



58.01.03 – Individual/Subsurface Sewage Disposal Rules Docket No. 58-0103-1501



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Presented By:

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Overview

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- **DEQ has initiated rulemaking in the subsurface program**
 - In response to public comment/input and manufacturers limiting number of service providers
 - Intended to simplify DEQ/Health District oversight of service providers
 - Intended to expand choices of service providers for septic system owners

Overview

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- Intended to create a certification program for service providers
 - Must have complex installer permit
 - Additional continuing education and exam
 - Certification of training from product manufacturer

Current Operation, Maintenance, and Monitoring Authority

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- DEQ requires operation, maintenance, and monitoring (OMM) of some complex alternative systems
 - Authorized by IDAPA 58.01.03.005.14 and 009.03
 - ✦ 005.14 – DEQ may require specific OMM procedures be observed as a condition of issuing a septic permit
 - ✦ 009.03 – as part of a product’s design approval DEQ may specify circumstances under which the product must be operated and maintained
 - Extended treatment package system (ETPS)
 - Recirculating gravel filter (RGF) used to meet requirements of an Nutrient Pathogen evaluation

Extended Treatment Package System

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- **ETPS are manufactured and packaged mechanical treatment devices that provide additional biological treatment to septic tank effluent**
 - Mechanical, non-passive treatment necessitates operation, maintenance, and monitoring (OMM)
 - OMM needs to be provided by a trained professional
 - History of the program and documented performance of certain technologies has shown that OM&M is an important component of the program

