

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.04 - RULES FOR ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS

DOCKET NO. 58-0104-1501

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This rulemaking action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before September 16, 2015. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: This rulemaking has been initiated to comply with a recent revision to the Clean Water Act that requires planning documents, that are used for State Revolving Fund (SRF) projects, to assess the cost and effectiveness, to the maximum extent practicable, of efficient water use, reuse, recapture and conservation, and energy conservation. This proposed rule change incorporates the required elements of planning documents that are not already in the existing rule. The additional required elements are a result of the 2014 amendments to the Clean Water Act (Pub.L. 113-121).

Prospective grant and loan recipients, consulting engineers, grant and loan administrators, and other funding agencies may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2015 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2016 legislative session if adopted by the Board and approved by the Legislature.

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.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on the outcome of the negotiated rulemaking process conducted pursuant to Idaho Code § 67-5220 and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the July 2015 Idaho Administrative Bulletin, [Vol. 15-7, page 100](#), and a preliminary draft rule was made available for public review. A meeting was held on July 21, 2015. Members of the public did not attend the meeting or submit written comments. At the conclusion of the negotiated rulemaking process, DEQ formatted the final rule draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule drafts, and documents distributed during the negotiated rulemaking process, is available at www.deq.idaho.gov/58-0104-1501.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

FISCAL IMPACT STATEMENT: 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 when the pending rule will become effective: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov, (208) 373-0439.

Anyone may submit written comments by mail, fax or email at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 30, 2015.

Dated this 2nd Day of September, 2015.

Paula J. Wilson
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0104-1501
(Only Those Sections With Amendments Are Shown.)

030. PROJECT SCOPE AND FUNDING.

Grant funds awarded under this program will be used entirely to prepare a wastewater treatment facility planning document. The planning document will identify the cost effective and environmentally sound alternative to achieve or maintain compliance with IDAPA 58.01.16, "Wastewater Rules," and the federal Clean Water Act, 33 U.S.C. Sections 1381 et seq. The planning document must be approved by the Department. (3-29-12)

01. Planning Document. (3-29-12)

a. A planning document shall include all items required by IDAPA 58.01.16, "Wastewater Rules," Subsection 411.03 or 410.04. Should the grant recipient proceed to construction using federal funds (e.g., a state revolving fund loan), then the items listed in Subsection 030.01.b. of these rules shall be required prior to construction. (3-29-12)

b. A planning document that is prepared anticipating the use of federal funds shall include an environmental review that will require the Department approval of both a draft and final planning document. (3-29-12)

i. The draft planning document shall include all items required by 58.01.16 "Wastewater Rules," Subsection 411.03 or 410.04, as well as the following: (3-29-12)

- (1) Description of existing conditions for the proposed project area; (4-2-08)
- (2) Description of future conditions for the proposed project area; (4-2-08)
- (3) Development and initial screening of alternatives; and (3-29-12)
- (4) Development of an environmental review specified by the Department as described in Section 042. (3-29-12)

ii. The final planning document shall include all items required of the draft planning document as well as the following: (3-29-12)

- (1) Final screening of principal alternatives and plan adoption; (4-2-08)
- (2) Selected plan description and implementation arrangements; ~~and~~ ~~(3-29-12)~~()
- (3) Relevant engineering data supporting the final alternative; ~~and~~ ~~(3-29-12)~~()

(4) Assessment of the cost and effectiveness, to the maximum extent practicable, of efficient water use, reuse, recapture and conservation, and energy conservation, with cost including construction, operation and maintenance, and replacement. ()

iii. The grant recipient shall provide an opportunity for the public to comment on the draft planning document. The public comment period shall be held after alternatives have been developed and the Department has approved the draft planning document. The grant recipient shall provide written notice of the public comment period and hold at least one (1) public meeting within the jurisdiction of the grant recipient during the public comment period. At the public meeting, the draft planning document shall be presented by the grant recipient with an explanation of the alternatives identified. The cost effective and environmentally sound alternative selected shall consider public comments received from those affected by the proposed project. After the public meeting and public comment period, the final alternative will be selected and the Environmental Information Document may be prepared. (3-29-12)

c. The draft and final planning document shall bear the imprint of an Idaho licensed professional engineer's seal that is both signed and dated by the engineer. (3-29-12)

d. The draft and final planning documents must be reviewed and approved by the Department. (3-29-12)

e. The planning period shall be twenty (20) years for all facilities except for conveyance systems which may be forty (40) years. (4-2-08)

02. Limitation on Funding Assistance. The maximum grant funding provided in a state planning grant award shall not exceed fifty percent (50%) of the total eligible costs for grants awarded. (4-2-08)