

## Response to Comments:

### 58-0116-2501 Negotiated Rulemaking Meeting #1

Commenter #	Commenter
1	J Coleman
2	Post Falls
3	Meridian
4	WelchCome
5	Boise

Commenter #	Section	Comment	Response	Reasoning
3	58.01.16.008	Is there a reason these three guidance documents are being removed?	No change made.	DEQ's rationale is that our rules should not be referencing our own guidance documents to avoid treating guidance documents as rule. In addition, some of these references were not used in this rule set.
3	58.01.16.010	010.02. Response Time Please explain the reasoning behind setting a minimum response time at 30 minutes.	No change made.	DEQ's opinion was the rule should establish a consistent emergency response time for all systems. Based on DEQ's experience with systems statewide, 30 minutes appeared to be a reasonable minimum response time in the context of establishing what emergency storage capacity in the design. Response times less than 30 minutes may be possible under special circumstances and would be allowable with adequate documentation.

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3	58.01.16.010	010.03, 010.15, 010.38. Removal of flow definitions Is there a reason that the Average Daily Flow, Design Flow, and Mixing Zone definitions were removed? They are used in other areas of the rules. These seem like important parameters to define to help ensure uniform application and understanding.	No change made.	The definitions appeared in two locations; the definitions were consolidated to reside under the definition of Wastewater Flows. In addition, Mixing Zone is not used in these rules and is used in the IPDES rules.
5	58.01.16.010	04. Beneficial Use Not consistent with Recycled Water Rules	No change made.	Definition is not the same, but equivalent. Pointing to the water quality standards definition here is the most appropriate approach.
5	58.01.16.010	05. Biochemical Oxygen Demand (BOD) Not consistent with Recycled Water Rules	No change made.	Definition is equivalent but does include the 20degree incubation that is standard for this type of test.
3	58.01.16.010	18. Removing waters of the state Please explain the reasoning behind removing waters of the state from the definition of discharge. This seems like an important distinction.	No change made.	Definition occurs in statute.
5	58.01.16.010	21. Effluent Not consistent with IPDES Rules	No change made.	True, but for the purposes of wastewater engineering and design, this definition is most appropriate.
5	58.01.16.010	24. Equivalent Dwelling Unit (EDU) Not consistent with IPDES Rules	No change made.	Not intended to be the same. EDU in the IPDES rules is defined solely for the purpose of calculating fees. Here it is defined to assist in engineering design.
5	58.01.16.010	25. Facility Plan A Facility Plan may be referred to as a master plan or facilities planning study and is updated on a regular basis to account for growth patterns, regulatory requirement or other needs. The city recommends that "regular basis" is too	No change made.	Due to system complexity, specifying a specific timeframe that applies to all systems across the board isn't practical. Consideration of a 5 year timeframe has been made, but that may not be appropriate depending on system size, complexity, and growth.

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		subjective and could be applied inconsistently. The city recommends that additional language be included in Section 410.		
5	58.01.16.010	30. Industrial Wastewater Not consistent with Recycled Water Rules	No change made.	Definition is similar but not exact.
5	58.01.16.010	31. Land Application Not consistent with Recycled Water Rules	No change made.	True, but for the purposes of wastewater engineering and design, this definition is most appropriate.
4	58.01.16.010	35. Material Modification Definition The deleted sentence of “Maintenance and repair performed on the system and the replacement of valves, pumps, or other similar items with new items of the same size and type are not considered a material modification” provides a clearer distinction between what is considered a material modification than the proposed sentence of “Maintenance as outlined in the approved operation and maintenance manual is not a material modification”. Additionally, many smaller systems either do not have a currently approved O&M manual or the prescribed replacement (especially in an emergency) may not be clearly defined in the O&M. This appears to add a regulatory burden to smaller entities. We request the Department consider revising this language accordingly or consider keeping the	No change made.	This definition was changed to match the definition within the drinking water rules. It is important for consistency amongst these projects to have the definitions match. DEQ does not interpret this rule that a system must have an approved O&M Manual to make repairs; the sentence is used to provide an example of what types of repairs are not considered a material modification. DEQ expectation for systems that do not have an approved O&M manual is for the system to discuss planned maintenance and repair projects with the regional office to determine if the project is defined as a material modification.

