

**Docket Number:** 58-0116-2501

**Rule:** IDAPA 58.01.16, Wastewater Rules

**Effective Date:** 7/1/26 if approved by the Idaho State Legislature

**Agency Contact:** Mary Anne Nelson (208)373-0291

### Overview

This rulemaking was initiated in compliance with [Executive Order No. 2020-01](#), Zero-Based Regulation (EO 2020-01), issued by Governor Brad Little on January 16, 2020.

A detailed explanation for this rulemaking is available in the Descriptive Summary in the [Notice of Rulemaking – Proposed Rule](#) published in the Idaho Administrative Bulletin on September 3, 2025.

### Public Participation

**Negotiated Rule Making?**  Yes  No

[Negotiated Rulemaking Summary](#)

**Proposed Rule:** 9/3/25 Idaho Administrative Bulletin

**Public Hearings?**  Yes  No

**Written Comment Deadline:** 10/01/25

**Public Comments Received?**  Yes  No

See DEQ's Response to Comments  
(attached to this summary)

**Revisions to Proposed Rule?**  Yes  No

See Final Proposal

### Impact on Stakeholders

Anticipated impact includes clarity and increased ease of use of the rule chapter. No financial impacts anticipated.

## DEQ's Response to Comments/Proposed Rule

### Wastewater Rules, Docket No. 58-0116-2501

Commenter #	Commenter
<u>1</u>	<a href="#">Panhandle Health District</a>
<u>2</u>	<a href="#">Hawkins Engineering – Jeff Hess</a>
<u>3</u>	<a href="#">Aquaculture Results, LLC – Gary Fornshell</a>
<u>4</u>	<a href="#">Idaho Aquaculture Association</a>
<u>5</u>	<a href="#">Leo Ray</a>
<u>6</u>	<a href="#">Riverence Farms, LLC/Riverence Provisions, LLC</a>
<u>7</u>	<a href="#">First Ascent Fish Farm – Don Campbell</a>

Below is the agency's response to the comments received. In some instances, several commenters submitted identical or very similar comments on a particular point. For brevity, comments that were similar in nature are only copied once and the individual commenters are identified.

Cmt #	Section	Commenter #	Comment	Response	Rationale
1	010	1	The first request is to not delete "Pollutant" from the definitions section. "Pollutants" are defined in the recently revised IDAPA 58.01.03, and the definition points to 58.01.16. If we delete "Pollutant" from 58.01.16, the definition in 58.01.03 will point nowhere.	Definition for Pollutant is restored.	Definition for Pollutant in IDAPA 58.01.16 is sufficiently different from the definition in IDAPA 58.01.25, therefore; it is not reasonable to delete from this chapter.

