials with appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste, process water, or process contaminated water to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

3. Materials that provide appropriate shear resistance of the upper and lower component interface to prevent sliding of the upper component including on slopes;

4. Certification from an Idaho licensed professional engineer that the liquid flow rate per unit area through the equivalent layer is no greater than the liquid flow rate through two (2) feet of compacted soil with a hydraulic conductivity less than or equal to $10^{-6}$ cm/sec, considering the maximum hydraulic head anticipated on the liner system and the thickness of the equivalent layer replacing the two (2) feet of compacted soil; and

5. Plans and specifications for an equivalent layer that substantially reflect the manufacturer’s specifications and standards for construction, operation and maintenance unless otherwise approved by the Department.

iv. Include geomembrane liners consisting of high density polyethylene, linear low-density polyethylene, or equivalent, rated as having a resistance to the passage of process water equal to or less than a hydraulic conductivity of $10^{-11}$ cm/sec. Each geomembrane liner will be constructed of materials with appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation and permanent closure.

v. Be constructed according to manufacturer’s standards, or Department-approved design standards, and protect against damage from cracking, sun exposure, ice, frost penetration or heaving, wildlife, wildfires, and
damage that may be caused by personnel or equipment operating in or around these facilities. ( )

vi. Have an appropriate coefficient of friction against sliding plus a factor of safety for each interface constructed on a slope. ( )

vii. Have minimum factors of safety, and the logic behind their selection, for the stability of the earthworks and the lining systems. ( )

viii. Include redundant systems for failures in primary power or pumping systems. ( )

ix. Have liner material that meets the manufacturer’s quality assurance/quality control performance specifications. ( )

07. Process Buildings, Process Chemical Storage Containment Areas and General Facility Criteria. Storage, handling and use of all process chemicals, process wastes, process water and pollutants associated with the cyanidation facility must be conducted within a clean, safe and secure work space to prevent unauthorized discharges to soils, ground water or surface water. The plans and specifications must contain sufficient detail, including pump capacity and plumbing for evacuation of collection sumps, triggering systems for sump evacuation, and monitoring and reporting requirements and, where appropriate, provide for:

a. Structural integrity of the foundation, walls and roof for process and process chemical storage buildings; ( )

b. Restriction of public access; ( )

c. Protection of wildlife; ( )

d. Internal sumps and spill cleanup plans; ( )

e. Grouted and sealed concrete stemmed walls and floors in the process buildings and process chemical storage and containment facilities; ( )

f. Vapor barriers and frost protection; ( )

g. Segregation of process chemicals according to compatibility; ( )

h. Communication systems; ( )

i. Fire suppression systems, internal and external; and ( )

j. Quality assurance/quality control for construction activities and construction materials. ( )

08. Cap and Cover Criteria. Caps and covers used as source control measures for facilities must be designed and constructed to minimize the interaction of meteoric waters, surface waters, and ground waters with wastes containing pollutants that are likely to be mobilized and discharged to waters. Caps and covers designed for permanent closure must demonstrate permanence applicable to the permittee’s designed and approved permanent closure plan. ( )

09. Plumbing and Conveyance Criteria. Plumbing and conveyance systems must:

a. Be structurally sound and chemically compatible with the materials being conveyed; ( )

b. Provide adequate primary and secondary containment; and ( )

c. Be protected against heat, cold, mechanical failures, impacts, fires, and other factors that may cause breakage and result in unauthorized discharges.
10. **Operation and Maintenance Plans.** Operation and maintenance plans must be submitted to the Department for review and approval. Operation and maintenance plans must include, but are not limited to:

   a. An overall plan that includes techniques for evaluating the integrity and performance of all containment systems;

   b. Schedule for inspections of all containment systems;

   c. Schedule for inspections on piping and conveyance systems that carry process water;

   d. Response plans that detail specific actions that will result in mitigation of compromised or damaged containment systems; and

   e. Response plans that detail specific thresholds identified under Subsection 200.11, the locations and frequency at which the thresholds will be monitored, and actions that will result in mitigation of an exceedance of any threshold.

11. **Water Quality Monitoring and Reporting.** The water quality monitoring plan submitted with the application must be reviewed and, if appropriate, approved by the Department. The approved water quality monitoring plan must:

   a. Provide for physical, chemical and biological monitoring, including measurements of surface water flow, wildlife and bird mortality, and aquatic indicator species in potentially affected surface and ground water, as appropriate;

   b. Provide for sampling locations and frequency;

   c. Provide an assessment of the existing surface and ground water conditions prior to construction of the proposed cyanidation facility;

   d. Be site specific and dependent on location, design and operation of the cyanidation facilities included in the overall operating plan;

   e. Specify compliance points and associated water quality compliance criteria;

   f. Specify monitoring points and threshold concentrations that provide for early detection of discharges of pollutants;

   g. Provide analytical methods and method detection limits for chemical analysis used in the determination of water quality;

   h. Provide a quality assurance quality control plan for data collection and analysis;

   i. Provide for appropriate and timely analytical data analyses including evaluations of water quality and quantity trends;

   j. Provide an annual environmental monitoring and data analysis report of water quality and quantity trends;

   k. Provide for the reporting and re-sampling of monitoring locations where detectable and statistically significant changes in water quality are found. The permittee must propose a statistical method to determine the significance of the changes in water quality; and

   l. Provide for anticipated changes or modifications to monitoring plans, which may be the result of a phased approach to cyanidation facility construction, operations and permanent closure.

12. **Monitoring Wells Siting and Construction Plans.** The applicant is encouraged to submit a report
describing the purpose, objectives, location and proposed construction of monitoring wells to the Department for review and comment during the initial stages of site characterization. A monitoring well siting and construction plan must be provided upon submittal of the preliminary design report under Subsection 050.02.

a. Monitoring well siting and construction plans must provide for the following.
   
i. A quality assurance/quality control plan for well construction.
   
   ii. A minimum of three (3) monitoring wells with one (1) located up gradient and two (2) located down gradient of primary components of the cyanidation facility to determine ground water flow direction.

b. Siting and planning for additional wells or replacement wells may be required in the permit application and final permit. Specifically, additional wells may be required for:
   
i. Large areas with multiple potential sources for pollutants;
   
   ii. Areas with complex geology, fractured bedrock; and
   
   iii. Areas with insufficient background hydrogeology.

c. All monitoring well construction must also conform to the well construction rules listed in IDAPA 37.03.09, “Well Construction Standards Rules.”

d. Record diagrams including well construction details, well elevation and a detailed geologic log must be provided to the Department for each monitoring well.

