



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

State Water Quality Division – Wastewater Program

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C. L. "Butch" Otter, Governor  
Curt Fransen, Director

## MEMORANDUM

**August 5, 2014**

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**TO:** Health District Environmental Health Directors  
Health District Land Based Program Supervisors  
Technical Guidance Committee  
DEQ Wastewater Program Staff – State Office  
DEQ Regional Office Administrators  
DEQ Regional Office Engineering Managers

**FROM:** Tyler R. Fortunati, R.E.H.S., On-Site Wastewater Coordinator

**SUBJECT:** Variance to IDAPA 58.01.03 Process and Inclusion of the Technical Guidance Committee

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This memorandum provides direction on the variance process and possible inclusion of the Technical Guidance Committee (TGC) in the variance process. Variances to IDAPA 58.01.03 are governed by IDAPA 58.01.03.010.02-.06. Variances heard by DEQ or a health district shall follow the procedures, documentation, and timelines specified in IDAPA 58.01.03.010.02-.06. Involvement of the TGC in variances is referenced in IDAPA 58.01.03.004.08 and IDAPA 58.01.03.010.06.b but shall be reserved for the petition scenarios described herein.

Variances from IDAPA 58.01.03 related to experimental systems, any public subsurface sewage disposal system, and large soils absorption systems must be petitioned to the On-Site Wastewater Coordinator for the Idaho Department of Environmental Quality (DEQ). If a variance is petitioned to DEQ for one of the systems listed above DEQ will request from the applicable health district:

- The application, and
- Site evaluation, and
- An opinion on the variance petition from the health district's Environmental Health Director or their designee, and
- Any other applicable information the health district may have related to the variance petition.

DEQ's On-Site Wastewater Coordinator will make a recommendation to the Wastewater Program Manager and Water Quality Division Administrator. The Water Quality Division Administrator will coordinate DEQ's final decision with the DEQ Director. Any appeal of the final agency decision on the variance shall be made to Idaho's Board of Environmental Quality following the requirements of IDAPA 58.01.23. Further appeal outside of DEQ shall be heard in the appropriate district court following the requirements of Chapter 52, Title 67, Idaho Code only

after the appellant has exhausted all administrative remedies available.

