

# **IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY**

## **DOCKET NO. 58-0000-2000F (FEE RULE)**

### **NOTICE OF OMNIBUS RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to the following Idaho Code provisions. Citations to any federal statutes that provide the basis of authority or requirement for the rulemaking are also included.

- IDAPA 58.01.01 – Sections 39-105, 39-107, 39-114(4), 39-115(3), and 39-116B, Idaho Code; Clean Air Act, 42 U.S.C. § 7401 *et seq.*
- IDAPA 58.01.05 – Chapters 44 and 58, Title 39, Idaho Code; Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*
- IDAPA 58.01.06 – Sections 39-105, 39-107, and 39-7408C, Idaho Code; Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*
- IDAPA 58.01.07 – Chapters 1 and 88, Title 39, Idaho Code; Solid Waste Disposal Act, 42 U.S.C. §§ 6991 – 6991m
- IDAPA 58.01.08 – Chapter 1, Title 39, Idaho Code; Chapter 21, Title 37, Idaho Code; Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*
- IDAPA 58.01.09 – Sections 39-104A, 39-105, and 39-107, Idaho Code
- IDAPA 58.01.11 – Sections 39-105, 39-107, 39-120, and 39-126, Idaho Code
- IDAPA 58.01.12 – Chapters 1 and 36, Title 39, Idaho Code; Clean Water Act, 33 U.S.C. § 1251 *et seq.*
- IDAPA 58.01.13 – Chapter 1, Title 39, Idaho Code
- IDAPA 58.01.14 – Sections 39-105, 39-107, and 39-119, Idaho Code
- IDAPA 58.01.18 – Sections 39-105, 39-107, 39-4405, and 39-7210, Idaho Code
- IDAPA 58.01.20 – Chapters 1 and 76, Title 39, Idaho Code; Safe Drinking Water Act, 42 U.S.C. § 300j *et seq.*
- IDAPA 58.01.25 – Chapter 1, Title 39, Idaho Code; Clean Water Act, 33 U.S.C. §§ 1342 and 1345

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222, Idaho Code, a public hearing has been scheduled and will be held as follows:

#### **PUBLIC HEARING**

**Contingent upon COVID 19 safety protocols, the public may attend in person or remotely via telephone and video conferencing. Remote attendance is encouraged. Information for signing up is provided below.**

**Wednesday, October 7, 2020 – 9:30 a.m. (MDT)**

**In Person:  
DEQ State Office  
1410 N. Hilton Street  
Conference Center  
Boise, Idaho 83706**

**All attendees must comply with current COVID-19 safety protocols for public gatherings.**

#### **Via Telephone and Video Conferencing:**

**To sign up for remote attendance via telephone and video conferencing, contact [Paula Wilson](#) by September 30, 2020.**

The hearing location will be accessible to persons with disabilities, and language translators will be made available upon request. To request accommodations for language translation, contact the undersigned by September 30, 2020.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of the purpose of the proposed rulemaking:

On February 13, 2020, the Board adopted as temporary fee rules the IDAPA 58 rule chapters as they were presented in the pending rule dockets adopted by the Board in 2019 and submitted to the Second Regular Session of the 65th Idaho Legislature for review (2019 pending rule dockets). The 2019 pending rule dockets are posted in the [2020 Legislative Rules Review Books](#). The IDAPA 58 fee rule chapters and the 2019 pending rule dockets are listed below.

This proposed rule includes 1) the temporary fee rules adopted by the Board in February 2020, and 2) revisions to several fee rule chapters as described below.

Revisions made to the February 2020 temporary fee rules are not considered changes to existing rules and, therefore, are not shown in strike-out/underline format. For revisions that were negotiated, the strike-out/underline format proposed revisions are available for viewing in the latest posted negotiated rule drafts. The negotiated rulemaking records, including negotiated rulemaking summaries and negotiated rule drafts, are available on the web page links provided below.

More information regarding this rule docket is available at [deq.idaho.gov/58-0000-2000F](http://deq.idaho.gov/58-0000-2000F).

▪ **IDAPA 58.01.01, *Rules for the Control of Air Pollution in Idaho***

- Docket No. 58-0101-1903
- Docket No. 58-0101-1904
- Docket No. 58-0101-1905
- Revisions Updating Federal Regulations Incorporated by Reference:

These proposed revisions are to ensure that the state rules remain consistent with federal regulations. The Rules for the Control of Air Pollution in Idaho, IDAPA 58.01.01, are updated annually to maintain consistency with federal regulations implementing the Clean Air Act. This proposed rule updates federal regulations incorporated by reference with the July 1, 2020 Code of Federal Regulations (CFR) effective date.

▪ **IDAPA 58.01.05, *Rules and Standards for Hazardous Waste***

- Docket No. 58-0000-1900F
- Docket No. 58-0105-1901
- Revisions Updating Federal Regulations Incorporated by Reference:

These proposed revisions are to ensure that the state rules remain consistent with federal regulations. Idaho's Rules and Standards for Hazardous Waste, IDAPA 58.01.05, are updated annually to maintain consistency with the federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). This proposed rule updates federal regulations incorporated by reference with the July 1, 2020 Code of Federal Regulations (CFR) effective date. The proposed rule also includes minor non-substantive corrections.

▪ **IDAPA 58.01.06, *Solid Waste Management Rules***

- Docket No. 58-0000-1900F
- Revisions Negotiated Under Docket No. 58-0106-1901:

These revisions are proposed in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that certain rules are outdated, unnecessary, or redundant. Various sections throughout IDAPA 58.01.06, Solid Waste Management Rules, have been identified for deletion, simplification, or consolidation with other sections. The negotiated rulemaking record is available at [deq.idaho.gov/58-0106-1901](http://deq.idaho.gov/58-0106-1901).

▪ **IDAPA 58.01.07, *Rules Regulating Underground Storage Tank Systems***

- Docket No. 58-0000-1900F

▪ **IDAPA 58.01.08, Idaho Rules for Public Drinking Water Systems**

- Docket No. 58-0000-1900F

▪ **IDAPA 58.01.09, Rules Regulating Swine Facilities**

- Docket No. 58-0109-1901

▪ **IDAPA 58.01.11, Ground Water Quality Rule**

- Docket No. 58-0111-1901

▪ **IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans**

- Docket No. 58-0000-1900F
- Revisions Negotiated Under Docket No. 58-0112-1901:

These revisions are proposed in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program, and merge necessary and relevant sections of IDAPA 58.01.20 with IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans. DEQ has initiated a separate rulemaking for the deletion of IDAPA 58.01.20 (Docket No. 58-0120-1901). The negotiated rulemaking record is available at [deq.idaho.gov/58-0112-1901](http://deq.idaho.gov/58-0112-1901).