13. **Land Application.** Plans and specifications must include:

a. An operation and maintenance plan including:
   
i. Water balance for the land application site;
   
   ii. Pretreatment requirements and procedures;
   
   iii. Operating season for land application;
   
   iv. Seasonal closeout procedures;
   
   v. Special soils or vegetative amendments;
   
   vi. Storm water run-on/run-off controls;
   
   vii. Best management practices for all areas impacted by the land application system; and
   
   viii. A topographic map of the land application site and adjacent affected areas, of sufficient scale to facilitate site-specific analysis of soils, vegetation, surface water and ground water;

b. Chemical, physical, and volumetric characteristics of the material to be land applied;

c. A complete description of the chemical and physical characteristics of the soils and applicable geology of the land application site;

d. Methods of process water treatment, distribution and disposal;

e. Hydraulic loading capacity of the soils;

f. Constituent loading capacity of the site;
g. Attenuation capacity of the vegetative covers and soils; ( )
h. Evapotranspiration capacity of the site; ( )
i. Testing and analytical procedures for water quality and soils samples prior to, during, and following the land application process; ( )
j. Trend analysis of the constituent loading in the affected soils, vegetation and water quality of the affected surface or ground water systems; ( )
k. Reporting requirements including both frequency and form; and ( )
l. Standby power and pumps sufficient to maintain all treatment and distribution works. ( )

14. Temporary or Seasonal Closure. Temporary and seasonal closure plans for the entire cyanidation facility must be submitted by an applicant to the Department for review and approval prior to issuance of a final permit. Temporary and seasonal closure plans may, subject to Department approval pursuant to Section 750, be modified to provide for changes in operating conditions of the facilities and must incorporate a water management plan for the period of inactivity as well as during shut down and reactivation.

a. Prior to seasonal closure, process buildings, process chemical storage, process water ponds, tailings impoundments, spent ore disposal areas and other ancillary facilities must be stabilized and/or conditioned to prevent any emergency or unauthorized discharges to surface or ground water.

b. Subsequent to seasonal closure, process buildings, process chemical storage, process water ponds, tailings impoundments, spent ore disposal areas and other ancillary facilities must be maintained to prevent any emergency or unauthorized discharges to surface or ground water. Cyanidation facilities must be conditioned and maintained to provide:

i. Material stabilization for all solids affected by process waters; ( )

ii. Optimum freeboard in all ponds, as dictated by the water management plan; ( )

iii. Fully functional power and pumping systems that are ready for use; both power and pumps are to incorporate redundant systems to allow for failure of either power or a pumping system. A failed power supply or pump is not an acceptable reason for an unauthorized discharge; ( )

iv. Protection of all containment; and ( )

v. Sufficient availability of qualified staff to restrict public access, fully implement the water quality monitoring plan, and initiate the emergency and spill response plan. ( )

15. Employee Education Program. Operators and staff of facilities must be properly oriented and trained to operate, maintain and protect containment systems; waste disposal and discharge systems; and to implement monitoring and emergency and spill response plans. An applicant must submit an employee orientation and continuing training plan to the Department for review prior to issuance of a final permit. The plan must provide the format and contents for training, the general qualifications of the person(s) responsible for training and testing, and the person(s) or positions who must receive such training.

201. Design Criteria for Leach Pads and Other Nonimpounding Surfaces that Contain and Promote Horizontal Flow of Process Water. Plans and specification for leach pads and other nonimpounding surfaces that temporarily contain, not impound, process water and promote the horizontal flow of process water must provide for all of the following.

01. Minimal Hydraulic Head. Process water is limited to twelve (12) inches or less hydraulic head pressure on the liner systems.
02. **Engineered Liner System.** In addition to meeting the general liner requirements in Subsection 200.06.b., the engineered liner system plans and specifications are to provide for geomembrane liners with a minimum thickness of eighty (80) milli-inches (2.0 mm) or equivalent liners approved by the Department. ( )

a. If leach pads or other non-impounding surfaces are located above areas where ground water is considered near the surface pursuant to Subsection 200.06.a.iii., the Department may require a liner system with a higher level of engineered containment. ( )

b. When a material or system that provides hydraulic relief is installed, beneath a single liner, including, but not limited to, sand, French drains and geotextiles, regardless of the intent of its design, it is to function as a leak detection system and include a means for recovering process water. ( )

c. Depending on the methods and materials used for their construction, the Department may require all open channels that routinely transport process water to be traced by a leak detection system. ( )

03. **Ore Loading Procedures.** Procedures for loading ore onto the leach pads that minimize tensile stresses in the containment liners that may result in failure of the liners. ( )

04. **Monitoring.** Monitoring points that will provide for early detection of any discharge. ( )

05. **Process Water Containment.** Where appropriate, process water containment calculations at the leach pad perimeter should include the potential for drainage constrictions, including constrictions due to talus or washouts at the ore pile toe. Ore pile setbacks from the leach pad perimeter should be calculated based on local climatic conditions, ore properties, and site specific operating conditions. Solution collection ditches in which the liner is contiguous with the leach pad may be used to satisfy perimeter containment requirements. ( )

202. **DESIGN CRITERIA FOR PROCESS PONDS.**

01. **Engineered Liner System.** In addition to meeting the general liner requirements in Section 200.06.b., the engineered liner system plans and specifications must provide for all of the following. ( )

a. Lower geomembrane liners with a minimum thickness of eighty (80) milli-inches (2.0 mm) or equivalent liners approved by the Department. ( )

b. Leak detection and collection system that provides material between the lower geomembrane liner and the upper liner system to collect, transport and remove all process water that passes through the upper liner at such a rate as to prevent hydraulic head from developing on the lower geomembrane liner to the level at which it may be reasonably expected to result in leaks through the lower liner system. ( )

c. Upper geomembrane liners with a minimum thickness of eighty (80) milli-inches (two (2.0) mm) or equivalent liners approved by the Department. ( )

d. Routines and schedules for the evaluation of the efficiency and effectiveness of the removal of process water from the leak collection system. The properly working system will continually relieve head pressures on the lower geomembrane liner. ( )

e. Monitoring points that will provide for early detection of any discharge. ( )

f. Specific triggers for maintenance routines to address inadequate performance of liner systems. ( )

g. Specific operation and maintenance procedures to address inadequate performance of containment or leak detection and collection systems. ( )

02. **Temporary Containment.** Ponds for temporary containment of excess quantities of process water as a result of storm events may be constructed with a single liner if approved by the Department. ( )
203. DESIGN CRITERIA FOR CONTAINERS THAT CONFINE PROCESS WATER.
Vats, tanks, or other containers that are partially buried and cannot be visually inspected must have a system providing secondary containment and leak detection. If visual inspection is possible and an area for secondary containment equal to one hundred ten percent (110%) of the largest container is provided, a double liner is not required.