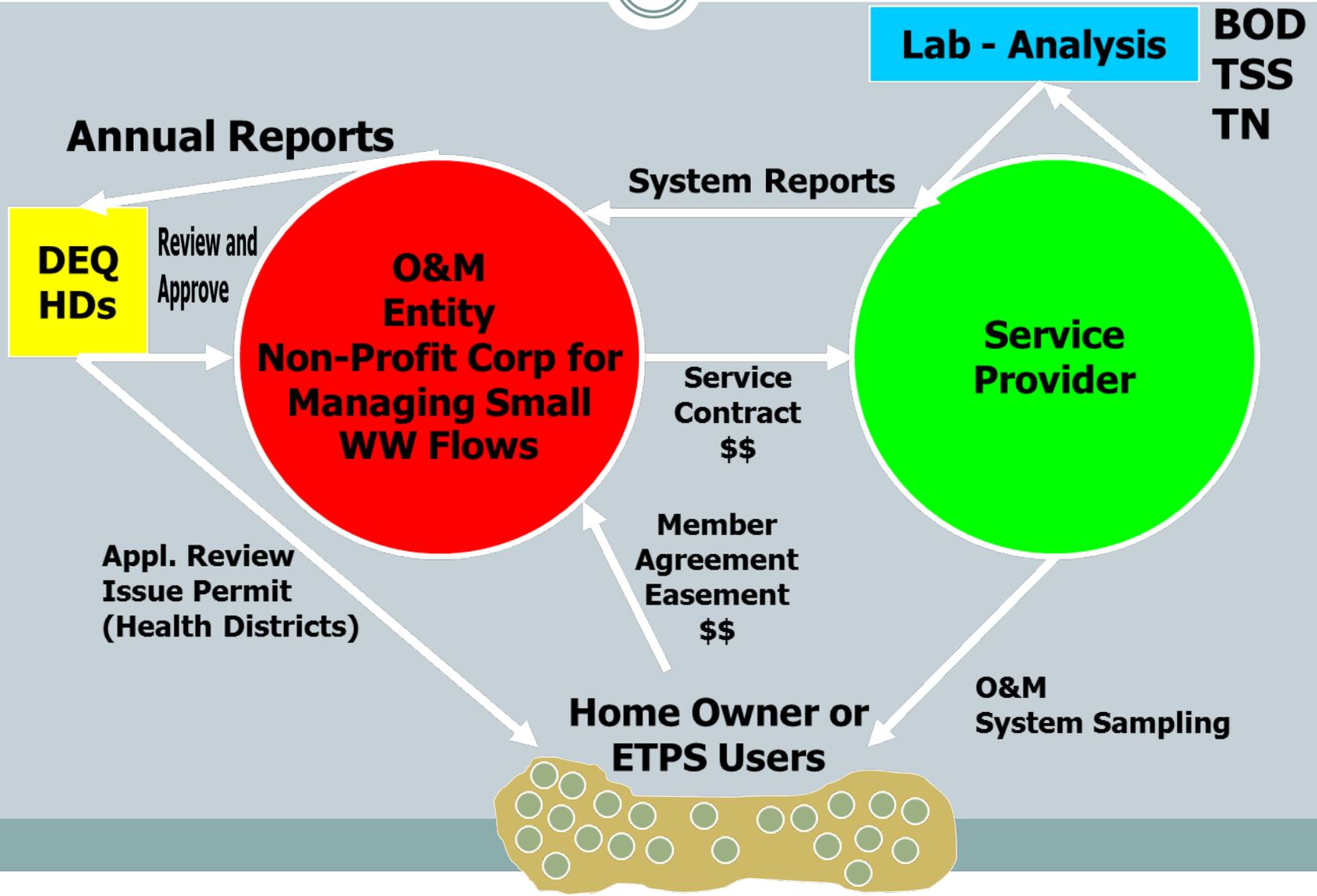
History

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- **Historically OMM has been delivered by a non-profit O&M entity**
 - O&M entity contracts with a service provider
 - Service provider provides OMM records to O&M entity who reports to health district and DEQ annually
 - O&M entities are typically associated with one manufacturer
 - Members are required to record access easements and member agreements to their property to become a member prior to obtaining a septic permit

Current System of OMM

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History

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- O&M entity system was setup in 1985
- First entity was not incorporated until 1996
 - Remaining 11 followed in 97, 99, 01, 02, 03, 04, 09, and 13
- Entities have had a varying level of operating success
 - Some have operated successfully since incorporation
 - Some have been suspended intermittently
 - Currently 6 entities suspended since 2011/2012 due to a lack of O&M entity operation
 - ✦ Poor ETPS system performance
 - ✦ Failure to submit reports or perform and document routine maintenance and repair

O&M Entities and Service Providers

- **Currently 12 O&M entities**
 - Some providers serve multiple entities
 - 6 entities suspended (3.5-4.5 years)
 - ✦ Account for roughly 909 individual property owners or 48% of ETPS program
 - ✦ Entities were suspended due to lack of annual report submittal and/or failure to perform maintenance and monitoring of member's systems
- **Currently 14 service providers**
 - Some serve entire state
 - Some serve a health district territory

Current O&M Entity Membership

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O&M Entity	Health District							
	1	2	3	4	5	6	7	Total
Idaho Wastewater Treatment Services (Residential & Commercial)	17	0	306	353	4	22	11	713
Southeast Idaho Environmental Treatment Services (SSPD)	0	0	0	0	0	2	171	173
Intermountain Septic Solutions	0	0	0	0	0	6	0	6
Tricounty Wastewater Management (SSPD)	58	0	0	0	0	0	0	58
Valley Environmental Protection (SSPD)	7	0	0	0	0	0	30	37
Northern Extended Treatment Systems (SSPD)	0	0	0	0	0	0	102	102
Septic Systems, Inc. (SSPD)	0	0	193	18	0	0	0	211
Wilbert Systems	2	0	0	0	0	0	0	2
Effluent Technologies (SSPD)	0	0	0	0	0	0	328	328
Everlasting Extended Treatment	0	0	67	1	0	0	0	68
Idaho Onsite Services	117	0	7	19	26	2	6	177
Unidentified	0	0	0	0	0	0	6	6
Total number of ETPSs permitted in district	201	0	573	391	30	32	654	1,881

Notes: ETPS – extended treatment package system; O&M – operation and maintenance; SSPD - suspended

Regulated Community Requests Changes

- Many existing ETPS owners across the state have requested changes to the O&M entity system to provide them more options and ability to independently meet their OMM requirements
 - More options for service providers
 - No O&M entity, allow individuals to meet their permit requirements independently of other ETPS owners
 - No access easements
 - Better regulations for service providers