▪ **IDAPA 58.01.13, Rules for Ore Processing by Cyanidation**

- Docket No. 58-0000-1900F
- Revisions Negotiated Under Docket No. 58-0113-1901:

The Idaho Mining Association (IMA) requested, via letter submitted to the Director on March 18, 2019, that DEQ revise the rules to move away from prescriptive design and construction requirements to performance-based outcomes for design, construction and closure. IMA's letter is posted at [deq.idaho.gov/58-0113-1901](http://deq.idaho.gov/58-0113-1901). The current rules, adopted by the Board in 2005 and approved by the Idaho Legislature in 2006, adopted minimum design and construction criteria for all cyanidation facilities. IMA's letter to DEQ states that technologies and industry best practices for cyanidation facilities have changed since 2006. DEQ initiated negotiated rulemaking to evaluate such changes and to determine if the rules should be updated.

The proposed rule includes revisions to account for current best available technologies or best practices for design, construction and closure of cyanidation facilities that can achieve necessary regulatory goals of protecting human health and the environment and addresses the following:

- (1) applicability of the design criteria to different types of cyanidation facilities;
- (2) consideration of a broader range of acceptable materials included in the design;
- (3) broader interpretation of performance and compliance regarding constructability of leak detection systems;
- (4) variability in design approach based on the physical characteristics of impounded materials; and
- (5) variability in design approach based on the chemical characteristics of impounded materials and process water; and
- (6) cyanidation permit application and administration, including recovery of costs incurred by DEQ in processing permit applications and administering issued permits.

The negotiated rulemaking record is available at [deq.idaho.gov/58-0113-1901](http://deq.idaho.gov/58-0113-1901).

▪ **IDAPA 58.01.14, Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services**

- Docket No. 58-0000-1900F

▪ **IDAPA 58.01.18, Idaho Land Remediation Rules**

- Docket No. 58-0000-1900F

▪ **IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program**

- Docket No. 58-0000-1900F
- Revisions Negotiated Under Docket No. 58-0120-1901 (Chapter Repeal):

These revisions are proposed in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program, and merge necessary and relevant sections of IDAPA 58.01.20 with IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans. DEQ has initiated a separate rulemaking for the revisions to IDAPA 58.01.12 (Docket No. 58-0112-1901). The negotiated rulemaking record is available at [deq.idaho.gov/58-0120-1901](http://deq.idaho.gov/58-0120-1901).

▪ **IDAPA 58.01.25, Rules Regulating the Idaho Pollutant Discharge Elimination System Program**

- Docket No. 58-0000-1900F
- Revisions Negotiated Under Docket No. 58-0125-2001:

To maintain delegated authority for the IPDES program, state rules need to be updated routinely to maintain consistency with federal regulations implementing the Clean Water Act. The purpose of this rulemaking is to ensure the Rules Regulating the Idaho Pollutant Discharge Elimination System (IPDES) Program, IDAPA 58.01.25, remain consistent with federal regulations and to make clarifications in response to ambiguities identified during DEQ's administration of the IPDES program.

In 2015, 2017, 2019, and 2020, updated federal regulations became effective for National Pollutant Discharge Elimination System (NPDES) permitting authorities. These regulations require commensurate changes to portions of the IPDES rules with regard to updating definitions, applications, and reporting requirements for the state and facilities permitted under the program. DEQ is proposing to update those items incorporated by reference impacted by the federal changes. DEQ also proposes changes to the IPDES rules to clarify requirements related to fee payment, public comments, appeals, and other ambiguities identified since implementation of the program in July 2018.

This proposed rule updates federal regulations incorporated by reference with the July 1, 2020 Code of Federal Regulations (CFR) effective date. To maintain consistency for all federal regulations listed in IDAPA 58.01.25.003, this update includes the regulations that have not been revised since the initial incorporation by reference. DEQ negotiated the original rule language and incorporated by reference federal regulations affecting the program.

The negotiated rulemaking record is available at [deq.idaho.gov/58-0125-2001](http://deq.idaho.gov/58-0125-2001).

After consideration of public comments, DEQ intends to present the final proposal to the Board in November 2020 for adoption as pending rules. With respect to IDAPA 58.01.13, Ore Processing by Cyanidation, DEQ intends to present the final proposal to the Board for adoption as both an amendment to the temporary rules and as pending rules.

**FEE SUMMARY:** With the exception of revisions to IDAPA 58.01.13, Rules for Ore Processing by Cyanidation, this rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules. A description of each fee category is provided below.

Listed below are the DEQ fee rule chapters, fee categories, and the statutory authority for imposition of the fees.

IDAPA 58.01.01, *Rules for the Control of Air Pollution* in Idaho - crop residue burn fee, Idaho Code § 39-114(4); application fee for industrial or commercial air pollution source permits, Idaho Code § 39-115(3); motor vehicle inspection fee, Idaho Code § 39-116B

IDAPA 58.01.05, *Rules and Standards for Hazardous Waste* - hazardous waste siting license fee, Idaho Code § 39-5813(3)

IDAPA 58.01.06, *Solid Waste Management Rules* - commercial solid waste siting license fee, Idaho Code § 39-7408(C)

IDAPA 58.01.07, *Rules Regulating Underground Storage Tank Systems* – annual UST program fee, Idaho Code §§ 39-119, 39-8802(d)

IDAPA 58.01.08, *Idaho Rules for Public Drinking Water Systems* – annual drinking water system fee, Idaho Code § 39-119

IDAPA 58.01.09, *Rules Regulating Swine Facilities* - permit application fee, Idaho Code § 39-119

IDAPA 58.01.11, *Ground Water Quality Rule* - point of compliance application fee, Idaho Code § 39-119

IDAPA 58.01.12, *Rules for Administration of Water Pollution Control Loans* – loan fee to offset costs of administering loan program, Idaho Code §§ 39-119, 39-3627(4)

IDAPA 58.01.13, *Rules for Ore Processing by Cyanidation* – fee for processing permit applications, Idaho Code § 39-118A(2)(c)

**Fee Summary - Revisions in IDAPA 58.01.13 Negotiated Under Docket No. 58-0113-1901:**

The current rule requires applicants to submit a fee ranging from \$5,000 for a pilot facility not processing more than 10,000 tons of ore to \$20,000 for a facility processing more than 120,000 tons of ore during the life of the facility. The current rule also includes the option for the applicant to enter into an agreement with the Department for actual costs incurred to process an application and issue a final permit in lieu of paying a fee. This proposed rule eliminates the fee schedule and requires the applicant to enter into an agreement with the Department for actual costs incurred to process an application and issue a final permit. Section 39-118A(2)(c), Idaho Code, authorizes the Director of DEQ to require a reasonable fee for processing permit applications.