204. DESIGN CRITERIA FOR TAILINGS IMPOUNDMENTS.

01. Engineered Liner System. In addition to meeting the general liner requirements in Subsection 200.06.b., the engineered liner system plans and specifications must provide for the following.

a. Geomembrane liners with a minimum thickness of sixty (60) milli-inches (1.5 mm) or equivalent liners approved by the Department.

b. A system to limit hydraulic head over the geomembrane liner that preserves the integrity and long-term performance of the liner system and includes the following:

i. A system to reduce excess pore pressure within the tailings; and

ii. A plan for managing the depth, area, and volume of process water occurring above the tailings surface and in direct contact with the liner, including thresholds and contingency measures to manage excess accumulation of process water in the facility.

c. Monitoring points that will provide for early detection of discharges of pollutants.

02. Enhanced Containment Criteria. An enhanced level of containment may be required by the Department for all of the tailings impoundment or for a portion thereof after considering the following factors:

a. The anticipated characteristics of the material to be deposited;

b. The characteristics of the soil and geology of the site;

c. The methods employed and degree to which the hydraulic head on the liner is minimized;

d. The extent of and methods used for material stabilization and recycling or neutralization of process water;

e. Area and volume of process water;

f. The depth from the surface to all ground water;

g. The methods employed in depositing the impounded material; and

h. The proximity to surface water and the ground water interactions with surface water.

03. Tailings Treatment. Tailings impoundments are restricted to a maximum of fifty (50) mg/L WAD cyanide concentration in the liquid fraction unless otherwise approved by the Department.

205. ALTERNATIVE PLANS AND SPECIFICATIONS FOR FACILITIES THAT CONTAIN PROCESS WATER.
An applicant may propose an alternative to the requirements identified in Sections 200.06, 201, 202, 203, or 204 based on site-specific conditions and best management practices to protect water quality and human health. All other requirements in Section 200 apply to alternative design proposals.

01. Alternative Design Proposal. The applicant must demonstrate that the alternative design will
protect water quality and human health by confirming that the alternative to the minimum design criteria is appropriate based on the WAD cyanide concentration and chemical characteristics of materials contained; the physical characteristics of the materials contained; site-specific soil, geology, hydrology, and hydrogeology characteristics; degree to which hydraulic head on the liner is minimized; area and volume of the facility; depth to ground water; methods employed in depositing the impounded material; potential for leaks and impacts to water quality; and risk to human health and the environment. The alternative design must provide an evaluation based on site-specific data, supported by best available science, and consistent with best management practices demonstrating that process water and process-contaminated water are contained and controlled or treated as necessary to protect public safety and the environment, prevent unauthorized degradation of waters, and achieve all applicable water quality and ground water quality standards. The alternative design must include all applicable elements listed below.

(a) A hydrogeology assessment of site characteristics including depth to ground water; distance to surface water; hydrogeology and stratigraphy of the site; ground water and surface water interaction; and the quality, characteristics and existing and future beneficial uses of ground water and surface water that may be potentially affected by the facility.

(b) An engineering assessment detailing the design of each component of the containment system, including type and thickness of each component of the liner system; types of materials to be used and methods of placement of those materials; structures, devices and techniques for controlling drainage and minimizing solution loss; and method to control internal hydraulic head.

(c) A water quality assessment providing an analysis of potential for the facility to cause degradation of waters including the effect of ground water and surface water interactions, the potential for process water to reach waters, and the potential impact of process water on waters.

02. Preliminary Design Submittal. Alternative design proposals must be provided to the Department upon submittal of the preliminary design report required in Section 050.

03. Department Review. In evaluating alternative design proposals, the Department will consider the WAD cyanide concentration and other materials contained in facilities receiving process water, site hydrogeology, advances in liner technology, alternative designs implemented at other facilities receiving process water, and other site-specific factors in determining if an alternative is appropriate to protect water quality and the public health.

04. Cost Recovery Agreement. As provided in Subsection 100.04, the applicant must enter into an agreement with the Department for actual costs incurred to process an alternative design proposal under this subsection. The Department may utilize a third-party to support Department review of the alternative design proposal.

206. -- 299. (RESERVED)

300. APPLICATION PROCESSING PROCEDURE.

01. Completeness Review. Within thirty (30) days of receipt of an application, the Director will issue a written notice to the applicant and the Idaho Department of Lands, indicating:

(a) The application is complete; or

(b) The application is incomplete, specific deficiencies, and additional required information.

02. Accuracy and Protectiveness Review. Within ninety (90) days of receipt of an application and upon determination by the Department that the application is complete, the Department will review the application for accuracy and protectiveness based on these and other applicable rules including, but not limited to, IDAPA 58.01.02, “Water Quality Standards,” and IDAPA 58.01.11, “Ground Water Quality Rule.”

03. Permit Application Rejection.
a. If the Director decides to reject an application under subsection 300.03.b., the Director will provide public notice within ninety (90) days after receipt of the application. Such notice will be in writing, explain the basis for the rejection, and constitute a notice of rejection in accordance with Section 39-118A(2)(b), Idaho Code.

b. A complete permit application will be rejected if:

i. The cyanidation facility as proposed cannot be conditioned for construction, operation, and closure so as to comply with applicable state law; or

ii. Any payment required by the cost recovery agreement under Subsection 100.04 is due and unpaid.

04. Draft Permit and Fact Sheet.

a. If the Director decides to prepare a draft permit or draft major permit modification, the draft will contain the following information:

i. All conditions based on Sections 200 through 204;

ii. All conditions for an approved alternative under Section 205;

iii. All conditions under Section 500;

iv. Any information incorporated into the draft permit by reference; and

v. Any other condition the Director finds appropriate to protect water quality and public health.

b. A fact sheet will accompany the draft permit. The fact sheet will briefly state the principal facts and the significant legal and policy questions considered in the draft permit. The fact sheet will include, when applicable:

i. A brief description of the proposed cyanidation facility and the operating plan described in the application or permit modification request.

ii. A brief summary of the basis for the conditions on the draft permit, including references to applicable statutes or regulations and appropriate supporting references to the administrative record; and

iii. The name and phone number of the agency representative to contact for additional information.