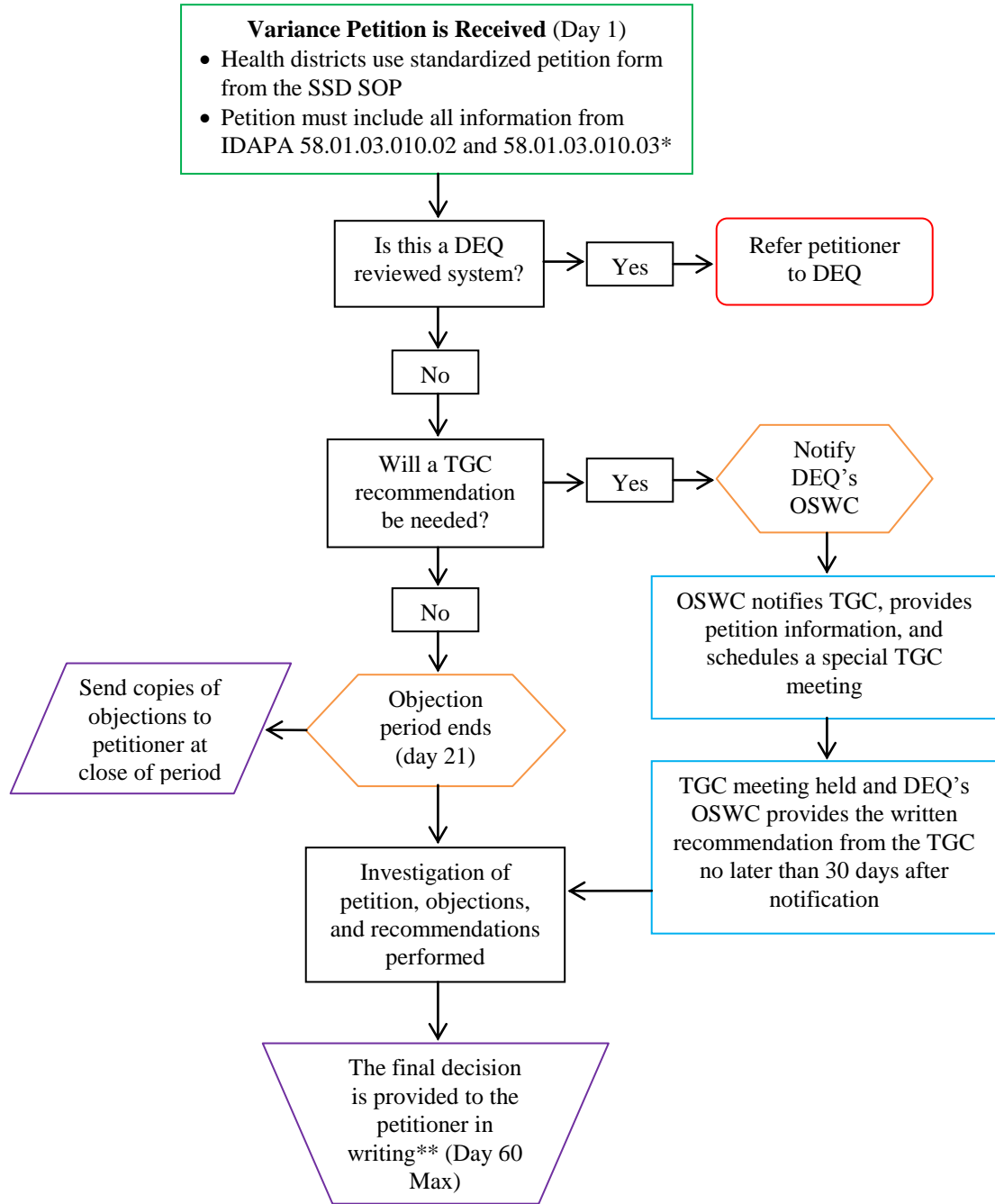
All variances from IDAPA 58.01.03 for other subsurface sewage disposal systems not described above shall be petitioned to the health district that the system is proposed to be located within. A recommendation on the variance petition shall be made to the District Director by internal staff specified by the health district. Health districts may request an opinion on a variance petition from DEQ through DEQ's On-Site Wastewater Coordinator as allowed by IDAPA 58.01.03.010.05. The final decision on the petition for a variance shall be made by the District Director. Any appeal of a District Director's final decision on a petition for a variance to IDAPA 58.01.03 shall be heard by that District's Board of Health following the requirements of IDAPA 41.08.01 (for health district 2 – 7) or Chapter 52, Title 67, Idaho Code (for health district 1 only). Further appeal outside a health district shall be heard in the appropriate district court following the requirements of Chapter 52, Title 67, Idaho Code only after the appellant has exhausted all administrative remedies available. DEQ and the Idaho Board of Environmental Quality do not review appeals on final decisions made by a District Director or District Board of Health.

The TGC may be included in the variance process at DEQ's discretion (IDAPA 58.01.03.004.08) as described herein. Per IDAPA 58.01.03.010.06.b any decision rendered by DEQ or a health district on a variance petition must be consistent with the recommendations of the TGC or Technical Guidance Manual (TGM) in use at the time of the petition.

- The TGC shall not be involved:
  - If the variance petition requests a variance to IDAPA 58.01.03 or the current version of the TGM at the time the request is made as the TGC's recommendation is already included in the current version of the TGM.
- The TGC shall be involved:
  - If the variance petition requests some type of change in an approved alternative system design that is materially different than the existing alternative system guidance listed in the current version of the TGM, or
  - If the variance petition requests the use of a completely new alternative system or experimental system design.

TGC recommendations should be obtained during the investigation and fact gathering phase of the variance process as described in IDAPA 58.01.03.010.05. TGC recommendations shall be used in the development of any DEQ or health district final decision on the variance petition.

If it is necessary to obtain a recommendation from the TGC on a variance petition the request for the TGC's recommendation shall be submitted to DEQ's On-Site Wastewater Coordinator. The On-Site Wastewater Coordinator will facilitate disseminating the petition information to the TGC members and coordinate any meetings necessary to obtain the TGC's recommendation within 30 days of notification to DEQ's On-Site Wastewater Coordinator. When the TGC must provide a recommendation on a variance petition it is important that the On-Site Wastewater Coordinator is notified upon receipt of the petition to ensure DEQ or the health district can issue a final decision on the variance within 60 days of receipt of the petition.



\* - A dated copy of the newspaper posting and certified mail receipts dated at least 15 days prior to the filing of the petition will fulfill these requirements.

\*\* - The final decision must be issued by the agency director and fulfill the requirements of IDAPA 58.01.03.010.05-.06.

Final decisions may not be issued until after the objection period (22 days from receipt of the petition) and must be issued prior to 60 days from the receipt of the petition. Information on appealing the decision should be included in the written notice.