

Dear Senators HEIDER, Brackett, Stennett, and
Representatives VANDER WOUDE, Amador, Smith:

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

IDAPA 58.01.09 - Rules Regulating Swine Facilities (Fee Rule) - Proposed Rule (Docket No.
58-0109-1901);

IDAPA 58.01.11 - Ground Water Quality Rule (Fee Rule) - Proposed Rule (Docket No.
58-0111-1901).

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 10/23/2019. 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 11/20/2019.

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 334-4854, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Environment, Energy & Technology Committee

FROM: Deputy Division Manager - Katharine Gerrity

DATE: October 03, 2019

SUBJECT: Department of Environmental Quality

IDAPA 58.01.09 - Rules Regulating Swine Facilities (Fee Rule) - Proposed Rule (Docket No. 58-0109-1901)

IDAPA 58.01.11 - Ground Water Quality Rule (Fee Rule) - Proposed Rule (Docket No. 58-0111-1901)

1. IDAPA 58.01.09 - Rules Regulating Swine Facilities

Summary and Stated Reasons for the Rule

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.09 - Rules Regulating Swine Facilities. This is a fee rule. According to the department, a temporary rule was adopted and became effective June 30, 2019. This rulemaking adopts and republishes an existing and previously approved and codified fee rule. The department states that the rule does not impose a fee or charge beyond what was previously approved and codified in prior rules. The specific fees provided for are permit application fees. The department has provided a Section 39-107D Statement. According to the department, the rules were promulgated pursuant to legislative directive in Section 39-104A, Idaho Code, to address the surface and ground water impacts of large swine feeding operation development in the state. The department indicates that the federal government has no federal water quality protection requirements applicable to commercial swine facilities but adds that the rules have been previously approved as meeting statutory requirements.

Negotiated Rulemaking / Fiscal Impact

The department states that negotiated rulemaking was not conducted because the rules were adopted as temporary rules and because they are being reauthorized and republished.

Statutory Authority

The rulemaking appears to be authorized pursuant to Sections 39-104A, 39-105, and 39-107, Idaho Code.

2. IDAPA 58.01.11 - Ground Water Quality Rule

Summary and Stated Reasons for the Rule

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.11 - Ground Water Quality Rule. This is a fee rule. According to the department, a temporary rule was adopted and became

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Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
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effective on June 30, 2019. This rulemaking reauthorizes and republishes that rule. The department adds that the rule does not impose a fee or charge beyond what was previously approved and codified in the prior rules. The specific fees provided for are point of compliance application fees. The department has provided a Section 39-107D Statement. The department notes that the rule regulates activities not specifically regulated by the federal government but that the federal government does require that public drinking water systems meet the maximum contaminant levels adopted by the state. The department indicates that the rule establishes minimum requirements to maintain and protect ground water quality and applies to all activities with the potential to degrade ground water quality.

Negotiated Rulemaking / Fiscal Impact

The department states that negotiated rulemaking was not conducted because the rules were adopted as temporary rules and because they are being reauthorized and republished.

Statutory Authority

The rulemaking appears to be authorized pursuant to Sections 39-105, 39-107, 39-120, and 39-126, Idaho Code.

cc: Department of Environmental Quality
Paula J. Wilson

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.09 – RULES REGULATING SWINE FACILITIES

DOCKET NO. 58-0109-1901 (FEE RULE)

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. The action is authorized pursuant to Idaho §§ 39-104A, 39-105, and 39-107.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: This rulemaking adopts and re-publishes the following existing and previously approved and codified fee rule chapter under IDAPA 58 rules of the Department of Environmental Quality:

IDAPA 58.01.09, Rules Regulating Swine Facilities

A temporary rule was adopted by the Idaho Board of Environmental Quality in May 2019, effective June 30, 2019, and published in the Idaho Administrative Bulletin, July 3, 2019, **Vol. 19-7, pages 507–523**. More information regarding this rule docket is available at www.deq.idaho.gov/58-0109-1901.

FEE SUMMARY: The attached rules provide a specific description of the fee or charge imposed by this rulemaking. This rulemaking does not impose a fee or charge beyond what was previously approved and codified in the prior rules. The fee category and statutory authority for imposition of the fees are listed below. Idaho Code § 39-119, permit application fee.

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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not applicable.

IDAHO CODE SECTION 39-107D STATEMENT: These rules were specifically promulgated pursuant to a legislative directive in Idaho Code § 39-104A to address the surface and ground water impacts of large swine feeding operation development in the state.

The legislature directs that any rule formulated and recommended by the department to the board which is broader in scope or more stringent than federal law or regulations, or proposes to regulate an activity not regulated by the federal government, is subject to the following additional requirements: the notice of proposed rulemaking and rulemaking record requirements under Chapter 52, title 67, Idaho Code, must clearly specify that the proposed rule, or portions of the proposed rule, are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government, and delineate which portions of the proposed rule are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government.

The majority of these rules are either (1) not broader in scope or more stringent than federal law nor propose to regulate an activity not regulated by the federal government, or (2) have previously been approved as meeting the

requirements of Idaho Code § 39-107D. However, because there are no federal water quality protection requirements applicable to commercial swine facilities, IDAPA 58.01.09.250 proposes to regulate activities not regulated by the federal government.

To the degree that a proposed rule subject to Idaho Code § 39-107D is based on science, Idaho Code § 39-107D(2) requires the department to utilize (a) the best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and (b) data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justify use of the data. The provisions of IDAPA 58.01.09.250.01 are derived from best practices described in the National Resources Conservation Service Agricultural Waste Management Field Handbook, particularly Chapter 10, Agricultural Waste Management System Component Design, available at <https://www.wcc.nrcs.usda.gov/ftpref/wntsc/AWM/handbook/ch10.pdf> (last checked June 18, 2019).

Because IDAPA 58.01.09.250 does not propose a standard necessary to protect human health and the environment, Idaho Code § 39-107D(3) is inapplicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact the undersigned. Anyone may submit written comments regarding the proposed rulemaking by mail, fax, or email. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 4th day of September, 2019.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
Phone: (208) 373-0418 / Fax: (208)373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED RULE TEXT OF DOCKET NO. 58-0109-1901

Pursuant to Section 67-5221(1), Idaho Code, this docket is being published as a proposed rule.

This docket has been previously published as a temporary rule.

**The original text of the temporary rule was published in the Idaho Administrative Bulletin,
[Volume 19-7, July 3, 2019, pages 507 through 523.](#)**

**(No changes have been made to the reauthorized/temporary rule
and it is being published as proposed in its entirety)**

IDAPA 58
TITLE 01
CHAPTER 09

58.01.09 – RULES REGULATING SWINE FACILITIES

000. LEGAL AUTHORITY.

The Idaho Legislature has given the Idaho Board of Environmental Quality the authority to promulgate Rules Regulating Swine Facilities pursuant to Sections 39-104A, 39-105, and 39-107, Idaho Code. (3-29-12)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 58.01.09, “Rules Regulating Swine Facilities.” (3-29-12)

02. Scope. These rules establish the procedures and requirements for the issuance of a permit to construct, operate, close or expand swine facilities of a defined capacity. The intent of these rules is to ensure animal waste from swine facilities are properly controlled so as not to adversely affect public health or the environment. (3-29-12)

002. WRITTEN INTERPRETATIONS.

As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255. (4-1-00)

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” (3-15-02)

004. -- 009. (RESERVED)

010. DEFINITIONS.

01. Animal Unit. An animal unit equals two and a half (2.5) swine, each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds), or ten (10) weaned swine, each weighing under twenty-five (25) kilograms. Total animal units are calculated by adding the number of swine weighing over twenty-five (25) kilograms multiplied by four-tenths (.4) plus the number of weaned swine weighing under twenty-five (25) kilograms multiplied by one-tenth (.1). (3-29-12)

02. Animal Waste. Animal excrement, feed wastes, process wastewater or any other waste associated with the confinement of swine. (3-29-12)

03. Animal Waste Management System. Any structure or system that provides for the collection, treatment, disposal, distribution, or storage of animal waste. (4-1-00)

04. Certified Planner. A person who has completed the nutrient management certification in accordance with the Nutrient Management Standard. (4-1-00)

05. Department. The Idaho Department of Environmental Quality. (4-1-00)

06. Director. The Director of the Department of Environmental Quality or his designee. (4-1-00)

07. Existing Facility. A facility built and in operation one (1) year or more prior to the original

effective date of these rules. (4-1-00)

08. Expanding Facility. A swine facility of less than two thousand (2,000) animal units that increases its one-time animal unit capacity to two thousand (2,000) or more animal units or an existing facility that increases its one-time animal unit capacity by ten percent (10%). (3-29-12)

09. Facility or Swine Facility. Any place, site or location or part thereof where swine are kept, handled, housed, or otherwise maintained and includes but is not limited to buildings, lots, pens, and animal waste management system, and which has the one-time animal unit capacity of two thousand (2000) or more animal units. (3-29-12)

10. Land Application. The spreading on or incorporation of animal waste into the soil mantle primarily for beneficial purposes. (4-1-00)

11. Nutrient Management Plan. A plan prepared in compliance with the Nutrient Management Standard or other equally protective standard approved by the Director for managing the amount, source, placement, form, and timing of the land application of nutrients and soil amendments for plant production and to minimize the potential for environmental degradation, particularly impairment of water quality. (4-1-00)

12. Nutrient Management Standard. The United States Department of Agriculture-Natural Resource Conservation Service Code 590 or the Idaho Agricultural Pollution Abatement Plan-Nutrient Management Standard Component Practice. (4-1-00)

13. One-Time Animal Unit Capacity. The maximum number of animal units that a facility is capable of housing at any given point in time. (4-1-00)

14. Operate. Confine, feed, propagate, house, or otherwise sustain swine. (3-29-12)

15. Permit. A written authorization by the Director to construct, operate, or expand a swine facility. (3-29-12)

16. Permittee. The person in whose name a permit is issued. (4-1-00)

17. Person. Any individual, association, partnership, firm, joint stock company, joint venture, trust, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity which is recognized by law as the subject of rights and duties. (4-1-00)

18. Process Wastewater. Any water used in the facility that comes into contact with any manure, litter, bedding, raw, intermediate, or final material or product used in or resulting from the production of swine and any products directly or indirectly used in the operation of a facility, such as spillage or overflow from animal watering systems; washing, cleaning, or flushing pens, barns, manure pits, or spray cooling of animals; and dust control and any precipitation which comes into contact with animals or animal waste. (3-29-12)

19. Unauthorized Discharge. A release of animal waste to the environment or waters of the state that is not authorized by the permit or the terms of an NPDES permit issued by the federal EPA. (4-1-00)

20. Waters of the State. All the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. (4-1-00)

011. -- 099. (RESERVED)

