

<p>Docket Number: <u>58-0103-1501</u> Effective Date: <u>7/1/17</u> Rules Title: <u>Individual/Subsurface Sewage Disposal Rules</u> Agency Contact and Phone: <u>Barry Burnell, 373-0194</u></p>	<p>Public Notice Hearings: [] Yes [X] No Locations and Dates: N/A Written Comment Deadline: 2/3/16</p>
<p>Descriptive Summary of Rule as Initially proposed: This rulemaking has been initiated to create an effective and useful means of approving and overseeing service providers for DEQ and the health districts and will expand choices of service for private property owners.</p> <p>Complex alternative septic systems are engineered and/or manufactured systems and products that contain many different mechanical components to achieve secondary wastewater treatment. Without complex alternative septic systems, an individual property owner's options for subsurface sewage disposal system installation may be extremely limited in many environmentally sensitive areas. It is important that complex alternative septic systems undergo a minimum of annual operation, maintenance, and monitoring by a qualified service technician that is familiar with the technology to ensure system functionality and efficacy. Without the proper operation, maintenance, and monitoring, these wastewater treatment systems do not achieve their designed treatment levels prior to discharge. Improper wastewater treatment prior to discharge to the subsurface may result in degradation of Idaho's ground water resources where these systems are located.</p> <p>Currently, DEQ's ability to approve qualified service technicians and ensure that they have baseline knowledge of the technology that they are servicing is limited because there are no state requirements supported by rule for the minimum qualifications, responsibilities, and approval of service providers for complex alternative treatment systems. DEQ is currently limited to approving service providers through guidance and has found that manufacturers of the treatment technology are limiting the number of service providers they are willing to train. The limited training of service providers by manufacturers under DEQ's current guidance system has resulted in a limited number of service providers who can conduct routine operation, maintenance and repair for private property owners.</p> <p>Several private property owners have requested via public comment that DEQ develop an approval process for service providers that allows the property owner to have a larger base of service providers from which to choose. The private property owners also hope that an unlimited service provider system would help foster healthy and open competition for their business, resulting in better service and effective cost control for the provider's services. DEQ also received recommendation from its Technical Guidance Committee for Individual and Subsurface Alternative Sewage Disposal, authorized by IDAPA 58.01.03.004.07, to pursue a service provider based operation, maintenance, and monitoring model for complex alternative treatment units for septic systems during the committee's March and May 2015 meetings. The Idaho Attorney General's Office has advised that approval and oversight of service providers should be done under authorized agency rule.</p> <p>DEQ is responding to the desires of the private property owners that have complex alternative treatment systems installed on their property and the Technical Guidance Committee for Individual and Subsurface Alternative Sewage Disposal by pursuing an amendment to IDAPA 58.01.03.006. The amendment to IDAPA 58.01.03.006 will allow DEQ to authorize individuals to be service providers for complex alternative treatment systems through the issuance of a complex installer's registration permit with a service provider certification. The rule amendment creates minimum application contents and responsibilities that service providers would have to meet.</p>	<p>Negotiated Rule Making: [X] Yes [] No The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220 and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the October 2015 Idaho Administrative Bulletin, Vol. 15-10, and a preliminary draft rule was made available for public review. A meeting was held on October 22, 2015. Members of the public participated in this negotiated rulemaking process by attending the meeting and by submitting written comments. A record of the negotiated rule drafts, written comments, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary is available at www.deq.idaho.gov/58-0103-1501.</p> <p>Relevant Statutes: Chapters 1 and 36, Title 39, Idaho Code</p> <p>Idaho Code § 39-107D Statement: This rule regulates an activity not regulated by the federal government. Chapters 1 and 36, Title 39, Idaho Code, grant authority to the Board to adopt rules and standards to protect the environment and health of the state of Idaho for the installation of cottage site sewage treatment facilities and for the issuance of pollution source permits.</p> <p>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> <p>DEQ recommends that the Board adopt the rule, as presented in the final proposal, as a pending rule with the final effective date of July 1, 2017. The rule is subject to review by the Legislature before becoming final and effective.</p>

Costs to the Agency: DEQ will incur minimal costs as the service provider certification is implemented and to guide stakeholders through the application and permitting process. DEQ will incur moderate staff workload to provide the initial required educational component of the permitting process, but will not require additional staffing. After initial implementation DEQ will incur minimal staff workload to provide the continuing education requirement of the permitting process. All costs will be covered by DEQ's §604(b) grant from the EPA under the Clean Water Act.

