

4.2 Nonprofit Corporations

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~~Nonprofit Corporations (Entities) to manage large soil absorption systems, extended treatment, or experimental systems, clustered systems, or any other more-complex systems the Director deems a maintenance entity is required to manage~~ must guarantee that they will be responsible for the system and be available to provide operation and maintenance (O&M). The following guidance provides for a nonprofit corporation which can do that. ~~If an O&M Entity is setup to provide operation and maintenance for Extended Treatment Package Systems (IDAPA 58.01.03.009.02 and 58.01.03.009.03) or Large Soil Absorption Systems (IDAPA 58.01.03.013.07.c) according to the following minimum elements, the maintenance entity will likely be approved by the Director. These minimum elements provide assurance that operation and maintenance, as conditioned for these particular systems by the Director, occurs. Other O&M Entity elements may be acceptable on a case-by-case basis depending upon the maintenance needs of an Entity. Other elements not included within this guidance section will be evaluated on a case-by-case basis.~~

4.2.1 Required Incorporation Elements

The following elements must be included within the Entity's Articles of Incorporation or Bylaws:

1. The nonprofit organization should be incorporated according to Idaho Code 30-3.
2. The Articles of Incorporation shall include a requirement that any changes to the Entity's Articles of Incorporation or Bylaws shall be approved by the Department of Environmental Quality's Water Quality Division Administrator (Director) or his/her designee per Idaho Code 30-3-99.
 - a. The Director shall provide the Nonprofit Entity approval in writing of any changes to the Articles of Incorporation or Bylaws that are not in conflict with section 4.2 or 4.10 of the Technical Guidance Manual.
- ~~2.3.~~ Membership should be limited to property owners only.
- ~~3.4.~~ Voting should be limited to one parcel/one full membership/one vote.
- ~~4.5.~~ Voting rights should be restricted to members with improved property.
6. Voting rights should not be cancelled.
 - a. Exception to this is allowed in the event that an extended treatment package system is disconnected and removed from the property as approved by the Director.
7. Purposes of the organization should be clearly defined in the Articles of Incorporation.
- ~~5.8.~~ The Nonprofit Entity should hold an annual meeting of the membership.

9. Funds generated are to operate specific functions and should be restricted for use to the specific purpose. Those purposes should be defined in the Bylaws or associated Membership Agreement.
 - a. Annual financial reports should be made available to the membership upon request by individual members and through the annual membership meeting.
- ~~6~~.10. Multiple-purpose organization funds generated are to be separately maintained, and funds from one account should not be available for another account's use.
11. The ~~organization~~ Nonprofit Entity should either own the system(s) it intends to maintain or have an access easement in place.
 - a. Access easements for extended treatment package systems should be executed through a membership agreement as outlined in section 4.2.3.
- ~~7. Mutually agreeable access to those systems owned by the entity should be provided by the property owner.~~
- ~~8~~.12. Membership (and shares) in the ~~entity~~ Nonprofit Entity must run with the land, and successive owners must acquire the preceding owner's membership or voting share(s).
- ~~9~~.13. The purchaser ~~or~~ and any new member should be provided by the Nonprofit Entity with a copy of the Articles of Incorporation, By-Laws, Covenants, and Contracts (i.e., membership agreement, etc.) with the ~~entity~~ Entity.
- ~~10~~.14. There should be no provisions restricting ownership of improved property.
15. The ~~entity~~ Nonprofit Entity should be capable of raising revenue by ~~fixing~~ setting and collecting user charges.
16. Board of Director Requirements:
 - a. For Extended Treatment Package System Nonprofit Operation and Maintenance Entities the Board of Directors should contain one permanent position required to be filled by a corporate officer, general partner, or owner of the manufacturer of the treatment technology.
 - i. The only exemption to this requirement shall be for cases where manufacturers are no longer in business. In this case the existing Board Members and associated membership shall vote in a new Board Member to ensure that item 16.b is fulfilled.
 - ~~a~~.b. The Board of Directors should include a minimum of three Board Member positions.
- ~~11~~.17. The Board of Directors should be able to raise revenue for emergency operation and maintenance of community owned systems without majority vote.

