

<p>Docket Number: <u>58-0103-0801</u> Effective Date: <u>July 1, 2009</u> Rules Title: <u>Individual/Subsurface Sewage Disposal Rules</u> Agency Contact and Phone: <u>AJ Maupin, 373-0167</u></p>	<p style="text-align: center;">Public Notice</p> <p>Hearings: [X]Yes [] No Locations and Dates: Boise, Coeur d'Alene, Lewiston, Twin Falls, Pocatello, Idaho Falls – August 28, 2008 Written Comment Deadline: September 3, 2008</p>
<p>Descriptive Summary of Rule as Initially Proposed: The purpose of this rulemaking is to provide for a revised method to estimate wastewater flow from single family dwellings that is more consistent with domestic water usage statewide. The proposed revisions would provide for a more refined soil classification system which will allow more precise sizing of drainfields. The rule would also provide a definition of “bedroom” and “module” to assist understanding and applicability of the rule within the regulated community.</p> <p>The proposed rule includes the following: 1) Add a definition for the terms “bedroom” and “module”; 2) Revise the wastewater flow rates for single family dwellings (Subsection 007.08); 3) Refine the soil classification system from 3 to 6 soil types (Subsections 008.02 and 008.03); and 4) Revise the maximum total square feet of trench (Subsection 008.04). In order to be in balance with the increased wastewater flow rates, it is necessary to increase the maximum allowable size for a standard drainfield.</p> <p>Public comments were received and the proposed rule has been revised. DEQ recommends that the Board adopt the rule, as presented in the final proposal, as a pending rule with a final effective date of July 1, 2009. The rule is subject to review by the Legislature before becoming final and effective.</p>	<p>Negotiated Rule Making: [X] Yes [] No Groups Involved: Sign-in sheets attached.</p> <p>On May 7, 2008, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 08-5, pages 63-64, and a preliminary draft rule was made available for public review. Meetings were held on May 22, June 5, and June 19, 2008. Several members of the public participated in this negotiated rulemaking process by attending the meetings and by submitting written comments.</p>
	<p>Costs To the Agency: No additional costs to the agency. The health districts deliver the program under the current rule. DEQ's role should remain at the same level of effort.</p> <p>Costs To the Regulated Community: Potential higher costs for property owners when installing a septic tank and drainfield. These costs are offset by fewer septic system failures due to undersized septic tanks and drainfields.</p>
	<p>Relevant Statutes: Chapters 1 and 36, Title 39, Idaho Code</p> <p>Idaho Code § 39-107D Statement: See attached.</p> <p>Idaho Code § 67-5221(1)(c) 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.</p>

Temporary Rule	<input type="checkbox"/> Necessary to protect public health, safety or welfare
	<input type="checkbox"/> Compliance with deadlines in amendments to governing law or federal programs
	<input type="checkbox"/> Conferring a benefit

Docket Number: <u>58-0103-0801</u>		
Section	Section Title	Summary of Rule Changes Based on Public Comment
003	Definitions.	This section has been changed. See attached Response to Comments.
007.08	Septic Tank Design and Construction Standards - Wastewater Flows from Various Establishments in Gallons Per Day	This section has not been changed. See attached Response to Comments.
008.02	Standard Subsurface Disposal Facility Design and Construction – Site Suitability	This section has not been changed. See attached Response to Comments.
008.03	Standard Subsurface Disposal Facility Design and Construction – Subsurface Disposal Facility Sizing	This section has not been changed. See attached Response to Comments.
008.04	Standard Subsurface Disposal Facility Design and Construction – Standard Subsurface Disposal Facility Specifications	This section has not been changed. See attached Response to Comments.
013	Large Soil Absorption System Design and Construction	This section has not been changed. See attached Response to Comments.

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 the proposed rule. Therefore, the proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed rule to more accurately size drainfields. Since the 2008 data indicates the current rule underestimate flows, the proposed 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 proposed 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 proposed 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.