Costs to the Regulated Community: No additional costs are anticipated for private businesses that seek to add a certification as a service provider to their complex installer's registration permit. The certification would be issued as part of a complex installer's registration permit through one of Idaho's health districts. No additional fee for the certification would be tied to the issuance of the complex installer's registration permit as currently allowed by IDAPA 58.01.14.120. The certification as a service provider will provide small businesses a new opportunity to deliver a necessary service and expand their current business opportunities. Private property owners that contract with a permitted complex installer/service provider are anticipated to be provided with more options to obtain these services through the implementation of these rules. DEQ anticipates that the majority of the regulated community will positively perceive the development of rules pertaining to service providers for individual/subsurface sewage disposal systems as a means to approve individuals qualified to provide operation, maintenance, and monitoring requirements for specific complex alternative systems.

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
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Response to Comments Attached

Section	Section Title	Summary of Rule Changes Based on Public Comment
003.	Definitions.	Sections 006 and 009 have been revised for clarification purposes. The revisions in Subsection 006.03 have been made in response to comments.
006.	Installer's Registration Permit and Service Provider Certification.	
009.	Other Components.	

DEQ's Response to Comments
Docket No. 58-0103-1501

Commenter 1 – PaRee Godsill, Everlasting Concrete Products
 Commenter 2 – Thomas and Petra Cervino
 Commenter 3 – Marvin Fielding, Keller Associates, Inc.

Commenter 4 – John Mackenzie
 Commenter 5 – Michael and Jennifer Spackman
 Commenter 6 – Gerald Williams, Williams Engineering, Inc.

Rule Section	C o m m e n t e r	Comment	Response
006.03	1	I view the intended Service Provider as more of an "Operator". I have found the educational opportunities thru DEQ regarding wastewater operations very helpful and an excellent source of education for our specialized industry. The classes I attended were also attended by certified wastewater operators and other individuals interested in providing service to ATU's. I believe the protection of Idaho's groundwater would be better served by a service provider that has attended "Operator" classes. An operator has a better understanding of overall wastewater treatment. It is imperative that a service provider understand wastewater treatment. I agree that a Complex Installer is better than a Basic installer as a service provider, but I do not agree that a Service Provider should also be a Complex Installer.	DEQ's intention is to require individuals holding both a complex installer's registration permit and a service provider certification to complete the education requirements of their installer's registration permit in addition to education requirements of their service provider certification. Each service provider will have to complete both educational requirements independent of one another. DEQ will clarify this in the draft rule. Continuing education for service providers is intended to cover wastewater treatment. Operator classes may be used to fulfill this requirement. Further explanation of service provider requirements will be developed in the Technical Guidance Manual when they are supported by rule.
006.04	1	As the Norweco distributor, we intend to train and certify service providers for our technology. We want our technology to be maintained as required by the manufacturer. The requirement for a service provider to have	Idaho's seven health districts permitted approximately 305 complex installers in 2015. The health districts also permitted approximately 303 standard and basic