301. -- 399. (RESERVED)

400. PUBLIC NOTICE AND COMMENT.

01. Public Notice. No public notice is required when a request for a permit modification is denied. The Director will give public notice of:

a. Receipt of an application for a permit;

b. A scheduled public meeting;

c. Issuance of a draft permit and fact sheet or a decision to reject an application for a permit; and

d. An appeal that has been filed.
02. **Public Notice Information.** A public notice issued under this section will contain at least the following information:

a. Contact information for the Department and applicant; (    )

b. Description of public involvement procedures and how to obtain additional public information available; (    )

c. General description of the facility location; (    )

d. Comment period; and (    )

e. Public meeting location and time conducted under subsection 400.06 (    )

03. **Serving the Public Notice.** Public notice of permit actions will be given by the following methods: (    )

a. By mail to: (    )

i. The applicant; (    )

ii. Persons on the public notice mailing list developed under Subsection 400.04; and (    )

iii. Other appropriate federal, tribal, state, or local government entities. (    )

b. Publication in a daily or weekly major newspaper of general circulation in the area of the proposed cyanidation facility; and (    )

c. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected. (    )

04. **Mailing List.** The Department will develop a mailing list for public notices issued under this section by recording those who request in writing to be on the list, publishing notice of the opportunity to be on the mailing list on the Department’s website, and periodically publishing in the local press and in regional and state-funded newsletters, environmental bulletins, state law journals or similar publications. The Department may update the mailing list from time to time by requesting written indication of continued interest from those listed and may delete from the list the name of any person who fails to respond to the Department’s request. (    )

05. **Participation by Idaho Department of Lands.** The Department will request that the Idaho Department of Lands participate in the public meeting with respect to performance criteria for permanent closure. (    )

06. **Public Comment Period.** The Director will allow public comment on a draft permit for a period of sixty (60) days beginning on the date of the public notice for the draft permit. All written comments received during this public comment period will be considered by the Director. (    )

07. **Public Meeting.** Within thirty (30) days after the date of the public notice for draft permit or draft major permit modification, the Department will hold a public meeting. Oral or written comments may be submitted by any person at the public meeting. The meeting will be conducted by an official designated by the Director. In order for the Department to address public comments in its Response to Public Comments pursuant to Subsection 450.02, comments must be submitted in writing during the public comment period under subsection 400.06. (    )

401. -- 449. (RESERVED)

450. **FINAL PERMIT DECISION.**
01. Notification of the Decision. The Director will provide notice of the final permit decision to each person or entity given notice under Subsection 400.03. This notice will include reference to the procedures for administrative appeal under Section 003. For the purpose of this section, a final permit decision means a final decision to issue, deny, or modify a permit.

02. Response to Public Comments. The Director will prepare and make available to the public a response to relevant written comments received during the public comment period under Subsection 400.06. This response will:
   a. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
   b. Briefly describe and respond to all relevant written comments on the draft permit.

03. Basis for Permit Denial. The Director will deny a permit if:
   a. The application is incomplete or inaccurate;
   b. The cyanidation facility as proposed cannot be conditioned for construction, operation, and closure so as to comply with applicable state law; or
   c. The Idaho Department of Lands has determined that the permanent closure plan does not meet the requirements of Chapter 15, Title 47, Idaho Code, or the rules promulgated thereunder.

04. Immediate Effect of the Permit. A valid permit authorizes the construction and operation of a cyanidation facility in accordance with the terms of the permit.

500. PERMIT CONDITIONS.
The following conditions apply to and must be specified in all permits:

01. Compliance Required. The applicant or permittee must comply with all conditions of the permit. Issuance or possession of a permit issued according to these rules does not relieve the applicant or permittee of the responsibility to comply with all other applicable local, state, and federal laws.

02. Construction. Construction of individual components of a cyanidation facility may commence upon approval by the Department of the final plans and specifications for that component.

03. Record Plans and Specifications. An Idaho licensed professional engineer must confirm in writing that all record drawings and specifications are complete and accurate. These record plans and specifications must be submitted by the permittee to the Director within thirty (30) days after the completion of the construction of each critical phase of facility development as approved by the Department. The record plans and specifications must be accompanied by a final construction report. If the construction does not deviate from the approved plans and specifications, a statement to the effect must be submitted by the engineer. The Department will review the final construction report, including record plans and specifications and results of quality control and quality assurance testing, to verify that the facility was constructed in compliance with and does not deviate from the approved plans and specifications. If the Department determines that the facility was not constructed in compliance with or deviates from the approved plans and specifications, the Department will provide the permittee written notice of necessary corrective actions within thirty (30) days of receipt of all submittals required by this subsection. In the event the Department provides such written notice, operation of the facility may not begin until the Department inspects and provides written approval of the corrective actions. Operation of the facility may begin if the Department does not deliver to the permittee such written notice within thirty (30) days of receipt of all submittals required by this subsection.

04. Duty to Provide Information. The permittee must furnish to the Director, within a reasonable or specified time, any information, including copies of records required by the permit or other applicable rules, that the
Director may request to determine whether cause exists for modifying or revoking the permit or to determine compliance with the permit or other applicable rules.

05. **Notifications.** After initial construction and seasonal and/or temporary closure, the permittee must, within thirty (30) days, provide written notice to the Director of the permittee’s intentions to commence or restart operations. At least thirty (30) days prior to completion of operations, and/or temporary or seasonal operations, the permittee must notify the Director of the permittee’s intentions to temporarily, seasonally or permanently close operations. Notification must provide sufficient time for the Director to provide pre-operational or post-operational inspections, as necessary.

06. **Entry and Access.** The permittee must allow the Director, or a designee obligated by agreement with the Director to comply with the confidentiality provisions of Section 39-111, Idaho Code, to:
   a. Enter at reasonable times upon the premises of a permitted cyanidation facility or where records required by a permit are kept;
   b. Have access to and copy at reasonable times any records that must be kept under the conditions of the permit;
   c. Inspect at reasonable times any cyanidation facility, equipment, practice, or operation permitted or required by the permit; and
   d. Sample or monitor at reasonable times, substance(s) or parameter(s) directly related to permit or regulation compliance.

07. **Reporting.** It is the permittee’s responsibility to report to the Director:
   a. Orally, as soon as possible but no later than twenty-four (24) hours from the time the permittee knows or should reasonably know of any noncompliance that may endanger the public health or the environment.
   b. In writing, within five (5) working days from the time a permittee knows or should reasonably know of any event that may be or that may result in a violation of these rules, or IDAPA 58.01.02, “Water Quality Standards,” or IDAPA 58.01.11, “Ground Water Quality Rule.” This report must contain:
      i. A description of the event and its cause; if the cause is not known, steps taken to investigate and determine the cause;
      ii. The period of the event including, to the extent possible, the individual(s) involved in the incident(s) and the time(s) and date(s) of the incidents;
      iii. Measures taken to mitigate or eliminate the event and protect the public health; and
      iv. Steps taken to prevent recurrence of the event;
   c. In writing, confirmation of any conditions that may result in violation of any permit condition; and
   d. In writing, when the permittee knows or should reasonably know of relevant facts not submitted or incorrect information submitted in a permit application or any report or notice to the Director or the Department. Those facts or the correct information must be included as a part of this report.

08. **Discharge Response.** If an unauthorized discharge occurs the permittee must implement the Department approved emergency and spill response plan.

09. **Temporary or Seasonal Closure Plans.** Prior to temporary or seasonal closure, the permittee must submit a temporary or seasonal closure plan to the Director for approval. The plan must describe the procedures,
methods, and schedule to be implemented for the treatment and disposal of process water and pollutants, the control of drainage from the cyanidation facility, the control of drainage from the surrounding area, and the secure storage of chemicals during the period of closure. Within thirty (30) days of receiving the plan, the Director will approve and/or suggest modifications necessary to protect waters. The permittee must ensure that closure complies with an approved plan. The approved plan must be implemented before the permittee completes temporary or seasonal closure. Facilities may not be temporarily or seasonally closed for a period longer than two (2) years unless approved by the Director.

