IDAPA 02 – IDAHO DEPARTMENT OF AGRICULTURE

Administration Division

02.03.01 – Rules Governing Pesticide Management Plans for Ground Water Protection

Who does this rule apply to?
This rule applies to landowners where groundwater well users or owners have experienced impacts from pesticides. This rule also applies to pesticide applicators and pesticide dealers.

What is the purpose of this rule?
This rule establishes a process for responding to pesticide detections in ground water, including:

- Ground water monitoring for pesticides;
- Setting response levels related to a pesticide detection;
- Setting pesticide use restrictions within certain geographic boundaries where pesticides have affected groundwater; and
- Establishes procedures for repealing an area of pesticide concern

What is the legal authority for the agency to promulgate this rule?
This rule implements the following statutes passed by the Idaho Legislature:

- 22-3418, Idaho Code – Restricted Pesticide Use Pesticides and Chemigation
- 22-3419, Idaho Code – Procedure for Establishing a Restricted Area Pesticides and Chemigation
- 22-3421, Idaho Code – Adoption and Scope of Rules Pesticides and Chemigation

Who do I contact for more information on this rule?

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This rule chapter will be reviewed in compliance with Section 67-5292, Idaho Code, and in accordance with the 8-year rule review schedule linked here.

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02.03.01 – RULES GOVERNING PESTICIDE MANAGEMENT PLANS FOR GROUND WATER PROTECTION

000. LEGAL AUTHORITY.
Sections 22-3418, 22-3419, and 22-3421, Idaho Code. (7-1-25)

001. SCOPE.
This chapter establishes a process for responding to pesticide detections in ground water. (7-1-25)

002. – 003. (RESERVED)

004. INCORPORATION BY REFERENCE.
The following documents are incorporated by reference into this chapter: (3-31-22)

01. Dimethyl Tetrachloroterephthalate (DCPA) Pesticide Management Plan. The June 2007 edition published by the Idaho State Department of Agriculture. Copies of this document may be obtained from the Idaho State Department of Agriculture. (3-31-22)

005. – 009. (RESERVED)

010. DEFINITIONS.
The Idaho Department of Agriculture adopts the definitions set forth in Section 22-3401, Idaho Code, and the following definitions: (3-31-22)

01. Aquifer. A geological unit of permeable saturated material capable of yielding economically significant quantities of water to wells and springs. (3-31-22)

02. Beneficial Uses. Current or future uses of ground water supplies including, but not limited to domestic, industrial, agricultural, aquacultural, and mining. (3-31-22)

03. Best Management Practice. A practice or combination of practices determined to be the most effective and practical means of preventing or reducing pesticide contamination to ground water and interconnected surface water from nonpoint and point sources to achieve water quality goals and protect the beneficial uses of the water. (3-31-22)

04. Constituent. Any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance occurring in ground water. (3-31-22)

05. Contaminant. Any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance which does not occur naturally in ground water or which naturally occurs at a lower concentration. (3-31-22)

06. Contamination. The direct or indirect introduction into ground water of any contaminant caused in whole or in part by human activities. (3-31-22)

07. Ground Water. Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (3-31-22)

08. Health Advisory Level. Guidance for the maximum allowable or acceptable daily concentration of a pesticide in drinking water in the absence of or prior to a MCL being set. (3-31-22)

09. Maximum Contaminant Level. Maximum allowable or acceptable daily concentration of a pesticide in drinking water that may be consumed over a lifetime. (3-31-22)

10. Pesticide Management Standard. The United States Department of Agriculture Natural Resource Conservation Service Conservation Practice Standard, Idaho Pesticide Management Code 595, or the Idaho Agricultural Pollution Abatement Plan -- Pesticide Management Standard Component Practice. (3-31-22)

11. Pesticide Use. The mixing, application, handling, transport, storage, display, distribution, and disposal of pesticides and their containers. (3-31-22)

12. Projected Future Beneficial Uses. Various uses of ground water, such as drinking water, aquaculture, industrial, mining or agriculture, that are practical and achievable in the future based on hydrogeologic

conditions, water quality, future land use activities and social/economic considerations. (3-31-22)