Technical Guidance Committee Recommendation

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- In response to the public input DEQ's Technical Guidance Committee (TGC) has recommended to DEQ that the O&M entity system be replaced with a service provider based system
 - Intended to allow property owners choice of trained service provider
 - Intended to provide better oversight of service providers through a permitting/certification program supported by administrative rules
 - Intended to allow property owners to address their septic permit requirements independent of other property owners

DEQ Response

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- **DEQ has accepted the TGC's recommendation to pursue a service provider based OMM model**
 - Would replace the O&M entity model upon approval of the Idaho Legislature (projected 7/1/17)
 - Initiated rulemaking process to incorporate service provider certifications and requirements in IDAPA 58.01.03
 - Intended to allow property owners to address their septic permit requirements independent of other property owners

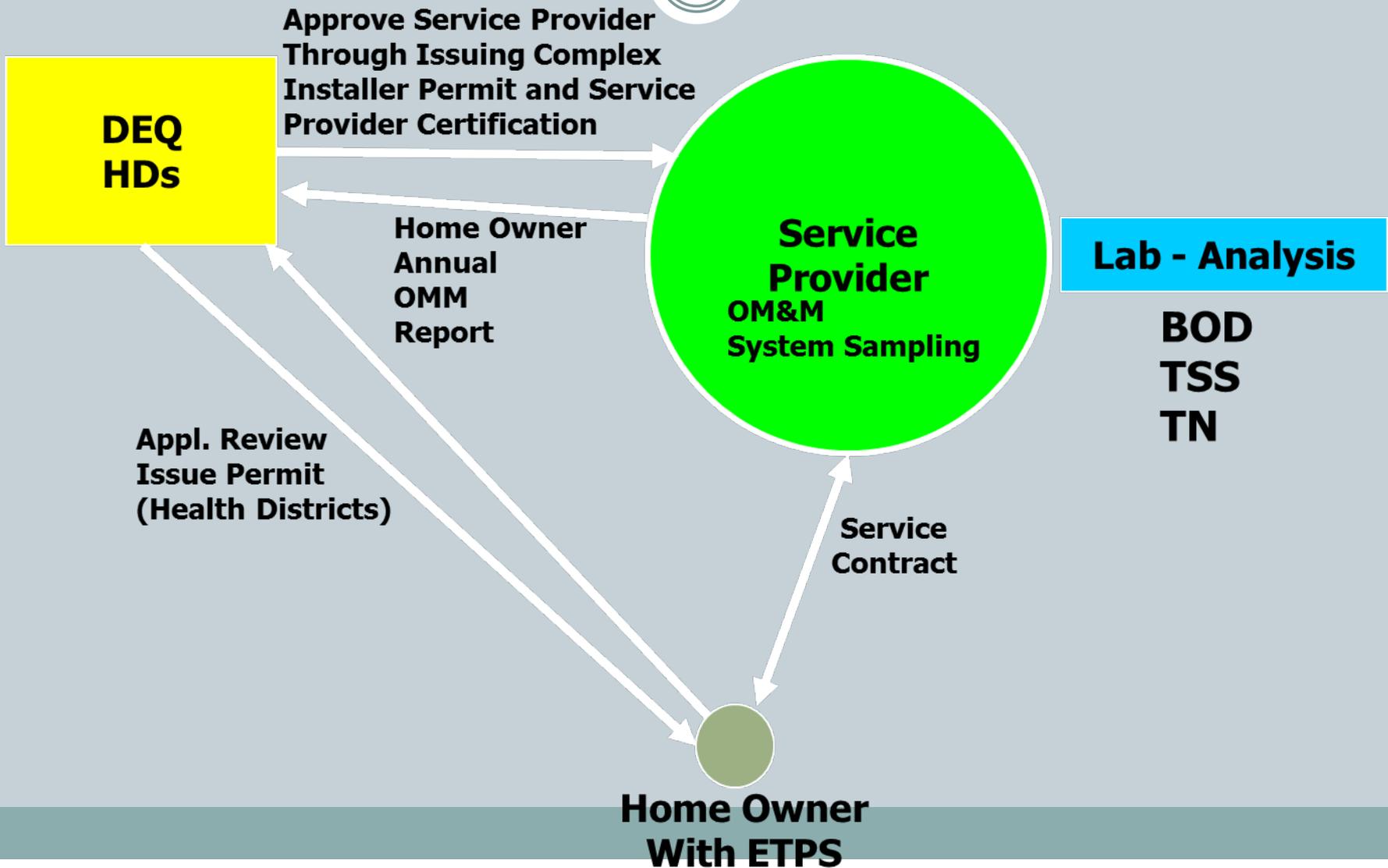
DEQ Response

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- **DEQ has initiated rulemaking because**
 - Current OMM system has shown lack of functionality over several years
 - Collaborative program revisions have not made a significant difference in compliance
 - There is a lack of state requirements supported by rule for the minimum qualifications, responsibilities, and approval of service providers for complex alternative systems
 - DEQ is limited to current approval of service provider through guidance and has found that manufacturers may limit the number of service providers they are willing to train, thus limiting service provider options for property owners

Proposed System of OMM

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Proposed System of OMM

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- **Will replace the current O&M entity system**
 - No recorded access easements and member agreements
 - Allows property owner to choose service provider
 - Allows property owner to meet their permit requirements independently of other property owners
 - Allows better oversight of service providers by DEQ/health districts

Proposed System of OMM

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- All existing ETPS owners will be transferred to new service provider system
- Manufacturers will be required to train qualifying individuals but have ability to remove their training certifications through an MOU with providers

IDAPA 58.01.03 Rulemaking Progress and Schedule

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- **Completed schedule**
 - Notice has been published in Administrative Bulletin
 - Negotiated rulemaking held on 10/22/15
 - Written public comment period ended on 11/6/15
 - Draft rule published in Idaho Administrative Bulletin 1/6/16
