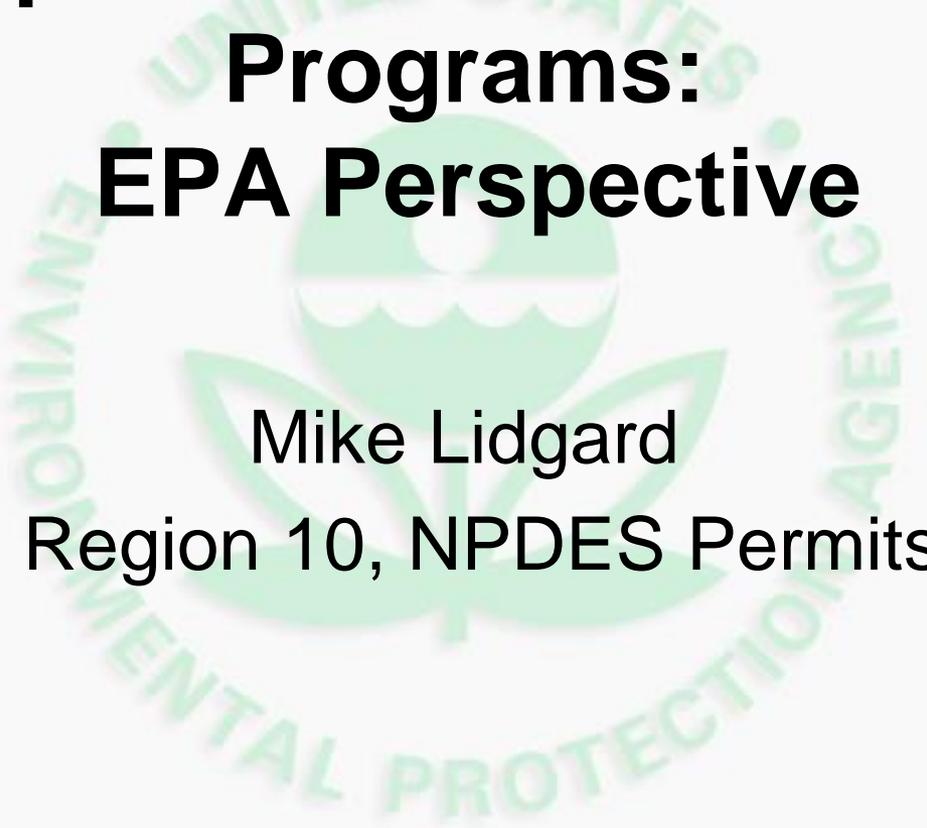




Approval of State NPDES Programs: EPA Perspective

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Outline

- State NPDES Program Status
- EPA/DEQ Roles
- Elements of a Program Submission
- Program Approval Process
- Other Considerations



Five NPDES Program Components

- The following components can be authorized
 - NPDES Base Program for individual municipal and industrial facilities
 - General Permit Program
 - Pretreatment Program ([40 CFR 403](#))
 - Federal Facilities Program
 - Biosolids (Sewage Sludge) Program ([40 CFR 503](#))
- Idaho is proposing to assume all but Biosolids



Summary of Roles

Before state/tribal program approval:

- EPA issues permits
- EPA conducts compliance and monitoring activities
- EPA enforces
- State reviews permits and grants CWA section 401 certification

After state/tribal program approval:

- State issues permits
- State conducts compliance and monitoring activities
- State enforces
- EPA provides administrative, technical and legal support
- EPA ensures state program meets federal requirements
- EPA reviews permits and, as necessary, comments or objects
- EPA offers NPDES program training
- EPA oversees enforcement of permits, and also retains concurrent enforcement authority



Elements of a Program Submission

- (1) A letter from the Governor of the State requesting program approval;
- (2) A complete **program description**, as required by § 123.22, describing how the State intends to carry out its responsibilities under this part;
- (3) An **Attorney General's statement** as required by § 123.23;
- (4) A **Memorandum of Agreement** with the Regional Administrator as required by § 123.24;
- (5) Copies of all applicable **State statutes and regulations**, including those governing State administrative procedures.