100. APPLICABILITY.

01. Permit Required. No person shall construct, operate, or expand a regulated swine facility without first obtaining a permit issued by the Director as provided in these rules. (3-29-12)

02. Regulated Facilities. New swine facilities having a one-time animal unit capacity of two thousand (2,000) or more animal units and expanding facilities are required to be permitted as provided in these rules. (3-29-12)

03. Common Control. Two (2) or more swine facilities under common control of the same person may be considered, for purposes of permitting, to be a single facility, even though separately their capacity is less than two thousand (2,000) animal units, if they use a common animal waste management system or land application site. (3-29-12)

04. Existing Swine Facilities. Those swine facilities built and in operation one (1) year or more prior to the original effective date of these rules are exempt from the requirements of these rules except as provided in Section 210. (3-29-12)

101. -- 199. (RESERVED)

200. PERMIT APPLICATION.

01. Permit Application. Every person requiring a permit under these rules shall submit a permit application to the Department. A permit application will be used to determine if the construction, operation, and closure of a swine facility will be in conformance with these and other applicable rules. (3-29-12)

02. Preapplication Conference. Prospective applicants are encouraged to meet with the Department to discuss application requirements and procedures. (4-1-00)

03. Contents of Application. Each application shall include, in the format set forth by the Director and when determined applicable by the Director, the following information in Subsections 200.04 through 200.08 in sufficient detail to allow the Director to make necessary application review decisions concerning design, environmental protection and public health. (4-1-00)

04. Relevant Information. (4-1-00)

a. Name, mailing address and phone number of the facility owner. (4-1-00)

b. Name, mailing address and phone number of the facility operator. (4-1-00)

c. Name and mailing address of the facility. (4-1-00)

d. Legal description of the facility location. (4-1-00)

e. The legal structure of the entity owning the facility, including the names and addresses of all directors, officers, registered agents and partners. (4-1-00)

f. The names and locations of all swine facilities owned and/or operated by the applicant within the last ten (10) years. (3-29-12)

g. The one-time animal unit capacity of the facility. (4-1-00)

h. The type of animals to be confined at the facility. (4-1-00)

i. Evidence that a valid water right exists to supply adequate water for the proposed facility or a copy of either an application for permit to appropriate water or an application to change the point of diversion, place, period and nature of use of an existing water right that has been filed with the Idaho Department of Water Resources which, if approved, will supply adequate water for the proposed operation. (4-1-00)

j. Proof of financial capability to perform remedial actions and to meet the conditions of an approved closure plan for a facility. The mechanism used to demonstrate financial capability must be legally valid, binding and enforceable under applicable law and must insure that the funds necessary to meet the costs of remediation and

closure will be available whenever they are needed in accordance with Section 205. The mechanisms include, but are not limited to, trust funds, surety bonds, letters of credit, insurance and corporate guarantees. (3-15-02)

k. The facility's biosecurity and sanitary standards. (4-1-00)

l. A statement of estimated annual income and operating expenses that demonstrate, to the satisfaction of the Department, financial capability to operate the facility. (3-15-02)

05. Construction Plan. Plans and specifications for the facility's animal waste management system that include the following information: (4-1-00)

a. Vicinity map(s) prepared on one (1) or more seven and one-half minute (7.5') USGS topographic quadrangle maps or a high quality reproduction(s) that includes the following: (4-1-00)

i. Layout of the facility, including buildings and animal waste management system; (4-1-00)

ii. The one hundred (100) year FEMA flood zones or other appropriate flood data for the facility site and land application sites owned or leased by the applicant; (4-1-00)

iii. The location of occupied dwellings, public and private gathering places, such as schools, churches and parks, and incorporated municipalities which are within a two (2) mile radius of the facility; and (4-1-00)

iv. Private and community domestic water wells, irrigation wells, irrigation conveyance and drainage structures, monitoring wells, wetlands, streams, springs, and reservoirs which are within a one (1) mile radius of the facility. (4-1-00)

b. Facility construction specifications including: (4-1-00)

i. A site plan showing: (4-1-00)

(1) Building locations; (4-1-00)

(2) Waste facilities; (4-1-00)

(3) All waste conveyance systems; and (4-1-00)

(4) All irrigation systems used for land application, including details of approved water supply protection devices. (4-1-00)

ii. Building plans showing: (4-1-00)

(1) All wastewater collection systems in housed units; (4-1-00)

(2) All freshwater supply systems, including details of approved water supply protection devices; (4-1-00)

(3) Detailed drawings of wastewater collection and conveyance systems and containment construction; and (4-1-00)

(4) Detailed construction and installation procedures. (4-1-00)

06. Site Characterization. A characterization of the facility and any land application site(s) owned or operated by the applicant, prepared by a registered professional geologist, a registered professional engineer or a qualified ground water hydrologist, that includes the following information: (4-1-00)

a. A description of monitoring methods, frequency, and reporting components related to either leak detection systems and/or ground water monitoring wells; (4-1-00)

- b. The climatic, hydrogeologic, and soil characteristics; (4-1-00)
 - c. The depth to water and a potentiometric map for the uppermost and regional aquifer; (4-1-00)
 - d. The vertical and horizontal conductivity, gradient, and ground water flow direction and velocity; (4-1-00)
 - e. Estimates of recharge to the uppermost aquifer; (4-1-00)
 - f. Information which characterizes the relationship between the ground water and adjacent surface waters; and (4-1-00)
 - g. A summary of local ground water quality data. (4-1-00)
- 07. Nutrient Management Plan.** A plan prepared by a Certified Planner demonstrating compliance with the Nutrient Management Standard for land application. (4-1-00)
- 08. Closure Plan.** A plan describing the procedures for final closure of a facility that ensures no adverse impacts to the environment and waters of the state and that includes: (4-1-00)
- a. The estimated length of operation of the facility; and (4-1-00)
 - b. A description of the procedures, methods, and schedule to be implemented at the facility for final disposal, handling, management and/or treatment of all animal waste. (4-1-00)
- 09. Other Information.** An applicant shall provide any other information relative to Subsections 200.04 through 200.08 deemed necessary by the Director to assess protection of human health and the environment (4-1-00)
- 10. Application Fee.** A fee shall be submitted with each permit application as follows: (4-1-00)
- a. Three thousand dollars (\$3,000) for facilities that have a one-time animal unit capacity of less than five-thousand (5,000) animal units; (4-1-00)
 - b. Five thousand dollars (\$5,000) for facilities that have a one-time animal unit capacity of five thousand to ten thousand (5,000-10,000) animal units; and (4-1-00)
 - c. Ten thousand dollars (\$10,000) for facilities that have a one-time animal unit capacity over ten thousand (10,000) animal units. (4-1-00)
- 201. -- 204. (RESERVED)**
- 205. FINANCIAL ASSURANCE REQUIREMENTS.**
- 01. Written Estimate of Costs.** The owner of a swine facility shall submit, as part of the permit application, a detailed written estimate, in current dollars, of the cost of hiring a third party to: (3-29-12)
- a. Remediate potential contamination caused by the operation of the facility or of any potential spill or breach, including, without limitation, remediation pursuant to the facility's Spill Contingency Plan; and (3-15-02)
 - b. Close the facility in accordance with an approved closure plan. (3-15-02)
 - c. The Department must approve the cost estimate as reasonable prior to the issuance of a permit. (3-15-02)
- 02. Financial Assurance Mechanisms.** The owner shall submit as part of the permit application

evidence of financial assurance to cover the approved remediation and closure cost estimates. However, if the Department has determined, prior to October 19, 2000, that a complete application has been submitted, the owner shall submit the remediation and closure cost estimates and financial assurance mechanism to the Department for approval prior to the issuance of a permit. The mechanism used to demonstrate financial assurance shall be submitted to the Department for approval and shall ensure that the funds necessary to meet the approved costs of remediation and closure will be available whenever they are needed. The financial assurance mechanisms allowed for swine facilities shall include any mechanism or a combination of mechanisms meeting the criteria set forth below or other mechanism approved by the Department. (3-29-12)

a. Trust Fund. (3-15-02)

i. An owner may satisfy the requirements of Subsection 205.02 by establishing a trust fund and submitting an originally signed duplicate of the trust agreement to the Department. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. (3-15-02)

ii. After the trust fund is established, whenever the current remediation and closure cost estimates change, the owner must compare the new estimates with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner, within sixty (60) days after the change in the cost estimate, must either deposit an amount equal into the fund so that its value after this deposit at least equals the amount of the current remediation or closure cost estimate, or obtain other financial assurance as specified in Subsection 205.02 to cover the difference. (3-15-02)

iii. If the value of the trust fund is greater than the total amount of the current remediation or closure cost estimate, the owner may submit a written request to the Department for release of the amount in excess of the current remediation or closure cost estimate. (3-15-02)

iv. If an owner substitutes other financial assurance as specified in Subsection 205.02 for all or part of the trust fund, he may submit a written request to the Department for release of the amount in excess of the current remediation or closure cost estimate covered by the trust fund. (3-15-02)

b. Surety Bond. (3-15-02)

i. An owner may satisfy the requirements of Subsection 205.02 by obtaining a payment or performance surety bond and submitting a certified copy of the bond to the Department. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury. (3-15-02)

ii. The penal sum of the bond must be in an amount at least equal to the current remediation and closure cost estimates. (3-15-02)

iii. Under the terms of the bond, the surety will become liable on the bond obligation when: (3-15-02)

(1) The owner fails to perform as guaranteed by the bond; or (3-15-02)