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		original language and adding “or as outlined by the system’s approved O&M”.		
5	58.01.16.010	39. Municipal Wastewater Not consistent with Recycled Water Rules	No change made.	Definition is similar and equivalent in meaning but not exactly the same.
1	58.01.16.010	39. Municipal Wastewater. “treated or untreated” – Most surrounding states consider ‘treated’ wastewater a resource. Idaho appears to consider wastewater as always wastewater. All municipal wastewater is not always just sewage. Sewage definition and wastewater should be combined into one definition.	Wastewater is a broad definition of all types of wastewater. Sewage is human and animal generated waste and feces. And Municipal Wastewater is human-only generated feces.	Our Recycled Water permitting program allows treated wastewater to be used as a resource (58.01.17). It is not within the scope of this set of rules.
5	58.01.16.010	54. Potable Water Not consistent with the detailed RW Rules definition but similar to DW Rules.	No change made.	Intended to be similar to the DW rules. Will consider updates to reuse rules at later date.
4	58.01.16.010	57. Preliminary Engineering Report Definition Broadening the scope of system modifications that require a PER to include “material modifications” as revised above appears to increase regulatory burden. We understand this is proposed to coordinate with the Drinking Water Rules (58.01.08); however, in practice we have seen that PERs are now required for minor system modifications that have been interpreted as “material modifications”. This now adds another requirement for minor improvements	No change made.	PERs have always been required for projects which require plan and specification review including material modifications with the exception of simple main extensions as described in section 411. This definition revision clarifies those requirements.

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		to systems that typically make implementation more challenging (partially due to the lack of review time stipulated by IDEQ or in Idaho Code, commented further below).		
1	58.01.16.010	59. Private Wastewater System. Definition is any system over 2,500 gallons per day. Section 455 does not allow any system under 25,000 gallons per day. These two Rules are in direct conflict.	No change made.	This comment appears to confuse certain definitions pertaining to wastewater systems. The proposed rule is meant to address some of this confusion. Generally, a Private Wastewater System has never been defined as 2,500 gallons per day. The previously rule defined a Public Wastewater System as 2,500 gallons per day simply as the minimum threshold that any wastewater system required a licensed operator. The current rule proposal renames this type of system to a Community Water System. A Private Wastewater Treatment Plant has its' own definition and is regulated separately from a Community Water System.
5	58.01.16.010	63. Receiving Waters Not consistent with IPDES Rules	No change made.	Not intended to be. IPDES is strictly limited to discharges to Waters of the U.S. Engineering facility design includes design for other types of discharge and disposal.
5	58.01.16.010	65. Recharge Water This definition is out of place in these rules. Recommend moving to GWQR as it's not wastewater.	No change made.	DEQ is declining to move 58.01.16.600 to the Groundwater Quality Rule at this time. There are instances where this has provided flexibility to the regulated community in not needing a reuse permit for a de minimum discharge but needing approval from the agency to ensure that environmental and public health is protected. E.g., a drinking water facility periodically needing to discharge of storage backwash water to a swale or ditch.

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1	58.01.16.010	72. Reviewing Authority. The Rule seems to limit the review to Department only (except minor QLPE reviews). Would recommend adding 'or designee' which would allow for outside contracted review. Outside reviewers should be designated to reduce work load, reduce time or review projects or systems outside of the Department's experience or qualifications.	No change made.	Our rules do not preclude DEQ from contracting plan and specification review to an outside entity. At this point in time, DEQ has not executed a contract for this review.
5	58.01.16.010	74. Secondary Treatment Not consistent with IPDES Rules	Change made	Definition has been modified to reflect Metcalf and Eddy. Secondary treatment as defined in the IPDES rules is specific for the technology based effluent limits and may not reflect the entire universe of secondary treatment processes and purposes, e.g., disinfection.
1	58.01.16.010	74. Secondary Treatment. A better definition is necessary. Secondary treatment of wastewater is a biological process aimed at removing dissolved organic matter that remains after primary treatment. This stage primarily utilizes microorganisms to break down organic pollutants, resulting in treated effluent suitable for discharge or further processing.	Change made	Definition updated based on Metcalf and Eddy.
5	58.01.16.010	75. Septage Not consistent with IPDES Rules	No change made.	WW definition is more encompassing and is referenced in IDAPA 58.01.03 Individual/Subsurface Seage Disposal Rules and Rules for Cleaning of Septic Tanks.