IDAPA 58.01.14, *Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services* – fees for environmental operating permits, licenses, inspection services and waiver application processing, Idaho Code § 39-119

IDAPA 58.01.18, *Idaho Land Remediation Rules* – voluntary remediation program application fee, Idaho Code § 39-7210(5)

IDAPA 58.01.20, *Rules for Administration of Drinking Water Loan Program* – loan fee to offset costs of administering loan program, Idaho Code §§ 39-119, 39-3627(4)

IDAPA 58.01.25, *Rules Regulating the Idaho Pollutant Discharge Elimination System Program* – application fee and/or annual fee, Idaho Code § 39-175C

**FISCAL IMPACT:** 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:

This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**Fiscal Impact - Revisions in IDAPA 58.01.13 Negotiated Under Docket No. 58-0113-1901:**

Section 39-118A(2)(c), Idaho Code, authorizes the Director of DEQ to require a reasonable fee for processing permit applications. The proposed rule includes a fee for processing a permit application but does not include any fees following issuance of the permit. As facilities are permitted, there will be an impact to the state general fund for administration of a cyanidation permit program; however, it would vary based on the number and size of permitted facilities operating in Idaho. The estimated average annual general fund impact is \$6,000 per permitted facility.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, agencies shall proceed through negotiated rulemaking whenever it is feasible to do so. DEQ made the following determinations regarding feasibility to conduct negotiated rulemaking:

Negotiated rulemaking was not feasible for the temporary fee rules adopted by the Board in February 2020 because engaging in negotiated rulemaking for the previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

Negotiated rulemaking was not feasible for the revisions updating federal regulations incorporated by reference in IDAPA 58.01.01, *Rules for the Control of Air Pollution in Idaho*, and IDAPA 58.01.05, *Rules and Standards for Hazardous Waste*, due to the simple nature and because DEQ has no discretion with respect to adopting federal regulations necessary to maintain state primacy of the federal programs. Whenever possible, DEQ incorporates federal regulations by reference to ensure that the state rules are consistent with federal regulations.

Negotiated rulemaking was feasible for revisions in the following rule chapters. These revisions were negotiated with stakeholders and members of the public. The negotiated rulemaking record for each docket is available on the listed web pages.

IDAPA 58.01.06, Solid Waste Management Rules  
Docket No. 58-0106-1901 - [deq.idaho.gov/58-0106-1901](http://deq.idaho.gov/58-0106-1901)

IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans  
Docket No. 58-0112-1901 - [deq.idaho.gov/58-0112-1901](http://deq.idaho.gov/58-0112-1901)

IDAPA 58.01.13, Rules for Ore Processing by Cyanidation  
Docket No. 58-0113-1901 - [deq.idaho.gov/58-0113-1901](http://deq.idaho.gov/58-0113-1901)

IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program (Chapter Repeal)  
Docket No. 58-0120-1901 - [deq.idaho.gov/58-0120-1901](http://deq.idaho.gov/58-0120-1901).

IDAPA 58.01.25, Rules Regulating the Idaho Pollutant Discharge Elimination System Program  
Docket No. 58-0125-2001 - [deq.idaho.gov/58-0125-2001](http://deq.idaho.gov/58-0125-2001)

**INCORPORATION BY REFERENCE:** The following rule chapters include revisions updating federal regulations incorporated by reference:

IDAPA 58.01.01, *Rules for the Control of Air Pollution in Idaho*  
IDAPA 58.01.05, *Rules and Standards for Hazardous Waste*  
IDAPA 58.01.25, *Rules Regulating the Idaho Pollutant Discharge Elimination System Program*

Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief summary of why the incorporation by reference is necessary:

Adoption of federal regulations is necessary to maintain program primacy. Incorporation by reference allows DEQ to keep its rules up to date with federal regulation changes and simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rules.

In compliance with Idaho Code 67-5223(4), for each fee rule chapter with updates to federal regulations incorporated by reference, DEQ prepared a brief synopsis detailing the substantive differences between the previously incorporated material and the latest revised edition or version of the incorporated material being proposed for incorporation by reference. The Overview of Incorporations by Reference documents are available at [deq.idaho.gov/58-0000-2000F](http://deq.idaho.gov/58-0000-2000F).

**IDAHO CODE SECTION 39-107D STATEMENT:** With the exception of revisions to IDAPA 58.01.13, *Rules for Ore Processing by Cyanidation*, these rules are either (1) not broader in scope or more stringent than federal law nor propose to regulate an activity not regulated by the federal government, or (2) have previously been approved as meeting the requirements of Section 39-107D, Idaho Code.

**IDAHO CODE SECTION 39-107D STATEMENT FOR REVISIONS IN IDAPA 58.01.13 NEGOTIATED UNDER DOCKET NO. 58-0113-1901:** IDAPA 58.01.13, *Rules for Ore Processing by Cyanidation*, regulates activities not regulated by the federal government. The following is a summary of additional information required by Sections 39-107D(2) through (3), Idaho Code, supporting the adoption of these rules. These rules establish the procedures and requirements for the issuance and maintenance of a permit to construct, operate, and close that portion of a cyanidation facility that is intended to contain, treat, or dispose of process water or process-contaminated water containing cyanide.

*Section 107D(2)(a), Idaho Code. To the degree that a department action is based on science, in proposing any rule or portions of any rule subject to this section, the department shall utilize the best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices.*

The requirements set forth in this proposed rule are based upon best available peer reviewed science provided by participants in the negotiated rulemaking conducted pursuant to Section 67-5220, Idaho Code. In addition, the requirements set forth in this proposed rule are industry accepted standards and proven regulatory requirements shown to be generally protective of human health and the environment.

To the extent practicable, the proposed rule reflects derivations of the standards and evaluation criteria used in the state of Nevada to regulate cyanidation facilities. Nevada's rules more broadly address mining facilities, not cyanidation facilities specifically. The standards specific to cyanidation facilities were developed based on numerous references providing the best available peer reviewed science. These references are included in the rulemaking record and available at [deq.idaho.gov/58-0113-1901](http://deq.idaho.gov/58-0113-1901).

***Section 39-107D(2)(b), Idaho Code. To the degree that a department action is based on science, in proposing any rule or portions of any rule subject to this section, 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.***

Data was not collected or analyzed as part of this rulemaking process.

***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 release of contaminants from cyanidation facilities may adversely impact beneficial uses in both surface and ground water. The populations and receptors of contaminants generated by these facilities potentially include, depending on a facility's location, domestic and community drinking water systems, recreationists, agriculture, and wildlife. Contaminants of concern with the potential of release from cyanidation facilities include, but are not limited to, cyanide, nitrates, chlorine, heavy metals, and sediment.

