

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.03 – INDIVIDUAL/SUBSURFACE SEWAGE DISPOSAL RULES AND RULES FOR CLEANING OF SEPTIC TANKS

DOCKET NO. 58-0103-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Idaho Board of Environmental Quality (Board) and is now pending review by the 2021 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty-sixth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 2, 2020, [Vol. 20-9, pages 126 through 140](#). After consideration of public comments, Subsection 009.04.d.ii. has been revised. In addition, Sections 004, 006, and 009 have been revised to correct publication errors overlooked during review of the proof copy proposed rule. The remainder of the rule has been adopted as initially proposed. The board meeting documents can be obtained at deq.idaho.gov/58-0103-1901 or by contacting the undersigned.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Peter Adams at peter.adams@deq.idaho.gov or (208) 373-0464.

Dated this 19th day of November, 2020.

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THE FOLLOWING IS THE TEXT OF THE PENDING RULE FOR DOCKET NO. 58-0103-1901

(Only those sections or subsections that have changed from the original proposed text are printed in this Bulletin following this notice.)

Amendments made to the proposed rule are published in this pending rule in *red italicized double underscored text.*

004. GENERAL REQUIREMENTS.

01. **Intent of Rules.** The Board, in order to protect the health, safety, and environment of the people of the state of Idaho establishes these rules governing the design, construction, siting and abandonment of individual and subsurface sewage disposal systems. These rules are intended to ensure that blackwastes and wastewater generated in the state of Idaho are safely contained and treated and that blackwaste and wastewater contained in or discharged from each system: (5-7-93)()

- a. Are not accessible to insects, rodents, or other wild or domestic animals; (10-1-90)
- b. Are not accessible to individuals; (10-1-90)
- c. Do not give rise to a public nuisance due to odor or unsightly appearance; (10-1-90)
- d. Do not injure or interfere with existing or potential beneficial uses of the waters of the State. (10-1-90)

02. **Compliance with Intent Required.** The Director shall not authorize or approve any system if, in the opinion of the Director, the system will not be (is not) in compliance with the intent of these rules. (5-7-93)

03. **System Limitations.** Cooling water, backwash or backflush water, hot tub or spa water, air conditioning water, water softener brine, groundwater, oil, or roof drainage cannot be discharged into any system unless that discharge is approved by the Director. (10-1-90)

04. **Increased Flows.** Unless authorized by the Director, no person shall provide for or connect additional blackwaste or wastewater sources to any system if the resulting flow or volume would exceed the design flow of the system. (10-1-90)

05. **Failing System.** The owner of any failing system shall obtain a permit and cause the failing system's repair: (10-1-90)

- a. As soon as practical after the owner becomes aware of its failure; or (10-1-90)
- b. As directed in proper notice from the Director. (10-1-90)

06. **Subsurface System Replacement Area.** An area of land which is suitable in all respects for the complete replacement of a new subsurface system disposal field shall be reserved as a replacement area. This area will be kept vacant, free of vehicular traffic and free of any soil modification which would negatively affect its use as a replacement disposal field construction site. (10-1-90)

07. **Technical Guidance Committee (TGC).** The Director shall appoint a ~~Technical Guidance Committee~~ **TGC** composed of three (3) representatives from the seven (7) Health Districts, one (1) representative from the Department of Environmental Quality, one (1) professional engineer licensed in the state of Idaho and one (1) licensed installer. Initially two (2) committee members shall be appointed to each of one (1), two (2) and three (3) year terms. Appointments to vacancies thereafter shall be to three (3) year terms. (12-31-91)()

08. **Duties of the ~~Technical Guidance Committee~~ TGC.** The ~~Committee~~ **TGC** shall maintain a ~~technical guidance manual which shall~~ **the TGM to** be used in the design, construction, alteration, operation, and maintenance of conventional systems, their components and alternatives. The **TGC** shall review variances **and commercially manufactured wastewater treatment components and systems** at the request of the Director and provide recommendations ~~on such variances~~. (10-1-90)()

09. **~~Technical Guidance Manual for Individual and Subsurface Alternative Sewage Disposal~~ TGM.** The ~~manual~~ **TGM** maintained by the ~~Technical Guidance Committee~~ **TGC** shall provide state-of-the-art technical

guidance on alternative sewage disposal components and systems, soil type determination methodology and other information pertinent to the best management practices of individual and subsurface sewage disposal.