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5	58.01.16.010	77. Sewage IPDES references WW Rules, Recycled Water Rules has most updated definition.	No change made.	Definition is identical to Recycled Water Rules with the proposed modifications
1	58.01.16.010	78. Simple Wastewater Main Extension. This should be extended to simple pressure sewers instead of limiting it only to gravity. A direct replacement or like-kind replacement of pressure sewer should be considered simple also.	No change made.	Like-kind replacement is not subject to plan and specification review. DEQ does not view extensions of pressure sewer mains as simple extensions of wastewater infrastructure. Additional components such as pumps or a lift station are typically required to extend pressure sewer mains.
5	58.01.16.010	86. Treatment Facility. 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, or wastewater treatment plant. Recommend the addition of the term "wastewater system" to the definition.	No change made.	The was a specific change to the definition of wastewater system based on the clarity added to wastewater system definition which includes both a collection system and treatment system.
5	58.01.16.010	96. Water Pollution Not consistent with IPDES Rules	Changed reference from water quality standards definition to IPDES rules	
2	58.01.16.010	Material Modification Ambiguous language such as "changing engineering design intent" complicates the ability to determine if a proposed project will materially modify a wastewater collection or treatment system. The City proposes the following definition: Material Modification. Those modifications to a wastewater system that increase	No change made.	The definition is synchronized with the definition within the Idaho Public Rules for Drinking Water Systems. Although the language seems ambiguous, the intent of the wording is to provide DEQ, in conjunction with the system, the ability to evaluate proposed system changes and determine if plans and specs are required to provide additional flexibility when plans and specifications are not needed.

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		<p>system capacity or alter methods or processes employed. Increasing system capacity occurs by increasing pumping or treatment capacity of a system or the number of service connections within the system. Altering methods or processes employed occurs by adding or removing system components which are covered by the Facility and Design Standards of these rules.</p>		
2	58.01.16.010	<p>Sanitary Sewer Overflows Current municipal IPDES permits contain standard language that obligates permit holders to report occurrences of noncompliance by telephone within 24 hours of becoming aware of such events. Specifically, the permits require the reporting of any overflow prior to the treatment works that falls under the permittee's ownership or operational control, or any overflow from a contributing collection system that is influenced by the permittee's infrastructure. The City requests the addition of a definition for "sanitary sewer overflow" within IDAP A 5 8. 01.16, "Wastewater Rules." Furthermore, defining a de minimis category of sanitary sewer overflow that does not requiring reporting would ensure only those</p>	No change made.	The requested change is outside the scope of the Wastewater Rules.

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		<p>events which pose a risk to public health and the environment are repaired. The current situation allows for a permittee to be deemed in significant noncompliance with permit requirements while the situation may be either beyond the reasonable control of the permittee or for which no risk to public health or the environment can be identified.</p>		
1	58.01.16.010	<p>XX. Like-Kind Replacement – I could not find this definition in 58-01-08 “Idaho Rules for Public Drinking Water Systems” Would like to see a definition that includes a definition specific to wastewater collection and treatment systems. Like-Kind replacements should be exempt from DEQ review and approval process. For example, during a maintenance operation if a repair is extended to a replacement it should not be subject to DEQ review and approval.</p>	No change made.	<p>Definition of like kind replacement is defined in IDAPA 58.01.08.003.27. Like kind replacements are exempt from DEQ review and approval via the definitions of like kind replacement and material modification.</p>
5	58.01.16.201	<p>201.03.b Wastewater System Requirements New text in this section is redundant with other sections, please see City of Boise comment #1: b. Ensure that untreated or partially treated wastewater is not disposed of to the ground surface unless otherwise</p>	No change made.	<p>Previously, the Wastewater Rules did not prohibit unauthorized disposal of untreated or partially treated wastewater to the ground surface. This language is not only intended to address SSOs; it is meant to address any intended or unintended disposal of untreated or partially treated wastewater.</p>

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		permitted or approved by the Department; and		
3	58.01.16.201	201.03.b. Wastewater System Requirements Is this addition intended to address SSO's? If so, it should clarify that it discharges prior to the treatment plant, under the control of the system.	No change made.	Previously, the Wastewater Rules did not prohibit unauthorized disposal of untreated or partially treated wastewater to the ground surface. This language is not only intended to address SSOs; it is meant to address any intended or unintended disposal of untreated or partially treated wastewater.
3	58.01.16.203	203.01 and 409.03.c. Substitute Responsible Charge Operator Requiring a system to designate a substitute responsible charge operator at all times may be challenging for many systems in the state. Each system has the obligation to employ or retain one appropriately licensed operator to be designated as the facility's Responsible Charge Operator. By re-writing the language as it is proposed, the Department is essentially requiring each facility to have two responsible charge operators at all times. This can be challenging financially for many systems who may not have budget for two positions. This can also be challenging when staff leave a facility. Today, if the backup responsible charge operator quits, the main responsible charge operator must be available at all times, but the facility doesn't have to immediately designate	No change made.	The previous rules have always required each system have a substitute responsible charge operator. The rule does not change the requirement that every system is required to designate a substitute responsible charge operator. The language has been condensed into one paragraph.

