

Idaho's Pollutant Discharge Elimination System (IPDES)

IPDES Rules Draft 1 – 6 and
Definitions

July 10, 2015



IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY



SUMMARY OF DRAFT 1 – 6 AND DEFINITIONS

- ❖ Formatting
- ❖ Grammatical
- ❖ Consistency (w/CFR and IPDES)
- ❖ Sequential/Logical
- ❖ Cross References

- ❖ Replace the term “Waters of the State” throughout rules with the term “Waters of the United States”



SECTION 000 (LEGAL AUTHORITY)

- ❖ Simplified to address DEQ's authorization to implement and enforce rules

000. LEGAL AUTHORITY

Pursuant to Sections 39-105 and 39-3601 et seq., Idaho Code, the Director is directed to formulate and recommend to the Board, such rules and regulations and standards as may be necessary to deal with the problems related to personal health and water pollution. The Director is further charged with the supervision and administration of a system to safeguard the quality of the waters of the state including the enforcement of standards relating to the discharge of effluent into the waters of the state. Authority to adopt rules, regulations and standards as are necessary and feasible to protect the environment and health of the citizens of the state is vested in the Board pursuant to Section 39-107, Idaho Code. The Department and the Board are authorized to formulate and adopt rules as are necessary to obtain approval of the IPDES program by EPA pursuant to Section 39-175C, Idaho Code. The Department is authorized to implement and enforce the rules in this chapter pursuant to the Sections, 39-175A-C and the provisions of the Environmental Protection and Health Act, Section 39-101 et.seq. Idaho Code.



SECTION 002 (CONFIDENTIALITY OF RECORDS)

❖ 002.02

❖ Include information related to NOIs and General Permits

- 02.** In accordance with Idaho Code Section 9-342A, a claim of confidentiality, including but not limited to a claim as to information claimed confidential as a trade secret, shall be denied and any person may inspect and copy:
- a.** The name and address of any IPDES applicant or permittee;
 - b.** The content of any IPDES permit;
 - c.** IPDES permit applications, and information required to be submitted by IPDES application forms under Section 105 (Application for an Individual IPDES Permit), or IPDES General Permit Notice of Intent, and information required to be submitted under Section 130 (General Permits). whether the information is submitted on the application forms themselves or in any attachments used to supply information required by the application forms; and



SECTION 003 (INCORPORATION BY REFERENCE)

❖ 003.02 Incorporation by Reference

❖ Change dates of IBR from 2013 to 2015

02. Incorporation by Reference. The following documents are incorporated by reference into these rules. Any reference in these rules to requirements, procedures, or specific forms contained in any section or subsection shall constitute the full adoption by reference of that section or subsection, including any notes and appendices therein, unless expressly provided otherwise in these rules:

- a. 40 CFR 122.21(r), revised as of July 1, ~~2013~~ 2015 (Application Requirements for Facilities with Cooling Water Intake Structures);
- b. 40 CFR 122.23, revised as of July 1, ~~2013~~ 2015 (Concentrated Animal Feeding Operations);
- c. 40 CFR 122.24, revised as of July 1, ~~2013~~ 2015 (Concentrated Aquatic Animal Production Facilities);



SECTION 003 (INCORPORATION BY REFERENCE)

❖ 003.02 Incorporation by Reference

- ❖ Incorporate term and definition, “Waters of the United States or waters of the U.S.” from 40 CFR 122.2

aa. The term “Waters of the United States or waters of the U.S.” as defined in 40 CFR 122.2, revised as of July 1, 2015.