~~(10-1-90)~~()

10. Alternative System. If a standard system as described in these rules cannot be installed on a parcel of land, an alternative system may be permitted if that system is in accordance with the recommendations of the ~~Technical Guidance Committee~~ **TGC** and is approved by the Director as set forth in Section 009. ~~(5-7-93)~~()

(BREAK IN CONTINUITY OF SECTIONS)

006. INSTALLER'S REGISTRATION PERMIT AND SERVICE PROVIDER CERTIFICATION.

01. Permit and Certification Required. Every installer and service provider shall secure from the Director an installer's registration permit. Service providers must also obtain a service provider's certification. Two (2) types of installer permits and one (1) type of service provider certification are available. (7-1-17)

a. A standard and basic alternative system installer's registration permit is required to install all individual systems not listed under Subsection 006.01.b. (5-7-93)

b. A complex alternative system installer's registration permit is required to install evapotranspiration systems, ~~extended treatment package systems~~ **ETPSs**, lagoon systems, large soil absorption systems, pressure distribution systems, proprietary wastewater treatment systems intermittent sand filters, sand mounds, or other systems as may be specified by the Director. ~~(7-1-17)~~()

c. A service provider certification is required to perform operation, maintenance, or monitoring of ~~complex alternative systems~~ ETPSs and any other Director-identified complex alternative systems. ~~(7-1-17)~~()

02. Examination. The initial issuance of the installer's permit and service provider certification shall be based on the completion of an examination, with a passing score of seventy percent (70%) or more, of the applicant's knowledge of the principles set forth in these rules and the applicable sections of the Technical Guidance Manual. The examinations will be prepared, administered and graded by the Director. The installer examination and service provider examination shall be separate exams. (7-1-17)

03. Permits and Certifications Required Annually. Registration permits and service provider certifications expire annually on the first (1st) day of January, and all permits and certifications issued thereafter will be issued for the balance of the calendar year. Additionally, installers and service providers shall attend at least one (1) refresher course approved by the state of Idaho, Department of Environmental Quality, every three (3) years. Individuals holding both a complex installer registration permit and service provider certification shall attend one refresher course for the complex installer registration permit and another course for the service provider certification. Installer and service provider refresher courses are not interchangeable. (7-1-17)

04. Contents of Application. (7-1-17)

a. Applications for installer permits and service provider certifications shall: (7-1-17)

i. Be in writing: (7-1-17)

ii. Be signed by the applicant or by an officer or authorized agent of a corporation: (7-1-17)

iii. Contain the name and address of the applicant; and ~~(7-1-17)~~()

iv. Indicate whether the permit is to be for: ~~(7-1-17)~~()

(1) Installation of standard and basic alternative systems; (7-1-17)

- (2) Installation of standard, basic and complex alternative systems; or (7-1-17)
- (3) Installation of standard, basic and complex alternative systems and certification as a service provider; and (7-1-17)
- v. Contain the expiration date of the bond required by Subsection 006.05. (7-1-17)
- b. Additionally, for applicants seeking certification as a service provider, the application shall also contain ~~annual~~ documentation of manufacturer specific training, as required by Subsection 006.06.a. ~~(7-1-17)~~()