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		<p>another responsible charge operator. They have time to hire, train, and license a new operator to eventually fill the backup responsible charge operator. It will be challenging for many facilities to always meet this requirement as written.</p>		
5	58.01.16.400	<p>400 Review of Plans for Municipal Wastewater Systems Clarity needed. Recommend inserting "material modifications to" before municipal ww systems. Also recommend deleting new addition of "the plans and specifications must contain sufficient detail to allow for the contracting and construction of ww systems" as this text is subjective and may lead to confusion.</p>	No change made.	<p>Section 400 applies to more than just upgrades or modifications to a facility. New facilities have to have plans and specification that comply with section 410 through 599 as applicable.</p>

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3	58.01.16.400	<p>400.03.a. Plan and Specification Review Many projects are not constructed within one year (12 months). Previously this section was intended to ensure projects began construction within one year of plan review/approval by the Department. It now reads that projects must also have construction completed within one year after approval of the Department or the facility must seek a new approval or reapproval of the plans. Is there a reason for this change? It does say additional documentation can be provided if a project will take more than 12 months to construct, but this seems like additional work and requirements that do not serve a purpose.</p>	No change made.	<p>The rule is synchronized to match verbiage from the drinking water rules. Changes were made to provide flexibility for a longer approval time in cases where a large project is expected to take longer than 12 months. Typically, DEQ does not require resubmittal of plans and specifications to approve a construction extension. If no changes to the design have been made. While the point is valid that many wastewater treatment plant projects may take longer than 12 months, many projects are not like that, e.g., pumping station and force main addition. DEQ feels synching with the Drinking Water Rules with the inclusion of: "The Department may, at its discretion, issue an approval or re-approval for a duration of more than twelve (12) months based on documentation provided by the design engineer that completion of construction is anticipated to be more than twelve (12) months." Striking a balance with keeping the timeframe reasonable for many projects but gives the flexibility to extend it at the onset of the project or trough re-approval. As stated, DEQ typically does not require resubmittal and approval prior to granting a construction inspection.</p>
5	58.01.16.400	<p>400.03.a Plan and Specification Review The proposed rule changed from construction completed within 12 months to construction commenced. Recommend changing back to commenced. Could cause unnecessary changes to projects already under construction due to re-review.</p>	No change made.	See previous response to comment.

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3	58.01.16.400	<p>400.03.c.iii - d.iii. QLPE requirements This section states that a QLPE cannot approve plans for wastewater pump stations, force mains, or treatment facilities? If not a QLPE, then who can approve these? What is the intent of taking away the ability for staff who work at the same municipality from performing the QLPE review on another staff's work for minor projects? This eliminates the ability for a city's staff to do QLPE review for other staff members projects. This could add cost and time to cities.</p>	No change made.	QLPEs have never been allowed to review mechanical systems such as pumping stations. The rules were condensed for better reading.
3	58.01.16.400	<p>400.04. Plan and Specification Review The rewrite as proposed would make it a requirement that a licensed professional engineer stamp all plans from a facility. The previous way it was written clarified that this requirement meant plans for construction. Facilities must develop many "plans" for DEQ such as Mercury Minimization Plans, Operation and Maintenance Plans, and Emergency Response Plans just to name a few. Those plans should not be required to be created and stamped by a professional engineer. This will add time and cost to all systems across the state. I don't think this is the intent of</p>	Change made.	Addressed comment to address what projects require engineer's seal.

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		the re-write, but it could be interpreted in this way.		
5	58.01.16.400	400.05.a Record Plan and Specification Plan and Specification DEQ added words "by the design engineer" Recommend deleting as it could conflict with IDAPA 39-118(3)	Deleted	
5	58.01.16.400	400.06 Compliance with Applicable Standards Exception to P&S Review Recommend inserting "or for wastewater system projects not explicitly covered by Section 430 through 650 of these Rules"		Comment needs clarification please. Is the intent to provide coverage for other projects and hold them to the equivalent design standards?
3	58.01.16.400	400.09. Construction Inspection The rewrite now requires that a professional engineer (PE) inspect all construction elements of a project. Previously it allowed other qualified personnel to perform inspections. Many facilities employ their own Public Works Inspectors, who are not PEs to inspect projects. This change would create a significant cost and burden to facilities.	Change made.	Addressed the comment during the negotiating session.