In Idaho, ground water supplies drinking water to approximately 95% of Idaho's citizens. Of these consumers, approximately one million rely on regulated public water systems for drinking water. Another 500,000 Idahoans utilize ground water from private wells for drinking water. Protection of this resource is critical to the health of the citizens of Idaho.

Ground water also replenishes surface water supplies throughout Idaho. In areas with degraded ground water, the quality of the interconnected surface water can be negatively impacted. The release of contaminants to surface water either directly or indirectly through the ground water can have adverse environmental effects on aquatic habitats, such as increased algal blooms and systemic or neurological effects in susceptible species. The release of contaminants to surface water may also affect communities or individuals who use surface water as a drinking water source by, for example, making the water unfit for consumption or increasing treatment costs.

***Section 107D(3)(b) through (e), 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, 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 studies known to the department that support, are directly relevant to, or fail to support any estimate of public health effect or environmental effects and the methodology used to reconcile inconsistencies in the data.***

The proposed rule includes permitting process requirements and criteria for the design, construction, operation, and closure of a cyanidation facility. The design criteria are intended to ensure that cyanidation facilities are constructed, operated, and closed in a manner that complies with Idaho's existing standards for protection of human health and the environment, including surface and ground water quality standards. Because specific standards for protecting of human health and the environment already exist in other rules, there is no need to duplicate them in this proposed rule. The criteria included as part of this proposed rule are not based on any express estimate or analysis of risk to public health or the environment. Instead, the criteria are based on best available peer reviewed science and generally accepted design principles used by engineers and regulators to safely contain, control, and treat pollutants associated with ore processing by cyanidation consistent with other existing standards. Application of the criteria in this proposed rule and other rules administered by the Department or other state agencies will result in minimal risk of release of contaminants from the cyanidation facility into the environment and appropriate response in the event of a release.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the proposed rule, contact the undersigned.

**SUBMISSION OF WRITTEN COMMENTS:** Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before October 16, 2020.

Dated this 19th day of August, 2020.

Paula J. Wilson  
Department of Environmental Quality  
1410 N. Hilton Street  
Boise, Idaho 83706  
Phone: (208) 373-0418  
Fax: (208) 373-0481  
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**58.01.07 – RULES REGULATING UNDERGROUND STORAGE TANK SYSTEMS**

**000. LEGAL AUTHORITY.**

Chapters 1 and 88, Title 39, Idaho Code, grant authority to the Board of Environmental Quality to promulgate rules for the regulation of underground storage tank systems within the state of Idaho. ( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules are titled IDAPA 58.01.07, “Rules Regulating Underground Storage Tank Systems.” ( )

**02. Scope.** These rules establish standards and procedures necessary for the regulation of underground storage tank systems. Compliance with these rules shall not relieve persons from the obligation to comply with other applicable state or federal laws. ( )

**002. WRITTEN INTERPRETATIONS.**

As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255. ( )

**003. ADMINISTRATIVE PROVISIONS.**

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” ( )

**004. INCORPORATION BY REFERENCE.**

Any reference to any document identified in Subsection 004.01 shall constitute the full adoption by reference into IDAPA 58.01.07. ( )

**01. Documents Incorporated by Reference.** Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, [40 CFR Part 280](#), revised as of July 1, 2017 with the following exceptions: ( )

- a.** 40 CFR 280.12, the definition of “Replaced” is excluded; ( )
- b.** 40 CFR 280.12, the definition of “Under-dispenser containment or UDC” is excluded; ( )
- c.** 40 CFR 280.20, the introductory paragraph sentence, “In addition, except for suction piping that meets the requirements of Section 280.41(b)(1)(ii)(A) through (E), tanks and piping installed or replaced after April 11, 2016 must be secondarily contained and use interstitial monitoring in accordance with Section 280.43(g),” is excluded; ( )
- d.** 40 CFR 280.20(f), is excluded; ( )
- e.** 40 CFR 280.34(b)(9), the citation to Section 280.245 is excluded; ( )
- f.** 40 CFR 280.41(a)(1), “installed on or before April 11, 2016...” is excluded; ( )
- g.** 40 CFR 280.41(a)(2), is excluded; ( )
- h.** 40 CFR 280.41(b)(1), “installed on or before April 11, 2016...” is excluded; ( )
- i.** 40 CFR 280.41(b)(2), is excluded; ( )
- j.** 40 CFR 280.42, Note to paragraph (a), “for tank installed on or before October 13, 2015.” is excluded; ( )
- k.** 40 CFR 280.42(e), “installed on or before October 13, 2015...” is excluded; and ( )
- l.** 40 CFR Part 280 Subpart J is excluded. ( )

**02. Hazardous Substance Underground Storage Tank Systems.** ( )

- a.** The following items only apply to hazardous substance underground storage tank systems and do

not apply to petroleum underground storage tank systems: ( )

i. The definition of “Hazardous substance UST system” in 40 CFR 280.12 and use of this term or regulations regarding hazardous substance in [40 CFR Part 280](#); and ( )

ii. 40 CFR 280.42 and any reference to 40 CFR 280.42 in [40 CFR Part 280](#). ( )

b. All other provisions of 40 CFR Part 280 and all provisions of IDAPA 58.01.07 shall apply to hazardous substance underground storage tank systems. ( )

**03. Consistency.** In the event of conflict or inconsistency between the language in IDAPA 58.01.07 and that found in [40 CFR Part 280](#), IDAPA 58.01.07 shall prevail. ( )

**04. Stringency.** IDAPA 58.01.07 shall be no more stringent than federal law or regulations governing underground storage tank systems. ( )

**05. Availability of Referenced Material.** The federal regulations adopted by reference can be obtained at the following locations: ( )

a. U.S. Government Printing Office, [www.ecfr.gov](http://www.ecfr.gov); and ( )

b. Department of Environmental Quality, Hearing Coordinator, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. ( )

**005. OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.**

The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, (208) 373-0502, [www.deq.idaho.gov](http://www.deq.idaho.gov). The office hours are 8 a.m. to 5 p.m. Monday through Friday. ( )

**006. CONFIDENTIALITY OF RECORDS.**

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Title 74, Chapter 1, Idaho Code, and IDAPA 58.01.21, “Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality.” ( )

**007. -- 009. (RESERVED)**

**010. DEFINITIONS.**

For the purpose of the rules contained in IDAPA 58.01.07, “Rules Regulating Underground Storage Tank Systems,” the following definitions apply: ( )