(2) The Department notifies the owner that he has failed to meet requirements of these rules. (3-15-02)

iv. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and the Department one hundred twenty (120) days in advance of cancellation. Cancellation may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by the Department, as evidenced by the return receipt. The surety shall remain liable on the bond for costs of remediation and closure unless the owner obtains a replacement financial assurance mechanism, approved by the Department in accordance with Subsection 205.02.f., that covers both the existing and future costs of remediation and closure. (3-15-02)

c. Letter of Credit. (3-15-02)

i. An owner may satisfy the requirements of Subsection 205.02 by obtaining an irrevocable standby letter of credit and submitting a certified copy of the letter to the Department. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency. (3-15-02)

ii. The letter of credit must be accompanied by a letter from the owner referring to the letter of credit by number, issuing institution, and date, and providing the following information: the type of facility, name and address of the facility, and the amount of funds assured for remediation and closure of the facility by the letter of credit. (3-15-02)

iii. The letter of credit must be irrevocable and issued for a period of at least one (1) year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner and the Department by certified mail of a decision not to extend the expiration date. Cancellation may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by the Department, as evidenced by the return receipt. The issuing institution shall remain liable on the letter of credit for costs of remediation and closure unless the owner obtains a replacement financial assurance mechanism, approved by the Department in accordance with Subsection 205.02.f., that covers both the existing and future costs of remediation and closure. (3-15-02)

iv. The letter of credit must be issued in an amount at least equal to the current remediation and closure cost estimates. (3-15-02)

d. Insurance. (3-15-02)

i. An owner may satisfy the requirements of Subsection 205.02 by obtaining remediation and closure insurance and submitting a certificate of such insurance to the Department. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states. (3-15-02)

ii. The insurance policy must be issued for a face amount at least equal to the current remediation and closure cost estimates. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments. (3-15-02)

iii. Each insurance policy must contain a provision allowing assignment of the policy to a successor. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused. (3-15-02)

iv. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. The insurer may cancel the policy by sending notice by certified mail to the owner and the Department one hundred twenty (120) days in advance. Cancellation may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by the Department, as evidenced by the return receipt. The insurer shall remain liable on the policy for costs of remediation and closure unless the owner obtains a replacement financial assurance mechanism, approved by the Department in accordance with Subsection 205.02.f., that covers both the existing and future costs of remediation and closure. (3-15-02)

e. Corporate Guarantee. (3-15-02)

i. An owner may satisfy the requirements of Subsection 205.02 by obtaining a written guarantee and submitting a certified copy of the guarantee and appropriate letter from the guarantor. The guarantor must be the direct or higher-tier parent corporation of the owner, a firm whose parent corporation is also the parent corporation of the owner, or a firm with a "substantial business relationship" with the owner. (3-15-02)

ii. If the guarantor's parent company is also the parent corporation of the owner, a letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. (3-15-02)

iii. If the guarantor is a firm with a “substantial business relationship” with the owner, the letter must describe the “substantial business relationship” and the value received in consideration of the guarantee. (3-15-02)

iv. The terms of the guarantee shall provide that if the owner fails to perform remediation or closure of a facility covered by the guarantee, the guarantor will: (3-15-02)

(1) Perform, or pay a third party to perform, remediation and closure as required (performance guarantee); or (3-15-02)

(2) Establish a fully funded trust fund as specified in Subsection 205.02.a. in the name of the owner (payment guarantee). (3-15-02)

v. The guarantee shall remain in force for as long as the owner must comply with the applicable financial assurance requirements of Subsection 205.02 unless the guarantor sends notice of cancellation by certified mail to the owner and to the Department one hundred twenty (120) days in advance. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice by the Department, as evidenced by the return receipt. The guarantor shall remain liable on the guarantee for costs of remediation and closure unless the owner obtains a replacement financial assurance mechanism, approved by the Department in accordance with Subsection 205.02.f., that covers both the existing and future costs of remediation and closure. (3-15-02)

f. If a financial assurance mechanism is cancelled by the issuing entity, the owner shall obtain alternate financial assurance, within sixty (60) days of receipt of notice of cancellation by the Department, which shall be submitted to the Department for approval. The alternate financial assurance must become effective not later than the effective date of cancellation or termination of the existing financial assurance. An owner may only cancel a financial assurance mechanism after first obtaining an alternative mechanism approved by the Department. (3-15-02)

03. Continuous Coverage. The owner shall provide continuous coverage for remediation and closure until released from financial assurance requirements by the Department. (3-15-02)

04. Adjustment of Financial Assurance Amounts. The following provisions apply to the adjustment of the amount of financial assurance: (3-15-02)

a. The owner shall increase the remediation and closure cost estimates and the amount of financial assurance if changes to the closure plan or facility conditions or operations increase the cost estimates at any time during the active life of the facility. The cost estimates and financial assurance shall also be adjusted to reflect inflation. Increased cost estimates and financial assurance shall be submitted to the Department for approval. (3-15-02)

b. The owner may reduce the remediation and closure cost estimates and the amount of financial assurance if the cost estimates exceed the maximum cost of remediation or closure at any time during the active life of the facility. The owner shall first notify the Department and obtain its approval of the justification for the reduction of the remediation and closure cost estimates. (3-15-02)

05. Release from Financial Assurance Requirements. When remediation and closure conditions required by a permit are complete, financial assurance shall be released by the Department as follows: (3-15-02)

a. When the Department determines that initial closure activities have been completed, financial assurance, less identified retainages, shall be released. (3-15-02)

b. A sufficient amount of financial assurance shall be retained by the Department, up to five (5) years after closure, to ensure proper remediation and closure of a facility. (3-15-02)

c. Release of any amount of financial assurance shall not release the owner from any responsibility for meeting remediation or closure requirements. (3-15-02)

06. Owner Liability. Nothing in these rules shall relieve the owner of liability for remediation and closure costs. The use of all financial assurance shall not relieve the owner from responsibility and liability for remediation and closure costs. (3-15-02)

206. -- 209. (RESERVED)

210. EXISTING FACILITIES.

01. Registration Requirement. Existing facility owners shall register with the Department within three (3) months after the original effective date of these rules. Registration shall include the information in Subsection 200.04 except for Subsection 200.04.j. Nothing in Section 210 shall be construed to deny an existing facility the opportunity to apply for, and receive, a permit under these rules. (4-1-00)

02. Plan Requirement. Existing facilities shall submit a nutrient management plan and closure plan to the Director for approval within two (2) years of the original effective date of these rules in accordance with Subsections 200.07 and 200.08. An application fee shall not be required unless the facility is expanding. (4-1-00)

03. Expanding Facility. The owner of an existing facility shall not increase the one-time animal unit capacity of the facility by ten percent (10%) or more without first obtaining a permit for the expansion as required by these rules. The ten percent (10%) increase is measured cumulatively from the original effective date of these rules. (4-1-00)

211. -- 249. (RESERVED)

250. REQUIREMENTS FOR WATER QUALITY PROTECTION.

The following minimum design and performance standards are intended as a baseline for protection of public health and the waters of the state. These standards shall apply to all facilities and be reflected in the permit unless the Director approves, based on an applicant's site specific information, that compliance with a specific standard is not required to protect water quality and the public health. Other conditions, as determined by the Director to be necessary to protect water quality, may be included in a permit. (4-1-00)

01. Animal Waste Management System Design Criteria. A facility's animal waste management system shall be designed and constructed in accordance with the NRCS and the American Society of Agricultural Engineers standards, whichever is most stringent and shall: (4-1-00)

a. Contain the maximum expected operating water balance and the twenty-five (25) year twenty-four (24) hour rainfall event and the one (1) in five (5) year winter runoff. (4-1-00)

b. Provide capacity to store the peak volume of process wastewater that will be generated during a six (6) month period. (4-1-00)

c. Provide a one (1) foot freeboard in addition to the storage requirements, specified in Subsections 250.01.a. and 250.01.b. (4-1-00)

d. Impoundments, other than for emergency runoff, containing or designed to contain process wastewater shall be designed for efficient leak detection and shall not be located in the one-hundred (100) year floodplain. (4-1-00)

e. Seepage rates for impoundments shall be no greater than 1×10^{-7} cm/sec. (4-1-00)

02. Water Quality Monitoring. Ground water and/or leak detection monitoring shall be conducted for every facility with a liquid storage impoundment and shall be designed to give the earliest possible detection of an unauthorized discharge to ground water. (4-1-00)

03. Discharges. Facilities shall be constructed, operated and maintained to not cause unauthorized discharges. (4-1-00)

04. Spill Contingency Plan. Facilities shall prepare a discharge response strategy that describes procedures and methods to be implemented for the abatement and cleanup of any pollutant. (4-1-00)

05. Stockpile Areas. Animal waste stockpile areas, including compost areas, shall be constructed to ensure that all water and precipitation, which comes into contact with the stockpiles, does not enter waters of the state. (4-1-00)

251. -- 299. (RESERVED)

300. APPLICATION PROCESSING PROCEDURE.

01. Application Completeness. Within thirty (30) days of receipt of an application, the Director shall provide written notice to the applicant as to whether the application meets all the requirements of Section 200. The Department shall provide public notice of the receipt of a complete application. An application which does not, on its face, meet all the requirements of Section 200 of these rules shall be returned to the applicant by the Director with a written list of the deficiencies. The Director will not process an application until it is determined to be complete in accordance with these rules. (4-1-00)

02. Notice of Environmental Suitability of Facility Location. Within thirty (30) days of the Director's notice that the application is complete, the Director shall determine whether the facility is environmentally suitable for the selected location. In making this decision, the Director shall review the location of the facility relative to flood zones, dwellings, wells, surface and ground water and those other items the applicant must identify on the vicinity map. Written notice of the Director's determination will be sent to the applicant, with a copy sent to the appropriate county and city officials for the selected location, along with a Department analysis that includes the following: (4-1-00)

a. A brief description of the proposed facility, its animal waste management system and its nutrient management plan; (4-1-00)

b. A brief summary of the basis for the determination on environmental suitability including references to applicable requirements and supporting materials; (4-1-00)

c. A description of the schedule for issuing a permit; and (4-1-00)

d. The name and phone number of the Department staff to contact for additional information. (4-1-00)

03. Draft Permit. Within sixty (60) days of the Director's determination that a facility is environmentally suitable for its proposed location, the Director shall either issue a draft permit or a notice of denial of a permit to the applicant. The draft permit shall be in the same form as a final permit and shall specify conditions of construction, operation and closure. (4-1-00)

04. Public Comments. The Department shall provide notice to the public of its issuance of a draft permit. The public may provide written comments for a time period and in a manner specified in the Department's notice. The Department may, in its discretion, provide an opportunity for the public to provide oral comments. (4-1-00)

05. Permit Denial. The Director may deny a permit if: (4-1-00)

a. The owner of a facility is not in substantial compliance with a final agency order or any final order or judgement of a court secured by any state or federal agency relating to the operation of a swine facility; (3-29-12)

b. The application is inaccurate; (4-1-00)

c. The facility as proposed cannot meet the requirements set forth in these rules or cannot be constructed, operated and closed in a manner that protects human health and the environment; or (4-1-00)

d. The appropriate county or city does not approve the location of the facility. (4-1-00)

06. Final Permit. Within sixty (60) days of the issuance of a draft permit, the Director shall issue a final permit to the applicant, however, a permit shall not be issued by the Director until the applicant has received final approval from the appropriate county or city for the location of the facility and has received approval for a water right from the Department of Water Resources. The permit shall be effective for a fixed term of not more than five (5) years, and may be reissued upon receipt of an updated application and demonstration of compliance with the rules and permit requirements existing at the time of reissuance. (4-1-00)

07. Additional Information. At any time during the application process an applicant shall provide the Director with additional information the Director deems necessary to process a permit, within thirty (30) days of the Director's request. The time period within which the Director must act with regard to the permit shall be stayed until the information requested is provided. If an applicant fails to provide the information within this time period, unless a longer time period is allowed by the Director, the Director may cease the application process and require the applicant to submit a new application. (4-1-00)

301. -- 399. (RESERVED)