SECTION 010 (DEFINITIONS)

Removed Unused Terms

- ❖ Contiguous Zone
- ❖ Disposal Facility
- ❖ Facility and Design Standards
- ❖ Municipal Wastewater
- ❖ Primary Treatment
- ❖ Waters and Waters of the State

Added New Term

- ❖ Electronic Signature

Modified Terms

- ❖ Grammar
- ❖ Consistency with CFR, WQS, Wastewater rules, etc.
- ❖ Design Flow
- ❖ Discharge of a Pollutant
- ❖ Effluent/Effluent Limitation
- ❖ EDU
- ❖ IPDES
- ❖ Major Facility
- ❖ Sludge
- ❖ Storm water



SECTION 090 (SIGNATURE REQUIREMENTS)

❖ 090.05 Electronic Signatures

- ❖ New subsection authorizing potential requirement of electronic signatures

05. Electronic Signatures. The Department may require any signed, certified, or authorized information required under these rules to be submitted electronically, with an electronic signature approved by the Department.



SECTION 105 (APPLICATION FOR AN INDIVIDUAL IPDES PERMIT)

❖ 105.03 Time to Apply

❖ DEQ may allow applications < 180 days for existing and new permittees

c. A person discharging from a permitted facility with a currently effective permit shall submit a new application at least one hundred eighty (180) days before the expiration date of the existing permit, unless the Department has granted permission to submit the application on a later date as specified in Subsection 105.03.d and e.

i. Permission may be granted by the Department for submission of an application in less than one hundred eighty (180) days. The Department's prior approval must be sought and obtained in advance of the one hundred eighty (180) days before expiration of the existing permit.

ii. In no instance shall the application be accepted after the expiration date of the existing permit as an application for renewal of the permit. Any applications received after the expiration of the permit will be received and reviewed as an application for a new source or new discharger.

d. Permission may be granted by the Department for submission of an application in less than one hundred eighty (180) days. The Department's prior approval must be sought and obtained in advance of the one hundred eighty (180) days before expiration of the existing permit or commencement of new discharge.

e. In no instance shall the application be accepted after the expiration date of the existing permit as an application for renewal of the permit. Any applications received after the expiration of the permit will be received and reviewed as an application for a new source or new discharger.



SECTION 105 (APPLICATION FOR AN INDIVIDUAL IPDES PERMIT)

- ❖ 105.04 Individual Application Forms
 - ❖ Remove reference to general permits

b. ——— A person required by Subsection 102.01.a to obtain an IPDES general permit shall submit a notice of intent to the Department as described in Section 130 (General Permits).



SECTION 105 (APPLICATION FOR AN INDIVIDUAL IPDES PERMIT)

❖ 105.11 Individual Permit Application Requirements for New and Existing POTWs and Other Dischargers Designated by the Department

❖ Applicants must report population or EDUs served

c. An applicant under this subsection must provide the following information:

i. Name, mailing address, and location of the facility for which the application is submitted;

ii. Name, mailing address, electronic mail address, and telephone number of the applicant, and a statement whether the applicant is the facility's owner, operator, or both;

iii. A list of all environmental permits or construction approvals received or applied for, including dates, under any of the following programs or types of activities:

iv. The name and population, and or equivalent dwelling units (EDU) of each municipal entity served by the facility, including unincorporated connector districts, a statement whether each municipal entity owns or maintains the collection system and, if the information is available, whether the collection system is a separate sanitary sewer or a combined storm and sanitary sewer;



SECTION 105 (APPLICATION FOR AN INDIVIDUAL IPDES PERMIT)

- ❖ 105.17 Individual Permit Application Requirements for Treatment Works Treating Domestic Sewage (TWTDS)
 - ❖ Applicants must report population or EDUs served

- b.** All applicants must submit the following information:
- i. The name, mailing address, and location of the TWTDS for which the application is submitted;
 - ii. The name, mailing address, and telephone number of the applicant and indication whether the applicant is the owner, operator, or both;
 - iii. Whether the facility is a Class I Sludge Management Facility;
 - iv. The design flow rate in million gallons per day (MGD), and equivalent dwelling units (EDU);
 - v. The total population or equivalent dwelling units (EDU) served; and
 - vi. The TWTDS's status as federal, state, private, public, or other entity.



SECTION 107 (DECISION PROCESS)

❖ 107.03 Proposed Permit

- ❖ New subsection addressing proposed permits (40 CFR 123.43(a))

03. **Proposed Permit.** After the close of the public comment period on a draft permit, the Department will make appropriate changes in response to comments, and generate a proposed permit. The Department will submit select proposed permits to the EPA for review.