**01. Board.** The Idaho Board of Environmental Quality. ( )

**02. Community Water System.** A public water system that serves at least fifteen (15) service connections used by year-round residents of the area served by the system or regularly serves at least twenty-five (25) year-round residents. ( )

**03. Department.** The Idaho Department of Environmental Quality. ( )

**04. Director.** The Director of the Idaho Department of Environmental Quality or his authorized agent. ( )

**05. Existing.** Solely for purposes of determining when secondary containment is required, existing is when a petroleum underground storage tank, piping, motor fuel dispensing system, facility, public water system or potable drinking water well is in place when a new installation or replacement of a tank, piping, or motor fuel dispensing system begins. ( )

**06. EPA.** The United States Environmental Protection Agency. ( )

**07. Installation of a New Motor Fuel Dispenser System.** The installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the petroleum underground storage tank system. This equipment may include flexible connectors, risers, or other transitional components that are beneath the dispenser, below the shear valve, and connect the dispenser to the piping. It does not mean the installation of a motor fuel dispenser installed separately from the equipment needed to connect the dispenser to the petroleum underground storage tank system. ( )

**08. Installer.** Any person who installs a new or replacement petroleum underground storage tank system. ( )

**09. New Underground Storage Tank.** Has the same meaning as “underground storage tank or UST” in 40 CFR 280.12, except that such term includes tanks that have been previously used and meet the requirements of 40 CFR 280.20(a). ( )

**10. Non-Community Water System.** A public water system that is not a community water system. A non-community water system is either a transient non-community water system or a non-transient non-community water system. ( )

**11. Piping.** A hollow cylinder or a tubular conduit constructed of non-earthen materials that routinely contains and conveys regulated petroleum substances from the petroleum underground storage tank(s) to the dispenser(s) or other end-use equipment. It does not mean vent, vapor recovery, or fill lines that do not routinely contain regulated petroleum substances. ( )

**12. Potable Drinking Water Well.** Any hole (dug, driven, drilled, or bored) that extends into the earth until it meets ground water which supplies water for a non-community public water system or otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses). Such wells may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities. ( )

**13. Product Deliverer.** Any person who delivers or deposits product into a petroleum underground storage tank. This term may include major oil companies, jobbers, petroleum transportation companies, or other product delivery entities. ( )

**14. Public Water System.** A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and, any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any “special irrigation district.” A public water system is either a “community water system” or a “non-community water system.” ( )

**15. Red Tag.** A tamper-resistant tag, device, or mechanism attached to the tank’s fill pipes that clearly identifies a petroleum underground storage tank as ineligible for product delivery. The tag or device shall be visible to the product deliverer and clearly state that it is unlawful to deliver to, deposit into, or accept product into the ineligible petroleum underground storage tank. ( )

**16. Replace.** As it applies to petroleum underground storage tanks and piping, replace is defined as follows: ( )

**a. Petroleum Underground Storage Tank.** Replace means to remove an existing tank and install a new tank. ( )

**b. Piping.** Replace means to remove and put back in one hundred (100) percent of the piping, excluding connectors, connected to a single petroleum underground storage tank system. This definition does not alter the requirement in 40 CFR 280.33(c) to replace metal pipe sections and fittings that have released product as a

result of corrosion or other damage. A replacement of metal pipe section and fittings pursuant to 40 CFR 280.33(c) shall be considered a replacement under this definition only if one hundred (100) percent of the metal piping, excluding connectors, is replaced. ( )

**17. Under-Dispenser Spill Containment.** Containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or ground water. Such containment must: ( )

- a. At installation or modification, be liquid-tight on its sides, bottom, and at any penetrations; and ( )
- b. Be compatible with the substance conveyed by the piping; and either ( )
- c. Allow for visual inspection and access to the components in the containment system; or ( )
- d. Be monitored for releases using a release detection method that meets the requirements of 40 CFR 280.43(g). ( )

**011. – 099. (RESERVED)**

**100. ADDITIONAL MEASURES TO PROTECT GROUND WATER FROM CONTAMINATION.**

**01. Notification.** An owner, operator or designee must: ( )

- a. Provide written notice to the Department thirty (30) days prior to the installation of a new piping system or a new or replacement petroleum underground storage tank. ( )
- b. Provide notice to the Department twenty-four (24) hours prior to the installation of a replacement piping system. ( )

**02. Notification Forms.** The written notice required in Subsection 100.01.a. shall be made upon forms provided by the Department. ( )

**03. Requirements for Petroleum UST Systems.** Owners, operators, and installers of a new or replacement petroleum underground storage tank or piping system shall comply with the following requirements. ( )

a. Each new petroleum underground storage tank, or piping connected to any such new tank, installed after February 23, 2007, or any existing petroleum underground storage tank, or existing piping connected to such existing tank, that is replaced after February 23, 2007, shall have secondary containment and be monitored for leaks if the new or replaced petroleum underground storage tank or piping is within one thousand (1,000) feet of any existing public water system or any existing potable drinking water well. At a minimum, secondary containment systems must be designed, constructed, and installed to contain regulated substances released from the tank system until they are detected and removed, prevent the release of regulated substances to the environment at any time during the operational life of the petroleum underground storage tank system, and be checked for evidence of a release at least every thirty (30) days. The following conditions are excluded: ( )

- i. Suction piping that meets the requirements of 40 CFR 280.41(b)(1)(ii)(A) through (E); ( )
- ii. Piping that manifolds two (2) or more petroleum underground storage tanks together; ( )
- iii. Existing piping to which new piping is connected to install a dispenser; and ( )
- iv. Tanks identified in 40 CFR 280.10(b). ( )

b. If the owner installs, within one (1) year, a potable drinking water well at the new facility that is within one thousand (1,000) feet of the petroleum underground tanks, piping, or motor fuel dispenser system as part of the new underground storage tank facility installation, secondary containment and under-dispenser containment

are required, regardless of whether the well is installed before or after the petroleum underground tanks, piping, and motor fuel dispenser system are installed. ( )

**c.** The notice required in Subsection 100.01 shall indicate whether the new or replacement installation is within one thousand (1,000) feet of an existing public water system or any existing potable drinking water well. If the owner and installer certify that the installation is not within one thousand (1,000) feet of an existing public water system or any existing potable drinking water well, the owner, operator or designee shall provide and maintain documentation showing that a reasonable investigation of water systems and drinking water wells was undertaken. A reasonable investigation includes, but is not limited to, a search of the records of: ( )

- i. The public or private water service provider in the area which the new or replacement installation is located (if any); ( )
- ii. The city or county in which the new or replacement installation is located; ( )
- iii. The Idaho Department of Water Resources; and ( )
- iv. The Idaho Department of Environmental Quality. ( )

