

INDIVIDUAL/SUBSURFACE SEWAGE DISPOSAL: NEGOTIATED RULEMAKING



Authority for Operation, Maintenance, and Monitoring

- ▣ As part of a product's design approval DEQ is authorized to specify circumstances under which the product must be operated and maintained (IDAPA 58.01.03.009.03)
- ▣ DEQ is also allowed to require specific operation, maintenance, and monitoring procedures be observed as a condition of issuing a septic permit (IDAPA 58.01.03.005.14)

Extended Treatment Package Systems and OM&M

- ▣ Extended treatment package systems (ETPS) are manufactured and packaged mechanical treatment devices that provide additional biological treatment to septic tank effluent
 - Mechanical, non-passive treatment necessitates operation, maintenance, and monitoring (OM&M)
 - OM&M needs to be provided by a trained professional
 - History of the program and documented performance of certain technologies has shown that OM&M is an important component of the program

History

- ▣ Historically OM&M has been delivered by a non-profit O&M entity
 - O&M entity contracts with a service provider
 - Service provider provides OM&M records to O&M entity who reports to health district and DEQ annually
 - O&M entities are typically associated with one manufacturer
 - Members are required to record access easements and member agreements to their property to become a member prior to obtaining a septic permit

History

- ▣ O&M entities are setup under Idaho Code 30-3-1, et seq. and verified by DEQ to be capable through their by-laws and articles of incorporation to provide the specified OM&M
- ▣ O&M entity is supposed to operate similar to a homeowner association
 - Often the O&M entity board has been run by the service provider instead of the membership
 - Many times when the original board resigns or moves on the membership has not kept the entity running

History

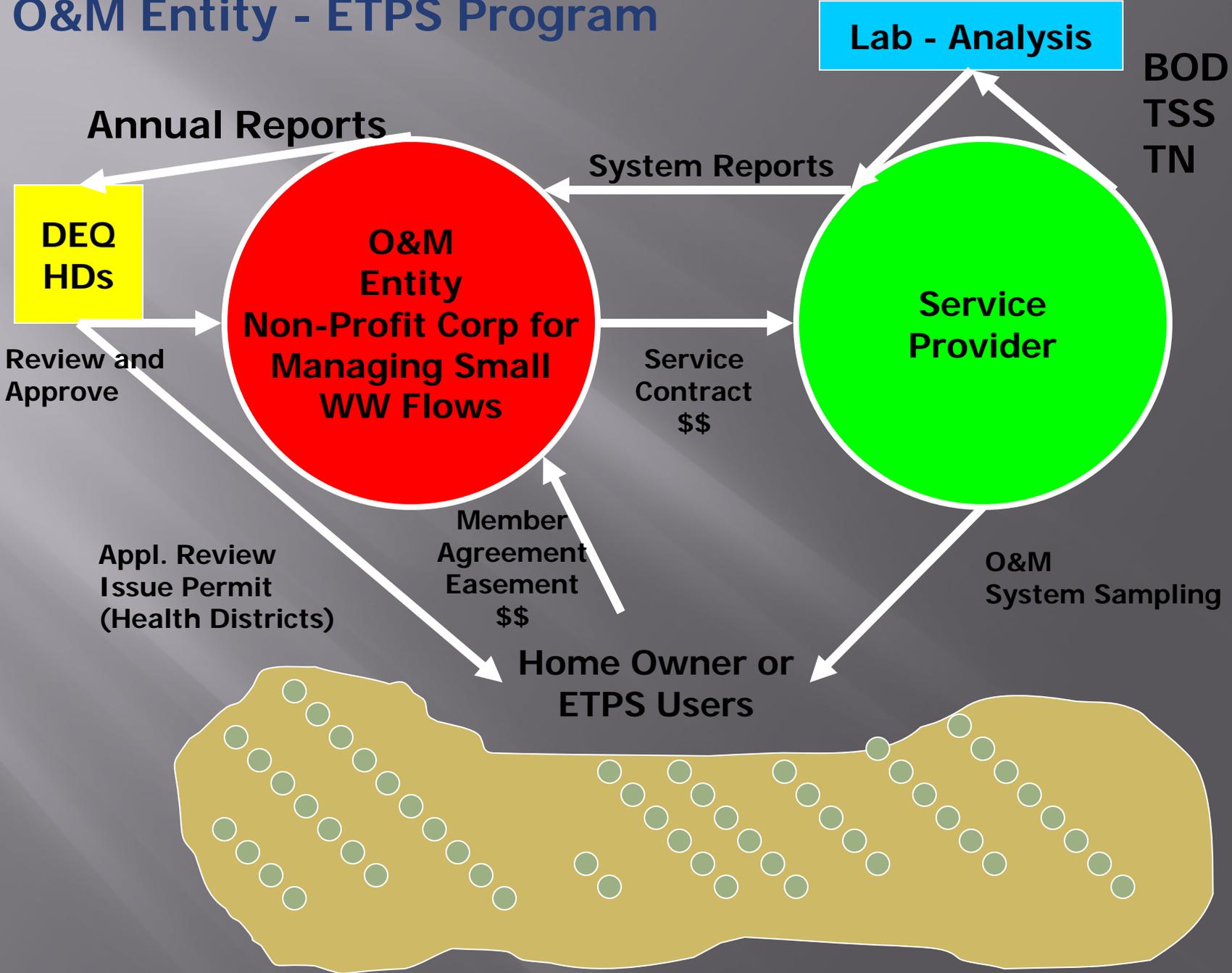
- ▣ O&M entity system was setup in 1985
- ▣ First entity was not incorporated until 1996
 - Remaining 11 followed in 97, 99, 01, 02, 03, 04, 09, and 13
- ▣ Entities have had a varying level of operating success
 - Some have operated successfully since incorporation
 - Some have been suspended intermittently
 - Currently 6 entities suspended since 2011/2012 due to a lack of O&M entity operation

