

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, 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 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.

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).

## 1.8 Easement

Revision: March 20, 2015

The “Individual/Subsurface Sewage Disposal Rules” (IDAPA 58.01.03) provide that every owner of real property is responsible for storing, treating, and disposing of wastewater generated on that property. This responsibility includes obtaining necessary permits and approvals for installing an individual or subsurface sewage disposal system. Therefore, a property owner wishing to install an individual or subsurface sewage disposal system must obtain a permit under IDAPA 58.01.03 and any other necessary approval for installing the system, including any authorization needed to install the system on another property that does not contain the wastewater-generating structure. This property may be owned by the same individual who owns the parcel with the wastewater-generating structure or another individual. Consistent with this requirement, IDAPA 58.01.03.005.04.1 requires a permit applicant to include in the application copies of legal documents relating to access to the system. This section provides guidance regarding the circumstances under which the health district should permit a system to be located on another property that does not contain the wastewater-generating structure and the legal documents that must be included in or with an application for such a system.

1. The health district will consider allowing the installation of a subsurface sewage disposal system on another property (e.g., lot or parcel). However, this option should be considered a last resort for use only when other practical solutions for subsurface sewage disposal are not available on the applicant’s property. In addition, the entire site (i.e., the area for both the primary and replacement drainfield) on the other property must be reviewed by the health district, and the site must meet all requirements of IDAPA 58.01.03.
2. The placement of an individual subsurface sewage disposal system on another property requires that an easement be in place before subsurface sewage disposal permit issuance. Easements are required anytime a subsurface sewage disposal system is proposed on another property regardless of property ownership. Easements must be obtained for each property, other than the wastewater-generating parcel that the application is submitted

for, that any portion of the subsurface sewage disposal system is proposed to be installed upon. It is the applicant's responsibility to include an easement that

- a. Contains a sufficient description of the easement area and of the property to be benefited by the easement (the property of the applicant).
  - b. Contains language ensuring that the other property can be used for the system, and that the applicant or a subsequent purchaser of the applicant's property has access to make repairs or perform routine maintenance until the system is abandoned. The language must ensure such use and access even when the applicant's property or the other property is sold or otherwise transferred.
  - c. Contains language that restricts the use of the easement area in a manner that may have an adverse effect on the system functioning properly.
  - d. Is surveyed, including monumenting the corners of the entire easement area, to supply an accurate legal description of the easement area for both the primary and replacement drainfield areas and enable the health district to properly evaluate the site.
3. The applicant is responsible for ensuring that a legally sufficient document is prepared to establish the necessary easement for the subsurface sewage disposal system located on another property. This document must be submitted to the health district with the permit application. The health district must ensure that an easement document is included in the application. However, the health district does not have the expertise, nor is it the duty of the health district, to determine the legal adequacy of the easement document, and the issuance of a permit does not in any way represent or warrant that an easement has been properly created. To issue a permit that includes a system on another property, the health district must ensure that the easement document included with the application:
- a. Has been prepared by an attorney.
  - b. Has been recorded in the county with jurisdiction. Evidence that the document has been recorded must be provided.

If the easement document meets the two criteria above, the health district may issue a permit. It is not the health district's responsibility to ensure the easement document meets the requirements in item 2 above. The applicant and the applicant's attorney are responsible for ensuring that the easement is legally sufficient and will meet the requirements in item 2 above.

### **Easement Restrictions**

1. If easements for drainfields under separate ownership result in more than 2,500 GPD of effluent being disposed of on the same property, the drainfields must be designed as a large soil absorption system and undergo a nutrient-pathogen (NP) evaluation.
2. Easement boundaries that are not adjacent to the grantee's property line must meet the separation distance of 5 feet between the drainfield and/or septic tank and the easement boundary.