

Idaho Department of Environmental Quality
Docket No. 58-0119-2001
Rules for the Design and Construction of Phosphogypsum Stacks
May 28, 2020

The Department of Environmental Quality (DEQ) received numerous comments on the preliminary draft rule for Rule Docket 58-0119-2001. Certain issues raised in the comments warrant more discussion before a revised draft of the rule is written. DEQ will present some of the items below, as listed on the agenda, for discussion during the May 28, 2020, negotiated rulemaking meeting and encourages interested parties to submit written comments for the rulemaking record. The comment period will close June 9, 2020.

- **Timeline of rulemaking and schedule considerations**
 - To meet the necessary deadlines for Board adoption of a pending rule in November 2020 and legislative review in 2021, DEQ's last opportunity for a negotiated rulemaking meeting is late June, with a final negotiated rule comment deadline in early July.
 - DEQ requests further discussion on whether additional rulemaking meetings will be needed beyond the meeting scheduled for late June.
- **Idaho Code § 39-107D applicability**
 - Idaho Code § 39-107D is applicable to this rulemaking because there are no EPA rules specifically related to the design and construction of phosphogypsum stacks.
- **EPA negotiations under their Mineral Processing Enforcement Initiative (Section 001)**
 - Negotiations are still occurring between EPA and Idaho facilities under EPA's Mineral Processing Enforcement Initiative. The design and construction requirements in this rulemaking should be consistent with the requirements included in consent decrees that result from the Mineral Processing Enforcement Initiative negotiations.
 - Idaho Code § 39-176B(2) states "Nothing in this chapter is intended to supersede or modify any existing agreement with or approval from the environmental protection agency or the department of environmental quality...." DEQ is not aware of any signed agreements under EPA's Mineral Processing Enforcement Initiative for Idaho facilities.
 - DEQ requests further discussion on how the scope applies to the Mineral Processing Enforcement Initiative and agreements or approvals from DEQ.
- **Solid waste considerations (Section 001)**
 - The addition of a reference to 40 CFR Part 257 is unnecessary and may be confusing or misleading. The existence of the proposed rule will present the state's mechanism for adequately regulating phosphogypsum stack systems in accordance with RCRA Subtitle D. RCRA Subtitle D simply requires that states have an adequate program in place to distinguish municipal solid waste landfills from open dumps.
- **Definition of stored (Section 010; April 16 Meeting Exhibit 1)**
 - DEQ requests further information on the issue of phosphogypsum storage. Based on the radioactivity and metal constituents contained in the source material for Idaho phosphate production, DEQ is not aware of a potential reuse for the phosphogypsum in Idaho stacks beyond that discussed in the next bullet.

- DEQ understands that phosphogypsum is currently or could be ‘reused’ as part of perimeter dike or liner construction. This caveat can be made within the definition to clarify this specific reuse within the construction of a phosphogypsum stack.
 - DEQ requests references cited in comments and instances of viable reuse options for phosphogypsum specifically contained within Idaho stacks.
 - DEQ also requests discussion of speculative accumulation. If phosphogypsum is not reused within a certain time period, then the waste must be properly disposed.
 - Although not a part of this rulemaking, there would also be closure and post-closure implications for material that is considered stored versus material disposed in phosphogypsum stacks.
- **Definitions of intermediate liner and vertical expansion (Section 010)**
 - Commenters requested further discussion of these definitions.
- **Siting criteria (Section 110)**
 - Including siting criteria is consistent with Idaho Code § 39-176A(1)(e)), which recognizes the need for DEQ to “develop a program necessary to assure the proper design and construction of phosphogypsum stacks and phosphogypsum stack systems,” and Idaho Code § 39-176B(4), which states that the chapter “establishes minimum design and construction requirements to ensure that phosphogypsum stack system impoundments meet critical safety standards.”
- **Seepage testing (Section 140.06.c)**
 - Seepage testing is important in determining an estimate of the seepage rate to help identify potential impacts to groundwater from that seepage. A whole pond seepage test determines if the pond is holding water. A seepage test prior to use is the most reliable mechanism to assure the liner integrity before it is put into use.
 - DEQ does not anticipate establishing a seepage criteria in the rule since the goal is not to see if a standard is exceeded, only to determine what the seepage rate may be as related to potential groundwater impacts that may result from that seepage.
 - Seepage testing protocols have evolved since the Wastewater Rules rulemaking in 2005.
 - Commenters requested discussion of alternatives to seepage testing.
- **Groundwater monitoring plan (Section 160)**
 - The groundwater monitoring plan language is being revised.
- **Cost recovery (Section 180)**
 - Recovery of actual costs incurred by DEQ to review and approve plans and associated documents required by the rule is consistent with the ‘require a fee’ language in Idaho Code § 39-176F(7).
- **Monthly construction reports and final inspection (Section 190)**
 - Monthly construction reports, a final inspection, and a notice of substantial completion letter were included in the rule to ensure phosphogypsum stacks could be put into use as soon as completed instead of waiting 90 days for the completion of the final construction report. An example of a process being followed is:
 1. Submittal of monthly construction reports

2. DEQ provided the opportunity to participate in a final inspection with the facility's Design Engineer of Record (EOR)
 3. Facility providing a letter from the EOR certifying that construction activities are complete and in substantial compliance with the approved Plans and Specifications, and that in the EOR's professional opinion the phosphogypsum stack is ready to begin receiving process water and phosphogypsum deposition
- DEQ requests additional discussion on the requirements of this section.
- **Deviations from design and construction plan (Section 200, April 16 Meeting Exhibit 2)**
 - Comments recommended moving some of the deviation language to Section 170 (Design and Construction Plan Review) as a new Subsection 170.05.
 - DEQ would accept the move and suggests the following language: "The design and construction plan submitted to the Department shall contain a notification and approval process for deviations from the approved design and construction plan." This would eliminate Section 200 of the rule.