**d.** In the case of a replacement of an existing petroleum underground storage tank or existing piping connected to the petroleum underground storage tank, Section 100 shall apply only to the specific petroleum underground storage tank or piping being replaced, not to other petroleum underground storage tanks and connected pipes comprising such system. ( )

**e.** Each installation of a new motor fuel dispenser system shall include under-dispenser spill containment if the new dispenser is within one thousand (1,000) feet of any existing public water system or any existing potable drinking water well. ( )

**04. Requirements for Hazardous Substance UST Systems.** Owners, operators, and installers of a new or replacement hazardous substance underground storage tank or piping system shall have secondary containment as required in 40 CFR 280.42. ( )

**05. Certification.** Owners and operators shall also comply with the certification requirements of 40 CFR 280.22(f) as incorporated by reference into these rules. ( )

**101. ALTERNATIVE PERIODIC TESTING OF CONTAINMENT SUMPS USED FOR INTERSTITIAL MONITORING OF PIPING.**

**01. Applicability.** ( )

**a.** The alternative test method in Subsection 101.02 shall only be used for containment sumps that are performing continuous interstitial monitoring as a piping release detection method where an electronic sump sensor is installed and connected to an electronic monitoring device, such as an automatic tank gauge, or where the piping within a containment sump is continuous to a containment sump which has an electronic sump sensor installed and connected to an electronic monitoring device, such as an automatic tank gauge. ( )

i. The sump sensor in Subsection 101.01.a. must be positioned in the containment sump according to manufacturer instructions and at the lowest possible point in the containment sump. ( )

ii. The sump sensor in Subsection 101.01.a. must be wired and programmed appropriately to shut down power to the submersible turbine pump (positive shutdown) when the sensor is in contact with liquid in any containment sump. ( )

iii. If new dispensers are added and Subsection 101.01.a.ii. cannot be achieved (no electrical conduit, not enough sensor ports, etc.), an electronic stand-alone dispenser containment sump sensor may be used if it is wired appropriately to shut down power to the dispenser when the sensor is in contact with liquid in the dispenser containment sump. ( )

b. The Department may not allow the alternative test method in Subsection 101.02 if it determines the containment sump, penetration fittings, or containment sump sensors are not constructed or positioned in a manner that will accommodate the alternative testing or prevent releases to the environment (i.e., penetration fittings are too close to the containment sump bottom). ( )

**02. Alternative Test Method Allowed.** ( )

a. As an alternative to the allowable test method in 40 CFR 280.35(a)(1)(ii)(A)-(C), containment sumps used for interstitial monitoring of piping may be tested as follows: ( )

i. Temporarily remove any interstitial monitoring containment sump sensors before conducting the test; ( )

ii. Add water to the containment sump up to a point directly beneath the first containment sump penetration fitting from the bottom of the containment sump. The water must be allowed to settle for at least fifteen (15) minutes; ( )

iii. Place a measuring stick that has one sixteenth (1/16th) inch increments into the lowest point in the containment sump and extending above the water level in the sump; and ( )

iv. Document the initial water level measurement as measured from the bottom of the containment sump. After one (1) hour, document the ending water level measurement. If the water level changes less than one eighth (1/8th) inch, the containment sump passes the integrity test. If the water level changes one eighth (1/8th) inch or greater, the containment sump fails the integrity test. ( )

b. Upon completion of the test, remove all water and properly dispose of it. Reinstall any interstitial monitoring sensors. Reinstall all containment sump lids, gaskets, and covers. ( )

**102. -- 199. (RESERVED)**

**200. RELEASE REPORTING REQUIREMENTS.**

**01. Information to be Reported.** ( )

a. In addition to the requirements in IDAPA 58.01.02, "Water Quality Standards," Subsection 851.01, owners or operators shall report the following information regarding confirmed petroleum underground storage tank releases to the Department on forms provided by the Department: ( )

i. The release source; and ( )

ii. The release cause. ( )

b. Releases less than twenty-five (25) gallons that are cleaned up within twenty-four (24) hours, and which do not cause a sheen on nearby surface water, do not need to be reported. ( )

**02. Release Sources.** Release sources may include, but are not limited to the following: ( )

a. Petroleum Underground Storage Tanks; ( )

b. Piping; ( )

c. Dispensers, which include the dispenser and equipment used to connect the dispenser to the piping. A release from a suction pump or components located above the shear valve would be an example of a release from the dispenser; ( )

d. Submersible turbine pump area, which includes the submersible turbine pump head (typically

located in the tank sump), the line leak detector, and the piping that connects the submersible turbine pump to the petroleum underground storage tank; and ( )

**e.** Delivery problem, which identifies releases that occurred during product delivery to the petroleum underground storage tank. Typical causes associated with this source are spills and overfills. ( )

**03. Release Causes.** Release causes may include, but are not limited to the following: ( )

**a.** Spills which may occur when the delivery hose is disconnected from the fill pipe of the petroleum underground storage tank or when the nozzle is removed from the vehicle at the dispenser; ( )

**b.** Overfills which may occur from the fill pipe at the petroleum underground storage tank or when the nozzle fails to shut off at the dispenser; ( )

**c.** Physical or mechanical damage of all types except corrosion. Examples include a puncture of the petroleum underground storage tank or piping, loose fittings, broken components, and components that have changed dimension like elongation or swelling; ( )

**d.** Corrosion of a metal tank, piping, flex connector, or other component; and ( )

**e.** Installation problem that occurs specifically because the underground storage tank system was not installed properly. ( )

**04. Requirements.** The reporting required in Section 200 shall be reported to the Department within ninety (90) days of a confirmed release. The reporting requirement in Section 200 shall not relieve owners or operators from the obligation to comply with 40 CFR Part 280 Subpart E “Release Reporting, Investigation, and Confirmation,” IDAPA 58.01.02, “Water Quality Standards,” Section 851, “Petroleum Release Reporting, Investigation, and Confirmation,” and IDAPA 58.01.02, “Water Quality Standards,” Section 852, “Petroleum Release Response and Corrective Action.” ( )

**201. -- 299. (RESERVED)**

**300. TRAINING REQUIREMENTS.**

**01. Requirements.** The Department shall adopt a training program to help owners and operators comply with the requirements of these rules. The training program requirements shall: ( )

**a.** Be consistent with 42 U.S.C. 6991i(a), as amended by the Underground Storage Tank Compliance Act, (Pub.L. 109-58, title XV, sec. 1524(a), Aug. 8, 2005); ( )

**b.** Be developed in cooperation with petroleum underground storage tank owners and tank operators; ( )

**c.** Take into consideration training programs implemented by petroleum underground storage tank owners and operators as of August 8, 2005; ( )