2	010	1	<p>I would like to make a request that we edit the definition for "Gray Water" (58.01.16.010.28). I think we should simplify it so that it is "<i>Domestic wastewater that does not contain blackwaste wastewater from toilets, kitchen sinks, dishwashers, clothes washing machines, and water softeners.</i>"</p> <p>Definitions for gray water from our neighbors are all over the place. I found two definitions in Oregon. In Oregon, "gray water" <u>is defined as</u> "<i>shower and bath waste water, bathroom sink waste water, kitchen sink waste water and laundry waste water.</i>" It is <u>also defined as</u> "<i>household sewage other than "black wastes," such as bath water, kitchen wastewater, and laundry wastes.</i>" So while our definition excludes kitchen sinks and clothes washing, Oregon specifically includes them.</p> <p>In Washington, "Greywater" <u>is defined as</u> "<i>sewage from any source in a residence or structure that has not come into contact with toilet or urinal wastes, including bathtubs, showers, bathroom sinks, washing machines, dishwashers, and kitchen sinks.</i>" That is a poorly worded definition, but it is saying greywater cannot include blackwaste but can include wastewater from bathtubs, showers, bathroom sinks, washing machines, dishwashers, and kitchen sinks.</p>	<p>Definition for Gray Water is updated to reflect this comment.</p>	<p>DEQ agrees with the comments and points identified.</p>
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		<p>In Montana, "Gray Water" <a href="#">is defined as</a> "wastewater that is collected separately from a sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets."</p> <p>In Utah, "Graywater" <a href="#">is defined as</a> "wastewater from bathtubs, showers, bathroom washbasins, clothes washing machines, or laundry tubs. Graywater does not include wastewater from toilets, kitchen sinks, photo lab sinks, dishwashers, water softeners, garage floor drains, or other sources that pose a public health hazard."</p> <p>In California, "Graywater" <a href="#">is defined as</a> "untreated wastewater that has not been contaminated by any toilet discharge, has not been affected by infectious, contaminated, or unhealthy bodily wastes, and does not present a threat from contamination by unhealthful processing, manufacturing, or operating wastes. 'Graywater' includes wastewater from bathtubs, showers, bathroom washbasins, clothes washing machines, and laundry tubs, but does not include wastewater from kitchen sinks or dishwashers."</p>		
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3	493	2	<p>The current language in Subsection .01b clearly exempts “evaporation” ponds from having to meet the 200 foot setback requirement required in Subsection 493.05. With the new proposed language, it shifts the Location requirement to Subsection 450.01c, which sets forth the “Plant” location in Subsection 450.01.c to require that same “evaporation” pond to now meet a 200 foot setback requirement when it did not have to meet in the current Section 493.01b. By lumping the new “Total Containment” and “Recycled Water Storage” ponds in the current Draft 4 with the current treatment lagoons listed in Section 450.01c it takes currently exempt evaporation ponds to a stricter rule.</p> <p>The current Section 450.01c deals with “lagoons,” which currently has no clear definition as the current rules define only “Wastewater Lagoon(s)” (current Subsection 91 with proposed at Subsection 66) with no definition of “lagoon” alone, but for the purpose of “storing or treating wastewater” and the defined term “Wastewater” is water that is “rationally identifiable as containing blackwater, gray water or commercial or industrial pollutants, and; sewage” or commonly understood as untreated water or sewage and not the “Wastewater” cleaned by treatment with the resultant water becoming “effluent” quality defined by</p>	<p>Section 450.01.c is updated to include ‘wastewater’ before lagoons to ensure clarity.</p>	<p>Subsection 450.01.c has always required all facilities open to the atmosphere be placed a minimum of two hundred (200) feet from residential property lines.</p> <p>The revised rule addresses the inconsistency between the two sections of the rule while allowing the setback to be lessened when appropriate on a case by case basis.</p> <p>DEQ does not believe a blanket reduction is warranted. The information supporting a lesser setback can be submitted within the project preliminary engineering report or appropriate recycled water permit application.</p> <p>In response to the information in the second paragraph in this comment, only a portion of the definition of wastewater is presented. Treated wastewater is still defined as wastewater until the point of disposal at which point in time it is defined as effluent that has met the treatment requirements of any applicable permit. As one example, wastewater defined as Class A has an allowable amount of total coliform and it must be ensured that public is protected via appropriate measures.</p> <p>The rules define disposal as the removal of wastewater via discharge, reuse, total containment (i.e., evaporation) or other allowable methods. The quality of wastewater directed to a Total Containment Lagoon can vary widely depending on the treatment provided prior to the total</p>
