



January 24, 2002

**MEMORANDUM**

To: Regional Managers  
DEQ Wastewater Personnel

From: David Mabe, State Water Quality Programs Administrator

Subject: Surface water discharges

**Issue:** If a developer proposes a wastewater treatment system with surface water discharge and EPA will not issue a permit within a reasonable time, how will DEQ handle this situation?

**Background:** The Clean Water Act designates EPA as the authority for the issuance of permits for surface water discharge. In turn EPA can delegate this authority to the States as they demonstrate they have the capacity and willingness to accept primacy for the NPDES program. The State of Idaho has not been delegated this responsibility, although we are in the process of investigating the feasibility of pursuing primacy for the program. Therefore, presently EPA issues NPDES permits and the State reviews the permits and issues a certification that the permit complies with State Water Quality Standards. In the past we have written a plan and specification agreement that included discharge limits, operation and maintenance requirements, operator certification, reporting requirements when the EPA indicated they would not be able to issue a permit in a reasonable time. In essence, the agreement was an approval from the DEQ to discharge to surface water under certain conditions.

**Recommended Action:** If the DEQ sanctioned a surface water discharge without an NPDES permit being issued by EPA, we would likely be subject to negative perception, possible lawsuits, and considerable more work and responsibility. It is more prudent to approve plans and specifications for these types of facilities only after EPA issues a permit. Options we are contemplating include:

1. Encourage EPA to develop, with our assistance, a general permit for small domestic type systems. EPA estimates this could happen in the next year or so.
2. Determine if EPA would be agreeable to the applicant hiring a 3<sup>rd</sup> party to draft their NPDES permit. EPA would review the draft prepared by the 3<sup>rd</sup> party and continue the processing of the permit, including issuing the final permit. EPA has stated that they would consider this approach on a case by case basis.
3. Encourage the applicant to pursue other treatment/disposal options.

The Package Treatment Plant Guidance will be revised to incorporate these actions.