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1	58.01.16.400	400. Review of Plans for Municipal Wastewater Systems. This section will not allow for the design/build process which will in many cases be beneficial to the outcome. There have been some design/build projects completed in Idaho which would not be allowed by this Rule. See comments above that would allow for designated reviews.	No change made.	Design build is not precluded by our rules. Our rules do not speak to contracting method. Both traditional and design/build are supported by our rules, and design/build projects have been reviewed and approved by DEQ through our current rule set.
5	58.01.16.401	401.01 Review of Plans for Nonmunicipal Wastewater Treatment or Disposal Facilities. The Department does not require review of industrial in-plant processes. For some industries it can get complicated determining what is considered an industrial in-plant process and what requires a permit. Some industries may request voluntary permits either way.	No change made.	Thank you for your comment
5	58.01.16.401	401.04.a Recommend inserting “or for wastewater system projects not specifically covered by the Rules.” for consistency.		Comment needs clarification please.
1	58.01.16.401	401.05 Waiver- Not sure this has ever happened in Idaho. What is the process.	No change made.	The decision to waive plan and specification review and approval for nonmunicipal wastewater systems lies with the Director of DEQ. A query would be made to the regional office justifying the project will have no significant impact on the environment or on public health, and the region will forward the request to the Director.

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4	58.01.16.410	<p>410. Facility Plan There is not currently a review time included in the rules. This presents a significant planning challenge for many entities who must complete or update an existing Facility Plan prior to submitting a PER and/or Plans and Specifications for critical projects. Open-ended review times inhibit entities from completing improvements required to protect public health and safety in a reasonable timeframe. We request the Department consider adding a timeframe or potentially introducing a review fee. Review fees, similar to the IPDES fees, provide for faster review time by Department staff (funding additional Department staff to complete reviews) and encourage high-quality documents to be submitted to the Department (reduction on repeat reviews). This has been successfully implemented in Washington (Dept. of Health).</p>	No change made.	<p>DEQ internal goal is to complete Facility Plan and PER reviews within 42-days. However, in accordance with Idaho Statute, we have to prioritize plan and specification review in accordance with the 42-day timeline. DEQ will consider review fees in the future if approved by the Idaho State Legislature.</p>
3	58.01.16.410	<p>410.04.b.i. Facility Plans - Hydraulic Model The rewrite requires the submission of the computerized hydraulic model not just the analysis or output of the hydraulic model. If this is truly the intent, does DEQ plan to utilize or run all of the system's hydraulic models? Many of these</p>	Change made.	<p>Computerized term is removed and replaced with system-wide to emphasize the entire system must be analyzed.</p>

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		models require specialized software and technical ability to run the models correctly. What is the purpose and intent of this change?		
3	58.01.16.410	410.04.d. Facility Plan Guidance It appears that this rewrite is removing the facility plan guidance document. Is DEQ not intending to keep this document? If not, where should facilities go for guidance on the creation of facility plans?	Change made.	Section was incorrectly deleted.
4	58.01.16.411	411.01. Preliminary Engineering Reports Refer to comment above on Facility Plans (discussing review time) and on definition of PERs. Additionally, by eliminating the word "major" from the last sentence in this section expands the projects that will require submittal of a PER. As seen on the implementation of the new Drinking Water Rules, this has added a regulatory burden to entities. We request the Department consider reverting this as originally drafted and consider the same on the Drinking Water Rules	No change made.	The term "major" was removed as it was not defined and caused ambiguity in the rule. Simple main wastewater extension projects do not require a PER. PERs are required for projects which require plan and specification; this precludes projects that are like-kind replacements but includes projects that are material modifications. In these cases, it is recommended to work with your local regional office.

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3	58.01.16.411	411.01. Preliminary Engineering Reports The rewrite states that a PER must be completed for any project and removes the word "major". This change could add significant additional workload for facilities and DEQ. Please clarify what the intent of this change is. The way this is written, for example, could imply that if a system wants to change out the type of weir washer it is using and put in a new type it could require a PER.	No change made.	The term "major" was removed as it was not defined and caused ambiguity in the rule. Simple main wastewater extension projects do not require a PER. PERs are required for projects which require plan and specification; this precludes projects that are like-kind replacements but includes projects that are material modifications. In these cases, it is recommended to work with your local regional office.