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		<p>different levels of treatment, not contained in the wastewater rule, but instead are in the recycled water rules of IDAPA 58.01.17. After “lagoon” the Subsection also adds to the list “open clarifiers ... aeration basins and <i>other such facilities</i>.” Because clarifiers are commonly used for settling solids and aeration basin for air to promote consumption of organic matter they are considered treatment. In-other-words, treatment of sewage generally and not the finally treated water for discharge (proposed as “Disposal”) to a disposal system that would be found in the proposed Total Containment or Recycled Water ponds. In addition, the existing Recycled Water Rules Section 609.1, specifically addresses the fact that a recycled water lagoon, which always has a component of an evaporation and storage lagoon status, should comply with Section 493 which allows for an evaporation lagoon that is used for effluent evaporation purposes to NOT have to meet the setback requirement in Section 493.05.</p>		<p>containment lagoon. For this reason, Total Containment Lagoons are not equivalent to Recycled Water Storage lagoons storing recycled water of any class designation. Those class designations have specific treatment requirements associated with them, while there are no inherent treatment requirements for wastewater directed to a Total Containment Lagoon.</p> <p>In addition, although evaporation occurs in recycled water lagoons as the water is held prior to disposal via the recycled water distribution system, this fact does not define these lagoons as evaporation lagoons. Evaporation naturally happens in every lagoon, but a Total Containment Lagoon (previously referred to as an evaporation lagoon) is specifically designed to maximize evaporation as the means of disposal. The definition of Total Containment Lagoon was added to clarify this distinction.</p> <p>For regulatory purposes, the use of lagoon in Section 450.01.c is defined as a wastewater lagoon. To clarify that point, the term “wastewater” is added to Section 450.01.c.</p>
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4	493.09ci	2	<p>In the last sentence in Draft 4 after “This requirement does not apply to” should delete the rest of the sentence and insert “Total Containment or Recycled Water Storage Lagoon areas which are permitted under the Recycled Water Rules.” Or, at least add Class B water as Class B buffer guidelines don’t require a fence for Class B.</p>	<p>Thank you for your comment.</p>	<p>This concern is more appropriately addressed in the recycled water rules and through recycled water permitting. The Wastewater Rules maintained the exemption for Class A recycled water lagoons as it previously existed, but expansion of the requirements for recycled water lagoons is not appropriate.</p> <p>Fencing may be required for Class B recycled water storage lagoons, among other recycled water classifications, depending on site-specific characteristics. A blanket exemption for other classes of recycled water or total containment lagoons is not appropriate without technical documentation demonstrating public health or environmental protection as required within a waiver application or recycled water permit application.</p>
5	010	2	<p>The proposed definition in Subsection 59 for “Total Containment Lagoon” should strike the words “with no other permit to dispose.” This language would not allow a “Recycled Water Storage” lagoon to dispose of the effluent at the same time as the impoundment area is being used as an evaporation disposal lagoon (Total Containment).</p>	<p>Thank you for your comment.</p>	<p>The purpose of this definition is to delineate when a lagoon (i.e., a total containment lagoon) is the only method used to dispose of wastewater from a wastewater system. It has a specific meaning in the regulatory structure of these rules.</p> <p>If a system is permitted to dispose of wastewater via the beneficial reuse of recycled water, then the lagoon used to store water is not a Total Containment Lagoon even if evaporation contributes to the disposal of the wastewater.</p>