18. The ~~organization~~ Nonprofit Entity must be capable of suing and of being sued, maintain the capability to impose liens on those members (shareholders) who become delinquent in user charges, and suspend services, providing such suspension will not jeopardize other members' use.
- ~~12.19.~~ The Nonprofit Entity should provide an operation and maintenance manual that shall be approved by the Director.
- a. ~~An~~ The operation and maintenance manual ~~shall~~ should be ~~approved by the Director~~ provided to all new members for extended treatment package systems and shall include the monitoring requirements as outlined in ~~the~~ Section 4.10.2 "Extended Treatment Package System" ~~Operation, Maintenance and Monitoring~~ Conditions for Approval.
- ~~13.20.~~ Conditions for dissolution of the ~~organization~~ Nonprofit Entity should be specified. Dissolution should be limited to connection to a municipal wastewater treatment facility or merger with another approved ~~nonprofit~~ Nonprofit corporation Entity having management capability.
- ~~14.21.~~ Except as provided in item ~~1820~~, the ~~entity~~ Nonprofit Entity should not be able to vote itself out of existence.
22. ~~A~~ For Nonprofit Entities a third party (i.e., maintenance entity, service provider, etc.) should be identified to execute the specified operation and maintenance functions. ~~in the event the operating entity is incapable of performance.~~
- a. Service Providers for Nonprofit Entities overseeing extended treatment package systems should be certified in writing by the manufacturer for the servicing of their technology. The certification should be provided to the Director prior to approval.
- ~~15.23.~~ The ~~entity~~ Nonprofit Entity should be able to plan and control how and at what time additional service functions will be extended or added.
- ~~16.24.~~ The Articles of Incorporation and/or By-Laws should provide for proxy voting.
- ~~17.25.~~ Proxies should not be binding on new purchasers.
- ~~18.26.~~ ~~The~~ For community systems the developer of the project should be required to contribute to the operation and maintenance until such time as the ~~nonprofit~~ Nonprofit corporation Entity is self-sustaining. Consider either a specified period of time or when a specified number of lots ~~has~~ have been sold.
27. The ~~organization~~ Nonprofit Entity should have a defined service area boundary.

4.2.2 Notification Requirements

The Nonprofit Entity shall notify the Director for any of the following reasons:

1. Any content changes that occur to the Articles of Incorporation, Bylaws, or Membership Agreements that occur after initial approval by the Director shall be provided to the Director for review and approval prior to their implementation. Any changes that conflict with any portion of section 4.2.1 should not be approved.
2. Changes occur to the Board of Directors.
3. Service provider(s) are changed.
4. Sampling plan changes or adjustments are necessary.

4.2.3 Membership Agreements for Extended Treatment Package Systems

The membership agreement is separate from the Articles of Incorporation and Bylaws for the Nonprofit Entity but is a required element for membership in the Nonprofit Entity and to ensure that proper operation and maintenance will be performed (IDAPA 58.01.03.009.03).

Membership agreements should contain the following elements:

1. Title of the membership agreement should include the words *lien notice, access easement, member agreement, and the name of the Nonprofit Entity*.
2. Contact information for the Nonprofit Entity should be listed including a mailing address and phone number.
3. A statement that annual fees will be assessed for services rendered by the Nonprofit Entity should be included.
4. The agreement should describe the exact services that are and are not included within the agreement (e.g., service, maintenance, annual testing, repairs, annual report submission, etc.).
5. The access easement language should be included.
6. A description of the lien process should be included.
7. The legal description of the property should be included.
8. A requirement that upon each sale of the property the buyer will sign an acknowledgement that they have reviewed the membership agreement and understand its requirements.
9. The agreement should state that the current property owner must disclose the terms of the membership agreement prior to any sales transaction of the property.

4.2.4 Sampling Plans for Extended Treatment Package Systems

Nonprofit Entities formed for the purpose of maintaining, servicing, and testing Extended Treatment Package Systems shall develop a sampling plan for the testing of effluent (IDAPA 58.01.03.009.03). Sampling plans should contain the following elements:

1. A signed letter from the manufacturer of the treatment technology certifying that the sampling method provided is acceptable for their technology.
2. A sampling location and design that is located after the secondary treatment unit for both gravity and pressurized systems.
3. Sample collection, preservation, and transportation techniques and methods that are in conformance with the latest edition of *Standard Methods for the Examination of Water and Wastewater*.
4. A way to collect all samples from a free flowing effluent pipe. Hose or portable water sources may be used to induce flowing condition but should be used as an option of last resort when access to a water source within the home is not available. If a hose or portable water source is used to induce a flowing condition the water source should discharge into the cleanout between the structure and primary septic tank. Cross connection and backflow prevention should be considered if hoses are used to induce flow.
5. Sample point cleaning and flushing procedures prior to sample collection.
6. Any necessary sampling device calibration techniques, equipment, and reagents.
- 4-7. Effluent field sample indicators that may be recommended for evaluation prior to collection of a grab sample. These indicators should provide indication that the treatment unit is operating properly.