History

- ▣ DEQ and the TGC have amended reporting requirements and monitoring limits at the request of O&M entities with no major change in overall operational success
- ▣ DEQ and the TGC revised the O&M entity program in 2013 but little progress has been made under the current system
 - Lack of property owner participation on the subcommittee that developed revisions despite DEQ's efforts to solicit their participation
 - Over past two years many property owners have provided input to DEQ requesting change to the O&M entity program

Current System of OM&M

O&M Entity - ETPS Program



Regulated Community Requests Changes

- ▣ Many existing ETPS owners across the state have requested changes to the O&M entity system to provide them more options and ability to independently meet their OM&M requirements
 - More options for service providers
 - No O&M entity, allow individuals to meet their permit requirements independently of other ETPS owners
 - No access easements
 - Better regulations for service providers

Regulated Community Requests Changes

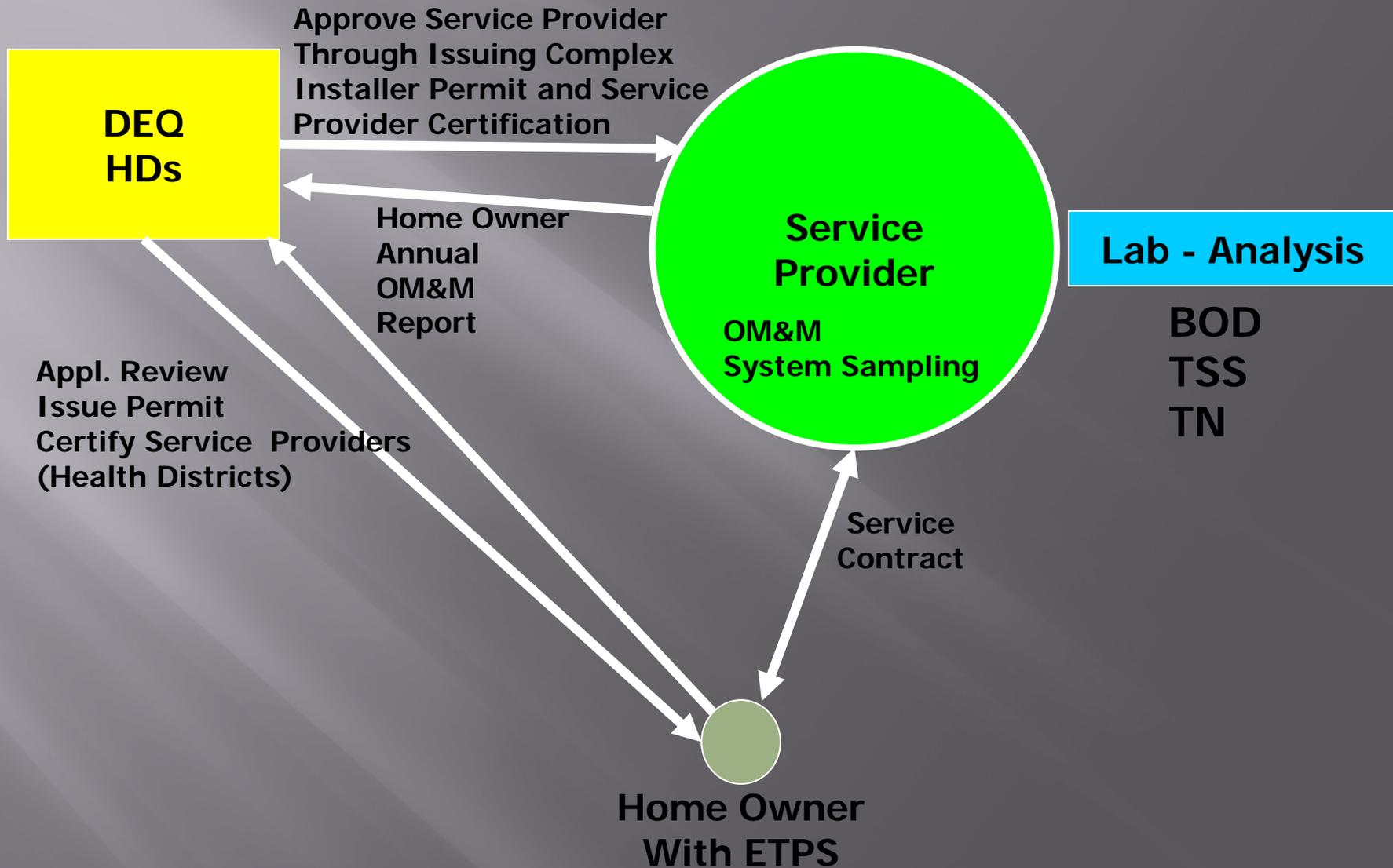
- ▣ In response to the public input the TGC has recommended to DEQ that the O&M entity system be replaced with a service provider based system
 - Intended to allow property owners choice of trained service provider
 - Intended to provide better oversight of service providers through a permitting/certification program supported by administrative rules
 - Intended to allow property owners to address their septic permit requirements independent of other property owners

DEQ Response

- ▣ DEQ has accepted the TGC's recommendation to pursue a service provider based OM&M model
 - Would replace the O&M entity model upon approval of the Idaho Legislature (projected 7/1/17)
 - Initiated rulemaking process to incorporate service provider certifications and requirements in IDAPA 58.01.03
- ▣ DEQ has initiated rulemaking because
 - Current approvals are limited due to a lack of state requirements supported by rule for the minimum qualifications, responsibilities, and approval of service providers for complex alternative systems

Proposed System of OM&M

Service Provider - ETPS Program



DEQ Response

- DEQ has initiated rulemaking because
 - DEQ is limited to current approvals through guidance and has found that manufacturers may limit the number of service providers they are willing to train, thus limiting service provider options for property owners
- Draft rule presented and negotiated with program stakeholders today will be published for public comment, presented to the Idaho Board of Environmental Quality for adoption, and presented to the 2017 Idaho Legislature if adopted by the Board