6	455.02a	2	<p>In the current Draft 4 there needs to context added in this Subsection; in its proposed form it is not clear what private plan is the subject of the first sentence in the paragraph. It seems the context this Subsection used to refer to a design engineer providing for an alternative process to be proposed in the Facility Plan or PER. This suggestion for adding context comes from reading the prior rule which described in deleted Subsections alternative methods. Because these were removed it makes for uncertainty in what types of alternative methods are acceptable therefore becoming more difficult rather than simpler and supportive of new innovation.</p>	<p>Thank you for your comment.</p>	<p>The intent is not to limit alternative methods with any list. The intent is to widen the scope of potential projects as the previous rule directed anyone proposing a private wastewater treatment plant to specifically evaluate certain treatment methods.</p> <p>The revision does not direct the proposed system to evaluate any particular set of treatment methods while allowing any method to be proposed thereby increasing flexibility and potential for innovation.</p> <p>The proposed subsections 455.02.a and 455.02.b are not new requirements. The entirety of Section 455 has been rewritten for clarity, and these sections were rearranged and moved from subsection 455.04.a and 455.04.d of the current rule.</p>
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7	660	2	<p>The proposed change deleting the phrase “will have no significant impact on the environment or on the public health” should be reinstated with the addition of “more than the Rules allow.” The change that then adds “are not necessary for the protection of public health and the environment,” should be deleted but keeping the last phrase.</p> <p>When reading the proposed sentence all together, it is very confusing as to how to obtain a waiver. For instance, if I propose to reduce the chlorination of a rule set amount of 10 to 5 (used for hypothetical only), how do I demonstrate “that such activities for which the waivers are granted are not necessary for the protection of public health and the environment, ...”; In other words, do I say that the 5 I suggest is “not necessary for the protection of public health” when the rules say a 10 is for the public health. How do I prove such reduction is not “necessary?” Should I not be showing that there is no substantial adverse effect on the public health.</p>	<p>Thank you for your comment.</p>	<p>The term significant impact posed an arbitrary judgement on a proposed waiver application.</p> <p>Waivers are project and site specific, and it is difficult to give statewide examples. Some examples of waivers include reducing separation distances between gravity sewer lines and a well.</p> <p>In this example, it could potentially be demonstrated the waiver is allowable because groundwater flow direction is away from the well.</p>
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8	010	3, 4, 5, 6, 7	<p>Of concern is the proposed deletion of the definition of "Pollutant" in Section 010.53 and the subsequent application of the pollutant definition as provided in the Idaho Pollutant Discharge Elimination System (IPDES) Rules (IDAPA 58.01.25).</p> <p>The current definition of Pollutant in IDAPA 58.01.16 includes an essential, specific exemption for aquaculture facilities that is not present in the IPDES Rules definition: "Provided however, <b>biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities.</b>" (IDAPA 58.01.16, Section 010.53, <i>emphasis added</i>).</p> <p>The deletion of this specific language, while intended to streamline IDAPA 58.01.16, has the unintended consequence of removing a fundamental legal protection for aquaculture facilities that has been a part of the regulations since at least 1997. Without this explicit exemption, the accidental or occasional release of live or dead fish could be classified as a pollutant.</p> <p>The proposed rule strikes a substantive provision that is critical to aquaculture operations. I request that the language not be stricken from the Wastewater Rules until such time that it can be added to the definition of pollutant in the IPDES Rules.</p>	<p>Definition for Pollutant is restored.</p>	<p>Definition for Pollutant in IDAPA 58.01.16 is sufficiently different from the definition in IDAPA 58.01.25; therefore, it is not reasonable to delete from this chapter.</p>
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9	General	3, 4, 5, 7	<p>The Idaho State Department of Agriculture regulates commercial fish farms (<a href="#">Title 22, Chapter 46</a> “Fish Farms”). All commercial fish farms require a \$25.00 license through ISDA, which renews on even-numbered years. These licenses require routine, documented inspections of all fish exclusion and containment devices at both the intake and outlet of every commercial aquaculture facility to prevent escapement. DEQ regulating the accidental release of fish would result in redundant regulatory oversight, contradicting the ZBR goal of reducing overall regulatory burden and streamlining provisions.</p>	<p>Thank you for the comment. DEQ has restored the definition of pollutant.</p>	<p>Restoring the previous definition of pollutant that carried the exclusion from biological material of live or dead fish maintains the current process where ISDA is responsible for inspections of fish exclusion and containment.</p>
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10	010	3, 4, 5, 6, 7	<p>I appreciate that DEQ is not changing the scope of applicability of this rule set. Nonetheless, the combination of a broad definition of “Wastewater” and the very broad, new proposed term “Wastewater System” creates ambiguity as to the applicable scope of the regulations.</p> <p><b>“Wastewater.</b> Any combination of liquid or water and pollutants from activities and processes occurring in dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water, and storm water that may be present...” (IDAPA 58.01.16, Section 010.64).</p> <p><b>“Wastewater System.</b> A collection system or treatment facility, or a combination of collection system and treatment facility. This includes all structures, equipment, or processes required to collect, convey, treat, store, and dispose of wastewater.” (IDAPA 58.01.16, Section 010.68).</p> <p>The concern with these broad definitions is that “Wastewater” and “Wastewater System” could be inappropriately interpreted to include water being beneficially utilized within an aquaculture facility and all of the components of an aquaculture facility, rather than only the</p>	<p>Thank you for the comment. No changes to the definitions mentioned made at this time.</p>	<p>DEQ understands the concern and emphasizes that the intent of these rules is not to classify water use within aquaculture facilities as “wastewater” or to treat entire facilities as “wastewater systems.” To ensure clarity, DEQ is updating Section 401.01 to specify design review requirements that apply to <i>waste treatment and disposal facilities</i>, consistent with Idaho Code § 39-118(1) - (4) and those that apply to aquaculture facilities consistent with Idaho Code § 39-118(5). The rules will also incorporate by reference the Idaho Waste Management Guidelines for Aquaculture, which distinguish production water use from actual treatment components. This provides certainty that circulating water used for fish rearing remains under beneficial use until discharged to a treatment or disposal system.</p>
