

**Preliminary Draft Negotiated Rule (Draft No. 1), Docket No. 58-0105-2101**

**Dated April 7, 2021**

This rule has been drafted in accordance with [Executive Order No. 2020-01, Zero-Based Regulation](#).

**Written comment deadline for this draft – April 30, 2021**

**58.01.05 – RULES AND STANDARDS FOR HAZARDOUS WASTE**

**000. LEGAL AUTHORITY.**

~~These rules are adopted pursuant to the authority vested in~~ Under Chapters 44 and 58, Title 39, Idaho Code, the Idaho Legislature has granted the Board of Environmental Quality the authority to promulgate these rules ~~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~~ constitutes the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 2020<sup>1</sup>, 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: ( )

a. U.S. Government Printing Office, <http://www.ecfr.gov/cgi-bin/ECFR>; ~~and~~ ( )

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

c. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255,  
(208) 373-0502. ( )

### 003. DEFINITIONS.

The terms “board” and “department” have the meaning provided for those terms in Section 39-4403, Idaho Code. For ~~the purpose of~~ these rules and any materials incorporated herein by reference, the following definitions apply unless their application would be is 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. ( )~~

**041. Director.** When used in the context of 40 CFR and these rules, the definition shall be is 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.~~ ( )

**052. Environmental Appeals Board.** When used in the context of 40 CFR, the definition shall be is 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.~~ ( )

**063. U.S. Environmental Protection Agency or EPA, EPA Headquarters, or EPA.** When used in the context of 40 CFR, the definition shall be is 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 is the U.S. Environmental Protection Agency EPA and the Headquarters of the U.S. Environmental Protection Agency EPA as appropriate. When used in the context of these rules, the definition shall be is the U.S. Environmental Protection Agency EPA. ( )

**074. HWFSA.** The Hazardous Waste Facility Siting Act of 1985, ~~Sections 39-5801 et seq., Chapter 58, Title 39,~~ Idaho Code. ( )

**085. HWMA.** The Hazardous Waste Management Act of 1983, ~~Sections 39-4401 et seq., Chapter 44, Title 39,~~ Idaho Code. ( )

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

**1006. RCRA.** When used in the context of 40 CFR, the definition ~~shall be~~ is the comparable sections of ~~the Hazardous Waste Management Act of 1983, Sections 39-4401 et seq., Idaho Code~~ HWMA. When used in the context of these rules, the definition ~~shall be~~ is ~~the~~ Resource Conservation and Recovery Act, 42 U.S. Code, Sections 6901 et seq. ( )

**1107. Regional Administrator or Administrator.** When used in the context of 40 CFR, the definition ~~shall be~~ is 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~~ is the ~~U.S. Environmental Protection Agency~~ EPA Administrator or Region 10 Regional Administrator as appropriate. ( )

**1208. TSD.** Treatment, storage ~~or~~ and disposal. ( )

**1309. United States or U.S.** When used in the context of 40 CFR, the definition ~~shall be~~ is the state of Idaho, except where noted in these rules. When used in the context of these rules, the definition ~~shall be~~ is 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 in Section 002~~. For ~~the purposes of~~ 40 CFR 260.4(a)(4), ~~and~~ 260.5(b)(2), and 260.10 in the definition of electronic manifest and electronic manifest system, “EPA” is defined as the ~~U.S. Environmental Protection Agency~~ EPA. 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~~ EPA 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(e)(3)(iii), are ~~herein~~ incorporated by reference ~~as provided in 40 CFR, revised as of July 1, 2020 in Section 002~~. For ~~purposes of~~ 40 CFR 261.10 and 40 CFR 261.11, “Administrator” is defined as the ~~U.S. Environmental Protection Agency~~ EPA 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~~ EPA. Copies of annual reports and advance notifications under these sections ~~shall~~ must also be sent to the Director. ( )

**01. Hazardous Secondary Materials Managers Emergency Notification.** In addition to the emergency notification ~~required by~~ provided in 40 CFR 261.411(d)(3) and 261.420(f)(4)(ii), the emergency coordinator must also immediately notify the Idaho Office of Emergency Management by telephone, 1-800-632-8000, to file an identical report. ( )

