

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1401

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 2015 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty-third Idaho Legislature unless prior to that date the rule is rejected in whole or in part 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 Sections 39-105, 39-107, and 39-3601 et seq., 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, September 3, 2014, [Vol. 14-9, pages 409 through 423](#). After consideration of public comments, the rule has been revised at Sections 010 and 060. The Rulemaking and Public Comment Summary can be obtained at www.deq.idaho.gov/58-0102-1401 or by contacting the undersigned.

IDAHO CODE SECTION 39-107D STATEMENT: The standards included in this rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

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 when the pending rule will become effective: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Don Essig at don.essig@deq.idaho.gov, (208)373-0119.

Dated this 19th Day of November, 2014.

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DOCKET NO. 58-0102-1401 - ADOPTION OF PENDING RULE

Substantive changes have been made to the pending rule.
Italicized red text that is double underscored 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 14-9, September 3, 2014, pages 409 through 423.

This rule has been adopted as a pending rule by the Agency and is now awaiting
review and final approval by the 2015 Idaho State Legislature.

THE FOLLOWING IS THE TEXT OF THE AMENDED PENDING RULE FOR
DOCKET NO. 58-0102-1401

010. DEFINITIONS.

For the purpose of the rules contained in IDAPA 58.01.02, "Water Quality Standards," the following definitions
apply: (4-11-06)

[Subsection 010.11.]

11. Bioaccumulative Pollutants. A compound with a bioaccumulation factor of greater than one
thousand (1,000) or a bioconcentration factor of greater than one thousand (1000). ()

[Subsections 010.54.]

~~54. LC-50. The toxicant concentration killing fifty percent (50%) of exposed organisms at a specific
time of observation (e.g., ninety six (96) hours). (3-20-97)~~

[Subsections 010.55 through 010.72 are reverting to codified text]

[Subsections 010.73 through 010.118]

~~73. Outstanding Resource Water Mixing Zone. An area or volume of an ORW where pollutants are
allowed to mix with the ORW receiving water at a location distinct from the sampling point where compliance with
ORW quality standards is measured. An ORW mixing zone will be downstream from the discharge of a tributary or a
segment immediately upstream which contains man caused pollutants as a result of nonpoint source activities
occurring on that tributary or segment. As a result of the discharge, the mixing zone may not meet all water quality
standards applicable to the ORW, but shall still be protected for existing beneficial uses. The Department, after
consideration of input from interested parties, will determine the size, configuration and location of mixing zones
which are necessary to meet the requirements of this chapter. (7-1-93)~~

743. Owner. For purposes of Sections 851 and 852, any person who owns or owned a petroleum storage
tank (PST) system any time during a release and the current owner of the property where the PST system is or was
located. (4-2-03)

754. Permit or License. A permit or license for an activity that is subject to certification by the state
under Section 401 of the Clean Water Act, including, for example, NPDES permits, dredge and fill permits, and
FERC licenses. (3-18-11)

765. Person. An individual, public or private corporation, partnership, association, firm, joint stock
company, joint venture, trust, estate, state, municipality, commission, political subdivision of the state, state or federal

agency, department or instrumentality, special district, interstate body or any legal entity, which is recognized by law as the subject of rights and duties. (3-20-97)

776. Petroleum Products. Products derived from petroleum through various refining processes. (7-1-93)

787. Petroleum Storage Tank (PST) System. Any one (1) or combination of storage tanks or other containers, including pipes connected thereto, dispensing equipment, and other connected ancillary equipment, and stationary or mobile equipment, that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. (7-1-93)

798. Point Source. Any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be, discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. (7-1-93)

8079. Pollutant. Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged to water in excessive quantities, cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities. (3-20-97)

810. Project Plans. Documents which describe actions to be taken under a proposed activity. These documents include environmental impact statements, environmental assessments, and other land use or resource management plans. (7-1-93)

821. Public Swimming Beaches. Areas indicated by features such as signs, swimming docks, diving boards, slides, or the like, boater exclusion zones, map legends, collection of a fee for beach use, or any other unambiguous invitation to public swimming. Privately owned swimming docks or the like which are not open to the general public are not included in this definition. (4-11-06)

832. Receiving Waters. Those waters which receive pollutants from point or nonpoint sources. (7-1-93)

843. Reference Stream or Condition. A water body which represents the minimum conditions necessary to fully support the applicable designated beneficial uses as further specified in these rules, or natural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin. In highly mineralized areas or in the absence of such reference streams or water bodies, the Director, in consultation with the basin advisory group and the technical advisors to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported. (3-20-97)

854. Release. Any unauthorized spilling, leaking, emitting, discharging, escaping, leaching, or disposing into soil, ground water, or surface water. (8-24-94)

865. Resident Species. Those species that commonly occur in a site including those that occur only seasonally or intermittently. This includes the species, genera, families, orders, classes, and phyla that: (8-24-94)

- a. Are usually present at the site; (8-24-94)
- b. Are present only seasonally due to migration; (8-24-94)
- c. Are present intermittently because they periodically return or extend their ranges into the site; (8-24-94)
- d. Were present at the site in the past but are not currently due to degraded conditions, and are

expected to be present at the site when conditions improve; and (8-24-94)

e. Are present in nearby bodies of water but are not currently present at the site due to degraded conditions, and are expected to be present at the site when conditions improve. (8-24-94)

876. Responsible Persons in Charge. Any person who: (8-24-94)

a. By any acts or omissions, caused, contributed to or exacerbated an unauthorized release of hazardous materials; (8-24-94)

b. Owns or owned the facility from which the unauthorized release occurred and the current owner of the property where the facility is or was located; or (8-24-94)

c. Presently or who was at any time during an unauthorized release in control of, or had responsibility for, the daily operation of the facility from which an unauthorized release occurred. (8-24-94)

