Dear Senators PEARCE, BAIR, Stennett, and
Representatives DENNEY, Gibbs, Pence:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Department of Water Resources:

IDAPA 37.03.03 - Rules and Minimum Standards for the Construction and Use of Injection Wells - Proposed Rule (Docket No. 37-0303-1401).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 09/18/2014. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 10/16/2014.

The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the memorandum attached below.

Legislative Services Office
Idaho State Legislature

Jeff Youtz
Director

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Resources & Conservation Committee

FROM: Principal Legislative Research Analyst - Katharine Gerrity

DATE: August 29, 2014

SUBJECT: Department of Water Resources

IDAPA 37.03.03 - Rules and Minimum Standards for the Construction and Use of Injection Wells - Proposed Rule (Docket No. 37-0303-1401)

The Idaho Department of Water Resources submits notice of proposed rulemaking at IDAPA 37.03.03 - Rules and Minimum Standards for the Construction and Use of Injection Wells. According to the department, the rule updates the definition of "injection well" to match that found in Section 42-3902, Idaho Code, which was amended during the 2014 legislative session. The department indicates that negotiated rulemaking was not conducted based on the fact that there were negotiations relating to the statutory change to the definition held prior to the 2014 legislative session. The rulemaking appears to be authorized pursuant to Section 42-3913, Idaho Code.

cc: Department of Water Resources
Brian Ragan, P.G.

Statehouse, P.O. Box 83720
Boise, Idaho 83720–0054

Tel: 208–334–2475
www.legislature.idaho.gov

IDAPA 37 - DEPARTMENT OF WATER RESOURCES

37.03.03 - RULES AND MINIMUM STANDARDS FOR THE CONSTRUCTION AND USE OF INJECTION WELLS

DOCKET NO. 37-0303-1401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 42-3913, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2014.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule which will appear in IDAPA 37.03.03.010.49 will update the definition of an "injection well" to match that found in Section 42-3902(10), Idaho Code. This rule revision is being proposed in order to make the reinforcing regulation match the statute.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year resulting from this rulemaking: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because negotiations regarding the parent statute revision were held prior to its adoption by the 2014 Idaho Legislature under House Bill 410 rendering negotiations for this proposed rule unnecessary.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Brian Ragan at (208) 287-4934 or **brian.ragan@idwr.idaho.gov**.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this August 11, 2014.

Brian Ragan, P.G., Technical Hydrogeologist
Idaho Department of Water Resources
Underground Injection Control Program
322 East Front Street
Boise, Idaho 83720
Phone: (208) 287-4934
FAX: (208) 287-6700

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 37-0303-1401
(Only those Sections being amended are shown.)

010. DEFINITIONS.

01. Abandonment. See "permanent decommission. (4-4-13)

02. Abandoned Well. See "permanent decommission". (4-4-13)

03. Agricultural Runoff Waste. Excess surface water from agricultural fields generated during any agricultural operation, including runoff of irrigation tail water, as well as natural drainage resulting from precipitation, snowmelt, and floodwaters, and is identical to the statutory phrase "irrigation waste water" found in Idaho Code 42-3902. (4-4-13)

04. Applicant. Any owner or operator submitting an application for permit to construct, modify or maintain an injection well to the Director of the Department of Water Resources. (7-1-93)

05. Application. The standard Department forms for applying for a permit, including any additions, revisions or modifications to the forms. (4-4-13)

06. Aquifer. Any formation that will yield water to a well in sufficient quantities to make production of water from the formation reasonable for a beneficial use, except when the water in such formation results solely from fluids deposited through an injection well. (5-3-03)

07. Area of Review. The area surrounding an injection well described according to the criteria set forth in Subsection 045.07 of these rules. (4-4-13)

08. Beneficial Use. One (1) or more of the recognized beneficial uses of water including but not limited to, domestic, municipal, irrigation, hydropower generation, industrial, commercial, recreation, aquifer recharge and storage, stockwatering and fish propagation uses, as well as other uses which provide a benefit to the user of the water as determined by the Director. Industrial use as used for purposes of these rules includes, but is not limited to, manufacturing, mining and processing uses of water. (5-3-03)

09. Best Management Practice (BMP). A practice or combination of practices that are more effective than other techniques at preventing or reducing contamination of ground water and surface water by injection well operation. (4-4-13)

10. Casing. A pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mudfluid into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole. (4-4-13)

11. Cementing. The operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing. (4-4-13)

12. Cesspool. An injection well that receives sanitary waste without benefit of a treatment system or treatment device such as a septic tank. Cesspools sometimes have open bottom and/or perforated sides. (4-4-13)