400. PERMIT CONDITIONS.

The following conditions shall apply to all permittees. (4-1-00)

01. Compliance Required. The permittee shall comply with all conditions of the permit. The permit shall not relieve the permittee of the responsibility to comply with all other applicable local, state, and federal laws. (4-1-00)

02. Financial Capability. Permittees shall have the financial capability to perform remedial actions and to meet the conditions of an approved closure plan for a facility. (3-15-02)

03. Construction and Operation of Facility. The permittee shall ensure that construction, operation and maintenance of the facility proceed according to the construction plans and specifications and the approved monitoring, nutrient management and closure plans, and comply with the following: (4-1-00)

a. Within thirty (30) days of completion of construction, submit as built plans. (4-1-00)

b. Apply appropriate management practices as approved by the Director. (4-1-00)

c. The facility or operations associated with the facility shall not create a public health hazard or nuisance conditions including odors. (4-1-00)

d. The facility shall not dispose of any material not approved for disposal under the permit into the animal waste management system including, but not limited to, human waste. (4-1-00)

e. The removal of animal waste from an impoundment or storage structure shall be performed in a manner to not damage the integrity of the liner. (4-1-00)

f. Dead animals shall be removed from the facility for rendering, cremation, burial, composting or other disposal in accordance with IDAPA 02.04.17, "Rules Governing Dead Animal Movement and Disposal." (3-15-02)

g. Nutrient management plans shall be amended if modifications to the facility operation, as outlined in the Nutrient Management Standard or other conditions, warrant the amendment. (4-1-00)

h. Soil tests shall be conducted on all land application sites owned or leased by the permittee every year to determine compliance with the nutrient management plan and Nutrient Management Standard. The Director may require more frequent soil tests if deemed necessary. (4-1-00)

04. Provide Information. The permittee shall furnish to the Director within a reasonable time, any information including copies of records required by the permit or other applicable rules, which the Director may

reasonably require to determine whether cause exists for modifying or revoking the permit or to determine compliance with the permit or other applicable rules. (4-1-00)

05. Entry and Access. The permittee shall allow the Director, consistent with Title 39, Chapter 1, Idaho Code, and in compliance with the biosecurity and sanitary standards of a facility, so long as the standards and requirements do not inhibit reasonable access, to: (4-1-00)

- a. Enter at reasonable times upon the premises of a permitted facility or where records are kept; (4-1-00)
- b. Have access to and copy at reasonable times any records that must be kept under conditions of the permit; (4-1-00)
- c. Inspect any facility or land application site; and (4-1-00)
- d. Sample or monitor at reasonable times, substances or parameters directly related to compliance with the permit or these rules. (4-1-00)

06. Reporting. The permittee shall report to the Director under the circumstances and in the manner specified in Section 400: (4-1-00)

- a. Orally, no later than twenty-four (24) hours from the time the permittee knows or should reasonably know of any noncompliance which may endanger the public health or the environment; and (4-1-00)
- b. In writing, within five (5) working days from the time a permittee knows or should reasonably know of any event which has resulted or which may result in noncompliance with these rules. The report shall contain: (4-1-00)
 - i. A description of the event and its cause or if the cause is not known, steps taken to investigate and determine the cause; (4-1-00)
 - ii. The period of the event including, to the extent possible, times and dates; (4-1-00)
 - iii. Measures taken to mitigate the event or eliminate the event and protect the public health; and (4-1-00)
 - iv. Steps taken to prevent recurrence of the event. (4-1-00)
- c. In writing, when the permittee knows or should reasonably know of material relevant facts not submitted or incorrect information submitted in a permit application or any report or notice to the Director. (4-1-00)

07. Begin Construction. If a permittee fails to begin construction or expansion of a facility within two (2) years of the effective date of a permit, the Director may void the permit and require a new application. (4-1-00)

08. Permit Renewal. If a permittee intends to continue operation of the permitted facility after expiration of an existing permit, the permittee shall apply for a new permit at least one hundred eighty (180) days prior to the expiration of any permit issued pursuant to these rules. (4-1-00)

401. -- 449. (RESERVED)

450. SPECIFIC PERMIT CONDITIONS.

01. Basis for Specific Permit Conditions. Conditions necessary for the protection of the environment and the public health may differ from facility to facility because of varying environmental conditions and animal waste compositions. The Director may establish, on a case-by-case basis, specific permit conditions. Specific conditions shall be established in consideration of characteristics specific to a facility and inherent hazards of those characteristics. Such characteristics include, but are not limited to, the following: (4-1-00)

- a. Chemical, biological, physical and volumetric characteristics of the process wastewater; (4-1-00)
 - b. Geological and climatic nature of the facility site; (4-1-00)
 - c. Size of the site and its proximity to population centers and to ground and surface water; (4-1-00)
 - d. Legal considerations relative to land use and water rights; (4-1-00)
 - e. Techniques used in process wastewater distribution and the disposition of that vegetation exposed to process wastewaters; and (4-1-00)
 - f. The need for monitoring and record keeping to determine if the facility is being operated in conformance with its design and if its design is adequate to protect the environment and the public health. (4-1-00)
- 02. Limitations to Operation.** Conditions of the permit may specify or limit: (4-1-00)
- a. Process wastewater composition; (4-1-00)
 - b. Method, manner and frequency of process wastewater treatment; (4-1-00)
 - c. Physical, chemical and biological characteristics of a facility; (4-1-00)
 - d. An odor management plan; and (4-1-00)
 - e. Any other condition the Director finds necessary to protect public health or the environment. (4-1-00)
- 03. Compliance Schedules.** The Director may establish a compliance schedule for facilities as part of the permit conditions including: (4-1-00)
- a. Specific steps or actions to be taken by the permittee to achieve compliance with applicable requirements or permit conditions; and (4-1-00)
 - b. Dates by which those steps or actions are to be taken. (4-1-00)
- 04. Monitoring Requirements.** Any facility may be subject to monitoring requirements including, but not limited to, the following: (4-1-00)
- a. The type, installation, use and maintenance of monitoring equipment; (4-1-00)
 - b. Monitoring or sampling methodology, frequency and locations; (4-1-00)
 - c. Monitored substances or parameters; (4-1-00)
 - d. Testing and analytical procedures; and (4-1-00)
 - e. Reporting requirements including both frequency and form. (4-1-00)
- 451. -- 499. (RESERVED)**
- 500. PERMIT MODIFICATION.**
- 01. Minor Modifications.** Minor modifications are those which do not have a potential affect to the environment or the public health. Such modifications shall be made by the Director. Minor modifications are generally limited to: (4-1-00)

- a. The correction of typographical errors; (4-1-00)
- b. Transfer of ownership or operational control in accordance with Section 550; or (4-1-00)
- c. Certain minor changes in monitoring or operational conditions. (4-1-00)

02. Major Modifications. All modifications not considered minor shall be considered major modifications. The procedure for making major modifications shall be the same as that used for a new permit under these rules. (4-1-00)

501. -- 549. (RESERVED)

550. TRANSFER OF PERMITS.

01. Transfer Application. A new owner or operator of a facility shall submit a transfer application to the Director that includes at least the following: (4-1-00)

- a. The relevant information required by Subsection 200.04; and (4-1-00)
- b. Any change of conditions at the facility resulting from the transfer of ownership or operation. (4-1-00)

c. The Director shall review the transfer application and within sixty (60) days of its receipt either approve or deny the transfer. (4-1-00)

02. Transfer Approval. An approved permit transfer shall be a minor modification in accordance with Subsection 500.01 as long as there are no major changes of conditions at the facility. Major changes of conditions at a facility will be subject to the provisions of Subsection 500.02. (4-1-00)

03. Transfer Denial. A notification of a permit denial shall set forth the reasons for the denial, steps necessary to meet the requirements for a permit transfer and the opportunity for the applicant to request a hearing. (4-1-00)

04. Permit Obligations. The new permittee assumes all rights and responsibilities of the transferred permit. (4-1-00)

551. -- 599. (RESERVED)

600. VIOLATIONS.

01. Failure to Comply. Failure by a permittee to comply with the provisions of these rules or with any permit condition shall be deemed a violation of these rules. (4-1-00)

02. Falsification of Statements and Records. It shall be a violation of these rules for any person to knowingly make a false statement, representation, or certification in any application report, document, or record developed, maintained, or submitted pursuant to these rules or the conditions of a permit. (4-1-00)

03. Discharges. Any unauthorized discharge from a facility shall be a violation of these rules. (4-1-00)

04. Penalties. Any person violating any provision of these rules or any permit or order issued thereunder shall be liable for a civil or criminal penalty in accordance with Title 39, Chapter 1, Idaho Code. (4-1-00)

05. Permit Revocation. The Director may revoke a permit for: (4-1-00)

- a. A material violation of any condition of a permit; or (4-1-00)
- b. If the permit was obtained by misrepresentation or failure to disclose all relevant facts. (4-1-00)

06. Revocation Hearing. Prior to revoking a permit, the Director shall issue a notice of intent which shall become final unless the permittee timely requests an administrative hearing in writing. Such hearing shall be conducted in accordance with Section 003 of these rules. (4-1-00)

601. -- 998. (RESERVED)

999. CONFIDENTIALITY OF RECORDS.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 1, Title 74, Idaho Code. Information submitted under a trade secret claim may be entitled to confidential treatment by the Department as provided in Section 74-114, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality." (4-1-00)

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.11 – GROUND WATER QUALITY RULE

DOCKET NO. 58-0111-1901 (FEE RULE)

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. The action is authorized pursuant to Idaho §§ 39-105, 39-107, 39-120, and 39-126.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: This rulemaking adopts and re-publishes the following existing and previously approved and codified fee rule chapter under IDAPA 58 rules of the Department of Environmental Quality:

IDAPA 58.01.11, Ground Water Quality Rule

A temporary rule was adopted by the Idaho Board of Environmental Quality in May 2019, effective June 30, 2019, and published in the Idaho Administrative Bulletin, July 3, 2019, **Vol. 19-7, pages 524–542**. More information regarding this rule docket is available at www.deq.idaho.gov/58-0111-1901.

FEE SUMMARY: The attached rules provide a specific description of the fee or charge imposed by this rulemaking. This rulemaking does not impose a fee or charge beyond what was previously approved and codified in the prior rules. The fee category and statutory authority for imposition of the fees are listed below. Idaho Code § 39-119, point of compliance application fee

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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not applicable.

IDAHO CODE SECTION 39-107D STATEMENT: IDAPA 58.01.11, Ground Water Quality Rule, regulates activities not specifically regulated by the federal government. The following is a summary of additional information required by Sections 39-107D(2) through (4), Idaho Code, supporting the adoption of these rules. The Ground Water Quality Rule establishes minimum requirements to maintain and protect ground water quality. This rule applies to all activities with the potential to degrade ground water quality.