13. **Reference Dose**. Allowable or acceptable dose of a pesticide in terms of mg pesticide/kg body weight that can be ingested in one day (acute reference dose) or on a daily basis over a lifetime (chronic reference dose). (3-31-22)

14. **Reference Point**. Numerical indicators of the toxicity of a substance based on test data and other reliable health effects information. (3-31-22)

15. **Susceptibility**. A method of describing the flow of water to, and through, the ground water resource based on physical factors such as hydraulic conductivity, porosity, hydraulic gradients, recharge, interactions with surface water, and transport through the unsaturated zone without considering specific natural or anthropogenic sources of contamination. (3-31-22)

16. **Vulnerability**. Ground water characterized by a potential for contaminants to enter and be transported within the flow system. Determinations of ground water vulnerability will include consideration of land use practices and aquifer characteristics. (3-31-22)

011. – 049. (RESERVED)

050. CHEMICAL SPECIFIC PESTICIDE MANAGEMENT PLANS (PMPS).

01. **Creating PMPs**. The Director shall develop and implement chemical specific PMPs (Section 200) for certain pesticides in geographical areas when: (7-1-25)

a. The level of a pesticide found in ground water is equal to or greater than fifty percent (50%) of the reference point and is scientifically validated; (3-31-22)

b. EPA restricts the sale or use of a pesticide in the state, or otherwise initiates action against a pesticide because of ground water concerns for a pesticide, unless such PMP is not deemed necessary by the Director; (3-31-22)

c. EPA's action, restriction, or prohibition will be implemented unless the state develops an adequate PMP; or (3-31-22)

d. A pesticide is conditionally registered by EPA because of ground water concerns. (3-31-22)

051. – 100. (RESERVED)

101. MANAGEMENT PLANS ADOPTED BY RULEMAKING AND REVIEW.

01. **PMP Review**. The Director shall review chemical specific PMPs every two (2) years to determine if the requirements contained in the plans need to be modified based on new scientific data and information. (3-31-22)

102. – 149. (RESERVED)

150. GROUND WATER QUALITY REFERENCE POINTS.

01. **Reference Points**. The Director will use reference points for pesticides in ground water, based on the following order of availability: (3-31-22)

a. Idaho rules of DEQ, IDAPA 58.01.11, Subsection 200.01.a. specific to pesticide primary constituent standards which were adopted from EPA MCLs; or (3-31-22)

b. EPA Health Advisory Levels (HALs) identified in the 2006 Edition of the EPA Drinking Water Standards and Health Advisories, EPA 822-R-06-013; or (3-31-22)

c. EPA Reference Dose (RfD) identified in the 2006 Edition of the EPA Drinking Water Standards and Health Advisories, EPA 822-R-06-013; or (3-31-22)

d. A reference point based on: (3-31-22)

i. Best scientific information currently available on adverse effects of the contaminant(s); and (3-31-22)

ii. Protection of a beneficial use(s); and (3-31-22)

iii. Practical quantitation levels for the pesticides, if they exceed the levels identified in IDAPA 58.01.11, Subsection 200.01.a. (3-31-22)

02. HAL and RfD Guide. The Director shall use the EPA's HAL and RfD number associated with the effects on a person weighing seventy (70) kilograms and drinking two (2) liters of water per day over a lifetime. (3-31-22)

151. – 199. (RESERVED)

200. RESPONSE TO A PESTICIDE DETECTION.

01. Level One Response. When a pesticide or its metabolite(s) is detected at or above the detection limit yet below twenty percent (20%) of the reference point, the Director shall notify well users or well owners of pesticide(s) detection and continue ground water monitoring. (7-1-25)

a. The Director may: (3-31-22)

i. Provide additional information to pesticide applicators within vulnerable areas; (3-31-22)

ii. Review use practices, soils, hydrogeology, and vulnerability within the area of pesticide detection(s); (3-31-22)

iii. Review state records for previous point source or potential violations in accordance with the Idaho Pesticide and Chemigation Law (Title 22, Chapter 34, Idaho Code); (3-31-22)

iv. Review existing monitoring data within area to check for previous detections; (3-31-22)

v. Conduct outreach in local area applicable to relevant data and information; and (3-31-22)

vi. Encourage voluntary BMPs consistent with the APAP. (3-31-22)

