

***Upon final approval of this section the following sections will move to section 1 of the TGM:**

- **4.2 Nonprofit Corporations in its current form → moves to section 1.6**
- **4.3 Existing and Approved Systems, Abandoned and Undocumented Systems, and Nonconforming Systems in its newly approved form → moves to section 1.7**
- **4.4 Easement in its current form → moves to section 1.8**

4.3 Vested Existing and Approved Systems Rights, Abandoned and Undocumented Systems, and Nonconforming Uses Systems

Revision: ~~October 31, 2013~~ December 10, 2014

4.3.1 Existing Systems

An existing subsurface sewage disposal system is a system installed prior to January 1, 1973, which was not permitted or approved by a health district (IDAPA 58.01.03.003.11). Existing subsurface sewage disposal system rights allow a property owner to use, repair, or replace the system for its original use and daily wastewater flow. Subsurface sewage disposal permits for the repair or replacement of an existing system must meet the current requirements of IDAPA 58.01.03 and the Technical Guidance Manual. If it is not possible to repair or replace the existing system in full compliance with IDAPA 58.01.03 then the replacement system must meet as many requirements of IDAPA 58.01.03 as possible and meet the intent of the rules (IDAPA 58.01.03.004.01) for any requirements that will not be in full compliance with IDAPA 58.01.03.

Existing systems will be repaired or replaced to meet the current requirements of IDAPA 58.01.03. Some situations may not allow for the replacement to meet all of the requirements of IDAPA 58.01.03. ~~There~~ In those non-conforming cases there is no right to repair or replace an existing system with a system that does not meet the intent of the rules. Meeting the intent of IDAPA 58.01.03 may require that a property owner replace an existing system, upon the system's failure, with an alternative system. Some alternative systems may require engineering or electrical components depending on the site conditions and alternative system requirements necessary to meet the intent of IDAPA 58.01.03. Any repair or replacement of an existing system that will only meet the intent of the rules must be issued as a non-conforming permit as described in the DEQ memorandum "Failing Subsurface Sewage Disposal System," dated July 26, 1993. If the repair or replacement of an existing system is for a different use than originally permitted or for increased wastewater flows (system expansion) the permit must be in full compliance with IDAPA 58.01.03 and follow the DEQ issued program directive "Permit Requirements for Increased Flows at Single Family Dwellings," dated April 15, 2010.

4.3.2 Approved Systems

An approved subsurface sewage disposal system is a system installed after January 1, 1973, which has been permitted, inspected, and approved by a health district (IDAPA 58.01.03.003.03). Approval is documented by the health district in the form of a signed final

inspection document or a signed approval letter. Approved subsurface sewage disposal system rights are the same for use, repair, and replacement of a system as described in section 4.3.1 for existing systems.

4.3.3 Abandoned Systems

An abandoned system is defined by IDAPA 58.01.03.003.01. The termination of wastewater discharge to a subsurface sewage disposal system for no more than ~~one~~ two years is the ~~typical~~ timeframe used to determine system abandonment. -A health district's determination that a system is abandoned ~~revokes any existing or approved system rights for the system and property.~~ Abandoned systems may be used for subsurface sewage disposal if the property owner can demonstrate that:

- The system meets the current requirements of IDAPA 58.01.03 and the Technical Guidance Manual, and
- The system is not failing as defined by IDAPA 58.01.03.003.13.

If there is not a previous subsurface sewage disposal permit, ~~and~~ system authorization, ~~and~~ or approval issued for the abandoned system, the health district ~~must~~ may permit the system ~~and~~, provide authorization, or approval for the system prior to its use.

4.3.4 Undocumented Systems

An undocumented subsurface sewage disposal system is a system that was installed after January 1, 1973 without a valid installation permit and record of a signed final inspection document or signed approval letter. Undocumented systems not acted upon within two years of identification are considered existing systems. An undocumented system may be replaced with a new system that meets the requirements of IDAPA 58.01.03 and the Technical Guidance Manual at any time, but the undocumented system must be abandoned once construction of the replacement system is completed unless the undocumented system is turned into an approved system. Undocumented and abandoned system may not be repaired, expanded, or placed into use unless it is first approved. To turn an undocumented system into an approved system the property owner must:

- Submit a complete subsurface sewage disposal permit application and fee to the health district of jurisdiction, and
- Have the system uncovered by a permitted installer or the property owner exposing the septic tank, effluent piping, and both ends of each drainfield trench, and
- Excavate at least one test hole within 10 feet of the existing drainfield at the time the system is uncovered unless there is existing soil documentation for the property, and
- Have the septic tank pumped by a permitted septic tank pumper so the health district can evaluate the tank for structural integrity and determination of the necessity of a leak test, and
- Allow the health district to inspect the exposed subsurface sewage disposal system and test hole to verify the installation meets all requirements of IDAPA 58.01.03 and the Technical Guidance Manual.

If the subsurface sewage disposal system is found to be in compliance with all the requirements of IDAPA 58.01.03 and the Technical Guidance Manual the health district will issue a subsurface sewage disposal permit for the system and provide the permit holder with written approval of the system in the form of a completed and signed final inspection document. If additional construction is required to bring the system into compliance with IDAPA 58.01.03 and the Technical Guidance Manual the health district will issue a subsurface sewage disposal permit for the necessary requirements. Written approval of the system will be provided once the permit requirements have been installed, inspected by the health district, and verified to meet the permit requirements.

4.3.5 Nonconforming Systems

If it is necessary to issue a nonconforming subsurface sewage disposal permit, the permit shall require that the system meet as much of IDAPA 58.01.03 as possible and the nonconforming permit requirement must meet the current intent of the rules (IDAPA 58.01.03.004.01). This may require the installation of an alternative system to meet separation distances or effective soil depths to features of interest or concern as described in IDAPA 58.01.03.007.17 and 58.01.03.008.02.c-d.