SECTION 107 (DECISION PROCESS)

- ❖ 107.04 Final Permit (next slide)
 - ❖ Modified to be consistent with Section 204 (Appeals Process)

04. Final Permit. After the close of the public comment period on a draft permit, and after receipt of comments, if any, from EPA regarding those proposed permits sent to EPA for review, the Department shall issue a final permit decision. A final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

b. A final permit decision shall become effective thirty twenty-eight (3028) days after the service of notice of the decision unless:

i. A later effective date is specified in the decision, or

ii. A Petition for Review is requested on the permit by any person who filed comments on that draft permit or participated in the public meetings filed with the Department as specified in Section 204 (Appeals Process).

(1) Any person who failed to file comments or failed to participate in the public meetings on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. The thirty (30)-day period within which a person may request review under this section begins with the service of notice of the Department's action unless a later date is specified in the notice.

(2) The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period or meeting, and when appropriate, a showing that the condition in question is based on:

(a) A finding of fact or conclusion of law which is clearly erroneous, or

(b) An exercise of discretion or an important policy consideration which the Board should, in its discretion, review.

iii. No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

c. The notice shall include references to the procedures for appealing a decision as specified in Section 204 (Appeals Process).



SECTION 109 (PUBLIC NOTIFICATION AND COMMENT)

❖ 109.02 Public Comment

- ❖ Applicant to provide information addressing public comments

h. After the close of the public comment period and prior to the issuance of the final permit decision, the Department shall afford the permit applicant an opportunity to provide additional information to respond to public comments. In addition, in order to respond to comments, the Department may request the applicant provide additional information.



SECTION 110 (FEE SCHEDULE FOR IPDES PERMITTED FACILITIES)

❖ 110.02 Fee Schedule

- ❖ Fee schedule based upon population or EDUs served

02. Fee Schedule.

a. Publicly owned and privately owned treatment works shall pay an annual fee based on the reported number of equivalent dwelling units (EDUs) stated in their annual report as defined in Section 010 (Definitions). The rate shall be \$1.74 per EDU for existing facilities or based on the facility planning design for new facilities. The rate for equivalent dwelling units shall be \$1.74 per EDU. The Department will calculate EDUs and the appropriate annual fee by the following:

i. Using the most recent Census Bureau estimates for the population of the community and the average number per people in a household; or

ii. Existing facilities may report to the Department the number of EDUs served, annually; or

iii. New facilities may report to the Department the number of EDUs to be served, based on the facility planning design as part of the IPDES permit application.



SECTION 110 (FEE SCHEDULE FOR IPDES PERMITTED FACILITIES)

❖ 110.03 Fee Assessment

❖ Deleted subsection that duplicates 110.02

03. Fee Assessment.

a. An annual fee assessment will be generated for each IPDES-permitted facility for which an annual fee is required as set forth in Subsection 110.02. Annual fees will be determined based on the **twelve (12)** months between October 1 and September 30 of the following calendar year.

b. ~~Publicly owned and privately owned treatment works shall report, annually, the number of equivalent dwelling units serviced over the past fee period. This reported value shall be used to calculate the annual fee for the treatment works based on the annual EDU rate published in 110.02.a.~~



SECTION 110 (FEE SCHEDULE FOR IPDES PERMITTED FACILITIES)

- ❖ 110.07 Suspension of Services and Disapproval Designation
 - ❖ Fee delinquency notification

a. For any permittee delinquent in payment of fee assessed under Subsections 110.02 and 110.06 in excess of ninety (90) days, technical services provided by the Department shall be suspended. The permittee will be informed of the fee delinquency in a warning letter, which shall identify administrative enforcement actions the Department may pursue if the permittee does not comply with the terms of the permit.