 - Second public comment period ended 2/3/16
 - Response to public comment has been completed

IDAPA 58.01.03 Rulemaking Progress and Schedule

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- **Upcoming schedule if adopted by the DEQ Board**
 - Pending rule published in Idaho Administrative Bulletin July 2016
 - Reviewed by Legislature 2017
 - Effective July 1, 2017 if approved (not sine die 2017)

Proposed Changes and Additions to IDAPA 58.01.03

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- 58.01.03.003.30

- Add definition of service provider

30. **Service Provider.** Any person corporation, or firm engaged in the business of providing operation, maintenance, and monitoring of complex alternative systems in the state of Idaho. ()

- Existing 58.01.03.003.30-38

- Revise to 003.31-39 due to new definition

Proposed Changes and Additions to IDAPA

58.01.03

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- 58.01.03.006

- Add service provider certification to section title

006. INSTALLER'S REGISTRATION PERMIT AND SERVICE PROVIDER CERTIFICATION.

- 58.01.03.006.01

- Require service providers to obtain a certification

01. Permit and Certification Required. Every installer and service provider shall secure from the Director, an installer's registration permit. Service providers must also obtain a service provider's certification. Two (2) types of installer permits and one (1) type of service provider certification are available: ~~(5-7-93)~~()

Proposed Changes and Additions to IDAPA

58.01.03

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- 58.01.03.006.01.b

- Remove a system that is considered basic alternative by DEQ

b. A complex alternative system installer's registration permit is required to install evapotranspiration systems, extended treatment package systems, lagoon systems, large soil absorption systems, pressure distribution systems, intermittent sand filters, ~~in-trench sand filter~~, sand mounds or other systems as may be specified by the Director. ~~(5-7-93)~~()

- 58.01.03.006.01.c

- Add when a service provider certification is required

c. A service provider certification is required to perform operation, maintenance, and or monitoring of complex alternative systems. ()

Proposed Changes and Additions to IDAPA

58.01.03

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- 58.01.03.006.02

- Include examination requirements for service providers

02. Examination. The initial issuance of the installer's permit and service provider certification shall be based on the completion of an examination, with a passing score of seventy (70) percent or more, of the applicant's knowledge of the principles set forth in *this chapter* these rules and the applicable sections of the Technical Guidance Manual. The examinations will be prepared, administered and graded by the Director. The installer examination and service provider examination shall be separate exams. ~~(5-7-93)~~()