**02. Excluded Wastes.** Chemically Stabilized Electric Arc Furnace Dust (CSEAFD)

generated by ~~Envirosafe Services of Idaho, Inc. (ESI)~~ US Ecology Idaho, Inc. (USEI), formerly Envirosafe Services of Idaho, at ~~ESI's~~ USEI's facility in Grand View, Idaho, using the Super Detox(R) treatment process as modified by ~~ESI~~ USEI and that is disposed of in a Subtitle D or Subtitle C landfill, is excluded from the lists of hazardous waste provided ~~ESI~~ USEI 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. ( )

i. 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. K061, whose waste has not previously been processed by ~~ESI~~ USEI 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. ( )

ii. ~~Prior to~~ Before the initial treatment of any new source of EAFD, ~~ESI~~ USEI must notify the Department in writing. The written notification includes: ( )

(1) The waste profile information; and ( )

(2) The name and address of the generator. ( )

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

iv. If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Subsection 005.02.d., ~~ESI shall~~ USEI must 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~~ must be considered delisted. ( )

v. CSEAFD generated by ~~ESI~~ USEI from EAFD originating from a new source ~~shall~~ must 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. ( )

vi. 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. ( )

c. Subsequent Verification Testing. ( )

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

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

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

iv. 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 at and/or disposed of in a Subtitle D or Subtitle C landfill. ( )

v. 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~~ USEI 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 must~~ 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):

antimony	0.06	mercury	0.009
arsenic	0.50	nickel	1
barium	7.60	selenium	0.16
beryllium	0.010	silver	0.30
cadmium	0.050	thallium	0.020
chromium	0.33	vanadium	2
lead	0.15	zinc	70

( )

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~~ USEI proposes to modify the Super Detox(R) treatment process from the description of the process as set forth in ~~ESII~~ USEI's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995 (available at the Department's state office), ~~ESII shall~~ USEI must notify the Department in writing ~~prior to~~ before implementing the modification. ( )

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

iii. If ~~ESII~~ USEI 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~~ USEI'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~~ USEI 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 ~~for~~ 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~~ USEI 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~~ USEI, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the Department and that ~~ESII~~ USEI will be liable for any actions taken in contravention of ~~ESII~~ USEI's RCRA and CERCLA obligations premised upon ~~ESII~~ USEI's reliance on the void exclusion." ( )

~~g. Facility Merger and Name Change. On May 4, 2001, the Department was notified of a stock transfer that resulted in ESII's facility merging with American Ecology. This created a name change from EnviroSAFE Services of Idaho, Inc. (ESII) to US Ecology Idaho, Inc. effective May 1, 2001. All references to EnviroSAFE Services of Idaho, Inc. or ESII now refer to US Ecology Idaho, Inc. ( )~~

**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 in Section 002.~~ For ~~purposes of~~ 40 CFR 262.20, 262.21, 262.24, 262.25, 262.32, 262.82, 262.83, and 262.84, "EPA" is defined as the ~~U.S. Environmental Protection Agency~~ EPA. Copies of advance notification, annual reports, and exception reports, required under those sections, ~~shall~~ must 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~~ provided in 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 in Section 002~~. 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 263.20(a), “EPA” is defined as ~~U.S. Environmental Protection Agency~~ the EPA. ( )

**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 in Section 002~~. For ~~purposes of~~ 40 CFR Subsection 264.12(a), “Regional Administrator” is defined as the ~~U.S. Environmental Protection Agency~~ EPA 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~~ EPA. ( )

**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 is~~ 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 in Section 002~~. For ~~purposes of~~ 40 CFR Subsection 265.12(a), “Regional Administrator” is defined as the ~~U.S. Environmental Protection Agency~~ EPA 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~~ EPA. ( )

**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 in Section 002~~. ( )

**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 in Section 002~~, 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~~ provisions of Sections 39-4403(17) and 39-4423, Idaho Code, ~~shall~~ must be applied in all cases where these ~~requirements~~ provisions 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~~ a case-by-case variance to the equivalent ~~requirement~~ provision of these rules. For ~~purposes of~~ 40 CFR 268.2(j) “EPA” is defined as the ~~U.S. Environmental Protection Agency~~ EPA. For ~~purposes of~~ 40 CFR 268.40(b), “Administrator” is defined as ~~U.S. Environmental Protection Agency~~ the EPA 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 in Section 002~~. 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~~ EPA and the ~~U.S. Environmental Protection Agency~~ EPA 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 in Section 002~~, 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~~ EPA and the ~~U.S. Environmental Protection Agency~~ EPA 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 in Section 002~~. 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, Sstates may petition the EPA to allow the use of used oil as a dust suppressant. Members of the public may petition the Sstate to make this application to the 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 provisions of 40 CFR 279.82(b) will be met. ( )