**Individual/Subsurface Sewage Disposal Rules
Docket No. 58-0103-0801
Response to Public Comments**

Commenter	Comment	DEQ Response
<p>Bob Erickson berickson@phd5.idaho.gov</p>	<p>After careful review, I believe the proposed new definition for "Module" (section .003.23 of the Rules) still needs further clarification. DEQ's intent is to limit Modules to no more than 10,000 gallons/day, but the proposed definition states only that the Primary Drainfield - found within and comprising just 1/3 of the Module - be limited to that amount. I believe the definition should state that the Module itself - and not the Primary Drainfield - be limited to 10,000 gallons/day. Thank you for your consideration.</p>	<p>DEQ agrees that including a limit on the total volume of effluent receivable at the module will yield a clearer definition. DEQ will change the definition of "module" as follows: "A module shall consist of The primary drainfield in any module may be designed for flows up to a maximum of ten thousand (10,000) gallons per day, and <i>the module</i> shall not receive more than ten thousand (10,000) gallons per day." (<i>italics</i> added to identify proposed change to this definition).</p>
<p>Jeanne Bock, Secretary/ District Director Panhandle Health District Board of Health Hayden, ID</p>	<p>On behalf of the Panhandle Health District Board of Health and as Secretary to the Board, I am writing in support of the proposed Department of Environmental Quality (DEQ) rule change regarding Individual/Subsurface Sewage Disposal Rules. Having been briefed by Panhandle Health District staff and review of Negotiated Rule Draft No. 5 dated July 2, 2008, Docket No. 58-0103-0801, the Panhandle Health District Board of Health supports the statewide effort to make changes in the Individual/Subsurface Sewage Disposal Rule to better protect the waters of the State of Idaho.</p> <p>With over 1000 septic permits issued annually in the five northern counties, it is our desire to support the rule change that will more adequately protect the resources in our region. The inclusion of definitions for "bedroom and module" increases the likelihood of better consistency in applying the rule to construction projects.</p> <p>As negotiated with our regional contractors and realtors, Panhandle Health District will engage in formal rule making with changes to IDAPA 41.01.01. 100.07 b and .08 to allow the permitting of speculative drainfields for a five-year permit period.</p> <p>Thank you for your efforts to pursue DEQ rule changes to further protect public health.</p>	<p>This comment is in support of the rule and requires no response. DEQ appreciates the support.</p>

Commenter	Comment	DEQ Response
<p>Richard Horne, Chairman Idaho Association of Public Health District Directors Idaho Falls, ID</p>	<p>On behalf of the Idaho Association of Public Health District Directors, I am writing this letter to express the Association's support for the proposed rule change to the State of Idaho's Individual/Subsurface Sewage Disposal rule. This rule presents a revised method of estimating wastewater flow from single family dwellings that is more consistent with domestic water usage statewide.</p> <p>Idaho's seven Public Health Districts participated and cooperated with the Department of Environmental Quality in collecting the data that was used in demonstrating the need for revising this rule. The fact that the data collected was from throughout the State of Idaho over many months of work, and is "real-world" data speaks volumes.</p> <p>The proposed revisions provide for a more refined soil classification system which will allow more precise sizing of drainfields. The rule would also provide a definition of "bedroom" and "module" to assist understanding and applicability of the rule within the regulated community.</p> <p>The Idaho Association of Public Health District Directors fully support these proposed revisions to the Idaho Individual/Subsurface Sewage Disposal rule.</p> <p>Thank you for your efforts to pursue these rule changes to further protect the public's health.</p>	<p>This comment is in support of the rule and requires no response. DEQ appreciates the support.</p>
<p>Bill Brown Board of Health Chairman/Trustee Southwest District Health Caldwell, ID</p>	<p>On behalf of the Southwest District Board of Health, and as Chairman of the Board, I am writing in support of the proposed Department of Environmental Quality (DEQ) rule change regarding Individual/Subsurface Sewage Disposal Rules. Having been briefed by Southwest District Health staff, and after reviewing Negotiated Rule Draft No. 5 dated July 2,2008 -Docket No. 58-0103-0801, the Southwest District Board of Health supports the statewide effort to make changes in the rule to better protect the waters of the State of Idaho.</p> <p>With approximately 1,000 septic permits issued annually in the six county district, it is our intent to support the rule change that will more adequately protect the resources in our region. The inclusion of definitions for "bedroom and module" increases the likelihood of consistency in applying the rule to</p>	<p>This comment is in support of the rule and requires no response. DEQ appreciates the support.</p>

