

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.03 - INDIVIDUAL/SUBSURFACE SEWAGE DISPOSAL RULES

DOCKET NO. 58-0103-0801

NOTICE OF RULEMAKING - ADOPTION OF PENDING 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 unless prior to that date the rule is rejected by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

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 Chapters 1 and 36, Title 39, 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 150 through 167. After consideration of public comments, the definition of "module" has been revised (Section 003). 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/subsurface/58_0103_0801_pending.cfm or by contacting the undersigned.

IDAHO CODE SECTION 39-107D STATEMENT: Section 39-107D, Idaho Code, provides that the Department of Environmental Quality (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 this 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 proposed rule regulates an activity 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), Idaho Code. To the degree that a department action is based on science, the department shall utilize (a) the best available peer reviewed science and supporting studies conducted in accordance with sound objective scientific practices, and (b) 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.

The requirements set forth in the rule are based on studies and analyses conducted by the health districts, the DEQ, the U.S. Environmental Protection Agency (EPA), and national wastewater organizations that indicate the requirements are protective of human health and the environment and reduce the risk of human exposure to sewage, wastewater effluent, and associated pathogens. The referenced studies and analyses will be included in the rulemaking record and can be reviewed during the public comment period for further detailed information regarding risk.

Section 39-107D(3)(a), Idaho Code. Identification of each population or receptor addressed by an estimate of public health effects or environmental effects.

The rule, in particular the changes in rates of wastewater flow from single family dwellings, are expected to have both public health and environmental effects. The populations affected by the rule include applicants for individual septic system permits, system installers, single family dwellings on individual septic systems, users of nearby drinking water supply wells, and other users of down-gradient beneficial uses of ground water and surface water.

Section 39-107D(3)(b) and (c), Idaho Code. Identification of the expected risk or central estimate of risk for the specific population or receptor and identification of each appropriate upper bound or lower bound estimate of risk.

The expected risk of exposure to sewage, wastewater effluent, and associated pathogens for the potentially affected populations listed above is reduced by addressing undersized septic system drainfields. The current rule wastewater flow estimates account for average flows from single family dwellings and were based on national studies conducted in the 1970s. This data, and the current rules, do not adequately take into account peak flows, were not based on usage data specific to Idaho, and do not accurately reflect household usage today. As a result, the current rules underestimate wastewater flow and have resulted in failing drainfields. Failed drainfields expose the affected

populations described above to potential pathogens from open sewage and wastewater effluent.

The expected risk for contamination of ground water and surface water is also reduced. The increased flow estimates in the rule result in slightly larger drainfields for standard systems. The chance of drainfield failure is reduced by the larger drainfields. Hydraulic overloading of soils will be reduced by distributing the wastewater effluent over the larger drainfield, thereby reducing the risk of ground water contamination. Overland flow of sewage and wastewater effluent into surface water bodies will likewise be reduced by properly sizing drainfields.

Section 39-107D(3)(d), Idaho Code. 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.

There is uncertainty inherent in the process of identifying wastewater flows from single family dwellings. For instance, usage may be highly variable from person to person, and the number of persons in a household is difficult to predict. The new flow rates introduce a peaking factor that accounts for peak flows expected at the system, thereby addressing this uncertainty. Using peak flows instead of average flows adds a margin of safety during normal flow conditions.

The estimation of wastewater flow rates in the current rule are based on average wastewater flows from national studies conducted in the 1970s. Prior to the collection of flow data in 2008, there was uncertainty as to how actual usage in Idaho compared to these national estimates. While some uncertainty remains, the 2008 Idaho-specific data provides more accuracy and reduces overall uncertainty inherent in estimating flows. Reducing uncertainty in the flow rates allows for the rule to more accurately size drainfields. Since the 2008 data indicates the current rule underestimate flows, the rule is expected to improve drainfield life and reduce early drainfield failure.

Section 39-107D(3)(e), Idaho Code. 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 requirements set forth in this rule are based upon studies and analyses conducted by the health districts, the DEQ, the EPA, and national wastewater organizations that indicate the requirements will reduce the risk of exposure to sewage, wastewater effluent, and associated pathogens for the populations listed above. The rule is also expected to more adequately protect ground water and surface water from contamination resulting from failed drainfields. The referenced studies and analysis will be included in the rulemaking record and can be reviewed during the public comment period for further detailed information regarding risk.

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 AJ Maupin at aj.maupin@deq.idaho.gov, (208)373-0167.

Dated this 10th day of October, 2008.

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DOCKET NO. - 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 07-8, August 6, 2008, pages 150 through 167.

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. 58-0103-0801

Subsection 003.23

003. DEFINITIONS.

For the purposes of these rules, the following definitions apply.

(5-7-93)

003.23

23. Module. A module shall consist of one (1) primary drainfield, one (1) secondary drainfield with a design flow equal to that of the primary drainfield, and one (1) replacement area in accordance with Subsection 004.06. The primary drainfield in any module may be designed for flows up to a maximum of ten thousand (10,000) gallons per day and *the module* shall not receive more than ten thousand (10,000) gallons per day. ()