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			<p>components used solely for waste treatment purposes, respectively.</p> <p>DEQ is urged to eliminate the ambiguity of the terms “Wastewater” and “Wastewater System” by revising the rules and/or issuing a clear assurance that water within an aquaculture facility is not considered “Wastewater” for regulatory purposes until its <b>beneficial use</b> has concluded, nor is the entirety of an aquaculture facility to be considered a “Wastewater System”.</p> <ul style="list-style-type: none"> <li>• As aquaculture water passes through a facility, it is continually used to culture fish or is transferred within the facility to additional fish rearing units (e.g., from head tanks to proceeding serial reuse raceways).</li> <li>• Water in an aquaculture facility should only be considered “wastewater” after all beneficial uses within the aquaculture facility have concluded.</li> </ul> <p>Clarity on this point is essential to ensure that the continued use and movement of water within a fish-rearing system is not classified or regulated as “Wastewater” and that all or most of an aquaculture facility, within which the collection and conveyance</p>		
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			of water that contains fish waste occurs, is not classified as a “Wastewater System.”		
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11	401	3, 6	<p>Aquaculture facilities have historically been excluded from the definition of a “Community Wastewater System” given the exception in Section 010.39.b (“any industrial or other nonmunicipal wastewater system which is covered under Section 401”).<sup>1</sup> However, a proposed change in Section 401 (Review of Plans for Nonmunicipal Wastewater Systems) indicates that the plans and specifications must be submitted to DEQ as specified in Idaho Code 39-118(3). Idaho Code 39-118(3) does not apply to aquaculture facilities, only Idaho Code 39-118(5), so the proposed change would effectively exclude aquaculture facilities from coverage under Section 401. As a result, an unintended consequence of this proposed change appears to be that aquaculture facilities would be inappropriately deemed a “Community Wastewater System” constituting a significant change that would impose new regulations on aquaculture facilities that are not appropriate for our operations. Given that we do not believe that is DEQ’s intent, a couple of options to avoid this outcome would be: (i) specifically exclude aquaculture facilities, as defined in Idaho Code 39-118(5), from the definition of a Community Wastewater System; (ii) remove the reference to</p>	<p>Thank you for your comment. Changes to Section 401.01 include addition of “Aquaculture facilities must submit plans and specifications for construction, modification, or expansion of waste treatment or disposal facilities for review and approval consistent with Section 39-118(5), Idaho Code. Infrastructure for water conveyance or aquatic organism husbandry within an aquaculture facility, prior to its discharge or diversion to waste treatment or disposal facility, does not require engineering design submittal under these rules.”</p>	<p>Section 401.01 has been updated to reflect the statutory requirements found at Idaho Code 39-118 to clarify that aquaculture facilities are a type of nonmunicipal wastewater systems and reduce potential application of community wastewater system requirements to wastewater systems treating industrial or non-municipal sources of wastewater.</p>
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			<p>sub-section (3) of Idaho Code 39-118 in Section 401; (iii) add a new section to the Wastewater Rules regarding the review of the waste treatment components of aquaculture facilities pursuant to Idaho Code 39-118(5) to the Wastewater Rules and reference that new section in the exclusions to the definition of a Community Wastewater System; or (iv) expressly exclude aquaculture facilities from the Wastewater Rules entirely as previously mentioned. Additionally, commenter 3 requested addition of “or aquatic organism husbandry” to the text.</p>		
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12	401.07	6	<p>Section 401.07 includes a new provision that “[a]ll plans and specifications submitted pursuant to Section 401.01 must conform in style and quality to regularly accepted engineering standards and applicable guidance and include the basis of design information and applicable design criteria.” Section 004 incorporates by references certain sections of the ‘Idaho Standards for Public Works Construction,’ 2020 Edition. Given that aquaculture facilities are not public investments nor are they the same as wastewater systems that handle municipal wastewater, it is unclear how this guidance will or will not be applied to aquaculture facilities.</p>	<p>Thank you for the comment. DEQ included the 1997 Idaho Waste Management Guidelines for Aquaculture to Section 08 for reference.</p>	<p>Idaho Code 39-118(5) does require that plans and specifications for the construction, modification, expansion, or alteration of waste treatment or disposal facilities for aquaculture facilities conform in style and quality to standard industry practices and guidelines. DEQ will continue to apply the appropriate standards to the industry and will not apply standards for public works construction to aquaculture facilities.</p>
13	402	6	<p>Can DEQ please explain why it is proposing to strike Section 402 (Plan and Specification Review Dispute Resolution)? Is DEQ’s policy set out in PS20-08 no longer relevant?</p>	<p>Thank you for the comment</p>	<p>As discussed during the negotiated rulemaking meetings, documents referenced in the rule that are not intended to regulate (e.g., guidance and policy documents) are being removed from the rule. However, the policy is unchanged and will remain the policy of the agency. The agency has many policies that it abides by, all of which are available online.</p>

	409	6	<p>Does Section 409 (Demonstration of Technical, Financial, and Managerial Capacity) now apply to aquaculture facilities? While the proposed cuts to the language in the header are arguably more aggressive than necessary, given the issue concerning Community Wastewater Systems discussed earlier we are concerned that this provision could now be imposed on aquaculture for the first time and create an undue burden on our ability to upgrade our facilities even though we do not believe that is DEQ's intent.</p>	<p>Section 409 updated to include 'municipal' before wastewater treatment facility and pumping station to ensure clarity in applicability.</p>	<p>It is not the intent of the agency to impose new or different regulations on the aquaculture industry, and we greatly appreciate the comments highlighting where inadvertent changes may be occurring based on the streamlining the agency is attempting. We believe the changes made to the rule here and to address the previous comments will clarify that Section 409 does not apply to aquaculture facilities.</p>
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