**d.** Provide for training to be conducted on site or at another mutually convenient location; and ( )

**e.** Be appropriately communicated to petroleum underground storage tank owners and operators. ( )

**02. Operator Designation.** For each petroleum underground storage tank system regulated under these rules, the owner or operator shall: ( )

**a.** Designate: ( )

i. The class A operator, who is the individual(s) having primary responsibility for on-site operation and maintenance of the petroleum underground storage tank system. This does not require that the class A operator be on site; ( )

ii. The class B operator, who is the individual(s) having daily on-site responsibility for the operation and maintenance of the petroleum underground storage tank system. This does not require that the class B operator be on site at all times; and ( )

iii. The class C operator, who is the daily, on-site individual(s) having primary responsibility for addressing emergencies presented by a spill or release from the petroleum underground storage tank system. The class C operator can be designated by the class A or B operator. ( )

**b.** Maintain a record at the facility where the petroleum underground storage tank is located listing each person designated in Subsections 300.02.a.i., 300.02.a.ii., and 300.02.a.iii. ( )

**c.** Notify the Department in writing of the individual(s) designated in Subsections 300.02.a.i. and 300.02.a.ii. within thirty (30) days of the designation. ( )

**03. Training.** The owner or operator of each petroleum underground storage tank system regulated under these rules shall ensure that the individual(s) identified in Subsections 300.02.a.i. and 300.02.a.ii. participate in the training conducted by the Department or a state of Idaho approved third party. ( )

**a.** The individual(s) identified in Subsections 300.02.a.i. or 300.02.a.ii. shall provide training to the persons identified in Subsection 300.02.a.iii. ( )

**b.** The individual(s) identified in Subsection 300.02.a.iii. must be trained before assuming responsibility for responding to emergencies. ( )

**c.** The individual(s) identified in Subsections 300.02.a.i. and 300.02.a.ii. shall repeat the training within thirty (30) days if the petroleum underground storage tank system for which they have responsibility is determined to be out of compliance with these rules. ( )

**d.** The individual(s) identified in Subsections 300.02.a.i. and 300.02.a.ii. shall be trained within thirty (30) days of assuming operation and maintenance duties. ( )

**04. Unattended Sites.** In the case of unattended sites, a sign must be posted in a location visible from the dispensers indicating emergency shut-off procedures and emergency contact phone numbers. ( )

**301. -- 399. (RESERVED)**

**400. INSPECTIONS.**

**01. Department Authority.** In order to fulfill the statutory requirements of Chapter 88, Title 39, Idaho Code, officers, employees or representatives of the Department, or third-party inspectors as described in Subsection 400.02, are authorized to inspect petroleum underground storage tanks, contents of the tanks, and associated equipment and records relating to such tanks, contents, and associated equipment. ( )

**02. Third-Party Inspections.** ( )

**a.** Third-party inspectors must be certified, licensed, or registered by an approved state program to perform on-site inspections. At a minimum, third-party inspectors must meet the requirements listed in Subsections 400.02.a.i. through 400.02.a.v.: ( )

i. Be trained in the state-specific inspection protocols and procedures, and perform inspections pursuant to such protocols and procedures; ( )

ii. Successfully complete the state's required training program. The training program for third-party

inspectors must be comparable to the training program for Department inspectors; ( )

iii. Not be the owner or operator of the petroleum underground storage tank, an employee of the owner or operator of the petroleum underground storage tank, or a person having daily on-site responsibility for the operation and maintenance of the petroleum underground storage tank; ( )

iv. Use an inspection report form developed by the Department. Review of applicable records and other activities that can be accomplished off-site may be combined with activities conducted at the site to fulfill the on-site inspection requirement; and ( )

v. Complete and submit the inspection report to the Department in the manner and time frame established by the Department. All third-party inspection reports must be submitted electronically to the Department for review and for the Department to make a compliance determination for each site. If requested by the Department, third-party inspectors shall provide all supporting documentation for its inspection reports. ( )

b. Third-party inspection procedures must contain an audit program, developed by the Department, to monitor third-party inspectors on a routine basis. The audit program must include a sufficient number of on-site inspections to effectively assess inspector performance. ( )

c. If a third-party inspector fails to demonstrate to the approved state program adequate competence and proficiency to perform petroleum underground storage tank inspections, or the approved state program otherwise determines it is not appropriate for the third-party inspector to conduct on-site inspections as part of a third-party inspection program, the approved state program must take appropriate action against the third-party inspector as provided by law. ( )

**03. Inspections.** All inspections shall be done in accordance with the provisions of Section 39-108, Idaho Code. At a minimum, an on-site inspection must assess compliance with the provisions of these rules and 40 CFR Part 280. ( )

**401. -- 499. (RESERVED)**

**500. DELIVERY PROHIBITION.**

**01. Prohibition.** Effective August 8, 2007, it shall be unlawful for any person to deliver to, deposit into, or accept a regulated petroleum substance into a petroleum underground storage tank at a facility which has been identified by the Department to be ineligible for such delivery, deposit, or acceptance. ( )

**02. Classification as Ineligible.** The Department shall classify a petroleum underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated petroleum substance as soon as practicable after the Department determines one or more of the following conditions exists: ( )

a. Required spill prevention equipment is not installed; ( )

b. Required overfill protection equipment is not installed; ( )

c. Required leak detection equipment is not installed; or ( )

d. Required corrosion protection equipment is not installed. ( )

**03. Warning of Violations.** The Department may classify a petroleum underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated petroleum substance if the owner or operator of the tank has been issued a written warning for any of the following violations, and the owner or operator fails to initiate corrective action within thirty (30) days of the issuance of the written warning, unless the deadline is extended by the Department: ( )

a. Failure to properly operate or maintain leak detection equipment; ( )

- b. Failure to properly operate or maintain spill, overfill, or corrosion protection equipment; or ( )
- c. Failure to maintain financial responsibility. ( )

**04. Service of Notice.** If the Department classifies a petroleum underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated petroleum substance pursuant to Subsections 500.02 or 500.03, the Department shall provide a written notice of the determination to the owner or operator prior to prohibiting the delivery, deposit, or acceptance of a regulated petroleum substance. Notice is considered properly served by the Department in any of the following ways: ( )

- a. The notice is personally delivered to the owner or operator; or ( )
- b. The notice is clearly posted at a public entrance to the facility where the petroleum underground storage tank is located and a copy of the notice is also sent by certified mail to the last known address of the owner or operator. ( )