887. Sediment. Undissolved inorganic matter. (3-30-07)

898. Seven Day Mean. The average of the daily mean values calculated over a period of seven (7) consecutive days. (3-20-97)

909. Sewage. The water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. (8-24-94)

910. Short-Term or Temporary Activity. An activity which is as short as possible but lasts for no more than one (1) year, is limited in scope and is expected to have only minimal impact on water quality as determined by the Director. Short-term or temporary activities include, but are not limited to, those activities described in Subsection 080.02. (3-30-07)

921. Silviculture. Those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, drainage of surface water which inhibits tree growth or logging operations, fertilization, application of herbicides or pesticides, all logging operations, and all forest management techniques employed to enhance the growth of stands of trees or timber. (3-20-97)

932. Sludge. The semi-liquid mass produced by partial dewatering of potable or spent process waters or wastewater. (7-1-93)

943. Specialized Best Management Practices. Those practices designed with consideration of geology, land type, soil type, erosion hazard, climate and cumulative effects in order to fully protect the beneficial uses of water, and to prevent or reduce the pollution generated by nonpoint sources. (3-3-87)

954. State. The state of Idaho. (7-1-93)

965. State Water Quality Management Plan. The state management plan developed and updated by the Department in accordance with Sections 205, 208, and 303 of the Clean Water Act. (3-20-97)

976. Suspended Sediment. The undissolved inorganic fraction of matter suspended in surface water. (3-30-07)

987. Suspended Solids. The undissolved organic and inorganic matter suspended in surface water. (3-30-07)

998. Technology-Based Effluent Limitation. Treatment requirements under Section 301(b) of the Clean Water Act that represent the minimum level of control that must be imposed in a permit issued under Section

402 of the Clean Water Act.

(8-24-94)

99. Thermal Shock. A rapid temperature change that causes aquatic life to become disoriented or more susceptible to predation or disease. ()

[Subsections 010.100 through 010.117 are reverting to codified numbering]

(BREAK IN CONTINUITY OF SECTIONS)

060. MIXING ZONE POLICY.

[Subsection 060.01 through Paragraph 060.01.c.]

01. Mixing Zones for Point Source Discharges. Whether a mixing zone is authorized, and its size, configuration and location, is determined by the Department on a case-by-case basis. This determination is made in accordance with the provisions of Section 060 at the time a permit is issued, renewed, or materially modified, and is in effect as long as the permit remains in effect. Such an authorization is required before a mixing zone can be used to determine the need for, or level of, effluent limits for a particular pollutant. ()

a. Mixing zones shall not be authorized for a given pollutant when the receiving water does not meet water quality criteria for that pollutant; provided, however, the Department may authorize a mixing zone when the permitted discharge is consistent with an approved TMDL allocation or other applicable plans or analyses (such as 4b implementation plans, watershed loading analyses, or facility-specific water quality pollutant management plans) that demonstrate that there is available assimilative capacity and authorizing a mixing zone is consistent with achieving compliance with water quality standards in the receiving water. ()

b. Water quality within an authorized mixing zone is allowed to exceed chronic water quality criteria for those parameters approved by the Department. If approved by the Department, acute water quality criteria for one (1) or more parameters may be exceeded within the zone of initial dilution inside the mixing zone. Narrative criteria in Subsections 200.03 and 200.05 apply within the mixing zone. All water quality criteria must be met at the boundary of any mixing zone under its design conditions. ()

c. The size of mixing zone(s) and the concentration of pollutant(s) present shall be evaluated based on the permitted design flow. The Department shall not authorize a mixing zone that is determined to be larger than is necessary considering siting, technological, and managerial options available to the discharger. ()

d. Mixing zones, individually or in combination with other mixing zones, shall not cause unreasonable interference with, or danger to, beneficial uses. Unreasonable interference with, or danger to, beneficial uses includes, but is not limited to, the following: ()

[Subparagraph 060.01.d.i.]

i. Impairment to the integrity of the aquatic community, including interfering with successful spawning, egg incubation, rearing, or passage of aquatic life. ()

[Subparagraph 060.01.d.iii.]

iii. Bioaccumulation of pollutants (as defined in Section 010) resulting in tissue levels in aquatic organisms that exceed levels protective of human health or aquatic life. ()

[Paragraph 060.01.f.]

f. Multiple mixing zones may be established for a single activity with multiple points of discharge. When these individual mixing zones overlap or merge, their combined area and volume shall not exceed that which would be allowed if there was a single point of discharge. When these individual mixing zones do not overlap or merge, they may be authorized as individual mixing zones. ()

h. Mixing zones shall meet the following restrictions; provided, however, that the Department may authorize mixing zones that vary from the restrictions under the circumstances set forth in Subsection 060.01.i. below: ()

[Subparagraphs 060.01.h.iii. and iv.]

iii. For all existing discharges to nonflowing waters authorized prior to July 1, 2015, the total horizontal area allocated to the mixing zone is not to exceed ten percent (10%) of the surface area of the lake. ()

iv. Lakes and reservoirs with a mean detention time of fifteen (15) days or greater shall be considered nonflowing waters for this purpose. Detention time will be calculated as the mean annual storage volume divided by the mean annual flow rate out of the reservoir for the same time period. ()

[Subsection 060.02]

02. Points of Compliance as Alternatives to Mixing Zones. Specification of mixing zones for some 404 dredge and fill activities, stormwater, and nonpoint source discharges may not be practicable due to the generally intermittent and diffuse nature of these discharges. Rather, the Department may allow limited dilution of the discharge by establishing points for monitoring compliance with ambient water quality criteria. These alternatives to a mixing zone are still subject to requirements outlined in Subsections 060.01.a., 060.01.d., 200.03, and 200.05. ()