**016. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT.**

40 CFR Part 273 and all Subparts are herein incorporated by reference ~~as provided in 40 CFR, revised as of July 1, 2020 in Section 002~~. For ~~purposes of~~ 40 CFR 273.32(a)(3), “EPA” is defined as the U.S. Environmental Protection Agency EPA. ( )

**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 in Section 002~~. ( )

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

40 CFR Part 267 and all Subparts, except 40 CFR 267.150, are herein incorporated by reference ~~as provided in 40 CFR, revised as of July 1, 2020 in Section 002~~. ( )

**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. These rules have the license fee criteria set forth in Section 39-5813(3), Idaho Code.~~ ( )

~~**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).~~ ( )

**021. License Fee Scale.** Except as provided in Subsection 355.032, the ~~siting license fee required by~~ provided in HWFSA and these rules ~~shall~~ will 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

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).

**032. License-Fee for Facilities Required to Submit Engineering or Hydrogeological Information.** For any proposed commercial hazardous waste ~~disposal, treatment or storage~~ TSD 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~~ is seven thousand five hundred dollars (\$7,500). ( )

**043. Expansion, Enlargement or Alteration of a Commercial Hazardous Waste ~~Disposal, Treatment or Storage~~ TSD 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~~ TSD 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. ( )

**054. Siting License-Fee Nonrefundable.** The ~~siting license~~ fee ~~required by these rules~~ ~~shall be~~ is nonrefundable and may not be applied toward any subsequent application ~~should~~ if the ~~siting license~~ application ~~be~~ is cancelled ~~or,~~ withdrawn, or denied. ( )

**356. VARIANCE APPLICATIONS FOR TSD FACILITIES OR SITES.**

**01. Application Contents ~~and Standard of Review.~~** Applications ~~for variances shall~~ must 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.~~

**02. Standard of Review.** 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~~ Will avert unnecessary and significant hardship; ( )
- b. ~~Is not inconsistent~~ consistent with EPA ~~requirements~~ provisions; and ( )
- c. Will not create a nuisance or a hazard to the public health, safety or the environment. ( )

**023. Public Hearings.** The Director may hold a public hearing on an initial application for a variance and ~~shall~~ will hold a public hearing on any application to renew or extend a variance. The public hearing ~~shall~~ will 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~~ or virtual format is more appropriate and convenient for interested members of the public. The Director ~~shall~~ will give at least twenty (20) days' notice of the hearing to the applicant by certified mail and ~~shall cause~~ publish 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~~ will maintain a complete record of the testimony and the evidence submitted at the hearing. ( )

**034. Public Information.** All information submitted as part of a variance application ~~shall be treated as~~ is 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. The information will be made available for public inspection at the Department's state office and following locations:~~

- a. Application -- appropriate regional office; and
- b. Current list of pending applications and schedule of pending hearings -- all regional offices. ( )

**045. Director's Decision.** No variance ~~shall~~ will be ~~issued~~ granted 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~~ will be for a period specified by the Director but not more than one (1) year. No variance ~~shall~~ will be ~~issued~~ granted or denied without a written order stating the findings upon which the decision is based. ( )

**056. Applicant to Bear Costs.** The cost of public notice, recording and transcribing of testimony, and hearing facilities ~~shall~~ **must** be borne by the applicant, ~~regardless of~~ whether or not a variance is ~~issued~~ **granted**. ( )

**357. -- 499. (RESERVED)**

**500. ROUTING OF HAZARDOUS WASTE SHIPMENTS.**

**01. Transporting.** Any person transporting a quantity of hazardous waste which requires a manifest ~~shall~~ **must**, 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, ~~and~~ 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 or Sites or Offsite Generator TSD Facilities or Sites.** ~~Commercial TSD facilities or sites or offsite generator TSD facilities or sites, u~~**Up** to every day. ( )

**02. Generator On-Site TSD Facilities or Sites.** ~~Generator on-site TSD facilities or sites~~ ~~u~~**Up** to twenty (20) times per year. ( )

**03. Transport Vehicles.** ~~Transport vehicles a~~**A**s necessary. ( )

**04. Transport Facilities or Sites.** ~~Transport facilities or sites~~ ~~u~~**Up** to twelve (12) times per year. ( )

**05. Generators.** ~~Generators~~ ~~u~~**Up** to twelve (12) times per year. ( )

**06. Conduct Inspections.** Nothing in the ~~preceding~~ schedule of frequency levels **in Subsections 800.01 through 800.05** 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, [Section 39-4417, Idaho Code](#), 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~~ are 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." ( )~~

**998.7. -- 999. (RESERVED)**