13. Coliform Bacteria. All of the aerobic and facultative anaerobic, gram-negative, non-spore forming, rod-shaped bacteria that either ferment lactose broth with gas formation within forty-eight (48) hours at thirty-five degrees Celsius (35C), or produce a dark colony with a metallic sheen within twenty-four (24) hours on an Endo-type medium containing lactose. (7-1-93)

14. Confining Bed. A body of impermeable or distinctly less permeable material stratigraphically

adjacent to one (1) or more aquifers. (4-4-13)

15. Confining Zone. A geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone. (4-4-13)

16. Construct. To create a new injection well or to convert any structure into an injection well. (7-1-93)

17. Contaminant. Any physical, chemical, biological, or radiological substance or matter. (4-4-13)

18. Contamination. The introduction into the natural ground water of any physical, chemical, biological, or radioactive material that may: (4-4-13)

a. Cause a violation of Idaho Ground Water Quality Standards found in IDAPA 58.01.11 "Ground Water Quality Rule" or the federal drinking water quality standards, whichever is more stringent; or (4-4-13)

b. Adversely affect the health of the public; or (4-4-13)

c. Adversely affect a designated or beneficial use of the State's ground water. Contamination includes the introduction of heated or cooled water into the subsurface that will alter the ground water temperature and render the local ground water less suitable for beneficial use. (4-4-13)

19. Conventional Mine. An open pit or underground excavation for the production of minerals. (4-4-13)

20. Decommission. To remove a well from operation such that injection through the well is not possible. See "permanent decommission" and "unauthorized decommission". (4-4-13)

21. DEQ. The Idaho Department of Environmental Quality. (5-3-03)

22. Deep Injection Well. An injection well which is more than eighteen (18) feet in vertical depth below land surface. (4-4-13)

23. Department. The Idaho Department of Water Resources. (7-1-93)

24. Director. The Director of the Idaho Department of Water Resources. (7-1-93)

25. Disposal Well. A well used for the disposal of waste into a subsurface stratum. (4-4-13)

26. Draft Permit. A prepared document indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." Permit conditions, compliance schedules, and monitoring requirements are typically included in a "draft permit". A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination is not a "draft permit." (4-4-13)

27. Drilling Fluid. Any number of liquid or gaseous fluids and mixtures of fluids and solids (such as solid suspensions, mixtures and emulsions of liquids, gases, and solids) used in operations to drill boreholes into the earth. (4-4-13)

28. Drywell. An injection well completed above the water table so that its bottom and sides are typically dry except when receiving fluids. (5-3-03)

29. Emergency Permit. A UIC "permit" issued in accordance with Subsection 045.09 of these rules. (4-4-13)

30. EPA. The United States Environmental Protection Agency. (5-3-03)

31. **Endangerment**. Injection of any fluid which exceeds Idaho ground water quality standards, or federal drinking water quality standards, whichever is more stringent, that may result in the presence of any contaminant in ground water which supplies or can reasonably be expected to supply any public or non-public water system, and if the presence of such contaminant may result in such a system not complying with any ground water quality standard or may otherwise adversely affect the health of persons or result in a violation of ground water quality standards that would adversely affect beneficial uses. (4-4-13)

32. **Exempted Aquifer**. An "aquifer" or its portion that meets the criteria in the definition of "underground source of drinking water" but which has been exempted according to the procedures in Section 025 of these rules and been recategorized as "other" according to the procedures in IDAPA 58.01.11 "Ground Water Quality Rule". (4-4-13)

33. **Existing Injection Well**. An "injection well" other than a "new injection well." (4-4-13)

34. **Experimental Technology**. A technology which has not been proven feasible under the conditions in which it is being tested. (4-4-13)

35. **Facility or Activity**. Any UIC "injection well," or another facility or activity that is subject to regulation under the UIC program. (4-4-13)

36. **Fault**. A surface or zone of rock fracture along which there has been displacement. (4-4-13)

37. **Flow Rate**. The volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel. (4-4-13)

38. **Fluid**. Any material or substance which flows or moves, whether in a semisolid, liquid, sludge, gaseous or any other form or state. (7-1-93)

39. **Formation**. A body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface. (4-4-13)

40. **Formation Fluid**. Fluid present in a "formation" under natural conditions as opposed to introduced fluids. (4-4-13)

41. **Generator**. Any person, by site location, whose act or process produces hazardous waste identified or listed in 40 CFR part 261. (4-4-13)

42. **Ground Water**. Any water that occurs beneath the surface of the earth in a saturated formation of rock or soil. (5-3-03)

43. **Ground Water Quality Standards**. Standards found in IDAPA 58.01.11, "Ground Water Quality Rule," Section 200. (5-3-03)

44. **Hazardous Waste**. Any substance defined by IDAPA 58.01.05, "Rules and Standards for Hazardous Waste,". (5-3-03)