These rules were originally approved in 1997 with the intent to implement policies from the Protection and Prevention Sections of the Idaho Ground Water Quality Plan, adopted by the legislature, 1992 Idaho Sess. Laws 310, page 92, and required by Idaho Code § 39-120 and 126.

Section 107D(2) and (3) potentially apply to Section 200, Ground Water Quality Standards.

Section 107D(2)(a) requires that, to the degree that a department action is based on science, in proposing any rule or portions of any rule subject to this section, the department shall utilize the best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices.

In accordance with The Ground Water Quality Protection Act of 1989 and Idaho Code § 39-102, the quality of the state's ground water should be protected to satisfy existing and future beneficial uses including drinking water. Furthermore, Idaho Code § 39-120(4) states "The director of the department of environmental quality may develop and recommend for approval by the board, through rulemaking, ambient ground water quality standards for contaminants for which the administrator of the United States environmental protection agency has established drinking water maximum contaminant levels." The maximum contaminant level (MCL) is the maximum level allowed of a contaminant in water which is delivered to any user of a public water system.

The numerical and narrative standards in Section 200 identify the minimum level of protection of ground water quality that shall be not exceeded unless otherwise allowed in the rule. IDAPA 58.01.11.200. The Idaho Primary Constituent Standards were consistent with USEPA MCLs at the time of promulgation in 1997. Changes to the Idaho Ground Water Quality Standard for total coliform were made in 2007. According to the EPA website, <https://www.epa.gov/dwregdev/how-epa-regulates-drinking-water-contaminants>, MCLs are determined in a manner that "maximizes health risk reduction benefits at a cost that is justified by the benefits." The MCL is the maximum level allowed of a contaminant in water which is delivered to any user of a public water system.

Consequently, although the federal government does not specifically regulate ground water, it does require that public drinking water systems meet the MCLs adopted by Idaho in Section 200.

Section 107D(2)(b) requires that, to the degree that a department action is based on science, in proposing any rule or portions of any rule subject to this section, the department shall utilize data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justifies use of the data.

Data was not collected or analyzed as part of the rulemaking process. DEQ relied on standards set by the USEPA.

Section 107D(3)(a) requires the identification of each population or receptor addressed by an estimate of public health effects or environmental effects.

In Idaho, ground water supplies drinking water to approximately 95% of Idaho's citizens. Of these consumers, approximately one million rely on regulated public water systems for drinking water. Another 500,000 Idahoans utilize ground water from private wells for drinking water. Protection of this resource is critical to the health of the citizens of Idaho. The health effects of each regulated contaminant are variable and have been studied by EPA prior to setting an MCL.

Ground water also replenishes surface water supplies throughout Idaho. In areas with degraded ground water, the quality of the interconnected ground water can negatively impact surface water quality resulting in adverse environmental effects on aquatic habitat such as increased algal blooms or endocrine disruption in susceptible species.

Section 107D(3)(b) through (e) requires identification of the expected risk or central estimate of risk for the specific population or receptor and identification of each appropriate upper bound or lower bound estimate of risk, of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty, and studies known to the department that support, are directly relevant to, or fail to support any estimate of public health effect or environmental effects and the methodology used to reconcile inconsistencies in the data.

The proposed rules include standards intended to protect human health and the environment. The standards are based on estimates or analyses of risk to public health or the environment conducted in accordance with 40 CFR Part 141 – National Primary Drinking Water Regulations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact the undersigned. Anyone may submit written comments regarding the proposed rulemaking by mail, fax, or email. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 4th day of September, 2019.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
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THE FOLLOWING IS THE PROPOSED RULE TEXT OF DOCKET NO. 58-01111-1901

Pursuant to Section 67-5221(1), Idaho Code, this docket is being published as a proposed rule.

This docket has been previously published as a temporary rule.

**The original text of the temporary rule was published in the Idaho Administrative Bulletin,
Volume 19-7, July 3, 2019, pages 524 through 542.**

**(No changes have been made to the reauthorized/temporary rule
and it is being published as proposed in its entirety)**

**IDAPA 58
TITLE 01
CHAPTER 11**

58.01.11 – GROUND WATER QUALITY RULE

000. LEGAL AUTHORITY.

The Idaho Legislature has given the Board of Environmental Quality authority to promulgate the Ground Water Quality Rule pursuant to Sections 39-105, 39-107, 39-120, and 39-126, Idaho Code. The authority to formulate and adopt rules as are necessary and feasible to protect the environment and health of the citizens of the state is vested in the Director and Board pursuant to Sections 39-105 and 39-107, Idaho Code. Under Section 39-120, Idaho Code, the Board is authorized to adopt, by rule, ambient ground water quality standards. Under Section 39-126, Idaho Code, all state agencies shall incorporate the Ground Water Quality Plan, adopted by the legislature, in the administration of their programs and are granted authority to promulgate rules to protect ground water quality as necessary to administer such programs. (3-20-97)

001. TITLE AND SCOPE.

01. Title. This rule is titled IDAPA 58.01.11, Rules of the Department of Environmental Quality, IDAPA 58.01.11, “Ground Water Quality Rule.” (3-20-97)

02. Scope. Under Section 39-120, Idaho Code, the Department of Environmental Quality is designated

as the primary agency to coordinate and administer ground water quality protection programs for the state. This rule establishes minimum requirements for protection of ground water quality through standards and an aquifer categorization process. The requirements of this rule shall serve as a basis for the administration of programs which address ground water quality. This rule does not in and of itself create a permit program. (3-20-97)

002. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal agency actions authorized under this chapter pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (3-15-02)

003. WRITTEN INTERPRETATIONS.

The Department of Environmental Quality may have written statements which pertain to the interpretation of the rules of this chapter. If available, such written statements can be inspected and copied, at cost, at the Department of Environmental Quality, 1410 North Hilton, Boise, ID 83706-1255. (3-20-97)

004. -- 005. (RESERVED)

006. POLICIES.

It is the intent of the Department to implement, through this rule, the following policies from the Protection and Prevention Sections of the Idaho Ground Water Quality Plan, adopted by the legislature, 1992 Session Law, Chapter 310, Page 922. These policies are: (3-20-97)

01. Ground Water Quality Protection. It is the policy of the state of Idaho to maintain and protect the existing high quality of the state's ground water. (3-20-97)

02. Existing and Projected Future Beneficial Uses. The policy of the state of Idaho is that existing and projected future beneficial uses of ground water shall be maintained and protected, and degradation that would impair existing and projected future beneficial uses of ground water and interconnected surface water shall not be allowed. (3-20-97)

03. Categorization of Ground Water. The policy of the state of Idaho is to provide differential protection for the state's ground water resources. A ground water categorization system should be established for aquifers or portions of aquifers. The categorization system should be based on vulnerability of the ground water, existing and projected future beneficial uses of the ground water, existing quality of the ground water, and social and economic considerations. (3-20-97)

04. Ground Water Quality Standards. The policy of the state of Idaho is to establish ground water quality standards for biological, radiological, and chemical constituents. (3-20-97)

05. Prevention of Ground Water Contamination. The policy of the state of Idaho is to prevent contamination of ground water from all regulated and nonregulated sources of contamination to the maximum extent practical. (7-1-98)

06. Mining. The policy of the state of Idaho is to protect ground water and allow for the extraction of minerals above and within ground water. (7-1-98)

007. DEFINITIONS.

01. Agricultural Chemical. Any pesticide, nutrient or fertilizer used for the benefit of agricultural production or pest management. (3-20-97)

02. Aquifer. A geological unit of permeable saturated material capable of yielding economically significant quantities of water to wells and springs. (3-20-97)

03. Beneficial Uses. Various uses of ground water in Idaho including, but not limited to, domestic water supplies, industrial water supplies, agricultural water supplies, aquacultural water supplies, and mining. A beneficial use is defined as actual current or projected future uses of ground water. (3-20-97)

- 04. Best Available Method.** Any system, process, or method which is available to the public for commercial or private use to minimize the impact of point or nonpoint sources of contamination on ground water quality. (3-20-97)
- 05. Best Management Practice.** A practice or combination of practices determined to be the most effective and practical means of preventing or reducing contamination to ground water and interconnected surface water from nonpoint and point sources to achieve water quality goals and protect the beneficial uses of the water. (3-20-97)
- 06. Best Practical Method.** Any system, process, or method that is established and in routine use which could be used to minimize the impact of point or nonpoint sources of contamination on ground water quality. (3-20-97)
- 07. Board.** The Idaho Board of Environmental Quality. (3-20-97)
- 08. Cleanup.** The removal, treatment or isolation of a contaminant from ground water through the directed efforts of humans or the removal or treatment of a contaminant in ground water through management practice or the construction of barriers, trenches and other similar facilities for prevention of contamination, as well as the use of natural processes such as ground water recharge, natural decay and chemical or biological decomposition. (3-20-97)
- 09. Constituent.** Any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance occurring in ground water. (3-20-97)
- 10. Contaminant.** Any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance which does not occur naturally in ground water or which naturally occurs at a lower concentration. (3-20-97)
- 11. Contamination.** The direct or indirect introduction into ground water of any contaminant caused in whole or in part by human activities. (3-20-97)
- 12. Crop Root Zone.** The zone that extends from the surface of the soil to the depth of the deepest crop root and is specific to a species of plant, group of plants, or crop. (3-20-97)
- 13. Degradation.** The lowering of ground water quality as measured in a statistically significant and reproducible manner. (3-20-97)
- 14. Department.** The Department of Environmental Quality. (3-20-97)
- 15. Extraction.** Physical removal of ore or waste rock from mineral-bearing deposits. Extraction does not include processing, which is the removal of target minerals from ores by physical or chemical methods. (7-1-09)
- 16. Ground Water.** Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (3-20-97)
- 17. Ground Water Quality Standard.** Values, either numeric or narrative, assigned to any constituent for the purpose of establishing minimum levels of protection. (3-20-97)
- 18. Highly Vulnerable Ground Water.** Ground water characterized by a relatively high potential for contaminants to enter and/or be transported within the flow system. Determinations of ground water vulnerability will include consideration of land use practices and aquifer characteristics. (3-20-97)
- 19. Irreplaceable Source.** A ground water source serving a beneficial use(s) where the reliable delivery of comparable quality and quantity of water from an alternative source in the region would be economically infeasible or precluded by institutional constraints. (3-20-97)
- 20. Mine Operator.** Any person authorized to engage in mining activities, including without limitation

those authorized by law, lease, contract, permit, or plan of operation. It does not include a governmental agency that grants mineral leases or similar contracts or permits unless the agency is engaged in mining activities. (7-1-09)