10. **Begin Construction.** If the permittee fails to begin construction of a cyanidation facility within one (1) year of the effective date of the permit, the permit will be deemed void.

11. **Permanent Closure.** The permanent closure plan, as approved by the Idaho Department of Lands, will be incorporated by reference into the Department-issued permit as a permit condition and will be enforceable as such.

501. **COMPLETION OF PERMANENT CLOSURE.**

01. **Implementation of a Permanent Closure Plan.** Unless otherwise specified in the approved permanent closure plan, the permittee must begin implementation of the approved permanent closure plan: ( )

a. Within two (2) years of the final addition of cyanide to the ore processing circuit; or ( )

b. If the product recovery phase of the cyanidation facility has been suspended for a period of more than two (2) years. ( )

02. **Submittal of a Permanent Closure Report.** The permittee must submit a permanent closure report to the Department for review and approval. A permanent closure report must be of sufficient detail for the directors of the Department and the Idaho Department of Lands to issue a determination that permanent closure, as defined in Section 007, has been achieved. The permanent closure report must address: ( )

a. The effectiveness of material stabilization; ( )

b. The effectiveness of the water management plan and adequacy of the monitoring plan; ( )

c. The final configuration of the cyanidation facility and its operational/closure status; ( )

d. The post-closure operation, maintenance, and monitoring requirements, and the estimated reasonable cost to complete those activities; ( )

e. The operational/closure status of any land application site of the cyanidation facility; ( )

f. Source control systems that have been constructed or implemented to eliminate, mitigate, or contain short and long term discharge of pollutants from the cyanidation facility, unless otherwise permitted; ( )

g. The short and long term water quality trends in surface and ground water through the statistical analyses of the existing monitoring data collected pursuant to the ore processing by cyanidation permit; ( )

h. Ownership and responsibility for the cyanidation facility during the defined post-closure period; ( )

i. The future beneficial uses of the land, surface and ground waters in and adjacent to the closed facilities; and ( )

j. How the permanent closure of the cyanidation facility complies with the Resource Conservation and Recovery Act, Hazardous Waste Management Act, Solid Waste Management Act, and appropriate rules. ( )

502. **DECISION TO APPROVE OR DISAPPROVE OF A PERMANENT CLOSURE REPORT.**
01. **Cost Recovery.** Final closure of the cyanidation facility will not be approved if any payment required by the cost recovery agreement under Subsection 100.04 is due and unpaid.

02. **Issuance of Director’s Determination.** Within sixty (60) days of receipt of a permanent closure report, the Director will issue to the permittee a Director’s determination of approval or disapproval of the permanent closure report. The Director’s determination will be based on applicable statutes or rules administered by the Department. The Department will coordinate the evaluation of the permanent closure report with the Idaho Department of Lands.

03. **Director’s Determination to Disapprove a Permanent Closure Report.** A Director’s determination to disapprove a permanent closure report will specifically identify and discuss those reasons for disapproval, any administrative actions being considered by the Director, and the permittee’s options and procedures for administrative appeal. The Director’s determination to disapprove a permanent closure report must include:

   a. Identification of errors or inaccuracies in the permanent closure report;
   b. Issues or details that require additional clarification;
   c. Failures to fully implement the approved permanent closure plans;
   d. Outstanding violations or other noncompliance issues; and
   e. Other issues supporting the Department’s disagreement with the contents, final conclusions or recommendations of the permanent closure report.

503. -- 549. (RESERVED)

550. **VALIDITY AND DURATION OF PERMITS.**
A permit remains valid until the Director determines that permanent closure is completed or the Director revokes or modifies the permit.

551. -- 649. (RESERVED)

650. **FINANCIAL ASSURANCE.**

   01. **Financial Assurance Required.** The permittee is required to provide financial assurance pursuant to the Idaho Mined Land Reclamation Act, Chapter 15, Title 47, Idaho Code, and the rules promulgated thereunder. The Department will not issue a permit under these rules to a cyanidation facility unless a permanent closure plan for the cyanidation facility has been submitted for approval under Chapter 15, Title 47, Idaho Code. Any permit issued under these rules will prohibit construction and operation of the cyanidation facility until the permittee submits proof acceptable to the Department that financial assurance for the cyanidation facility permanent closure plan has been provided as required by Chapter 15, Title 47, Idaho Code.

   02. **Insufficiency.** In the event the financial assurance is forfeited as described in the Idaho Mined Land Reclamation Act, Chapter 15, Title 47, Idaho Code, the Department may seek to recover the amount necessary to implement permanent closure under the Department-issued permit and these rules as provided by law.

651. -- 749. (RESERVED)

750. **PERMIT MODIFICATION.**

   01. **Cause for Permit Modification.** Causes for permit modification are:

      a. A material modification or material expansion in the cyanidation facility operation, design or closure plan; or
02. **Modification at Request of Permittee.** Requests for modification from the permittee must include:
   a. A written description of the modification(s);
   b. Data supporting the modification request; and
   c. Causes and anticipated effects of the modification.

03. **Modification at Request of Director.** Pursuant to Subsection 750.01, if the Director determines that cause exists for permit modification, the Director will notify the permittee in writing and request information necessary for the Director to modify the permit.

04. **Modification Procedure.** The Director will evaluate the request for a permit modification, based on the information provided in Subsection 750.02 or otherwise obtained by the Department, and determine if the modification requires a major permit modification or a minor permit modification.

   a. Major permit modifications are subject to the provisions of Sections 100, 200 through 205, 300, 400, and 450.
   b. Minor permit modifications are not subject to the provisions of Sections 100, 300 and 400. The permittee must notify and receive approval from the Department prior to making minor modifications.

05. **Major Permit Modifications.** Changes that require a major permit modification include but are not limited to:

   a. Material modifications or material expansions to a cyanidation facility as defined by these rules;
   b. A significant increase or decrease in the time the cyanidation facility is expected to be in operation; or
   c. Requests to modify or change water quality compliance criteria and/or water quality compliance monitoring points.

06. **Minor Permit Modifications.** Minor permit modifications are those that, if granted, would not result in any increased hazard to the environment or to the public health. Within thirty (30) days of receipt of a written request for a minor modification, the Department will complete an evaluation of the request and either approve or deny the request in writing. Minor modifications may include but are not limited to:

   a. The correction of typographical errors in an approved permit;
   b. Legal transfer of ownership or operational control;
   c. A change in the requirements for monitoring or reporting frequency of the quality or quantity of the project air, water or waste generated;
   d. A change in the cost estimates submitted by a permittee to the Idaho Department of Lands to complete permanent closure; and
   e. A change or modification that is required by a state or federal requirement that supersedes the authorities of these rules.