05. Bond Required. At the time of application, all applicants, including those seeking a service provider certification, shall deliver to the Director a bond in a form approved by the Director in the sum of five thousand dollars (\$5,000) for a standard and basic alternative system installer's registration permit, or in the sum of fifteen thousand dollars (\$15,000) for standard, basic and complex alternative system installer's registration permit. The bond will be executed by a surety company duly authorized to do business in the state of Idaho and must run concurrent with the installer's registration permit. The bond shall be approved by the Director and must guarantee the installer or service provider's faithful performance of all work undertaken under the provisions of the installer's registration permit or service provider certification, or both. Any person who suffers damage as the result of negligent or wrongful acts of the installer or service provider or by the installer or service provider's failure to competently perform any of the work agreed to be done under the terms of the registration permit or certification shall, in addition to other legal remedies, have a right of action on the bond for all damages not exceeding five thousand dollars (\$5,000) for standard and basic alternative systems or fifteen thousand dollars (\$15,000) for complex alternative systems or required operation, maintenance, or monitoring by certified service providers. The maximum liability of the surety and/or sureties on the bond, regardless of the number of claims filed against the bond, shall not exceed the sum of five thousand dollars (\$5,000) for standard and basic alternative systems or fifteen thousand dollars (\$15,000) for complex alternative systems or required operation, maintenance, or monitoring by certified service providers. (7-1-17)

06. Service Provider Responsibilities. All certified service providers who provide operation, maintenance, or monitoring for any complex alternative system are responsible for compliance with each of these rules that are relevant to those services. Additionally, each certified service provider shall: (7-1-17)

a. Obtain documentation of the completed manufacturer-specific training of each manufactured and packaged treatment system for which the service provider intends to provide operation, maintenance, or monitoring. Proper documentation includes a certificate or letter of training completion provided by the manufacturer and an expiration date of the manufacturer's certification. If a system manufacturer is no longer in business, that manufacturer-specific training is not required. ~~(7-1-17)~~()

b. Maintain a comprehensive list of real property owners who contracted with the certified service provider. ~~The list shall~~ include ing the current real property owner name, service property address, real property owner contact address, and subsurface sewage disposal permit number. This list shall be provided to the Director as part of the annual operation, maintenance, and monitoring reports for individual real property owners; ~~and~~ ~~(7-1-17)~~()

c. Notify the system owner in writing of any improper system function that cannot be remedied during the time of operation, maintenance, and monitoring services; and ()

d. Submit all operation, maintenance, and monitoring records in the form of an annual report for each individual real property owner with for whom the service provider contracts agrees to fulfill the real property owner's operation, maintenance, or monitoring responsibilities required through the real property owner's subsurface sewage disposal installation permit as allowed in Subsection 005.14 009.03. The annual reports shall are to be provided to the Director by the timeframe specified in the Technical Guidance Manual TGM for the specific complex alternative system for which operation, maintenance, or monitoring is required. ~~(7-1-17)~~()

07. Exemption. An installer's permit shall not be required for: (10-1-90)

a. Any person, corporation, or firm constructing a central or municipal subsurface sewage disposal system if that person, corporation, or firm is a licensed public works contractor as provided in Title 54, Chapter 19,

Idaho Code, is experienced in the type of system to be installed and is under the direction of a professional engineer licensed in the state of Idaho; or (5-7-93)

b. Owners installing their own standard or basic alternative systems. (7-1-17)

08. **Application Fee.** All applications shall be accompanied by payment of the fee specified in IDAPA 58.01.14, Section 120, "Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services". (5-7-93)

09. **Grounds for Revocation.** Failure to comply with these rules shall be grounds for revocation of the permit or the certification, or both. (7-1-17)

10. **Transfer from Non-Profit Operation and Maintenance Entity to Certified Service Provider.** (7-1-17)

a. Real property owners who want to install ETPSs must retain a permitted installer and certified service provider. An easement granting general access to a non-profit operation and maintenance entity is no longer required for ETPS installation permits. (7-1-17)

b. Beginning July 1, 2017, real property owners who had ETPSs installed are not required to be members of non-profit operation and maintenance entities. To meet the operation, maintenance, and monitoring requirements of their ETPSs, real property owners shall retain a certified service provider for their existing ETPSs. (7-1-17)

(BREAK IN CONTINUITY OF SECTIONS)

