



North Kootenai Water & Sewer District

13649 N Meyer Rd., Rathdrum ID 83858

Phone: (208) 687-6593 Fax: (208) 687-6597

www.nkwsd.com

October 5, 2023

Tyler Fortunati
Department of Environmental Quality
1410 N Hilton
Boise, ID 83706
tyler.fortunati@deq.idaho.gov

RE: Docket No. 58-0108-2301 Written Comment

Mr. Fortunati,

Thank you for accepting written comments to IDAPA Proposed Rule 58.01.08, Docket No. 58-0108-2301. The District understands the criteria of Zero-Based Regulation “is to perform a critical and comprehensive review of the entire chapter in an attempt to reduce overall regulatory burden, streamline various provisions, increase clarity and ease of use, and maintain state program approval.”

In large part, the District finds the intent of Zero-Based Regulation was met through the streamlining of various provisions and an increase in clarity from the current Rule. North Kootenai Water and Sewer District offers the following comments for your consideration in furtherance of Zero-Based Regulation criteria:

Docket No. 58-0108-2301-003.30 Material Modification. The District requests further clarification regarding the regulatory implementation of the additional proposed Rule revision, “Maintenance as outlined in the approved operation and maintenance manual is not a material modification.” This sentence implies maintenance activities not previously described in an operation and maintenance manual as a material modification. If correct, the revision may increase an overall regulatory burden to purveyors in cases where non-routine maintenance activities not previously included in an O&M manual require DEQ review and approval prior to implementation.

Docket No. 58-0108-2301-003.73. Substantially Modified. The inclusion of “material modifications completed after July 1, 2007” appears as a retroactive application of the Idaho Rule as the definition of Substantially Modified was not defined in Idaho Rule until May 8th 2009. Through legal consultation, the District is of the understanding that the retroactive application of the rule is in violation of clear Idaho law. The Idaho Administrative Procedure Act, prior to 2023 Idaho House Bill 206, provided for retroactive application of a rule that was final and effective, when provided for in the rule. *See* former IC 67-5224(5)(a). House Bill 206

removed this language, which in turn also removed the legislative intent to allow final rules to be applied retroactively. ID LEGIS 314 (2023), 2023 Idaho Laws Ch. 314 (H.B. 206).

Docket No. 58-0108-2301-302.03.c Significant Deficiencies. The inclusion of “Distribution system: A minimum system pressure of twenty (20) psi is not maintained throughout the distribution system as specified in Subsection 552.01.b.” The District does not consider the replacement of the current distribution significant deficiency, “No means for flushing dead-end water mains,” with the minimum 20 psi system pressure requirement to be cohesive with the criteria of Zero-Based Regulation. Additionally, the applicability of the revision as a significant deficiency provides for additional enforcement capabilities by the State under EPA oversight.

Furthermore, EPA Distribution System Water Quality (EPA 815-F-21-005, October 2021) indicates, “Many states have numerical requirements for operating pressure. A majority of states specify 20 psi (pounds per square inch) as a lower limit on pressure, to ensure that firefighters have access to water of sufficient pressure. While not all states have a maximum pressure limit, states that have implemented limits typically set them between 60 and 150 psi. Site-specific considerations may set other bounds on pressure requirements.”

The District requests the significant deficiency be re-evaluated to include site-specific considerations that “may set other bounds on pressure requirements.” The District suggests re-evaluation of the minimum pressure requirement in conjunction with other meaningful factors that may impact public health protection including but not limited to the implementation of an active cross-connection control program, PWSs not providing fire flow, and a history of microbial contamination of the water supply attributed to backflow.

Docket No. 58-0108-2301-500 Demonstration of Technical, Financial, and Managerial Capacity of Public Drinking Water Systems. The District requests the addition of “Existing community or non-transient, non-community, PWS with technical, financial or managerial problems...” be reworded to be indicative of the Department’s regulatory authority in which “problems” are defined therewithin for clarification.

Docket No. 58-0108-2301-504.02 Will Serve Letter. The District requests the addition of “and that the purveyor has reviewed and accepted the proposed construction plans and specifications.” be further defined to include the statement, “subject to DEQ review and approval” for clarification.

Docket No. 58-0108-2301-552.06.a Cross Connection Control Program – Community Water Systems. The District requests the Department consider revision to 552.06.a. “An inspection program to locate cross connections and determine required suitable protection. For new connections, PWS owners must install suitable protection prior to providing water service.” As worded, this revision appears to require purveyors to install suitable backflow protection prior to providing water service. Rather, standard purveyor cross-connection control programs require the customer to install suitable protection and have the assembly tested as a condition of water service. For clarification, the District requests this revision be re-worded to indicate purveyor

verification of the installation and testing of suitable protection on new service connections prior to providing water service.

Docket No. 58-0108-2301-501.07. Reliability and Emergency Operation. The District requests the Department consider revision 501.07.b. Existing community PWSs that are undergoing material modifications must meet the requirements of Subsection 501.07 in those portions of the PWS affected by the modification. The revision replaces language referencing PWS “substantially modified after April 15, 2007,” with criteria for systems undergoing “material modification. The District requests the Department consider the replacement of “material modification” with “substantial modification” to prevent this revision from becoming regulatorily cumbersome as per Zero-Based Regulation criteria.

Thank you for your review and consideration of the District’s comments.

Sincerely,

A handwritten signature in blue ink that reads "Suzanne Scheidt". The signature is written in a cursive style.

Suzanne Scheidt
Chief Operating Officer

C: Paul Tucker, District Manager, NKWSD