751. -- 799. (RESERVED)
800. TRANSFER OF PERMITS.

01. **Transfer of Permits Allowed.** A permit may be transferred to a new permittee if such permittee provides written notice to the Director containing:

   a. A specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees; ( )

   b. Demonstration that the new permittee has established appropriate financial assurance for permanent closure of the facility; and ( )

   c. The information required in Subsections 100.03.b., 100.03.d., 100.03.e. and 100.03.g. ( )

02. **Decision.** The Director will either approve of or deny the transfer of the permit within thirty (30) days of receipt of notice that the current permittee wishes to transfer the permit to a new permittee. ( )

03. **Basis for Transfer Denial.** The Director will deny the request for the permit transfer if the new permittee has not provided the information required in Subsection 800.01. ( )

801. -- 849. (RESERVED)

850. PERMIT REVOCATION.

01. **Cause for Revocation.** A material violation of a permit or these rules may be grounds for the Director to revoke a permit. A violation that is shown to have occurred as the result of an unforeseeable act of God despite a permittee’s reasonable efforts to comply with all applicable legal requirements will not be considered grounds for revocation. ( )

02. **Preliminary Decision.** The Director will provide the permittee written notice of a preliminary decision to revoke a permit, including a statement of the reasons for the preliminary decision and reference to the procedure for requesting a revocation hearing under Subsection 850.03. ( )

03. **Revocation Hearing.** A preliminary decision to revoke a permit becomes final thirty-five (35) days after the date of the written notice of the preliminary decision unless the permittee requests in writing an administrative hearing before the preliminary decision becomes final. A request for an administrative hearing must be in the form of and will be considered as a petition to initiate a contested case under IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” ( )

851. -- 899. (RESERVED)

900. VIOLATIONS.

01. **Failure to Comply.** Failure by a permittee to comply with the provisions of these rules or with any permit condition is a violation of these rules. ( )

02. **Falsification of Statements and Records.** It is a violation of these rules for any person to knowingly make a false statement, representation, or certification in any application, registration, report, document, or record developed, maintained, or submitted pursuant to these rules or the conditions of a permit. ( )

03. **Discharges.** Any unauthorized discharge is a violation of these rules. ( )

901. -- 999. (RESERVED)
The proposed rule was published in the Idaho Administrative Bulletin, Vol. 20-9SE, September 16, 2020, pages 2321 through 2909.

DEQ recommends that the Idaho Board of Environmental Quality adopt a pending rule that includes 1) the attached “Revisions to Proposed Rule for Board Consideration,” and 2) the remainder of the rule adopted as initially proposed. The draft “Notice Omnibus Rulemaking – Adoption of Pending Fee Rule and Adoption of Temporary Fee Rule” is attached.
EFFECTIVE DATE: These rules have been adopted by the Idaho Board of Environmental Quality (Board) and are now pending review by the 2021 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, the pending fee rules will not become final and effective until they have been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected. Fee rule chapter IDAPA 58.01.13, Rules for Ore Processing by Cyanidation, has been adopted as both a pending fee rule and as a temporary fee rule with an effective date of November 6, 2020. The November 6, 2020, temporary fee rule supersedes the March 20, 2020, temporary fee rule chapter IDAPA 58.01.13 adopted under Docket No. 58-0000-2000F.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted pending fee rules. This action is authorized by the following Idaho Code provisions. Citations to any federal statutes that provide the basis of authority or requirement for the rulemaking are also included.

IDAPA 58.01.01 - Sections 39-105, 39-107, 39-114(4), 39-115(3), and 39-116B, Idaho Code; Clean Air Act, 42 U.S.C. § 7401 et seq.

IDAPA 58.01.05 - Chapters 44 and 58, Title 39, Idaho Code; Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq.


IDAPA 58.01.07 - Chapters 1 and 88, Title 39, Idaho Code; Solid Waste Disposal Act, 42 U.S.C. §§ 6991 – 6991f

IDAPA 58.01.08 - Chapter 1, Title 39, Idaho Code; Chapter 21, Title 37, Idaho Code; Safe Drinking Water Act, 42 U.S.C. § 300f et seq.

IDAPA 58.01.09 - Sections 39-104A, 39-105, and 39-107, Idaho Code

IDAPA 58.01.11 - Sections 39-105, 39-107, 39-120, and 39-126, Idaho Code

IDAPA 58.01.12 - Chapters 1 and 36, Title 39, Idaho Code; Clean Water Act, 33 U.S.C. § 1251 et seq.

IDAPA 58.01.13 - Chapter 1, Title 39, Idaho Code

IDAPA 58.01.14 - Sections 39-105, 39-107, and 39-119, Idaho Code

IDAPA 58.01.18 - Sections 39-105, 39-107, 39-4405, and 39-7210, Idaho Code

IDAPA 58.01.25 - Chapter 1, Title 39, Idaho Code; Clean Water Act, 33 U.S.C. §§ 1342 and 1345

DESCRIPTIVE SUMMARY: In February 2020, the Board adopted as temporary fee rules the IDAPA 58 rule chapters as they were presented in the pending rule dockets adopted by the Board in 2019 and submitted to the Second Regular Session of the 65th Idaho Legislature for review. These temporary fee rules were effective March 20, 2020. The 2019 pending rule dockets are posted in the 2020 Legislative Review Books.

In September 2020, DEQ published the temporary rules, along with revisions to several of the rule chapters, as proposed rules inviting the public to submit comments. Idaho Administrative Bulletin, Vol. 20-9SE, September 16, 2020, pages 2321 through 2909. After consideration of public comments, and in accordance with Section 67-5227, Idaho Code, IDAPA 58.01.13, Sections 007, 200, 203, and 205, have been revised. The remaining rules have been adopted as initially proposed. All rule chapters in the rule docket have been adopted as pending fee rules. IDAPA 58.01.13, Rules for Ore Processing by Cyanidation, has been adopted as both a pending fee rule and a temporary fee rule with an effective date of November 6, 2020, and supersedes the March 20, 2020, temporary fee rule chapter IDAPA 58.01.13 adopted under Docket No. 58-0000-2000F. The board meeting documents can be obtained at deg.idaho.gov/58-0000-2000F or by contacting the undersigned.
TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

A temporary rule will bridge any gap between a pending rule being adopted by the Board of Environmental Quality in November 2020, and the approval of the pending rule by the Legislature upon the adjournment of the 2021 legislative session. In this regard, the temporary rule will 'confer a benefit' to companies in a position to submit a cyanidation permit application under the revised Rules for Ore Processing by Cyanidation in the interim period prior to the end of the 2021 legislative session. The existing Rules, which were approved during the 2006 legislative session by concurrent resolution, include a fee structure and option for entering into an agreement with the Department for reimbursement of actual costs incurred. The proposed Rules eliminated the fee structure but retain that the applicant enter into an agreement with the Department for reimbursement of actual costs incurred. Therefore, there is no new fee that requires justification of its imposition. This fee is specifically authorized by the legislature in Idaho Code Section 39-118A(2)(c).