Proposed Changes and Additions to IDAPA

58.01.03

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- 58.01.03.006.03

- Require service provider certification annually and clarify independent refresher course requirements

03. Permits and Certifications Required Annually. Registration permits and service provider certifications expire annually on the first (1st) day of January, and all permits and certifications issued thereafter will be issued for the balance of the calendar year. Additionally, installers and service providers shall attend at least one (1) refresher course approved by the state of Idaho, Department of Environmental Quality, ~~be attended~~ every three (3) years. Individuals holding both a complex installer registration permit and service provider certification shall attend one refresher course for the complex installer registration permit and another course for the service provider certification. Installer and service provider refresher courses are not interchangeable. (5-7-93)()

Proposed Changes and Additions to IDAPA

58.01.03

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● 58.01.03.006.04

- Include minimum application contents for service providers

04. Contents of Application.

a. Applications for installer permits and service provider certifications shall:

i. Be in writing;

ii. shall be signed by the applicant or by an officer or authorized agent of a corporation;

iii. shall contain the name and address of the applicant;

iv. shall indicate whether the permit is to be for:

(1) Installation of standard and basic alternative systems ~~or for~~;

(2) Installation of standard, basic and complex alternative systems; or

(3) Installation of standard, basic and complex alternative systems and certification as a service provider; and

v. shall contain the expiration date of the bond required by Subsection 006.05.

b. Additionally, for applicants seeking certification as a service provider, the application shall also contain annual documentation of manufacturer specific training, as required by Subsection 006.06.a (5-7-93)()

Proposed Changes and Additions to IDAPA

58.01.03

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- 58.01.03.006.05

- Require service providers to obtain a bond

05. Bond Required. At the time of application, all applicants, including those seeking a service provider certification, shall deliver to the Director a bond in a form approved by the Director in the sum of five thousand dollars (\$5,000) for a standard and basic alternative system installer's registration permit, or in the sum of fifteen thousand dollars (\$15,000) for standard, basic and complex alternative system installer's registration permit. The bond will be executed by a surety company duly authorized to do business in the state of Idaho and must run concurrent with the installer's registration permit ~~to~~. The bond shall be approved by the Director and must guaranteeing the installer or service provider's faithful performance of all work undertaken under the provisions of the installer's registration permit or service provider certification, or both. Any person who suffers damage as the result of ~~the~~ negligent or wrongful acts of the ~~registrant~~ installer or service provider or by ~~his~~ the installer or service provider's failure to competently perform any of the work agreed to be done under the terms of the registration permit or certification shall, in addition to other legal remedies, have a right of action ~~in his own name~~ on the bond for all damages not exceeding five thousand dollars (\$5,000) for standard and basic alternative systems or fifteen thousand dollars (\$15,000) for complex alternative systems or required operation, maintenance, and or monitoring by service providers. The maximum liability of the surety and/or sureties on the bond, regardless of the number of claims filed against the bond, shall not exceed the sum of five thousand dollars (\$5,000) for standard and basic alternative systems or fifteen thousand dollars (\$15,000) for complex alternative systems or required operation, maintenance, and or monitoring by certified service providers. (5-7-93)()

Proposed Changes and Additions to IDAPA

58.01.03

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- 58.01.03.006.06

- Require service providers to meet minimum responsibilities

06. Service Provider Responsibilities. All certified service providers who provide operation, maintenance, ~~and-or~~ monitoring for any complex alternative system are responsible for compliance with each of these rules that are relevant to those services. Additionally, each certified service provider shall: ()

Proposed Changes and Additions to IDAPA

58.01.03

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- 58.01.03.006.06.a

- Require service providers to obtain manufacturer-specific training

a. Obtain documentation of the completed manufacturer-specific training for of each ~~system that is a~~ manufactured and packaged treatment system for which the service provider intends to provide operation, maintenance, or monitoring. Proper documentation includes a certificate or letter of training completion provided by the manufacturer. If a system manufacturer is no longer in business, that manufacturer-specific training is not required. ()

Proposed Changes and Additions to IDAPA

58.01.03

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- 58.01.03.006.06 (continued)

