



MEMORANDUM

TO: DEQ Regional Administrators
DEQ Drinking Water and Wastewater Regional Managers
DEQ Drinking Water and Wastewater Bureau Chiefs

FROM: Jess Byrne, Director
Department of Environmental Quality

DATE: February 7, 2023

SUBJECT: Delegation of Authority for Issuing Waivers for the Engineering Design Standards of the Idaho Rules for Public Drinking Water Systems, Wastewater Rules, and Recycled Water Rules

Pursuant to Idaho code §67-2405(2)(c), I hereby delegate the authority to waive certain requirements in the administrative rules specified below to the Regional Administrators. This memo outlines the process Idaho Department of Environmental Quality (DEQ) will use for the issuance of waivers.

Statutory Exclusion

In accordance with Idaho Code §39-118, the Director may determine that a particular facility or category of facilities will produce no significant impact on the environment or on public health and may waive certain submittal or approval requirements for that facility or category of facilities. However, this delegation does not apply to any particular facility or category of facilities.

Administrative Rule Authorities for Issuing Waivers

IDAPA 58.01.08, Idaho Rules for Public Drinking Water Systems. Section 005.01.a. states the Department may waive any requirement of Sections 500 through 552 that is not explicitly imposed by Idaho Statute, if it can be shown to the satisfaction of the Department that the requirement is not necessary for the protection of public health, protection from contamination, and satisfactory operation and maintenance of a public water system.

IDAPA 58.01.16, Wastewater Rules. Section 660 states that waivers from the requirements of these rules may be granted by the Director on a case-by-case basis upon full demonstration by the person requesting the waiver(s) that such activities for which the waivers are granted will have no significant impact on the environment or on the public health.

IDAPA 58.01.17, Recycled Water Rules. Section 940 states that waivers from the requirements of these rules may be granted by the Director on a case-by-case basis upon

full demonstration by the person requesting the waivers that such activities for which the waivers are granted will not have a detrimental effect upon existing water quality and beneficial uses are adequately protected.

Engineering Waiver Review Process

The intent of the process is to ensure consistency statewide for review and issuance or denial of waivers from engineering rule requirements. Waiver requests must be submitted and approved prior to construction or during construction if an issue is found that prevents the project from being constructed as designed. Typically, waiver requests should be submitted with the preliminary engineering report or in conjunction with submission of plans and specifications.

The facility owner, operator, permittee, or consultant (applicant) typically inquires of the regional office if a waiver will be entertained, and is then asked to submit the request in writing using the DEQ “Engineering Waiver Application Form” found at www.deq.idaho.gov. The waiver request must identify the specific rule section(s) to be waived, provide written documentation that demonstrate how any mitigating or substituting conditions, construction techniques, or other site-specific factors will be provided to meet the waiver requirements outlined below:

- For the drinking water rules, submittals must ensure the protection of public health, protection from contamination, and satisfactory operation and maintenance of the public water system.
- For the wastewater rules, submittals must demonstrate that there will be no significant impact on the environment or public health.
- For the recycled water rules, submittals must demonstrate no detrimental effect on existing water quality and that beneficial uses of ground and surface waters are adequately protected.

The following DEQ procedures are to be used for all waivers of the subject rules:

1. **Preliminary Screening:** Regional office staff will discuss the potential waiver with the applicant and determine if a waiver is appropriate using best professional judgment. To facilitate statewide collaboration and perspective, regional office staff are encouraged to communicate with the appropriate bureau chief or designee to assist in developing a list of needs for the waiver application. Regional office staff will communicate the list of needs to the applicant for inclusion in their waiver application submittal.
2. **Waiver Review:** The regional office staff will review the waiver application submittal, along with any additional information that was requested of the applicant, to determine if sufficient documentation was provided to justify issuing a waiver. If sufficient documentation and justification is provided, regional office staff will prepare a staff analysis providing a recommendation to issue or deny waiver. In the staff analysis the regional office staff will document the justification for approval or denial based upon professional judgment, the information submitted by

the applicant, the waiver requirements, and the rules. The regional engineering manager will review the staff analysis and waiver application and coordinate with the regional administrator.

3. **Final Waiver Issuance or Denial:** The regional administrator will provide final approval or denial of the waiver by signing the waiver determination letter.
 - a. The regional staff are responsible for composing the correspondence to the applicant, notifying the applicant of waiver issuance or denial, copying appropriate bureau chief or designee on waiver issuance, and filing documentation in DEQ's records management system. Subsequent project approval letters, such as for plans and specifications, well site evaluations, or any other type of project that involved the issuance of a waiver, must state that a waiver was issued for the project and include a brief description of what rule requirement was waived, and conditions of the waiver, if applicable.
 - b. The bureau chief or their designee is responsible for recording all waiver approvals for statewide tracking purposes.

APPROVAL: 

02/08/2023

Jess Byrne, Director
Department of Environmental Quality

Date