FEE SUMMARY: This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules. A description of each fee category is provided below.

Listed below are the DEQ fee rule chapters, fee categories, and the statutory authority for imposition of the fees.

IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho - crop residue burn fee, Idaho Code § 39-114(4); application fee for industrial or commercial air pollution source permits, Idaho Code § 39-115(3); motor vehicle inspection fee, Idaho Code § 39-116B

IDAPA 58.01.05, Rules and Standards for Hazardous Waste - hazardous waste siting license fee, Idaho Code § 39-5813(3)

IDAPA 58.01.06, Solid Waste Management Rules - commercial solid waste siting license fee, Idaho Code § 39-7408(C)

IDAPA 58.01.07, Rules Regulating Underground Storage Tank Systems – annual UST program fee, Idaho Code §§ 39-119, 39-8802(d)

IDAPA 58.01.08, Idaho Rules for Public Drinking Water Systems – annual drinking water system fee, Idaho Code § 39-119

IDAPA 58.01.09, Rules Regulating Swine Facilities - permit application fee, Idaho Code § 39-119

IDAPA 58.01.11, Ground Water Quality Rule - point of compliance application fee, Idaho Code § 39-119

IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans – loan fee to offset costs of administering loan program, Idaho Code §§ 39-119, 39-3627(4)

IDAPA 58.01.13, Rules for Ore Processing by Cyanidation – fee for processing permit applications, Idaho Code § 39-118A(2)(c)

Fee Summary - Revisions in IDAPA 58.01.13 Negotiated Under Docket No. 58-0113-1901:
The existing rule requires applicants to submit a fee ranging from $5,000 for a pilot facility not processing more than 10,000 tons of ore to $20,000 for a facility processing more than 120,000 tons of ore during the life of the facility. The existing rule also includes the option for the applicant to enter into an agreement with the Department for reimbursement of actual costs incurred to process an application and issue a final permit in lieu of paying a fee. This pending/temporary rule eliminates the fee structure but retains that the applicant enter into an agreement with the Department for reimbursement of actual costs incurred to process an application and issue a final permit. Section 39-118A(2)(c), Idaho Code, authorizes the Director of DEQ to require a reasonable fee for processing permit applications.

IDAPA 58.01.14, Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection
Services – fees for environmental operating permits, licenses, inspection services and waiver application processing, Idaho Code § 39-119

IDAPA 58.01.18, Idaho Land Remediation Rules – voluntary remediation program application fee, Idaho Code § 39-7210(5)

IDAPA 58.01.25, Rules Regulating the Idaho Pollutant Discharge Elimination System Program – application fee and/or annual fee, Idaho Code § 39-175C

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

Fiscal Impact - Revisions in IDAPA 58.01.13 Negotiated Under Docket No. 58-0113-1901: Section 39-118A(2)(c), Idaho Code, authorizes the Director of DEQ to require a reasonable fee for processing permit applications. The rule includes a fee for processing a permit application but does not include any fees following issuance of the permit. As facilities are permitted, there will be an impact to the state general fund for administration of a cyanidation permit program; however, it would vary based on the number and size of permitted facilities operating in Idaho. The estimated average annual general fund impact is $6,000 per permitted facility.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning the rulemaking, contact the undersigned.

Dated this 5th day of November, 2020

Paula J. Wilson
Hearing Coordinator
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IDAPA 58.01.13 - RULES FOR ORE PROCESSING BY CYANIDATION

007. DEFINITIONS. The terms "cyanidation," "cyanidation facility," "Department," "Director," "State," and "Waters" have the meaning provided for that term in Section 39-103, Idaho Code. The term "ground water" has the meaning provided in Section 39-121, Idaho Code.

08. Material Modification or Material Expansion. Any change to a permitted cyanidation facility, except as provided in Subsection 007.08.b., that the Department determines will:

i. Cause or increase the potential to cause degradation of waters, such as a new cyanidation process or cyanidation facility component;

ii. Significantly change the capacity, location, or process of an existing cyanidation facility component; or

iii. Change the site condition in a manner that is not adequately described in the original permit application.

b. Reclamation and closure related activities at a cyanidation facility with an existing permit that did not actively add cyanide after January 1, 2005 is not material modification or material expansion of the cyanidation facility.

200. REQUIREMENTS FOR WATER QUALITY PROTECTION. The following design and performance standards are intended as the minimum criteria for protection of public health and waters. These standards apply to all facilities unless the Department determines that other site-specific criteria, including an alternative design approved under Section 205, are appropriate to protect water quality and the public health.

05. Process Water Storage Sizing Criteria. All aspects of the cyanidation facility that entrain, utilize, treat, discharge, pump, convey, or otherwise contain process water, treated process water, or run-off water from any portion of the cyanidation facility must be included in the water balance. Each pond, tailings impoundment, and ditch containing process water must be designed to maintain a minimum two (2) foot freeboard during storage or conveyance of the design climatic events plus maximum expected normal operating levels. Leach pad design must provide containment of the maximum expected operating flows plus storm flows from the design climatic event. At a minimum, a cyanidation facility must be designed to contain the maximum expected normal operating water balance and the volume of run-on and run-off water associated with a climatic event that has a one percent (1%) annual exceedance probability. Snowmelt events will be considered in determining the maximum flow volume during the design climatic event. Contingency plans for managing excesses of all water included as a part of the water balance must be described in the water management strategy. Each structure that impounds process water or process-contaminated water must include a means of passing excess water unless otherwise approved by the Department.
**Minimum Plans and Specifications.** Unless the Department approves an alternative design under Section 205, the plans and specifications for any portion of a cyanidation facility that will contain process water must satisfy the applicable general design criteria in Subsection 200.06 and the design criteria in Sections 201 through 204 for the type of facility receiving process water. These provisions establish minimum pollutant control technologies and define the site and operating conditions that must be evaluated.

**(11-6-20)**

**a.** Cyanidation facility design must:

**(11-6-20)**

i. Minimize releases of pollutants into ground water or subsurface migration pathways so that any release will not cause unauthorized degradation of waters.

**(11-6-20)**

ii. Preclude any differential movement or shifting of the subgrade, soil layer, liner or contained material that endangers containment integrity as a result of the proposed range of operating conditions for each component and the history of anticipated seismic activity events.