Commenter	Comment	DEQ Response
	<p>construction projects.</p> <p>Thank you for your efforts to pursue DEQ rule changes to further protect public health.</p>	
<p>Carolyn Meline, Chair Southeastern District Health Department Board of Health Pocatello, ID</p>	<p>On behalf of the Southeastern District Health Department Board of Health, I am writing in support of the proposed Department of Environmental Quality (DEQ) rule change regarding Individual/Subsurface Sewage Disposal Rules. Having been briefed by the staff of the Southeastern District Health Department and in review of the Negotiated Rule Draft dated August 6, 2008 Docket No. 58-0103-080 I, the Southeastern District Health Department Board of Health supports the statewide effort to make changes in the Individual/Subsurface Sewage Disposal Rule to better protect the waters of the State of Idaho as well as the public health of Idaho's citizens.</p> <p>With over 500 septic permits issued annually in the eight counties of southeastern Idaho, it is our desire to support the rule change that will more adequately protect the resources of our region.</p> <p>Thank you for your efforts to pursue DEQ rule changes to further protect public health.</p>	<p>This comment is in support of the rule and requires no response. DEQ appreciates the support.</p>
<p>Lee Halper Jerome, ID</p>	<p>Dear DEQ, this is my official comment on your proposed rules on septic systems, air quality and nitrate priority areas. Your paragraph in the septic section says it all. Pathogens from open sewage are also airborne so these comments apply to your air quality comment request. When you consider your reports on the increasing nitrates in the 1000 springs areas from mainly farms and cafos, the whole northside of the magic valley should be classified as a nitrate priority area.</p> <p>The change to the septic systems makes sense but when you consider air quality and water quality and health, you're leaving off the main culprit of negative health effects, air quality and water quality, CAFOS. Their "septic systems" are lagoons that, by DEQ rules, are allowed to leak their nitrates, hormones, pharmaceuticals and pathogens to the aquifer at a rate of 1/8 inch per day or 500 gallons per acre per day. All spring, summer and fall these cesspools are emptied into the air and onto the ground spreading these same contaminants in volumes that make ALL the household septic systems pale in volume comparison.</p>	<p>Mr. Halper's comments relating to CAFO lagoons are taken under advisement but do not relate to the Individual/Subsurface Sewage Disposal Rules. The comments regarding septic systems appear to be in support of the proposed rule changes and, therefore, require no response.</p>

Commenter	Comment	DEQ Response
	<p>If you're sincere about protecting the health, safety and welfare of the public and the environment, require artificial liners for these cesspools with electronic monitors underneath to prevent ANY leakage, testing of the wastewater, drift analysis, etcetera. And what you really should consider is whether the Magic Valley and any other CAFO county is oversaturated already and ask the Governor to issue an Executive Order for an open-ended Moratorium so that an inventory of cow numbers and land available to wastewater and manure in a sustainable agronomic system is being met. ISDA's own testing of fields show increasing oversaturation of phosphorus which suggests the reality that nitrates, hormones, etc. are also oversaturating the soil profile and leaching to our sole source aquifer.</p> <p>And please don't suggest that this is a local issue since by Idaho Code definition, ALL water in the State of Idaho belongs to EVERY Idaho citizen and what one County does to pollute the water under it affects the next county downstream and eventually the Snake River which belongs to EVERY United States citizen. The above is the only way you can do your jobs right. Any other action is mere collusion with the CAFO special interest group and, in my opinion, criminal threat and affect to the health, safety and welfare of the public. Thank you.</p>	