- Require service providers to maintain a list of properties they are contracted to service

b. Maintain a comprehensive list of real property owners who contracted with the certified service provider. The list shall include the current real property owner name, service property address, real property owner contact address, and subsurface sewage disposal permit number. This list shall be provided to the Director as part of the annual operation, maintenance, and monitoring reports for individual real property owners; and
()

Proposed Changes and Additions to IDAPA

58.01.03

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- 58.01.03.006.06 (continued)

- Require service providers to submit annual reports containing minimum information

c. Submit all operation, maintenance, and monitoring records in the form of an annual report for each individual real property owner with whom the service provider contracts to fulfill the real property owner's operation, maintenance, ~~and-or~~ monitoring responsibilities required through the real property owner's subsurface sewage disposal installation permit as allowed in Subsection 005.14. The annual reports shall be provided to the Director by the timeframe specified in the Technical Guidance Manual for the specific complex alternative system for which operation, maintenance, ~~and-or~~ monitoring is required. ()

Proposed Changes and Additions to IDAPA 58.01.03

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- Existing 58.01.03.006.06-08
 - Revise to 006.07-09 due to insertion of provider responsibilities

- 58.01.03.006.07.b
 - Clean up language
 - b. ~~An~~Owners installing ~~his~~ their own standard or basic alternative systems. ~~(5-7-93)~~ (____)

- 58.01.03.006.09
 - Include ability to revoke a service provider certification
 - ~~089.~~ **Grounds for Revocation.** Failure to comply with these rules shall be grounds for revocation of the permit or the certification, or both. ~~(5-7-93)~~(____)

Proposed Changes and Additions to IDAPA

58.01.03

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- 58.01.03.006.10

- Require all existing O&M entity members to transfer to service provider OMM program

10. Transfer from Non-Profit Operation and Maintenance Entity to Certified Service Provider. ()

a. Real property owners who want to install extended treatment package systems must retain a permitted installer and certified service provider. An easement granting general access to a non-profit operation and maintenance entity is no longer required for extended treatment package system installation permits. ()

Proposed Changes and Additions to IDAPA

58.01.03

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- 58.01.03.006.10 (continued)

- Require all existing O&M entity members to transfer to service provider OMM program

b. Beginning July 1, 2017, real property owners who had extended treatment package systems installed are not required to be members of non-profit operation and maintenance entities. To meet the operation, maintenance, and monitoring requirements of their extended treatment package systems, real property owners shall retain a certified service provider for their existing extended treatment package systems. ()

Proposed Changes and Additions to IDAPA

58.01.03

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- 58.01.03.009.03

- Revise to include system monitoring

03. Effect of Design Approval. The Director may condition a design approval by specifying circumstances under which the component must be installed, used, operated, ~~or~~ maintained, or monitored. ~~(10-1-90)~~()

- 58.01.03.009.03.a

- Requires DEQ to specify which systems are under the OMM program

a. The Director shall specify the complex alternative systems that must undergo professionally managed operation, maintenance, service, **and** or effluent testing. ()

Proposed Changes and Additions to IDAPA

58.01.03

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- 58.01.03.009.03.b

- Prevent manufacturers from limiting a property owner's choice of service providers

b. Manufacturers shall ~~not restrict the number~~ PROVIDE TRAINING TO A REASONABLE NUMBER of service providers ~~trained in their products to perform~~ required operation, maintenance, or monitoring as specified by the Director. ()

- 58.01.03.009.03.c

- Allows manufacturer to enter into an MOU with service providers to have control over quality of service by a provider

c. Manufacturers may enter into agreements with certified service providers trained in their technology but shall not limit the service providers from being trained in the technology of other manufacturers. ()

Proposed Changes and Additions to IDAPA

58.01.03

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- 58.01.03.009.04

- Allows DEQ to disapprove a manufacturer's product if they do not comply with service provider training

04. Notice of Design Disapproval. If the Director is satisfied that the component described in the submittal may not be in compliance with or may not consistently function in compliance with these rules, or that the manufacturer of the proposed system failed to comply with Subsection 009.03, the Director will disapprove the design as submitted. The manufacturer or distributor submitting the design for approval will be notified in writing of disapproval and the reason for that action. (~~5-7-93~~)()



Questions

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