**05. Red-Tagging.** Once service of the written notice of the ineligible determination is complete, the Department shall then attach a red tag to each fill pipe of the ineligible petroleum underground storage tank clearly identifying the tank as ineligible. The Department shall also maintain a list of all petroleum underground storage tanks that are classified as ineligible for delivery, deposit, or acceptance of a regulated petroleum substance. The Department shall make the list available to the public by posting the list on the Department's website at [www.deq.idaho.gov](http://www.deq.idaho.gov). ( )

**06. Written Notice.** The written notice required by Subsection 500.04 must include: ( )

- a. The specific reasons or violations that led to the ineligible classification; ( )
- b. A statement notifying the owner and operator that the petroleum underground storage tank is ineligible for delivery and it is unlawful for any person to deliver to, deposit into, or accept a regulated petroleum substance into the petroleum underground storage tank; ( )
- c. The effective date the petroleum underground storage tank is deemed ineligible for delivery; ( )
- d. The name and address of the department representative to whom a written request for re-inspection can be made, if a re-inspection is necessary; ( )
- e. A statement regarding the right to appeal the Department's action regarding ineligible classification pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality"; and ( )
- f. The option to request a compliance conference pursuant to Subsection 500.07. ( )

**07. Compliance Conference.** The owner or operator may request a compliance conference with the Department within fifteen (15) days of receipt of the notice. A compliance conference shall be scheduled within twenty (20) days and conducted in an informal manner by the Department. At the compliance conference, the owner or operator may explain why he believes the petroleum underground storage tank should not be classified as ineligible. During the compliance conference, the owner or operator and the Department will identify and establish appropriate acts and a time schedule for compliance as necessary. ( )

**08. Duration of Ineligible Classification.** The classification of a petroleum underground storage tank as ineligible shall remain in effect until the conditions cited in the notice no longer exist. If the Department determines that an ineligible storage tank has returned to compliance and is now eligible for delivery, deposit, or acceptance of a regulated petroleum substance, the Department or an authorized designee shall, as soon as practicable, remove the red tag from the petroleum underground storage tank and also remove the petroleum underground storage tank from the ineligible list posted on its website. The Department will also send a written notice to the owner and operator that an ineligible storage tank has returned to compliance and is now eligible for delivery,

deposit, or acceptance of a regulated petroleum substance. ( )

**09. Declining Classification.** The Director may decline to classify a petroleum underground storage tank as ineligible if the Director decides that classifying the petroleum underground storage tank as ineligible for delivery, deposit, or acceptance is not in the best interest of the public. ( )

**a.** The Director may only defer application of delivery prohibition for up to one hundred eighty (180) days after determining a petroleum underground storage tank is ineligible for delivery, deposit, or acceptance of a regulated petroleum substance. ( )

**b.** The Director may authorize the delivery, deposit, or acceptance of product into an ineligible petroleum underground storage tank if such activity is necessary to test or calibrate the underground storage tank or dispenser system. ( )

**10. Department Authority.** Nothing in Section 500 shall affect or preempt the authority of the Department to prohibit the delivery, deposit, or acceptance of a regulated petroleum substance to a petroleum underground storage tank under other existing authorities. ( )

**11. Proper Notice.** A person shall not be in violation of Subsection 500.01 if the Department fails to provide the notice required by Subsections 500.04 and 500.05. ( )

**12. Unlawful to Tamper with Red Tag.** It shall be unlawful for any person to tamper with and/or remove the red tag without the Department's approval. ( )

**501. -- 599. (RESERVED)**

**600. PETROLEUM UNDERGROUND STORAGE TANK DATABASE.**

**01. Maintenance.** The Department shall maintain a database which provides details on the status of all petroleum underground storage tanks in the state of Idaho which are subject to regulation. The database shall be updated no less than the end of each calendar quarter. ( )

**02. Identification.** The database shall identify any tanks subject to delivery prohibition. ( )

**03. Petition.** Petroleum underground storage tank owners or operators may petition the Department to correct any inaccurate information for their tanks and the Department shall correct any such inaccurate information within thirty (30) days after verification. ( )

**04. Availability.** The database shall be available to the public on the Department's website at [www.deq.idaho.gov](http://www.deq.idaho.gov). ( )

**601. FEE SCHEDULE FOR UNDERGROUND STORAGE TANKS.**

All regulated underground storage tanks shall pay an annual underground storage tank fee provided in Section 39-119, Idaho Code. The fee shall be assessed to regulated underground storage tanks as provided in Section 601. ( )

**01. Fee Criteria.** ( )

**a.** Compartment and siphon-manifolded underground storage tanks shall be treated as separate underground storage tanks. ( )

**b.** Temporarily out of use tanks are included in Section 601. ( )

**02. Fee Amount and Schedule.** ( )

**a.** Annual fees shall be paid for each fee year beginning January 2, 2018, and continuing for each succeeding year. ( )

**b.** The annual fee per underground storage tank is one hundred dollars (\$100). The annual fee shall not exceed one hundred dollars (\$100) and will be re-calculated each year if the fee balance exceeds thirty-five thousand dollars (\$35,000). Any fee balance above thirty-five thousand dollars (\$35,000) will be used to reduce the following year's fee. ( )

**c.** New underground storage tanks installed after January 2 will not pay a fee until the following January. ( )

**03. Billing.** ( )

**a.** An annual fee invoice will be generated and mailed in November for each owner listed in the Department's Underground Storage Tank Database. ( )

**b.** Owners will have one (1) month to notify the Department in writing if the number of underground storage tanks is incorrect. ( )

**04. Payment.** Payment of the annual fee shall be due on January 2, unless it is a Saturday, a Sunday, or a legal holiday, in which event the payment shall be due on the successive business day. Fees paid by check or money order shall be made payable to the Idaho Department of Environmental Quality and sent to 1410 North Hilton Street, Boise, ID 83706-1255. ( )

**05. Delinquent Unpaid Fees.** An owner will be delinquent in payment if the annual fee has not been received by the Department by March 1. ( )

**06. Enforcement.** Failure to comply with Section 601 shall be subject to enforcement and penalties pursuant to the enforcement provisions of Section 39-108, Idaho Code, (Idaho Environmental Protection and Health Act), and Section 39-8811(2), Idaho Code, (Idaho Underground Storage Tank Act). ( )

**07. Nonrefundable.** The annual fee required by these rules shall be nonrefundable. ( )

**08. Fee Report.** Prior to February 1 of each year, the Director shall report to the Governor and the Idaho Legislature on the use of fees collected the previous year. At a minimum, the report shall include: ( )

**a.** A list of all tanks subject to inspection; ( )

**b.** The type of inspection and regulatory authority or guidance used; and ( )

**c.** A detailed accounting of how fee funds were spent. ( )

**602. -- 999. (RESERVED)**