

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.11 - GROUND WATER QUALITY RULE

#### DOCKET NO. 58-0111-0801 (FEE RULE)

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2009 Idaho State Legislature for final approval. The pending rule will become final and effective on July 1, 2009 if the rule is approved by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Sections 39-105, 39-107, 39-120, and 39-126, Idaho Code.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 6, 2008, Vol. 08-8, pages 286 through 294. After consideration of public comments, the rule has been revised at Sections 007 and 401. The remainder of the rule has been adopted as proposed. The Rulemaking and Public Comment Summary can be obtained at [http://www.deq.idaho.gov/rules/groundwater/58\\_0111\\_0801\\_pending.cfm](http://www.deq.idaho.gov/rules/groundwater/58_0111_0801_pending.cfm) or by contacting the undersigned.

**FEE SUMMARY:** This rule includes a requirement that applicants submit a \$2500 fee at the time the application is submitted to DEQ (Subsection 401.02.a.). Imposition of the fee is authorized by Section 39-119, Idaho Code.

**IDAHO CODE SECTION 39-107D STATEMENT:** Section 39-107D, Idaho Code, provides that DEQ must meet certain requirements when it formulates and recommends rules which are broader in scope or more stringent than federal law or regulations. There is no federal law or regulation that is comparable to the Ground Water Quality Rule. Therefore, the changes to the rule are not broader in scope or more stringent than federal law or regulations.

Section 39-107D, Idaho Code, also applies to a rule which “proposes to regulate an activity not regulated by the federal government.” This rule amends portions of the Ground Water Quality Rule that address mining activities. Mining activities are regulated by the federal government. The federal government, however, does not have a regulatory program that specifically sets standards to protect ground water quality and beneficial uses of ground water as the Ground Water Quality Rule does. For this reason, DEQ believes Section 39-107D is applicable and that the amendments to the rule describe aspects of mining activities not regulated by the federal government.

The following is a summary of additional information required by Sections 39-107D(3) and (4), Idaho Code. Information relating to Section 39-107D(2) has also been provided.

**Section 39-107D(2)(a), Idaho Code. To the degree that a department action is based on science, the department shall utilize the best available peer reviewed science and supporting studies conducted in accordance with sound objective scientific practices.**

The rule changes were initiated for clarification purposes rather than for reasons based on new scientific information. By clarifying the language in the Ground Water Quality Rule, DEQ is facilitating more efficient implementation of the Ground Water Quality Plan and the Ground Water Quality Rule thereby reducing the economic burden on the regulated community. Improved rules also allow the public to better understand the requirements imposed on the regulated community to protect human health and the environment. Thus, the changes to the rule describe an administrative process to determine the application of the Ground Water Quality Rule to mining activities. The administrative process requires the application of sound science and identifies the scientific factors that must be considered and analyzed by mining companies and DEQ when making decisions. DEQ has relied upon its experience, the experience of federal agencies, and input from mining companies and environmental organizations in drafting the changes to the rule.

**Section 39-107D(2)(b), Idaho Code. To the degree that a department action is based on science, the department shall utilize data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justifies use of the data.**

This provision is not applicable because the rule changes are based on clarifying existing rule language. Please see explanation above.

Section 39-107D(3), Idaho Code. Any proposed rule subject to this section which proposes a standard necessary to protect human health and the environment shall also include in the rulemaking record requirements under chapter 52, title 67, Idaho Code, the following additional information:

- (a) Identification of each population or receptor addressed by an estimate of public health effects or environmental effects;
- (b) Identification of the expected risk or central estimate of risk for the specific population or receptor;
- (c) Identification of each appropriate upper bound or lower bound estimate of risk;
- (d) Identification of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty; and
- (e) Identification of studies known to the department that support, are directly relevant to, or fail to support any estimate of public health effects or environmental effects and the methodology used to reconcile inconsistencies in the data.

The changes to the rule set up an administrative process for DEQ to work with the mine operator and other interested persons to determine, on a site-specific basis, the application of the standards in the Ground Water Quality Rule in order to protect human health and the environment. This administrative process is not itself based upon any analysis of risk to specific populations or receptors, but rather sets out a process by which the risk to human health and the environment will be evaluated by DEQ as it reviews a specific mining site. Therefore, DEQ has no additional information relevant to this rulemaking pursuant to Section 39-107D(3).

**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: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning this rulemaking, contact Ed Hagan at ed.hagan@deq.idaho.gov, (208)373-0356.

Dated this 10th day of October, 2008.

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**DOCKET NO. 58-0111-0801 - ADOPTION OF PENDING RULE**

**Substantive changes have been made to the pending rule.**  
*Italicized text is new text that has been added to the pending rule.*

**Only those sections or subsections that have changed from the original proposed text are printed in this Bulletin following this notice.**

**The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 08-8, August 6, 2008, pages 286 through 294.**

**This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2009 Idaho State Legislature for final adoption.**

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 58-0111-0801

*Subsections 007.21 and 007.22*

007. DEFINITIONS.

21. Mining Activity. Recovery of a mineral from mineral-bearing deposits, which includes reclamation, extraction, excavation, overburden placement, *disposal of tailings resulting from processing*, and disposal of mineral extraction wastes, including tailings that are the result of extraction, waste rock, and other extraction wastes uniquely associated with mining. ( )

22. Mining Area. The area on or within which one (1) or more mining activities occur. The Department shall determine the boundaries of the mining area as provided in Section 401. *Distinct mining activities may constitute separate mining areas.* ( )

*Subsections 401.03, 401.04, and 401.05*

401. MINING.

03. Setting the Point(s) of Compliance. The point(s) of compliance shall be set as close as possible to the boundary of the mining area, taking into consideration the relevant factors set forth in Subsections 401.03.a. through 401.03.h., but in no event shall the point(s) of compliance be within the boundary of the mining area. The mining area boundary means the outermost perimeter of the mining area (projected in the horizontal plane) as it would exist at the completion of the mining activity. The point(s) of compliance shall be set so that, outside the mining area boundary, there is no injury to current or projected future beneficial uses of ground water and there is no violation of water quality standards applicable to any interconnected surface waters. The Department's determination regarding the point(s) of compliance shall be based on an analysis and consideration of all relevant factors including, but not limited to: ( )

04. Ground Water Monitoring and Reporting. The Department shall require ground water monitoring and reporting whenever the Department sets the point(s) of compliance. The Department shall not require ground water monitoring that duplicates ground water monitoring required by other state or federal agencies as long as the mine operator provides the data to the Department. ( )

05. Coordination with Other State or Federal Agencies/Public Notice. Before setting the point(s) of compliance or requiring ground water monitoring, the Department shall coordinate with and seek recommendations from other state or federal agencies that have regulatory authority over the mining activities. The Department may provide public notice and an opportunity for public comment prior to setting or changing the point(s) of compliance. The Department shall issue a public notice after it sets the point(s) of compliance. ( )