009. OTHER COMPONENTS.

01. **Design Approval Required.** Commercially manufactured ~~blackwater and~~ wastewater treatment ~~and storage~~ components ~~may~~ and systems must not be used in the construction of a subsurface sewage system unless their design is approved by the Director through the recommendation of the TGC as directed in Section 004. The Department has developed recommended standards and guidance for these systems in the TGM. Approval may be limited to those locations or conditions for which achievement of standards has been demonstrated. Commercially manufactured wastewater treatment components and systems may include but are not limited to: ~~(10-1-90)~~ ()

a. ETPSs (e.g., aerobic treatment systems); ()

b. Proprietary wastewater treatment systems (e.g., proprietary wastewater system technology with specified sand); ()

c. Proprietary wastewater system technology (e.g., gravelless distribution products); and ()

d. Proprietary non-discharging systems (e.g., individual wastewater incinerators, composting toilets, or vault toilets). ()

02. **Plan and Specification Submittal.** Plans and specifications for all commercially manufactured ~~individual and subsurface~~ wastewater treatment ~~and storage~~ components and systems will be submitted to the Director for approval. Plans and specifications will ~~show or~~ include ~~as requested by the Director~~, detailed construction drawings, capacities, structural calculations, lists of materials, evidence of stability and durability, performance standards, manufacturers' installation, operation and maintenance instructions, an installation inspection checklist, a list of all prior approvals from other states including any review or compliance related issues, and any other relevant information as requested by the Director. ~~(10-1-90)~~ ()

03. **ETPSs.** ()

- a. In addition to the items listed in Subsection 009.02, ETPS plan and specification submittals must include: ()
- i. A plan for training and certifying system installers and service providers under Section 006; ()
 - ii. An operation and maintenance manual which contains all operation and maintenance specified by the design engineer or manufacturer and the Department; and ()
 - iii. A quality assurance project plan which documents how sampling will occur if sampling is required by the Director for product approval and continued monitoring. ()
- b. Manufacturers seeking approval of these systems for reducing total suspended solids (TSS) and carbonaceous biological oxygen demand 5-day (CBOD5) when used with residential strength wastewater must submit NSF/ANSI 40: Residential Onsite Systems approvals, reports, and associated data or equivalent third-party standards. ()
- c. Manufacturers seeking approval for reduction of total nitrogen (TN) must submit NSF/ANSI 245: Nitrogen Reduction approvals, reports, and associated data or equivalent third-party standards. ()
- d. Design and installation of these systems must meet the following: ()
- i. The effluent is discharged to a drainfield meeting the requirements of a standard drainfield as directed in Section 008 or a Director-approved alternative. ()
 - ii. Separation between the bottom of the trench or bed to limiting layers protects ground water quality if the distance deviates from the table in Subsection 008.02.c. ()
 - iii. The distribution laterals within the trench or bed meet the requirements of Section 008 or a Director-approved alternative. ()
 - iv. Tank access lids are to grade or above with a sealed riser and fitted with a secured lid for monitoring and maintenance. ()
 - v. If vertical separation distances are reduced from the distances defined in the table in Subsection 008.02.c., a sampling port has to be installed to provide a representative sample of the effluent from the system. ()
- e. Within thirty (30) days of completing installation of an ETPS, the property owner shall provide certification to the health district from a representative approved by the manufacturer that the system has been installed and will operate in accordance with the manufacturer's recommendations. The health district shall not finalize the subsurface sewage disposal permit until the certification of proper installation and operation is received and includes information on the manufacturer, product, model number, and serial number of the ETPS installed. ()
- f. Property owners with an ETPS installed on their property must have all operation, maintenance, and monitoring requirements specified in the permit completed by June 30th each year by a certified service provider in accordance with Section 006, including effluent monitoring if required by the permit. The certified service provider who completed operation, maintenance, and monitoring for the system as specified in the TGM must submit an annual report by July 31st of each calendar year demonstrating that the system is working as designed. ()
- g. Permit requirements for ETPSs transfer with ownership changes. Before transferring ownership of a property with an ETPS, the system owner must notify all transferees of the ETPS operation, maintenance, and monitoring requirements. Within thirty (30) days of transferring ownership of a property with an ETPS, the transferee must notify the health district of the new owner of the property. ()
- 04. Proprietary Wastewater Treatment Systems. ()**