Program Description Must Include

- Description in narrative form of the scope, structure, coverage and processes of the State program.
- Organization and structure of State Agency responsible for administering program.
 - Positions, occupations, staffing numbers etc.
 - Cost of establishing and administering program.
 - Sources and amounts of funding (adequate resources).
- Description of state procedures, including permitting and administrative and judicial review.
- Copies of the permit form(s), application form(s), and reporting form(s) the State intends to employ in its program.
- A complete description of the State's compliance tracking (i.e. monitoring, inspections, assistance) and enforcement program.



State Attorney General Statement

- The laws of the State provide adequate authority to carry out the program – includes citations to specific statutes and regulations.
- Requirements for permitting.
- Requirements for compliance evaluation programs.
- Requirements for enforcement authority.
- State programs must have legal authority to implement certain NPDES regulatory provisions including provisions in 40 CFR Part 122, and Part 124.



Memorandum of Agreement (MOA)

- Provisions for the prompt transfer of permits (current, expired, under appeal) and files.
- Provisions specifying types of permit applications, draft permits, and proposed permits that the State will send to EPA for review, comment and, where applicable, objection.
- Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA.
- Provisions on the State's compliance monitoring and enforcement program.
- Provisions for modification of the Memorandum of Agreement.



State Regulations

- § 123.25 Requirements for permitting. All State Programs must have legal authority to implement each of the following provisions and must be administered in conformance with each...
- (1) § 122.4—(Prohibitions):
- (2) § 122.5(a) and (b)—(Effect of permit);
- (3) § 122.7(b) and (c)—(Confidential information);



Regulations cont'd

- (4) § 122.21 —(Application for a permit);
- (5) § 122.22—(Signatories);
- (6) § 122.23—(Concentrated animal feeding operations);
- (7) § 122.24—(Concentrated aquatic animal production facilities);
- (8) § 122.25—(Aquaculture projects);
- (9) § 122.26—(Storm water discharges);



Regulations cont'd

- (10) § 122.27—(Silviculture);
- (11) § 122.28—(General permits)...
- (15) § 122.44—(Establishing NPDES permit conditions);
- (16) § 122.45—(Calculating permit conditions);
- (17) § 122.46—(Duration);
- (18) § 122.47(a)—Schedules of compliance



Regulations cont'd

- § 123.26 Requirements for compliance evaluation programs.
- § 123.27 Requirements for enforcement authority.



Program Approval Process

- Within 30 days from receipt of State's application EPA must make an "completeness determination"
- If the application is complete, EPA has 90 days to perform the statutory review process
- Within this 90 day statutory review timeframe, EPA shall make its determination based on whether or not adequate authority exists pursuant to the CWA 402(b) and 40 CFR Part 123



EPA's Approval Process cont'd

- Additionally within this 90 day review timeframe EPA will engage in a public participation process which includes:
 - EPA public notices the application for public review and public comment (for 45 days)
 - Public hearings (within 30 days)



EPA's Approval Process cont'd

- Additionally, within this 90 day review timeframe EPA will:
 - Consult and coordinate with tribal governments on a formal government to government basis on this federal actions,
 - Hold discussions with other federal partners such as NOAA and FWS on ESA related topics (ESA consultation not required on this action),



EPA's Approval Process cont'd

- Additionally within this 90 day review timeframe EPA will obtain recommendation/concurrence from EPA HQ offices:
 - Office of General Council
 - Office of Enforcement and Compliance Assurance
 - Office of Water



EPA's Approval Process cont'd

- The State and EPA may extend the statutory review period by agreement
- EPA makes a final determination to either approve or disapprove the State's program based on the regulatory and statutory requirements taking into consideration all comments received.
- EPA's decision estimated to take up to a year.



When the State's Program is Approved...

- DEQ will have permit/enforcement authority
- The program will transfer in phases
- EPA will an oversight role of the state's permit and enforcement program (EPA retains enforcement authority)
- EPA implements biosolids program and permits in Indian Country



IDEQ Capacity Development

- Trainings – EPA HQ Permit Writers Course
- Job shadowing with EPA
- Familiarity with EPA tools
- Shadow writing of EPA permits
- Development of data base
- Development of guidance material: permit templates, fact sheet templates, permit process, reasonable potential calculation guidance, limit development guidance