



HAWKINS

Mary Anne Nelson
Idaho Department of Environmental Quality
Transmitted via Email

May 23, 2025

Re: Comments to Draft 2 Rule Making meetings Docket #58-0116-2501

Mary Anne,

My name is Jeff Hess. I am sorry for not being part of the first meetings and commenting on the prior draft but I just got notice of this rule making effort. I am one of three owners of Britannia Heights LLC which is a subsidiary of Hawkins Companies, homebased in Boise. Hawkins has been developing real estate nationally for over 40 years. In my role with Hawkins as Chief Legal Officer and Operating Officer, I have overseen numerous real estate development projects and their compliance with wastewater management rules in over 25 states. More specifically, I have personally overseen the planned development of a municipal wastewater treatment plant in eastern Canyon County where Britannia has built a treatment plant with a recently permitted phase for the land application of recycled water as a disposal method of our treated wastewater. With this in mind, I am familiar with the “wastewater rules” and the “recycled water rules” and wish to provide the Department with my insight into areas I believe are confusing in application of those rules.

I have the following comments, suggestions, or questions (while some may seem like “nits” I wish to get language correct) concerning specific rules:

1. Section 001 (in what was 02. Scope; *The word “discharge” should be kept with “and disposal” added after discharge and not just substituting disposal for discharge. They seem to have different meanings and applications within the rules. Discharge is the output of any constituents where disposal is the term normally used to dispose of or take out of the wastewater system past the point of final treatment and testing by turning the treated water into a subsurface, surface or recycle/resuse area;*
2. Section 008.14; *This subsection should be retained;*
3. Section 010.10 and .11; *“Class B” should be added;*
4. Section 010.18; *“Discharge” This definition may have problems given it only attaches to “pollutants” into “waters of the State.” This definition, if discharge has no other definition (qualification) then its use in these rules has to be specifically defined in each circumstance or it will be defined by this Subsection;*
5. Section 010.21; *The phrase “for disposal” needs to be added at the end of the sentence after the word “facility”;*
6. Section 010.31; *Change “wastewater” to “effluent” because wastewater is not allowed to be applied to the ground without approval by the department per subsection 201.03b, or add “effluent,” before the word “wastewater”;*

7. Section 010.XX (New definition of Nuisance); *Not sure why this is added to the definitions as the legal term nuisance has specific meanings in the law. If the department wants to define Nuisance to be applied to the rules then this definition is too narrow...this would include any single event that such as a neighbor who complains about the possibility of "bugs" in the air etc. ... seems extreme but the term "anything" and "injurious" leaves little wiggle room;*
8. Section 010.59; *Take out the word "municipal" if you take it out of the heading and be consistent throughout the rules;*
9. Section 010.68; *Insert the word "material" before "expansion ..." to be consistent with "material modification";*
10. Section 010.68a; *Add "with proper grade to allow gravity flow of blackwater to the municipal wastewater collection system;*
11. Section 010.68b; *Insert before the ", and the owner" "so long as all of the property proposed in the new wastewater treatment plant can be served by the municipal wastewater collection system through gravity flow;"*
12. Section 010.68c; *This subsection is very subjective with no criteria or a way to balance the economics of a longer pipe cost than the 1,000 feet compared to private plant development costs. Also no exception is made for "will serve" letter;*
13. Section 010.XX (Addition of "Total Containment Lagoon"); *Why is this new definition added? Why is it only with "no permitted discharge"? What about when a lagoon is used for both evaporation and disposal by land application or recycle/reuse of the effluent which has a discharge? This seems to be an effort to class an impoundment with only effluent for disposal;*
14. Section 010.91; *After the phrase "storing or treating wastewater" add "and storing for disposal of effluent." This fits in with the definition of Total Containment Lagoon;*
15. Section 400.03a; *The 12 month construction times is not feasible in a significant number of projects. The requirement for resubmittal is onerous; once construction has started and contracts are let going back for complete reapproval for an extension at the discretion of the department puts significant economic uncertainty on the owner that is not in keeping with the Governor's Order. This section should allow the PER to set out a reasonable timeline for approval and that extensions would be granted upon Departments review of reasonably progress toward completion. For example: construction of a lagoon may not be able to be started until the ground is dry enough in the spring and then having a membrane installed in mid to late summer leaves no time to complete the requisite seepage test because of the need for evaporation before the 12 month time limit is up. Under this paragraph the Department could require a complete new application;*
16. Section 400.03a; *Delete the word "waive" and insert "make an exception to" and after the word "significant" add the word "additional";*
17. Section 450.01c; *Add the word "used for treatment" after "lagoon". This will delineate lagoons used for storage, evaporation or reuse of effluent such as the effluent quality of Class A and B defined in the Recuse provisions compared to lagoons used to treat wastewater. This needs to be changed so that we know what the use of the lagoon is as the determining factor as to whether*

200 feet should be for treated water in the lagoon for disposal. There is currently a gap between the water that has been treated and tested at the end of treatment that becomes “effluent” for “disposal” at the physical point that is not considered in this definition of what has to have a 200 foot setback. From the physical point on it has to be either immediately disposed of by recharge, added to surface water or application by reuse; when reuse by land application or evaporation is approved as a disposal means during the winter months when land application is not allowed the treated water (effluent) has to be stored in some defined impound until land application is allowed again the next spring. The impound needed to store the effluent seems to be the gap problem. We believe that the new Total Containment Lagoon with some modifications can suffice to describe this impound. As such it should not be required to meet the 200 foot setback as the land application rules which allow the effluent to be applied under certain circumstance up to the property line. Because of the changes in Section 493.01.b the lagoon that stored treated wastewater for disposal through evaporation did not have to meet the 200 foot requirement. Finally, At the end where the “public use” is included this prohibition seems to be in conflict because the Reuse rules allow Class A and B irrigation of public parks and common area where public use is allowed.

18. Section 455.01b; *The IC 39-116A seems not to require this agreement as a condition of approval. The term is for 5 years when the IC section allows for 10 years and 5 years is before most permits terms are granted for that need an extension;*
19. Section 455.02a; *This eliminates the Department from approving any new ideas of how to treat wastewater. Someone must be the first to use a new and innovative solution and with this requirement Idaho will never be the innovative solutions State;*
20. Section 455.03a; *Delete the newly added “wastewater” before the word “effluent”; Add “Or other acceptable means of disposal of effluent approved by the Department.” Without this it requires an application for a reuse permit when it is not necessary considering an approval of a PER with a phased approach over time.*
21. Section 493.01b; *Add the following: “Lagoons used for storage for reuse and/or evaporation containing treated water to the quality of effluent as class A or B shall not be required to meet the new Subsection 450.01c minimum distance requirement however, minimum distance will be approved as part of the PER to protect the environmental and public health.”;*
22. Section 493.09ci; *Class B should be added to this Subsection;*
23. Section 600.04; *This Subsection should be consistent with Subsection 493.09v;*
24. Section 660; *After the word “Director” add “or designee”; delete the word “full” as it is a modifier that is extraneous to the word “demonstration”; delete “are not necessary for the protection of” and insert “will adequately protect the” which changes the necessary which is an absolute to adequately which is a measure of quality that is in keeping with a proposal to modify the rules.*

While I have reviewed the proposed draft with interest and complement staff on how well the proposed draft has accomplished the Governor's Order in the vast majority of the cases, there are a few items that I am still wrestling with and hope to participate in the upcoming meetings.

Sincerely,

A handwritten signature in blue ink that reads "J Hess". The signature is stylized with a large, looped initial "J" and a cursive "Hess".

Jeffery L. Hess
Owner

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