	<p>manufacturer training is necessary especially with the 90% compliance expectation. We have found that many of the complex installers are not interested in becoming certified service providers. This will likely not change with the new rulemaking. I would encourage DEQ to look at expanding the ways to become a service provider. A service provider must know how to evaluate effluent, just knowing how to install is not enough. Service providers must know how to evaluate system use. By removing the requirement to be a complex installer, we could solicit Operators currently licensed in the State. This would give us a larger base to find qualified service providers.</p>	<p>alternative installers in 2015. A current base of approximately 600 permitted installers capable of obtaining a complex installer's registration permit and service provider certification is an adequate number of potential service providers.</p>
006.05	<p>1 It was suggested by property owners that a plethora of service providers would bring the "cost" of service down. This is not an accurate statement for our company. We are currently \$80 below the national average for our technology. The cost to provide service will go up due to the required permits and bond amount. We are not installers. We do not intend to ever install. We are not required to have a complex installer license or a bond at this time as a service provider. Our company will have new expenses associated with the intended changes. A \$15,000 bond is an unreasonable amount for a service provider. A smaller bond, similar to what plumbers have, is a good alternative that costs less, while providing the property owner the assurances the rulemaking intended. We have General Liability Insurance and other policies as suggested by our agent. Errors and Omissions insurance is imperative for a service provider that monitors and reports to DEQ.</p>	<p>The complex installer permit costs ranged from \$100-\$209 across Idaho's seven health districts in 2015. There is no fee proposed for obtaining the service provider certification in addition to the complex installer permit fee. An individual intending to obtain the complex installer's registration permit and service provider certification may choose the health district from which they would like to obtain their permit and certification. Installer registration permits and service provider certification are accepted statewide regardless of the health district in which they are issued. DEQ suggests that a \$15,000 bond is reasonable to cover the potential costs of damaging expensive treatment equipment, subsurface sewage disposal systems, and subsequent damage to property that may result due to failure of either of these system components from negligent actions by a service provider. DEQ has been informed by the surety company underwriting >75% of Idaho's subsurface sewage disposal bonds that the cost is \$10 per \$1,000 bonded making the yearly premium of a \$15,000 bond \$150. The cost of the installer registration</p>

			permit and bond will not greatly increase a company's expense to operate as a service provider. DEQ does not expect rates to increase greatly due to this cost on per customer basis. DEQ is not imposing insurance requirements to obtain a service provider certification.
006.01	1	It is my opinion that it would be easier to separate the Service Provider Permit from the Installers altogether. I think this was discussed briefly at a TGC meeting, but haven't went back to review all the meeting minutes.	DEQ will not be separating the service provider certification from the complex installer's registration permit requirement because a separate fee rule would need to be generated.
009.03.b-c	2	I am a resident in a neighborhood that was told we could only install one type of septic system, Bio-Microbics. Currently, only one company, Alternative Wastewater, services this type of system in all of Ada County. I would like to see alternatives to who can service, test and install this type of septic system. When Canyon Septic Services came to pump my septic at the end of December 2015, the owner told me he would like to be one of the providers. Choice is what this country is built on and with only one option, it's a monopoly. Please open up the options in all Idaho counties.	DEQ intends that these Rules will provide private property owners more options in their choice of service provider.
006.06.a	3	I am in favor of having state licensed and certified service providers. I am also in favor of having these service providers receive system-specific training from the manufacturer on the systems they service. Based on our experience with Norweco, however, I am doubtful they will be willing to train other service providers other than under the umbrella/monopoly of the current franchise owners for Norweco Systems in Idaho. This problem is compounded in that Norweco will only sell parts for their systems through the current franchise owners who then disproportionately mark up the prices for the parts sold to individuals who are not members of their non-profit. This in an effort to strong-arm members of other non-profits to join their non-profit.	Manufacturers will have to comply with the requirement to train multiple providers if individuals show interest in being certified in their technology or risk product disapproval under DEQ's proposed amendment to IDAPA 58.01.03.009.04. DEQ does not control, nor is DEQ proposing to control, distribution agreements between manufacturers and individual businesses. Under the proposed changes to IDAPA 58.01.03, the non-profit operation and maintenance entities will no longer be a requirement of the extended treatment package system program.
N/A	3	My experience with the service provided by the current franchise owners for Norweco Systems in Idaho has been good, however they have demonstrated an unwillingness to operate under the direction of the non-	No response warranted. Thank you for your comment.