45. **Indian Lands**. "Indian Country" as defined in 18 U.S.C. 1151. That section defines Indian Country as: (4-4-13)

a. All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; (4-4-13)

b. All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (4-4-13)

c. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. (4-4-13)

46. Individual Subsurface Sewage Disposal System. For the purpose of these rules, any standard or alternative disposal system which injects sanitary waste from single family residential septic systems, or non-residential septic systems which are used solely for the disposal of sanitary waste and have the capacity to serve fewer than twenty (20) people a day. (4-4-13)

47. Improved Sinkhole. A naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface. (4-4-13)

48. Injection. The subsurface emplacement of fluids through an injection well, but excludes the following: (4-4-13)

a. The underground injection of natural gas for purposes of storage; (4-4-13)

b. The underground injection of fluids or propping agents, other than diesel fuels, pursuant to hydraulic fracturing operations related to oil, gas, or geothermal activities. (4-4-13)

49. Injection Well. Any feature that is operated to allow injection which also meets at least one (1) of the following criteria: (4-4-13)

a. A bored, or driven shaft whose depth is greater than the largest surface dimension; (4-4-13)

b. A dug hole whose depth is greater than the largest surface dimension; (4-4-13)

c. An improved sinkhole; or (4-4-13)

d. A subsurface fluid distribution system. (4-4-13)

e. Provided however, that "injection well" does not mean or include any well ~~*drilled*~~ used for oil, gas, or geothermal production activities, other than one into which diesel fuels are injected pursuant to hydraulic fracturing operations ~~*(4-4-13)*~~( )

50. Injection Zone. A geological "formation", or those sections of a formation receiving fluids through an "injection well." (4-4-13)

51. IWRB. Idaho Water Resource Board. (5-3-03)

52. Large Capacity Cesspools. Any cesspool used by a multiple dwelling, community or regional system for the disposal of sanitary wastes (for example: a duplex or an apartment building) or any cesspool used by or intended to be used by twenty (20) or more people per day (for example: a rest stop, campground, restaurant or church). (5-3-03)

53. Large Capacity Septic System. Class V wells that are used to inject sanitary waste through a septic tank and do not meet the criteria of an individual subsurface sewage disposal system. (4-4-13)

54. Lithology. The description of rocks on the basis of their physical and chemical characteristics. (4-4-13)

55. Maintain. To allow, either expressly or by implication, an injection well to exist in such condition as to accept or be able to accept fluids. Unless a well has been permanently decommissioned pursuant to the criteria contained in these rules it is considered to be capable of accepting fluids. (4-4-13)

56. Mechanical Integrity. The condition or status of an injection well and its physical components as they relate to the flow of fluids inside or outside the injection well. A well is said to have mechanical integrity if there

is no significant leak in the casing, tubing, or packer, and there is no significant fluid movement into a underground source of drinking water through vertical channels adjacent to the wellbore. (4-4-13)

57. Modify. To alter the construction of an injection well, but does not include cleaning or redrilling operations which neither deepen nor increase the dimensions of the well. (7-1-93)

58. Motor Vehicle Waste Disposal Wells. Injection wells that receive or have received fluids from vehicle repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (transmission and muffler repair shop), or any facility that does any vehicular repair work. (5-3-03)

59. New Injection Well. An "injection well" which began to be used for injection after a UIC program for the State applicable to the well is approved or prescribed. (4-4-13)

60. Open-Loop Heat Pump Return Wells. Injection wells that receive surface water or ground water that has been passed through a heat exchange system for cooling or heating purposes. (4-4-13)

61. Operate. To allow fluids to enter an injection well by action or inaction of the operator. (7-1-93)

62. Operator. Any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, federal agency or other entity that operates or proposes to operate any injection well. (7-1-93)

63. Owner. Any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, federal agency or other entity owning land on which any injection well exists or is proposed to be constructed. (7-1-93)

64. Packer. A device lowered into a well to produce a fluid-tight seal. (4-4-13)

65. Perched Aquifer. Ground water separated from an underlying main body of ground water by an unsaturated zone. (7-1-93)

66. Permanent Decommission. The discontinuance of use of an injection well in a method approved by the Director such that the injection well no longer has the capacity to inject fluids and the upward or downward migration of fluid is prevented. This also includes the disposal and proper management of any soil, gravel, sludge, liquids, or other materials removed from or adjacent to the injection well in accordance with all applicable Federal, State, and local regulations and requirements. (4-4-13)

67. Permit. An authorization, license, or equivalent control document issued by the Department. (4-4-13)

68. Person. Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by law. (4-4-13)

69. Plugging. The act or process of stopping the flow of water, oil or, gas, or other fluids into or out of a formation through a borehole or well penetrating that formation. (4-4-13)