21. Mining Activity. Recovery of a mineral from mineral-bearing deposits, which includes reclamation, extraction, excavation, overburden placement, disposal of tailings resulting from processing, and disposal of mineral extraction wastes, including tailings that are the result of extraction, waste rock, and other extraction wastes uniquely associated with mining. (7-1-09)

22. Mining Area. The area on or within which one (1) or more mining activities occur. The Department shall determine the boundaries of the mining area as provided in Section 401. Distinct mining activities may constitute separate mining areas. (7-1-09)

23. Natural Background Level. The level of any constituent in the ground water within a specified area as determined by representative measurements of the ground water quality unaffected by human activities. (3-20-97)

24. Person. Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity which is recognized by law as the subject of rights and duties. (3-20-97)

25. Point of Compliance. The vertical surface where the Department determines compliance with ground water quality standards as provided in Subsection 400.05 and Section 401. (7-1-09)

26. Practical Quantitation Level. The lowest concentration of a constituent that can be reliably quantified among laboratories within specified limits of precision and accuracy during routine laboratory operating conditions. Specified limits of precision and accuracy are the criteria listed in the calibration specifications or quality control specifications of an analytical method. (3-20-97)

27. Projected Future Beneficial Uses. Various uses of ground water, such as drinking water, aquaculture, industrial, mining or agriculture, that are practical and achievable in the future based on hydrogeologic conditions, water quality, future land use activities and social/economic considerations. (3-20-97)

28. Recharge Area. An area in which water infiltrates into the soil or geological formation from, including but not limited to precipitation, irrigation practices and seepage from creeks, streams, and lakes, and percolates to one (1) or more aquifers. (3-20-97)

29. Reclamation. The process of restoring an area affected by a mining activity to its original or another beneficial use, considering previous uses, possible future uses, and surrounding topography. The objective is to re-establish a diverse, self-perpetuating plant community, and to minimize erosion, remove hazards, and maintain water quality. (7-1-09)

30. Remediation. Any action taken (1) to control the source of contamination, (2) to reduce the level of contamination, (3) to mitigate the effects of contaminants, and/or (4) to minimize contaminant movement. Remediation includes providing alternate drinking water sources when needed. (3-20-97)

31. Site Background Level. The ground water quality at the hydraulically upgradient site boundary. (3-20-97)

008. -- 010. (RESERVED)

011. INCORPORATION BY REFERENCE.

Codes, standards and regulations may be incorporated by reference in this rule pursuant to Section 67-5229, Idaho Code. Such incorporation by reference shall constitute full adoption by reference, including any notes or appendices therein, unless expressly provided otherwise in this rule. Codes, standards or regulations adopted by reference throughout this rule are available in the following locations: (3-20-97)

01. Department of Environmental Quality. Department of Environmental Quality, 1410 N. Hilton,

Boise, ID 83706-1255. (3-20-97)

02. Law Library. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051. (3-20-97)

03. U.S. Government Printing Office. U.S. Government Printing Office, Superintendent of Documents, Washington, D.C. 20402, or U.S. Government Bookstore, Room 194 Federal Bldg., 915 Second Ave., Seattle, WA 98174. (3-20-97)

012. -- 149. (RESERVED)

150. IMPLEMENTATION.

This rule establishes minimum requirements to maintain and protect ground water quality. This rule applies to all activities with the potential to degrade ground water quality. (3-20-97)

01. Ground Water Quality Standards. The numerical and narrative standards in Sections 200 and 301 identify minimum levels of protection for ground water quality and shall be used as a basis for: (3-20-97)

a. Evaluating or comparing ground water quality when developing or modifying best available methods, best management practices, or best practical methods; (3-20-97)

b. Identifying permit conditions; (3-20-97)

c. Establishing cleanup levels; and (3-20-97)

d. Determining appropriate actions when ground water quality standards are exceeded. (3-20-97)

02. Aquifer Categorization. Aquifers of the state shall be categorized based on vulnerability of the ground water, existing and projected future beneficial uses of the ground water, existing water quality, and social and economic considerations. There shall be three aquifer categories, Sensitive Resource, General Resource, and Other Resource, to provide different levels of protection. The level of protection required for each category and application of standards to these categories are shown in Table I.

Table 1. Level of Protection and Application of Standards to Aquifer Categories		
Category	Level of Protection	Application of Standards
Sensitive Resource	Apply best management practices and best available methods. This category provides the highest level of ground water protection.	May apply stricter standards than in Section 200.
General Resource	Apply best management practices and best practical methods to the maximum extent practical.	Apply numerical and narrative standards in Section 200.
Other Resource	Apply best management practices and best practical methods to the maximum extent practical.	May apply less strict standards than in Section 200.

(3-25-16)

a. All aquifers where there are activities with the potential to degrade ground water quality are categorized in Section 300. Those aquifers where no activities with the potential to degrade ground water quality are occurring will remain uncategorized until such activities are commenced. If no action is taken to categorize an aquifer when an activity(ies) with the potential to degrade ground water quality is initiated, the aquifer will automatically be categorized as General Resource. (3-20-97)

b. Categorization should be considered when an activity with the potential to degrade ground water quality is proposed over an aquifer or portion of an aquifer which presently has no such activities and, based on the criteria in Section 350, the aquifer may be most appropriately categorized as Sensitive Resource or Other Resource. (3-20-97)

c. Recategorization should be considered when information on vulnerability of the ground water, existing and projected future beneficial uses of the ground water, existing quality of the ground water, and social and economic considerations, in conjunction with one or more of the criteria in Section 350, demonstrates that the aquifer or portion of an aquifer may be more appropriate in another category. (3-20-97)

03. Ground Water-Surface Water Interconnection. The beneficial uses of interconnected surface water shall be recognized when evaluating ground water quality protection. The implementation of water quality programs shall ensure that the quality of ground water that discharges to surface water does not impair the identified beneficial uses of the surface water and that surface water infiltration does not impair beneficial uses of ground water. (3-20-97)

04. Interagency Coordination. The Department will coordinate with other federal, state, and local agencies to pursue interagency agreements when necessary to ensure implementation of this rule for activities which have the potential to degrade ground water quality. (3-20-97)

151. -- 199. (RESERVED)

200. GROUND WATER QUALITY STANDARDS.

The following numerical and narrative standards apply to all ground water of the state and shall not be exceeded unless otherwise allowed in this rule. (3-20-97)

01. Numerical Ground Water Quality Standards. (3-20-97)

a. The Primary Constituent Standards are based on protection of human health and are identified in Table II.

Table II - Primary Constituent Standards		
Chemical Abstract Service Number	Constituent	Standard (mg/l unless otherwise specified)
7440-36-0	Antimony	0.006
7440-38-2	Arsenic	0.05
1332-21-4	Asbestos	7 million fibers/l longer than 10 um
7440-39-3	Barium	2
7440-41-7	Beryllium	0.004
7440-43-9	Cadmium	0.005
7440-47-3	Chromium	0.1
7440-50-8	Copper	1.3
57-12-5	Cyanide	0.2
16984-48-8	Fluoride	4
7439-92-1	Lead	0.015
7439-97-6	Mercury	0.002

Table II - Primary Constituent Standards		
Chemical Abstract Service Number	Constituent	Standard (mg/l unless otherwise specified)
*1	Nitrate (as N)	10
*1	Nitrite (as N)	1
*1	Nitrate and Nitrite (both as N)	10
7782-49-2	Selenium	0.05
7440-28-0	Thallium	0.002
15972-60-8	Alachlor	0.002
1912-24-9	Atrazine	0.003
71-43-2	Benzene	0.005
50-32-8	Benzo(a)pyrene (PAH)	0.0002
75-27-4	Bromodichloromethane (THM)	0.1
75-25-2	Bromoform (THM)	0.1
1563-66-2	Carbofuran	0.04
56-23-5	Carbon Tetrachloride	0.005
57-74-9	Chlordane	0.002
124-48-1	Chlorodibromomethane (THM)	0.1
67-66-3	Chloroform(THM)	0.002
94-75-7	2,4-D	0.07
75-99-0	Dalapon	0.2
103-23-1	Di(2-ethylhexyl) adipate	0.4
96-12-8	Dibromochloropropane	0.0002
541-73-1	Dichlorobenzene m-	0.6
95-50-1	Dichlorobenzene o-	0.6
106-46-7	1,4(para)-Dichlorobenzene or Dichlorobenzene p-	0.075
107-06-2	1,2-Dichloroethane	0.005
75-35-4	1,1-Dichloroethylene	0.007
156-59-2	cis-1, 2-Dichloroethylene	0.07
156-60-5	trans-1, 2-Dichloroethylene	0.1
75-09-2	Dichloromethane	0.005
78-87-5	1,2-Dichloropropane	0.005
117-81-7	Di(2-ethylhexyl)phthalate	0.006
88-85-7	Dinoseb	0.007

Table II - Primary Constituent Standards		
Chemical Abstract Service Number	Constituent	Standard (mg/l unless otherwise specified)
85-00-7	Diquat	0.02
145-73-3	Endothall	0.1
72-20-8	Endrin	0.002
100-41-4	Ethylbenzene	0.7
106-93-4	Ethylene dibromide	0.00005
1071-83-6	Glyphosate	0.7
76-44-8	Heptachlor	0.0004
1024-57-3	Heptachlor epoxide	0.0002
118-74-1	Hexachlorobenzene	0.001
77-47-4	Hexachlorocyclopentadiene	0.05
58-89-9	Lindane	0.0002
72-43-5	Methoxychlor	0.04
108-90-7	Monochlorobenzene	0.1
23135-22-0	Oxamyl (Vydate)	0.2
87-86-5	Pentachlorophenol	0.001
1918-02-1	Picloram	0.5
1336-36-3	Polychlorinated biphenyls (PCBs)	0.0005
122-34-9	Simazine	0.004
100-42-5	Styrene	0.1
1746-01-6	2,3,7,8-TCDD (Dioxin)	3.0 x 10 ⁻⁸
127-18-4	Tetrachloroethylene	0.005
108-88-3	Toluene	1
*1	Total Trihalomethanes [the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane (bromoform), and trichloromethane (chloroform)]	0.1
8001-35-2	Toxaphene	0.003
93-72-1	2,4,5-TP (Silvex)	0.05
120-82-1	1,2,4-Trichlorobenzene	0.07
71-55-6	1,1,1-Trichloroethane	0.2
79-00-5	1,1,2-Trichloroethane	0.005
79-01-6	Trichloroethylene	0.005
75-01-4	Vinyl Chloride	0.002

Table II - Primary Constituent Standards		
Chemical Abstract Service Number	Constituent	Standard (mg/l unless otherwise specified)
1330-20-7	Xylenes (total)	10
*1	Gross alpha particle activity (including radium -226, but excluding radon and uranium)	15 pCi/l
*1	Combined beta/photon emitters	4 millirems/year effective dose equivalent
*1	Combined Radium - 226 and radium 228	5 pCi/l
*1	Strontium 90	8 pCi/l
*1	Tritium	20,000 pCi/l
*1	Total Coliform ²	1 colony forming unit/100 ml
	Escherichia coliform (E. coli)	Less than 1 viable colony or colony forming unit/100 ml using any EPA approved method
	Fecal coliform	Less than 1 viable colony or colony forming unit/100 ml using any EPA approved method
Table Footnotes		
* ¹ No Chemical Abstract Service Number exists for this constituent.		
* ² An exceedance of the primary ground water quality standard for total coliform is not a violation of these rules. If the primary ground water quality standard for total coliform is exceeded, additional analysis for fecal coliform or E. coli will be conducted. An exceedance of the primary ground water quality standards for either fecal coliform or E. coli is a violation of these rules.		