		profit as currently mandated by the State.	
006	3	I agree with the direction the State is moving in doing away with the non-profits as third-party oversight of the service providers, however, I do not want to be forced back into a State-mandated monopoly as my only choice for my service provider. I am in favor of requiring the ATS's be serviced regularly and a record of these services be provided to the State.	The proposed changes to IDAPA 58.01.03 are intended to provide the opportunity for anyone interested to obtain a complex installer's registration permit and service provider certification. DEQ is not proposing a limit on service provider numbers.
009.03.a	3	I understand the Norweco system is not provided with a sample port that will allow consistent monitoring of the effluent. I would support requiring Norweco, in order to maintain approval for sale of their systems in Idaho, to design a retrofit sample port for their existing systems. This could be something as simple as a tee and riser installed in the septic tank outlet downstream of the filter. I understand there would be a cost to install the sample port that should be shared between the homeowner and Norweco. I believe monitoring of the treated effluent is an important verification the system is operating properly.	While not specifically about the proposed rules, DEQ nonetheless offers this response: The Norweco system is an approved complex alternative treatment system subject to the construction recommendations of the Technical Guidance Manual for Individual/Subsurface Sewage Disposal. The construction requirements for extended treatment package systems requires that all new, repair/replacement, or expansion installation permits require the installation of a sample port. Existing systems are not required to install the sample port until a repair/replacement or expansion installation permit is issued for the system.
006.10	4	We were presented with 3 options by our builder for sewer treatment systems which he knew nothing about. In building our home, we had to literally make an overwhelming number of decisions. I must say, one of my biggest regrets was installing one of these complex systems. I have a Norweco system and have never missed a payment in 13 years to have it serviced. But my service provider previously has taken our money and ran without adequately servicing it. But I felt I had to keep paying because of the easement DEQ had on my property for service providers. What a mess!!!	The easement on private property for operation, maintenance, and monitoring of extended treatment package systems is held by a non-profit operation and maintenance entity of which the property owner is currently required to be a member; DEQ does not hold the easement on your property. As part of DEQ's proposed changes to IDAPA 58.01.03, the requirement for a non-profit operation and maintenance entity and the associated easement on private property as part of a property owner's subsurface sewage disposal installation permit will no longer be required.
N/A	4	I would like to vent a little bit about my experiences here. First of all, the program the DEQ put in place to manage my septic system has been	No response warranted. Thank you for your comment.

		dysfunctional from the start. Whatever new changes are being contemplated for replacing this program are vetted and well thought out. Otherwise, I will assume the DEQ is completely dysfunctional for not having learned what a mess they created.	
009.03	4	I am facing needing to order spare parts for my system and that is an abysmal process! I hope you consider in rewriting these by-laws on what the process is for manufacturers being permitted to market their product in Idaho. I'm told I can only buy my parts from a service provider in Boise who will not sell his parts to us on this side of the state! What a mess DEQ has created! And I can't get the manufacturer to sell parts directly either. Am I supposed to call around to providers in other states hoping they'll sell me a part? How frustrating!	See response #1 to commenter #3.
009.03.b-c	4	I've sat through approximately 20 meetings over 13 years about these systems and have always seen a very elevated level of anger, frustration, and tempers at these meetings. Doing away with these entities as per the proposal is the right thing to do! Yeah! But I worry about the level of the support multiple service providers for Norweco will get in Idaho! It doesn't sound like they are willing to work with us in Idaho unless it is through their 1 service provider!	See response #1 to commenter #3.
009.03.b-c	4	I am very happy with the proposed service provider on our side of the state - Simple Septic Solutions. I would like to contract directly with him to maintain my system without paying extra to an entity to manage. But having a 2nd or 3rd option for service providers would also be nice!	No response warranted. Thank you for your comment.
009.03.b-c	5	As a home owner on a septic system we have had frustration that there is a monopoly by Alternative Wastewater as the only septic system tester. Not only does there seem to be lack of competition but there also seems to be lack of understand at their own necessity. When speaking to them they appeared to only know that they can charge pretty much whatever they want for little to no service. I strongly encourage not only having one but several choices of service with healthy competition.	See response to comment #2 and response #1 to commenter #3.

009.03.b-c	6 Provide state certification of systems; otherwise the manufacturers can limit the service providers and essentially create a monopoly; and	See response #1 to commenter #3.
009.03	6 Require manufacturers of systems approved for use in the state to sell parts at the same price to all state service providers so that those not certified by the manufacturer but by the state are not held hostage, so to speak, to pay higher prices for the same product.	See response #1 to commenter #3.