02. Level Two Response. When a pesticide or its metabolite(s) is detected at twenty percent (20%) to less than fifty percent (50%) of the reference point; (3-31-22)

a. Implement actions in Subsection 200.01 in the area of pesticide detection; (3-31-22)

b. Establish area of pesticide concern, in accordance with Section 400, within area of pesticide detection; (3-31-22)

c. Develop a monitoring plan and monitor to determine trends and fluctuations in pesticide concentrations; (3-31-22)

d. Determine likely source(s) while notifying and working with the appropriate parties including but not limited to: pesticide registrant(s), dealer(s), applicator(s) and producer(s) to determine likely source(s); (3-31-22)

e. Determine if pesticide detection(s) is from point or nonpoint source; (3-31-22)

f. Promote voluntary BMPs or other measures; evaluate BMP effectiveness, and change BMPs if needed; (3-31-22)

g. Require the utilization of the Idaho NRCS Conservation Practice Standard, Pesticide Management Code 595. (3-31-22)

h. The Director may: (3-31-22)

i. Develop a chemical specific PMP per pesticide, unless already mandated through EPA Rule to do so; (3-31-22)

ii. Monitor additional domestic wells in the hydrogeological up gradient and down gradient area; and (3-31-22)

iii. Conduct site specific pesticide use inspections within the area of detection(s). (3-31-22)

03. Level Three Response. When a pesticide or its metabolite(s) is detected at fifty percent (50%) to less than one hundred percent (100%) of the reference point, the Director shall: (3-31-22)

a. Implement actions in Subsections 200.02.a. through 200.02.g. in the area of pesticide detection; (7-1-25)

b. Establish an area of pesticide restriction when the Director determines ground water contamination resulted from the application of a pesticide in accordance with the label; (7-1-25)

c. Install monitoring wells as soon as possible, if the Director determines installation to be necessary based on severity of risk, to evaluate ground water quality, flow direction, and the effectiveness of preventative measures; (3-31-22)

d. Assist well users or well owners within the area of pesticide restriction with health information and alternative water source information; and (3-31-22)

e. Inspect the pesticide applicator records within the restricted area. (3-31-22)

04. Level Four Response. When a pesticide or its metabolite(s) is detected at or above one hundred percent (100%) of the reference point, the Director shall: (3-31-22)

a. Implement actions in Subsection 200.03 in the area of pesticide detection; (3-31-22)

b. Establish an area of pesticide prohibition when the Director has determined ground water contamination resulted from the application of a pesticide in accordance with the label; (7-1-25)

c. Implement use prohibition area(s); (3-31-22)

d. Assist persons within the use prohibition area with health and alternative water source information; (3-31-22)

e. Determine effectiveness of regulatory actions. (3-31-22)

05. Mixing and Loading Prohibited. No person shall mix or load the prohibited pesticide product in an identified pesticide prohibition area unless the mixing and loading is conducted over a spill containment surface which complies with the Idaho NRCS Conservation Practice Standard, Agrichemical Mixing Facility Code 702. (3-31-22)

201. – 399. (RESERVED)

400. DETERMINING PESTICIDE AREA BOUNDARIES.

01. Pesticide Area Boundary Factors. In determining the area of pesticide concern, restricted area, or prohibition area the Director may consider the following factors: (7-1-25)

a. Pesticide detections from reliable ground water test samples; (3-31-22)

b. Number and frequency of detections; (3-31-22)

c. Statistical trends of detections; (3-31-22)

d. Location of detections; (3-31-22)

e. Hydrogeology of the aquifer; (3-31-22)

f. Well depth and construction; (3-31-22)

g. Aquifer vulnerability and susceptibility; (3-31-22)

h. Pesticide physical and chemical characteristics; (3-31-22)

i. Pesticide use; or (3-31-22)

j. Other scientifically defensible information. (3-31-22)