(3-30-07)

b. The Secondary Constituent Standards are generally based on aesthetic qualities and are identified in Table III.

TABLE III - SECONDARY CONSTITUENT STANDARDS	
Constituent	Standard (mg/l unless otherwise specified)
Aluminum	0.2
Chloride	250
Color	15 Color Units
Foaming Agents	0.5
Iron	0.3
Manganese	0.05

TABLE III - SECONDARY CONSTITUENT STANDARDS	
Constituent	Standard (mg/l unless otherwise specified)
Odor	3.0 Threshold Odor Number
pH	6.5 to 8.5 (no units apply)
Silver	0.1
Sulfate	250
Total Dissolved Solids	500
Zinc	5

(3-20-97)

c. Sample preservation and analytical procedures to determine compliance with the standards identified in Subsection 200.01 shall be in accordance with the following, except that cyanide shall be analyzed as weak acid dissociable cyanide using a method approved by the Department: (5-3-03)

i. Environmental Protection Agency, Code of Federal Regulations, Title 40, Parts 141 and 143, revised as of July 2001; or (5-3-03)

ii. Another method approved by the Department. (3-20-97)

02. Narrative Ground Water Quality Standards. Contaminant concentrations, alone or in combination with other contaminants or properties, shall not cause the ground water to be hazardous, deleterious, carcinogenic, mutagenic, teratogenic, or toxic. Determinations of specific numerical levels when applying this standard shall be based on: (3-20-97)

a. Best scientific information currently available on adverse effects of the contaminant(s); (3-20-97)

b. Protection of a beneficial use; or (3-20-97)

c. Practical quantitation levels for the contaminant(s), if they exceed the levels identified in Subsection 200.02.a. or 200.02.b. (3-20-97)

03. Natural Background Level. If the natural background level of a constituent exceeds the standard in this section, the natural background level shall be used as the standard. (3-20-97)

201. -- 299. (RESERVED)

300. CATEGORIZED AQUIFERS OF THE STATE.

Aquifers or portions of aquifers in the state are categorized as follows: (3-20-97)

01. Sensitive Resource. (3-20-97)

a. Spokane Valley -- Rathdrum Prairie Aquifer. (3-20-97)

i. In addition to the ground water quality standards in Section 200, the following narrative standard applies: the aquifer shall not be degraded, as it relates to beneficial uses, as a result of point source or nonpoint source activity unless it is demonstrated by the person proposing the activity that such change is justifiable as a result of necessary economic or social development. (3-20-97)

02. General Resource. All aquifers or portions of aquifers where there are activities with the potential to degrade ground water quality of the aquifer, unless otherwise listed in Subsection 300.01 or 300.03. Once an activity with the potential to degrade the ground water quality of an uncategorized aquifer or portion of an aquifer is initiated, the uncategorized aquifer shall automatically become General Resource unless petitioned into the Sensitive Resource or Other Resource category. (3-20-97)

03. Other Resource. (3-20-97)

301. MANAGEMENT OF ACTIVITIES WITH THE POTENTIAL TO DEGRADE AQUIFERS.

01. Sensitive Resource Category Aquifers. (3-20-97)

a. Activities with the potential to degrade Sensitive Resource aquifers shall be managed in a manner which maintains or improves existing ground water quality through the use of best management practices and best available methods except when a point of compliance is set pursuant to Section 401. (3-25-16)

b. Numerical and narrative standards identified in Section 200 shall apply to aquifers or portions of aquifers categorized as Sensitive Resource. In addition, stricter numerical and narrative standards, for specified constituents, may be adopted pursuant to Section 350 on a case by case basis and listed in Section 300. (3-20-97)

02. General Resource Category Aquifers. (3-20-97)

a. Activities with the potential to degrade General Resource aquifers shall be managed in a manner which maintains or improves existing ground water quality through the use of best management practices and best practical methods to the maximum extent practical except when a point of compliance is set pursuant to Section 401. (3-25-16)

b. Numerical and narrative standards identified in Section 200 shall apply to aquifers or portions of aquifers categorized as General Resource. (3-20-97)

03. Other Resource Category Aquifers. (3-20-97)

a. Activities with the potential to degrade Other Resource aquifers shall be managed in a manner which maintains existing ground water quality, except for those identified constituents which may have a less stringent standard, through the use of best management practices and best practical methods to the maximum extent practical except when a point of compliance is set pursuant to Section 401. (3-25-16)

b. Numerical and narrative standards identified in Section 200 shall apply to aquifers or portions of aquifers categorized as Other Resource. In addition, less strict numerical and narrative standards, for specified constituents, may be adopted pursuant to Section 350 on a case by case basis and listed in Section 300. (3-20-97)

302. -- 349. (RESERVED)

350. PROCEDURES FOR CATEGORIZING OR RECATEGORIZING AN AQUIFER.

The following process shall be used for categorizing or recategorizing an aquifer. (3-20-97)

01. Criteria for Aquifer Categories. The following criteria shall be considered when a petition to categorize or recategorize aquifers or portions of aquifers is submitted to the Board: (3-20-97)

a. For Sensitive Resource aquifers: (3-20-97)

i. The ground water in an aquifer or portion of an aquifer is of a better quality than the ground water quality standards in Section 200 and maintenance of this quality is needed to protect an identified beneficial use(s); (3-20-97)

ii. The ground water in an aquifer or portion of an aquifer is considered highly vulnerable; (3-20-97)

iii. The ground water in an aquifer or portion of an aquifer represents an irreplaceable source for the identified beneficial use(s); (3-20-97)

iv. The ground water quality in an aquifer or portion of an aquifer has been degraded and there is a need for additional protection measures to maintain or improve the water quality or prevent impairment of a beneficial use; (3-20-97)

v. The ground water within an aquifer or portion of an aquifer is shown to be hydrologically interconnected with surface water and additional protection is needed to maintain the quality of either surface or ground water. Hydrologic interconnections can include either natural or induced ground water recharge or discharge areas; or (7-1-98)

vi. The ground water within an aquifer or portion of an aquifer demonstrates other criteria which justify the need for additional protection. (3-20-97)

b. For General Resource aquifers: (3-20-97)

i. An activity with the potential to degrade ground water quality is initiated over an aquifer or portion of an aquifer which presently has no such activities; (3-20-97)

ii. The ground water in an aquifer or portion of an aquifer is currently being used for drinking water or another beneficial use which requires similar protection; or (3-20-97)

iii. The ground water in an aquifer or portion of an aquifer has a projected future beneficial use of drinking water or another beneficial use which requires similar protection. (3-20-97)

c. For other resource aquifers: (3-20-97)

i. The ground water quality within an aquifer or portion of an aquifer does not meet one or more of the ground water quality standards in Section 200; and allowing the ground water quality to remain at this level does not impair existing or projected future beneficial uses within the aquifer or portion of an aquifer; (3-20-97)

ii. The projected ground water quality within an aquifer or portion of an aquifer will not meet one or more of the ground water quality standards in Section 200 as a result of activities over or within the aquifer or portion of an aquifer; and allowing the proposed degradation will not impair existing or projected future beneficial uses; (3-20-97)

iii. Human caused conditions or sources of contamination have resulted in ground water quality standards in Section 200 being exceeded, and the contamination cannot be remedied for economical or technical reasons, or remediation would cause more environmental damage to correct than to leave in place; or (3-20-97)

iv. The ground water within an aquifer or portion of an aquifer demonstrates other criteria which justify the need for categorization as an Other Resource. (3-20-97)

02. Petition Process. The Department or any other person may petition the Board to initiate rulemaking to categorize or recategorize an aquifer or portion of an aquifer pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." In addition to the information required in a rulemaking Petition pursuant to IDAPA 58.01.23, the following information shall be submitted in writing by the Petitioner for the identified aquifer or portion of an aquifer: (3-15-02)

a. Current category, if applicable; (3-20-97)

b. Proposed category and an explanation of how one or more of the criteria in Subsection 350.01 are met; (3-20-97)

c. An explanation of why the categorization or recategorization is being proposed; (3-20-97)

- d. Location, description and areal extent; (3-20-97)
- e. General location and description of existing and projected future ground water beneficial uses; (3-20-97)
- f. Documentation of the existing ground water quality; (3-20-97)
- g. Documentation of aquifer characteristics, where available, including, but not limited to: (3-20-97)
- i. Depth to ground water; (3-20-97)
- ii. Thickness of the water bearing section; (3-20-97)
- iii. Direction and rate of ground water flow; (3-20-97)
- iv. Known recharge and discharge areas; and (3-20-97)
- v. Geology of the area; (3-20-97)
- h. Identification of any proposed standards, for specified constituents, which would be stricter or less strict than the ground water quality standards in Section 200, or any standards to be applied in addition to those in Section 200; and a rationale for the proposed standards. (3-20-97)

03. Preliminary Department Review. Prior to submission of a petition to the Board to categorize or recategorize an aquifer, any person may seek a preliminary review of the petition from the Department. The Department shall respond to the petitioner with comments within forty-five (45) days. (3-20-97)

351. -- 399. (RESERVED)

400. GROUND WATER CONTAMINATION.

01. Releases Degrading Ground Water Quality. No person shall cause or allow the release, spilling, leaking, emission, discharge, escape, leaching, or disposal of a contaminant into the environment in a manner that: (3-20-97)

- a. Causes a ground water quality standard to be exceeded; (3-20-97)
- b. Injures a beneficial use of ground water; or (3-20-97)
- c. Is not in accordance with a permit, consent order or applicable best management practice, best available method or best practical method. (3-20-97)

02. Measures Taken in Response to Degradation. (3-25-16)

a. Except when a point of compliance is set pursuant to Section 401, when a numerical standard is not exceeded, but degradation of ground water quality is detected and deemed significant by the Department, the Department shall take one (1) or more of the following actions: (3-25-16)

- i. Require a modification of regulated activities to prevent continued degradation; (3-20-97)
- ii. Coordinate with the appropriate agencies and responsible persons to develop and implement prevention measures for activities not regulated by the Department; (3-20-97)

iii. Allow limited degradation of ground water quality for the constituents identified in Subsection 200.01.a. if it can be demonstrated that: (3-30-07)

