

From: [Dylan Lawrence](#)
To: [Rulemaking](#)
Subject: Comment letter in Dkt. No. 20-0304-2401
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Attachments: [2025-06-09 comment letter.pdf](#)

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Good morning. I have attached here a comment letter regarding IDL's current efforts to update its rules regarding encroachments in navigable lakes. Please let me know if you have any issues accessing the letter.

Thank you,
Dylan

Dylan Lawrence

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June 9, 2025

VIA EMAIL

Idaho Department of Lands
rulemaking@idl.idaho.gov

Re: Written Comments in Docket 20-0304-2401

Dear Sir or Madam:

I am submitting these written comments regarding the Department's current rulemaking with respect to its "Encroachment Rules" in IDAPA 20.03.04:

Newly proposed Encroachment Rule 003.04 incorporates IDAPA 18.08.01 by reference. Typically, "incorporation by reference" means that the incorporating agency has the legal authority to enforce the external regulations that are being incorporated. A good example of this is that because Idaho DEQ has authority over regulatory programs delegated by EPA, DEQ often incorporates EPA regulations by reference. I do not believe a similar legal relationship exists between the Department of Lands and the Department of Insurance ("DOI"), and incorporating DOI's legal authorities by reference may exceed IDL's statutory authorities. Instead of incorporating those regulations by reference (and perhaps the other regulations referenced in Encroachment Rule 003), I suggest revising the initial language of that rule to read, "The following sets of regulations may also apply to activities regulated by these rules and should be consulted."

Newly proposed Encroachment Rule 015.15(a) currently reads, "Wharves, piers, or docks at marine motor fuel dispensing facilities must be used exclusively for the dispensing or transfer of petroleum products to or from marine craft." This language

appears to be taken verbatim from the International Fire Code (2018) (“IFC”). However, it is an incomplete reference. Section 2310.3.1 of the IFC provides:

Wharves, piers or floats at marine motor fuel-dispensing facilities shall be used exclusively for the dispensing or transfer of petroleum products to or from marine craft, ***except that transfer of essential ship stores is allowed.***

(Emphasis added).

The need to load and unload essential items from wharves and piers is universal. As an initial matter, I question the wisdom of quoting other regulatory programs, rather than simply referencing them to put the public on notice of their existence. For one thing, if the IFC is amended, then the Encroachment Rules could become outdated and inconsistent with the amended IFC.¹ Given the reference to the state regulations adopting the IFC in newly proposed Rule 003.04 as previously discussed, I question whether it is necessary to quote Section 2310.3.1 at all. However, if IDL keeps the reference, it should restore the italicized language above and monitor amendments to the IFC to ensure consistency.

Newly proposed Rule 015.16(a) makes the affirmative statement that the following items are encroachments: (1) dredged material; (2) fill material; (3) refuse; and (4) waste matter intended as or becoming fill material. The Encroachment Rules are adopted pursuant to the statutes in the Lake Protection Act, Title 58, Chapter 13 of the Idaho Code (the “LPA”). The term “dredged” appears nowhere in the LPA, and the phrase “fill material” also appears nowhere in the LPA, though there is a reference to “landfills” being considered non-navigational encroachments in Idaho Code Section 58-1302(i). To ensure consistency with IDL’s authorities under the LPA, this Rule should read, “The placing of landfills on or in the beds or waters of any navigable waterway is an encroachment and requires written approval by the Department.”

IDL is suggesting mostly minor revisions to newly renumbered Encroachment Rule 016, regarding lake-specific permit terms. In the past, IDL has described an intent to

¹ The same concern applies to the adoption of a new definition of “marine motor fuel-dispensing facility” in newly proposed Rule 010.20. While that appears mostly consistent with the definition of that phrase in IFC Section 202, that may not always be the case in the future.

coordinate a public planning process for Bear Lake, but it has not followed through. While this comment may be outside the scope of a zero-based regulation rulemaking effort, given Bear Lake's uniqueness, IDL should consider resuming that effort, which could also involve development of standard permit conditions specific to Bear Lake.

Thank you for the opportunity to provide these comments. If you have any questions about them, please let me know.

Sincerely,
VARIN THOMAS LLC

A handwritten signature in blue ink, appearing to read "Dylan Lawrence", with a stylized, flowing script.

Dylan B. Lawrence