401. – 409. (RESERVED)

410. REPEALING SPECIFIC PESTICIDE AREAS.

01. Repealing an Area of Pesticide Concern. The Director may repeal or reduce the size of an area of pesticide concern in response to pesticide contamination in ground water if all the following conditions are met: (7-1-25)

a. Tests on at least three (3) consecutive ground water samples, drawn from each well site in the area of pesticide concern at which the concentration of a pesticide and its metabolites previously were found at twenty percent (20%) to fifty percent (50%) of the reference point, show that the concentration at the well sites has fallen to and remains less than twenty percent (20%) of the reference point. The three (3) consecutive samples shall be collected at each well site at intervals of at least six (6) months, with the first sample being collected at least six (6) months after the effective date of the area of pesticide concern designation. A monitoring well approved by the Director may be substituted for any well site which is no longer available for testing. (3-31-22)

b. Tests conducted at other well sites in the area of pesticide concern during the same retesting period, if any, reveal no other concentrations of the pesticide or its metabolites that exceed twenty percent (20%) of the reference point; and (3-31-22)

c. The Director determines, based on credible scientific evidence, that use of a pesticide product in the area of pesticide concern is not likely to cause a renewed detection between twenty percent (20%) to fifty percent (50%) of the reference point. (3-31-22)

02. Repealing an Area of Pesticide Restriction. The Director may repeal or reduce the size of an area of pesticide restriction in response to ground water pesticide contamination if all the following conditions are met: (7-1-25)

a. Tests on at least three (3) consecutive ground water samples, drawn from each well site in the area of pesticide restriction at which the concentration of a pesticide and its metabolites previously were found at fifty percent (50%) to less than one hundred percent (100%) of the reference point, show that the concentration at the well sites has fallen to and remains less than fifty percent (50%) of the reference point. The three (3) consecutive samples

shall be collected at each well site at intervals of at least six (6) months, with the first sample being collected at least six (6) months after the effective date of the area of the pesticide restriction designation. A monitoring well approved by the Director may be substituted for any well site which is no longer available for testing. As areas of pesticide restriction are repealed, the area automatically becomes an area of pesticide concern; (3-31-22)

b. Tests conducted at other well sites in the area of pesticide restriction during the same retesting period, if any, reveal no other concentrations of the pesticide or its metabolites that exceed fifty percent (50%) of the reference point; and (3-31-22)

c. The Director determines, based on credible scientific evidence, that use of a pesticide product in the area of pesticide restriction is not likely to cause a renewed exceedance of fifty percent (50%) of the reference point. (3-31-22)

03. Repealing an Area of Pesticide Use Prohibition. The Director may repeal or reduce the size of an area of pesticide use prohibition in response to ground water pesticide contamination if all the following conditions are met: (7-1-25)

a. Tests on at least three (3) consecutive ground water samples, drawn from each well site in the prohibition area at which the concentration of a pesticide and its metabolites previously attained or exceeded the reference point, show that the concentration at that well site has fallen to and remains less than fifty percent (50%) of the reference point. The three (3) consecutive samples shall be collected at each well site at intervals of at least six (6) months, with the first sample being collected at least six (6) months after the effective date of the pesticide use prohibition designation. A monitoring well approved by the Director may be substituted for any well site which is no longer available for testing. As areas of pesticide prohibition are repealed, the area automatically becomes an area of pesticide concern; (3-31-22)

b. Tests conducted at other well sites in the area of pesticide prohibition during the same retesting period, if any, reveal no other concentrations of the pesticide and its metabolites that exceed fifty percent (50%) of the reference point; and (3-31-22)

c. The Director determines, based on credible scientific evidence, that renewed use of a pesticide product in the area of pesticide prohibition is not likely to cause a renewed violation of the reference point. (3-31-22)

411. – 999. (RESERVED)