- (1) Best management practices, best available methods or best practical methods, as appropriate for the

aquifer category, are being applied; and (3-20-97)

(2) The degradation is justifiable based on necessary and widespread social and economic considerations; or (3-20-97)

iv. Allow degradation of ground water quality up to the standards in Subsection 200.01.b., if it can be demonstrated that: (3-20-97)

(1) Best management practices are being applied; and (3-20-97)

(2) The degradation will not adversely impact a beneficial use. (3-20-97)

b. The following criteria shall be considered when determining the significance of degradation: (3-20-97)

i. Site specific hydrogeologic conditions; (3-20-97)

ii. Water quality, including seasonal variations; (3-20-97)

iii. Existing and projected future beneficial uses; (3-20-97)

iv. Related public health issues; and (3-20-97)

v. Whether the degradation involves a primary or secondary constituent in Section 200. (3-20-97)

03. Contamination Exceeding a Ground Water Quality Standard. The discovery of any contamination exceeding a ground water standard that poses a threat to existing or projected future beneficial uses of ground water shall require appropriate actions, as determined by the Department, to prevent further contamination. These actions may consist of investigation and evaluation, or enforcement actions if necessary to stop further contamination or clean up existing contamination, as required under the Environmental Protection and Health Act, Section 39-108, Idaho Code. (3-20-97)

04. Agricultural Chemicals. Agricultural chemicals found in intermittently saturated soils within the crop root zone will not be considered ground water contaminants as long as the chemicals remain within the crop root zone, and have been applied in a manner consistent with all appropriate regulatory requirements. (3-20-97)

05. Site-Specific Ground Water Quality Levels or Points of Compliance. The Department may allow site-specific ground water quality levels, for any aquifer category, that vary from a standard(s) in Section 200 or Section 300, or may allow site-specific points of compliance, based on consideration of effects to human health and the environment, for: (7-1-09)

a. Remediation conducted under the Department's oversight; (3-20-97)

b. Permits issued by the Department; (3-20-97)

c. Situations where the site background level varies from the ground water quality standard; (7-1-09)

d. Dissolved concentrations of secondary constituents listed in Section 200 of this rule. The Department may allow the use of dissolved concentrations for secondary constituents if the requesting person demonstrates that doing so will not adversely affect human health and the environment; or (7-1-09)

e. Other situations authorized by the Department in writing. (3-20-97)

401. MINING.

01. Request for Setting Point(s) of Compliance and Standards Applicable to Mining Activities. At the request of a mine operator, pursuant to this section, the Department shall set a point of compliance, or points of

compliance, at which the mine operator shall protect current and projected future beneficial uses of the ground water and meet the ground water quality standards as described in Section 200 or as allowed under Subsection 400.05. Degradation of ground water is allowed at a point of compliance if the mine operator implements the level of protection during mining activities appropriate for the aquifer category as specified in Table 1 of Subsection 150.02. If a request is not made, the mine operator must meet the ground water quality standards as described in Subsection 150.01 in ground water both within and beyond the mining area unless the Department establishes the point(s) of compliance consistent with Subsection 401.03. (3-25-16)

02. Application Process. (7-1-09)

a. If the mine operator requests a point of compliance, or points of compliance, the mine operator shall make written application to the Department. The application shall be accompanied by a fee of two thousand five hundred dollars (\$2,500). The application shall include the following information in sufficient detail to allow the Department to establish point(s) of compliance: (7-1-09)

- i. Name, location, and mailing address of the mining operation; (7-1-09)
- ii. Name, mailing address, and phone number of the mine operator; (7-1-09)
- iii. Land ownership status of the mining operation (federal, state, private or public); (7-1-09)
- iv. The legal structure (corporation, partnership, etc.) and residence of the mine operator; (7-1-09)
- v. The legal description, to the quarter-quarter section, of the location of the proposed mining operation; (7-1-09)
- vi. Evidence the mine operator is authorized by the Secretary of State to conduct business in the state of Idaho; (7-1-09)
- vii. A general description of the operational plans for the mining operation from construction through final reclamation. This description shall include any proposed phases for construction, operations, and reclamation and a map that identifies the location of all mining activities; (7-1-09)
- viii. A preconstruction topographic site map or aerial photos extending at least one (1) mile beyond the outer limits of the mining area, identifying and showing the location and extent of the following features: (7-1-09)
 - (1) All wells, perennial and intermittent springs, adit discharges, wetlands, surface waters and irrigation ditches; (7-1-09)
 - (2) All public and private drinking water supply source(s) within one (1) mile of the mining area; (7-1-09)
 - (3) All service roads and public roads; (7-1-09)
 - (4) All buildings and structures within one (1) mile of the mining area; (7-1-09)
 - (5) All special resource waters within one (1) mile of the mining area; and (7-1-09)
 - (6) All Clean Water Act Section 303(d) listed streams, and their listed impairments, within one (1) mile of the mining area; (7-1-09)
- ix. To the extent such information is available, a description and location of underground mine workings and adits and a description of the structural geology that may influence ground water flow and direction; (7-1-09)
- x. Information regarding the relevant factors set forth in Subsection 401.03; and (7-1-09)

- xi. A proposed point of compliance, or points of compliance. (7-1-09)
- b. Within thirty (30) days of receipt of an application, the Department shall issue a written notice to the mine operator indicating: (7-1-09)
 - i. That the application is complete; or (7-1-09)
 - ii. That the Department is rejecting the application as incomplete. In such a case, the Department shall provide a list of deficiencies. Upon a determination that the application is incomplete, the Department shall refund one-half (1/2) of the application fee. (7-1-09)
- c. The Department shall establish the point(s) of compliance within one hundred eighty (180) days after receipt of a complete application unless the Department determines that additional time is necessary due to unusual circumstances. (7-1-09)

03. Setting the Point(s) of Compliance. The point(s) of compliance shall be set as close as possible to the boundary of the mining area, taking into consideration the relevant factors set forth in Subsections 401.03.a. through 401.03.h., but in no event shall the point(s) of compliance be within the boundary of the mining area. The mining area boundary means the outermost perimeter of the mining area (projected in the horizontal plane) as it would exist at the completion of the mining activity. The point(s) of compliance shall be set so that, outside the mining area boundary, there is no injury to current or projected future beneficial uses of ground water and there is no violation of water quality standards applicable to any interconnected surface waters. The Department's determination regarding the point(s) of compliance shall be based on an analysis and consideration of all relevant factors including, but not limited to: (7-1-09)

- a. The hydrogeological characteristics of the mining area and surrounding land, including any dilution characteristics of the aquifer and any natural attenuation supported by site-specific data; (7-1-09)
- b. The concentration, volume, and physical and chemical characteristics of contaminants resulting from the mining activity, including the toxicity and persistence of the contaminants; (7-1-09)
- c. The quantity, quality, and direction of flow of ground water underlying the mining area; (7-1-09)
- d. The proximity and withdrawal rates of current ground water users; (7-1-09)
- e. A prediction of projected future beneficial uses; (7-1-09)
- f. The availability of alternative drinking water supplies; (7-1-09)
- g. The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water; and (7-1-09)
- h. Public health, safety, and welfare effects. (7-1-09)

04. Ground Water Monitoring and Reporting. The Department shall require ground water monitoring and reporting whenever the Department sets the point(s) of compliance. The Department shall not require ground water monitoring that duplicates ground water monitoring required by other state or federal agencies as long as the mine operator provides the data to the Department. (7-1-09)

- a. A ground water monitoring system required under Subsection 401.04 shall be designed to: (7-1-09)
 - i. Represent the quality of background ground water that has not been affected by the mining activity; (7-1-09)and
- ii. Represent the quality of ground water passing the point(s) of compliance in order to determine compliance with ground water quality standards or effectiveness of best management practices. (7-1-09)

b. When practicable, indicator monitoring wells or other devices may be required. Such indicator wells and other devices shall not be used to determine compliance with the ground water quality standards, but instead may be used to evaluate modeling results, to predict the quality of ground water at the point(s) of compliance, or to determine the effectiveness of best management practices. (7-1-09)

c. All monitoring wells shall be constructed (well depth, well screen size, well screen interval, gravel pack, etc.) and developed so that ground water samples represent the quality of ground water that is relevant to current and future beneficial uses. (7-1-09)

05. Coordination with Other State or Federal Agencies/Public Notice. Before setting the point(s) of compliance or requiring ground water monitoring, the Department shall coordinate with and seek recommendations from other state or federal agencies that have regulatory authority over the mining activities. The Department may provide public notice and an opportunity for public comment prior to setting or changing the point(s) of compliance. The Department shall issue a public notice after it sets the point(s) of compliance. (7-1-09)

06. Limitations. Section 401 addresses only those contaminants that naturally occur in the mining area ground water or in the surrounding rock or soil and are present in concentrations above the natural background level as a result of mining activities. (7-1-09)

07. Application of Provisions. The provisions set out in Section 401 apply to new mining activities or to an expansion of existing mining activities commencing after July 1, 2009. All consent orders, compliance schedules, and other agreements adopted or issued by the Department prior to July 1, 2009 pertaining to ground water protection at mine sites shall remain in full force and effect. (7-1-09)

08. Change in Point(s) of Compliance/Ground Water Monitoring. (7-1-09)

a. A change in the point(s) of compliance may be requested by the mine operator when there is a change in, or new information regarding, the mining activity or any of the factors set forth in Subsection 401.03. A change requested by the mine operator shall include an identification of the new proposed point(s) of compliance, a description of the cause for the change and any data supporting the change. The mine operator's request shall be handled as an application submitted pursuant to Subsection 401.02.a. and shall be subject to all other provisions of Section 401. (7-1-09)

b. The Department may initiate a change in the point(s) of compliance if there is a change in, or new information regarding, the mining activity or any of the factors set forth in Subsection 401.03, and the Department determines that the change is necessary to ensure there is no injury to current or projected future beneficial uses of ground water and no violation of water quality standards applicable to any interconnected surface waters. The Department shall notify the mine operator in writing of the Department's intent to change the point(s) of compliance. The Department shall make its final decision to change the point(s) of compliance within sixty (60) days of the notice to the mine operator unless the Department and the mine operator agree more time is necessary to make the decision. (7-1-09)

c. The Department may require additional or new ground water monitoring or indicator wells when the Department changes the point(s) of compliance. The Department may also require additional or different ground water monitoring or indicator wells if the Department determines, based upon a change in or new information regarding the mining activity or any of the factors listed in Subsection 401.03, that the monitoring no longer meets the requirements set forth in Subsection 401.04. The mine operator may also request a change in the monitoring. (7-1-09)

402. -- 999. (RESERVED)