**(11-6-20)**

iii. Include additional containment of process water, as requested by the Department, in areas where ground water is considered to be near the surface. Ground water is considered to be near the surface if:

**(11-6-20)**

1. The depth from the surface to ground water is less than one hundred (100) feet and the top one hundred (100) feet of the existing formation has a hydraulic conductivity greater than $10^{-5}$ cm/sec;

**(11-6-20)**

2. Open fractured or faulted geologic conditions exist in the bedrock from the surface to the ground water; or

**(11-6-20)**

3. There is an inability to document that all borings beneath the cyanidation facility have been adequately abandoned.

**(11-6-20)**

iv. Not locate new process component containing process water within one thousand (1,000) feet of any dwelling that is occupied at least part of the year and not owned by the permittee. This does not apply to modifications at a facility that predates such a dwelling.

**(11-6-20)**

v. Include measures for preventing wildlife contact with process water having a WAD cyanide concentration in liquid fraction exceeding fifty (50) mg/L. The Department may require additional measures if wildlife mortality is observed.

**(11-6-20)**

vi. Implement measures to protect birds, other wildlife and livestock from adverse effects of cyanide process water and other pollutants.

**(11-6-20)**

vii. Include a quality assurance/quality control plan for the construction of containment systems that provides a process for documenting owner acceptance of all underlying components of the containment system prior to construction of the overlying components.

**(11-6-20)**

**b.** Liner systems must:

**(11-6-20)**

i. Have a structurally stable subgrade for the overlying components and contained material. The subgrade should be constructed to resist consolidation, excessive differential settlement that compromises liner performance, and uplift resulting from pressures inside or outside the containment unit to prevent distortion of overlying components.

**(11-6-20)**

ii. Have a smooth rolled and compacted soil layer, or equivalent layer approved by the Department, in intimate contact with the overlying geomembrane liner with the following characteristics:

**(11-6-20)**

1. A minimum thickness of twenty-four (24) inches compacted to ninety-five percent (95%) of maximum dry density according to Standard Proctor Test ASTM D698 or Modified Proctor Test ASTM D1557.
Soil placed in a minimum of four (4) lifts that each have a compacted thickness of six (6) inches and a hydraulic conductivity less than or equal to $10^{-6}$ cm/sec; (11-6-20)

An uppermost lift of soil that does not contain particles in excess of point seven five (0.75) inches (nineteen (19) mm) in largest dimension unless larger particles are consistent with the manufacturer’s specifications for the overlying liner and approved by the Department; (11-6-20)

No putrescible, frozen or other deleterious materials. (11-6-20)

No angular, sharp material regardless of diameter; and (11-6-20)

Soil placed within two percent (2%) of optimum moisture content to achieve the specified compaction and hydraulic conductivity. (11-6-20)

iii. Include the following if an equivalent layer replacing the soil layer described in Subsection 200.06.b.ii is proposed: (11-6-20)

A layer that is not a geomembrane and has a liquid flow rate no greater than that of twenty-four (24) inches of compact soil with a hydraulic conductivity less than or equal to $10^{-6}$ cm/sec; (11-6-20)

Materials with appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste, process water, or process-contaminated water to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation; (11-6-20)

Materials that provide appropriate shear resistance of the upper and lower component interface to prevent sliding of the upper component including on slopes; (11-6-20)

Certification from an Idaho licensed professional engineer that the liquid flow rate per unit area through the equivalent layer is no greater than the liquid flow rate through two (2) feet of compacted soil with a hydraulic conductivity less than or equal to $10^{-6}$ cm/sec, considering the maximum hydraulic head anticipated on the liner system and the thickness of the equivalent layer replacing the two (2) feet of compacted soil; and (11-6-20)

Plans and specifications for an equivalent layer that substantially reflect the manufacturer’s specifications and standards for construction, operation and maintenance unless otherwise approved by the Department. (11-6-20)

iv. Include geomembrane liners consisting of high density polyethylene, linear low-density polyethylene, or equivalent, rated as having a resistance to the passage of process water equal to or less than a hydraulic conductivity of $10^{-11}$ cm/sec. Each geomembrane liner will be constructed of materials with appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation and permanent closure. (11-6-20)

v. Be constructed according to manufacturer’s standards, or Department-approved design standards, and protect against damage from cracking, sun exposure, ice, frost penetration or heaving, wildlife, wildfires, and damage that may be caused by personnel or equipment operating in or around these facilities. (11-6-20)

vi. Have an appropriate coefficient of friction against sliding plus a factor of safety for each interface constructed on a slope. (11-6-20)

vii. Have minimum factors of safety, and the logic behind their selection, for the stability of the
earthworks and the lining systems.

viii. Include redundant systems for failures in primary power or pumping systems.

ix. Have liner material that meets the manufacturer’s quality assurance/quality control performance specifications.

(Break in Continuity)

203. DESIGN CRITERIA FOR CONTAINERS THAT CONFINE PROCESS WATER.

Vats, tanks, or other containers that are partially buried and cannot be visually inspected must have a system providing secondary containment and leak detection. If visual inspection is possible and an area for secondary containment equal to one hundred ten percent (110%) of the largest container is provided, a double liner is not required.

(Break in Continuity)

205. ALTERNATIVE PLANS AND SPECIFICATIONS FOR FACILITIES THAT CONTAIN PROCESS WATER.

An applicant may propose an alternative to the requirements identified in Sections 200.06, 201, 202, 203, or 204 based on site-specific conditions and best management practices to protect water quality and human health. All other requirements in Section 200 apply to alternative design proposals.

01. Alternative Design Proposal. The applicant must demonstrate that the alternative design will protect water quality and human health by confirming that the alternative to the minimum design criteria is appropriate based on the WAD cyanide concentration and chemical characteristics of materials contained; the physical characteristics of the materials contained; site-specific soil, geology, hydrology, and hydrogeology characteristics; degree to which hydraulic head on the liner is minimized; area and volume of the facility; depth to ground water; methods employed in depositing the impounded material; potential for leaks and impacts to water quality; and risk to human health and the environment. The alternative design must provide an evaluation based on site-specific data, supported by best available science, and consistent with best management practices demonstrating that process water and process-contaminated water are contained and controlled or treated as necessary to protect public safety and the environment, prevent unauthorized degradation of waters, and achieve all applicable water quality and ground water quality standards. The alternative design must include all applicable elements listed below.

a. A hydrogeology assessment of site characteristics including depth to ground water; distance to surface water; hydrogeology and stratigraphy of the site; ground water and surface water interaction; and the quality, characteristics and existing and future beneficial uses of ground water and surface water that may be potentially affected by the facility.

b. An engineering assessment detailing the design of each component of the containment system, including type and thickness of each component of the liner system; types of materials to be used and methods of placement of those materials; structures, devices and techniques for controlling drainage and minimizing solution loss; and method to control internal hydraulic head.

c. A water quality assessment providing an analysis of potential for the facility to cause degradation of waters including the effect of ground water and surface water interactions, the potential for process water to reach waters, and the potential impact of process water on waters.