A nonconforming system is a system that does not fully comply with all of the requirements of IDAPA 58.01.03. Nonconforming systems are typically existing systems or older approved systems that were installed after changes to IDAPA 58.01.03. For property owners to retain their existing or approved system rights in a nonconforming system, the system cannot be considered abandoned as described in section 4.3.3. All nonconforming systems must be brought into compliance with the intent of IDAPA 58.01.03 upon the repair, replacement, or enlargement of the system (IDAPA 58.01.03.004). The intent of the rules is best met by fully complying with the current requirements of IDAPA 58.01.03 at the time of permit issuance (IDAPA 58.01.03.004.02).

Some existing or approved systems may be located on properties that are no longer capable of meeting the requirements of IDAPA 58.01.03 due to changes in the rule requirements over time. If the property owner has maintained their existing or approved system right for the use, repair, or replacement of the system then they have the right to obtain a nonconforming repair or replacement permit for their property. All nonconforming permits shall be issued as described in the DEQ memorandum “Failing Subsurface Sewage Disposal System,” dated July 26, 1993 contained within Section 8.7 of the Idaho Subsurface Sewage Disposal Standard Operating Procedures. Issuance of a nonconforming permit shall only be for the original use and wastewater flow for the structure located on the property and neighboring features of interest (e.g., wells and water lines) shall take priority in separation distance requirements.

~~If it is necessary to issue a nonconforming subsurface sewage disposal permit, the permit shall require that the system meet as much of IDAPA 58.01.03 as possible and the nonconforming permit requirement must meet the current intent of the rules (IDAPA 58.01.03.004.01). This may require the installation of an alternative system to meet separation distances or effective soil depths to features of interest or concern as described in IDAPA 58.01.03.007.17 and 58.01.03.008.02.c-d.~~

When issuing a nonconforming repair or replacement permit an emphasis shall be placed on meeting the intent of IDAPA 58.01.03.004.01.d, preserving the existing or potential beneficial uses of the waters of the State. This emphasis arises out of the direction of Idaho's legislative bodies as stated in Idaho's water quality policy (Idaho Code §39-3601) and policy on environmental protection (Idaho Code §39-102).

~~Failed system: Repair or replacement of an existing system:~~

- ~~1. Dwelling or structure unit served by the system must not be altered, remodeled, or otherwise changed so as to result in increased wastewater flows (IDAPA 58.01.03.004.04).~~
- ~~2. Reason for failure should be determined if possible.~~
- ~~3. If failure is due to age, the system may be repaired or replaced with a similar system that shall be constructed as close as possible to current dimensional and setback requirements for standard systems (IDAPA 58.01.03.008.12).~~
- ~~4. If failure has occurred in less than 10 years and is due to increased wastewater flows or poor site characteristics, an alternative or larger system must be constructed as close as possible to current dimensional and setback requirements for alternative systems (IDAPA 58.01.03.008.12).~~
- ~~5. System replacement must follow the requirements of the subsurface program directive, "Failing Subsurface Sewage Disposal System," issued by DEQ on July 26, 1993.~~

~~Additions or alterations: Changes to an existing structure or dwelling:~~

- ~~1. Addition or alteration will not cause the existing system to become unsafe or overloaded (IDAPA 58.01.03.004.04).~~
- ~~2. Enough reserve area for both the original and additional system shall be preserved (IDAPA 58.01.03.004.06).~~
- ~~3. Wastewater flow will not be significantly increased (IDAPA 58.01.03.004.04). Significant increases shall be considered to be any increase in wastewater flow that exceeds the design flow of the system.~~
- ~~4. Area reserved for replacement cannot be used for the addition (IDAPA 58.01.03.004.06).~~
- ~~5. A subsurface sewage disposal permit may be required for system enlargement or adjustments based upon the addition or alteration plan:
 - ~~a. A permit may be required due to possible impacts on separation distances from the addition or alteration to the existing subsurface sewage disposal system or due to additional wastewater flows from the addition or alteration that exceeds the original design flow of the system.~~
 - ~~b. Permit issuance shall be required to conform with the subsurface program directive, "Permit Requirements for Increased Flows at Single Family Dwellings," issued by DEQ on April 15, 2010.~~~~

~~Abandoned system: An abandoned system is considered to be a system that has not received wastewater flows or blackwaste for 1 year or more due to the removal of a wastewater generating structure from the system:~~

- ~~1. An abandoned system may be used if the system was originally permitted and approved, and~~
- ~~2. Wastewater flows and blackwaste characteristics are similar to the system's original permit requirements for waste strength and flow rate received by the system, and~~
- ~~3. The site is inspected and approved.~~

4. ~~If the system is not an approved system (i.e., no issuance of a previous subsurface sewage disposal permit regardless of the installation date), it must be~~
 - a. ~~Uncovered by a permitted installer or the property owner (IDAPA 58.01.03.011.02).
—Uncovered means exposure of the septic tank, effluent piping, and the front and back ends of each subsurface sewage disposal trench.~~
 - b. ~~Pumped by a permitted septic tank pumper, and~~
 - c. ~~Inspected by the health district while uncovered (IDAPA 58.01.03.011.02).~~
 - d. ~~The system must meet all current requirements, including permit issuance (IDAPA 58.01.03.005.01).~~
 - 1) ~~If the system does not meet all current requirements, it must be brought into compliance with the current requirements prior to use according to the issued permit requirements.~~
 - 2) ~~If the system, or any portion thereof, cannot be brought into compliance with the current requirements, the system or portion of the system not in compliance must be abandoned and replaced in compliance with the current requirements and in accordance with the issued permit.~~