a. Manufacturers seeking approval for these systems for reducing total suspended solids (TSS) and carbonaceous biological oxygen demand 5-day (CBOD5) when used with residential strength wastewater must submit NSF/ANSI 40: Residential Onsite Systems approvals, reports, and associated data or equivalent third-party standards. ()

b. Manufacturers seeking approval for reduction of total nitrogen (TN) must submit NSF/ANSI 245: Nitrogen Reduction approvals, reports, and associated data or equivalent third-party standards. ()

c. Proprietary wastewater system media utilized with a proprietary wastewater treatment system must: ()

i. Be constructed or manufactured from materials that are non-decaying and non-deteriorating and do not leach unacceptable chemicals when exposed to sewage and the subsurface soil environment; ()

ii. Support the distribution pipe and provide suitable effluent distribution and infiltration rate to the absorption area at the soil interface; and ()

iii. Maintain the integrity of the trench or bed. The material used, by its nature and manufacturer-prescribed installation procedure, needs to withstand the physical forces of the soil sidewalls, soil backfill, and weight of equipment used in the backfilling. ()

d. Design and installation of these systems must meet the following: ()

i. The effluent is discharged to a drainfield that meets the required effective soil depth for standard drainfields as directed in Section 008. ()

ii. Separation between the bottom of the manufactured medium sand component of the *proprietary wastewater treatment system* to limiting layers protects ground water quality if the distance deviates from the table in Subsection 008.02.c. ()

iii. The distribution laterals within the trench or bed meet the requirements of Section 008 or a Director-approved alternative. ()

iv. Drainfields sized based on the manufacturer's recommended minimum sizing requirement or the maximum daily flow of effluent divided by the hydraulic application rate for the applicable soil design subgroup, whichever is greater. ()

v. Pressure distribution, when used with a proprietary wastewater treatment product, is designed by an Idaho licensed professional engineer. ()

e. A proprietary wastewater treatment system may be required to follow the same operation, maintenance, monitoring, and reporting requirements described in Subsection 009.03.f. due to factors such as product complexity and/or site specific constituent reduction requirements. ()

f. Permit requirements for these systems transfer with ownership changes. Before transferring ownership of a property with this system, the system owner must notify all transferees of the system operation, maintenance, and monitoring requirements. Within thirty (30) days of transferring ownership of a property with the system, the transferee must notify the health district of the new owner of the property. ()

035. Effect of Design Approval. The Director may condition a design approval by specifying circumstances under which the component must be installed, used, operated, maintained, or monitored. (7-1-17)

a. The Director shall specify the complex alternative systems that must undergo professionally managed operation, maintenance, service, or effluent testing. (7-1-17)

b. Manufacturers shall provide training to a reasonable number of service providers to perform required operation, maintenance, or monitoring as specified by the Director. (7-1-17)

c. Manufacturers may enter into agreements with certified service providers trained in their technology but shall not limit the service providers from being trained in the technology of other manufacturers. (7-1-17)

046. **Notice of Design Disapproval.** If the Director is satisfied that the component described in the submittal may not be in compliance with or may not consistently function in compliance with these rules, or that the manufacturer of the proposed system failed to comply with Subsection 009.03, the Director will disapprove the design as submitted. The manufacturer or distributor submitting the design for approval will be notified in writing of the disapproval and the reason for that action. (7-1-17)

07. **Amendments or Revocations.** The Director may amend or revoke any permit or system approved by the Department if: ()

a. Approval was based on false or misleading information; ()

b. The material, technology, or design no longer achieves performance standards for which it was approved or does not meet the intent of the rules; or ()

c. The manufacturer is not meeting the requirements of these rules or conditions of the approval. ()