70. Plugging Record. A systematic listing of permanent or temporary decommissioning of water, oil, gas, test, exploration and waste injection wells, and may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations which are sealed and a graphic log of the well showing formation location, formation thickness, and location of plugging structures.(4-4-13)

71. Point of Beneficial Use. The top or surface of a USDW, directly below an injection well, where water is available for a beneficial use. (4-4-13)

72. Point of Diversion for Beneficial Use. A location such as a producing well or spring where ground

water is taken under control and diverted for a beneficial use. (7-1-93)

73. Point of Injection. The last accessible sampling point prior to waste being released into the subsurface environment through an injection well. For example, the point of injection for a Class V septic system might be the distribution box. For a drywell, it is likely to be the well bore itself. (4-4-13)

74. Pressure. The total load or force per unit area acting on a surface. (4-4-13)

75. Project. A group of wells in a single operation. (4-4-13)

76. Radioactive Material. Any material, solid, liquid or gas which emits radiation spontaneously. Radioactive geologic materials occurring in their natural state are not included. (7-1-93)

77. Radioactive Waste. Any fluid which contains radioactive material in concentrations which exceed those established for discharges to water in an unrestricted area by 10 CFR 20.1302.(b)(2)(i) and Table 2 in Appendix B of 10 CFR 20. (5-3-03)

78. RCRA. The Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976. (4-4-13)

79. Remediation Project. Use of an injection well for the removal, treatment or isolation of a contaminant from ground water through actions or the removal or treatment of a contaminant in ground water as approved by the Director. (4-4-13)

80. Residential (Domestic) Activities. Human activities that generate liquid or solid waste in any public, private, industrial, commercial, municipal, or other facility. (4-4-13)

81. Sanitary Waste. Any fluid generated through residential (domestic) activities, such as food preparation, cleaning and personal hygiene. This term does not include industrial, municipal, commercial, or other non-residential process fluids. (4-4-13)

82. Schedule of Compliance. A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with the standards. (7-1-93)

83. Septic System. An injection well that is used to inject sanitary waste below the surface. A septic system is typically comprised of a septic tank and subsurface fluid distribution system or disposal system. (5-3-03)

84. Shallow Injection Well. An injection well which is less than or equal to eighteen (18) feet in vertical depth below land surface. (7-1-93)

85. Site. The land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity. (4-4-13)

86. State. The state of Idaho. (7-1-93)

87. Stratum (plural strata). A single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material. (4-4-13)

88. Subsidence. The lowering of the natural land surface in response to: Earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (Hydrocompaction); oxidation of organic matter in soils; or added load on the land surface. (4-4-13)

89. Subsurface Fluid Distribution System. An assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground. (4-4-13)

90. Surface Casing. The largest diameter permanent pipe string set and sealed following setting of the

conductor pipe. (4-4-13)

91. **Total Dissolved Solids**. The total dissolved (filterable) solids as determined by the use of the method specified in 40 CFR part 136. (4-4-13)

92. **Transferor**. The owner or operator transferring ownership and/or operational control of the well. (4-4-13)

93. **UIC**. The Underground Injection Control program under Part C of the Safe Drinking Water Act, including an "approved State program." (4-4-13)

94. **Unauthorized Decommission**. The decommissioning of any injection well that has not received the approval of the Department prior to decommissioning, or was not decommissioned in a method approved by the Director. These wells may have to be properly decommissioned when discovered by the Director to ensure that the well prevents commingling of aquifers or is no longer capable of injection. (4-4-13)

95. **Underground Injection**. See "injection. (4-4-13)

96. **Underground Source of Drinking Water (USDW)**. An aquifer or its portion: (4-4-13)

a. Which: (4-4-13)

i. Supplies any public water system; or (4-4-13)

ii. Contains a sufficient quantity of ground water to supply a public water system; or (4-4-13)

(1) Currently supplies drinking water for human consumption; or (4-4-13)

(2) Contains fewer than ten thousand (10,000) mg/l total dissolved solids; and (4-4-13)

b. Which is not an exempted aquifer. (4-4-13)

97. **Unreasonable Contamination**. Endangerment of a USDW or the health of persons or other beneficial uses by injection. See "endangerment." (4-4-13)

98. **USDW**. Underground Source of Drinking Water. (4-4-13)

99. **Water Quality Standards**. Refers to those standards found in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards" and IDAPA 58.01.11, "Ground Water Quality Rule." (5-3-03)

100. **Well**. For the purposes of these rules, "well" means "injection well." (5-3-03)

101. **Well Monitoring**. The measurement, by on-site instruments or laboratory methods, of the quality of water in a well. (4-4-13)