SECTION 130 (GENERAL PERMITS)

❖ 130.04 Notice of Intent

❖ Requirement may differ depending on the general permit

- a. Any person required under Subsection 102.01 must submit a notice of intent to the Department for coverage under an IPDES general permit as set out in Subsection 130.05.
- b. A notice of intent must be signed and certified as required by Section 090 (Signature Requirements).
- c. ~~A storm water discharge facility permitted under an expiring general permit must submit a new notice of intent to obtain permit authorization under the new general permit at least thirty (30) days before the existing permit's expiration.~~



SECTION 204 (APPEALS PROCESS)

❖ 204.01 Permit for Review of a Permit Decision

01. Petition for Review of a Permit Decision. Appeal from a final IPDES permit decision issued under Section 107 (Decision Process), to the Hearing Authority is commenced by filing a petition for Review with the Department's Hearing Coordinator within the time prescribed in Subsection 204.01.b. The "Hearing Authority" shall be a Hearing Officer appointed by the Director from a pool of Hearing Officers approved by the Board.

a. Any person who is aggrieved by the final permit decision may file a petition for Review as provided in this section. A person aggrieved includes the permit holder or applicant, and any person or entity who filed comments or who participated in the public hearing on the draft permit, or any person or entity with legal standing to challenge the final permit decision.



SECTION 204 (APPEALS PROCESS)

❖ 204.01 Permit for Review of a Permit Decision

c. In addition to meeting the requirements in Subsection 204.06, a Petition for Review must:

i. Be confined to the issues raised during the public comment process or to changes made to the permit by the Department after the close of the public comment period;

ii. Identify the permit condition or other specific aspect of the permit decision that is being challenged;

iii. Set forth the legal and factual basis for the petitioner's contentions;

iv. Set forth the relief sought;

v. Set forth the basis for asserting that the petitioner is an aggrieved person. If the petitioner is not a permit holder or applicant or did not file comments or participate in a public hearing on the draft permit decision, then the petition must set forth the basis for the petitioner's legal standing to challenge the permit decision; and



SECTION 204 (APPEALS PROCESS)

❖ 204.20 Appointment of Hearing Officers

20. Appointment of Hearing Officers. The Hearing Authority shall be a ~~may appoint a h~~Hearing ~~o~~Officer appointed by the Director from a pool of Hearing Officers approved by the Board. Hearing Officers should be persons with technical expertise or experience in the issues involved in IPDES appeals. ~~to hear the Petition for Review. The Hearing Officer shall have all the authority specified in Subsection 204.21. Hearing o~~Officers may be (but need not be) attorneys. Hearing ~~o~~Officers who are not attorneys should ordinarily be persons with technical expertise or experience in issues before the Hearing Authority. The ~~h~~Hearing ~~e~~Coordinator shall administer the ~~appointment of the h~~Hearing ~~o~~Officer. Notice of appointment of a ~~h~~Hearing ~~o~~Officer shall be served on all parties. No Hearing Officer shall be appointed that has a conflict of interest as defined in 40 CFR 123.25(c).

- Blue highlighted change was not in the rules posted for this meeting, but will appear in the proposed rule.



SECTION 204 (APPEALS PROCESS)

- ❖ 204.24 Preliminary Orders Issued by a Hearing Officer
 - ❖ Deleted

~~24. — Preliminary Orders Issued by a Hearing Officer. If a Hearing Officer is appointed, the Hearing Officer shall issue a preliminary order.~~



SECTION 204 (APPEALS PROCESS)

❖ 204.24 Final Orders

24. Final Orders.

a. Final orders are issued by the Hearing Authority upon review of the petitions, briefs and the administrative record on appeal.:

i. Preliminary orders that have become final under Subsection 204.24, because no party filed a request for review within fourteen (14) days of the service date of the order; or

ii. An order issued by the Hearing Authority upon review of a preliminary order; or

iii. An order issued by the Hearing Authority if no hHearing oOfficer is appointed and the Hearing Authority hears the appeal in the first instance.

b. Unless a different date is stated in the final order, the order is effective fourteen days upon its service date.



SECTION 204 (APPEALS PROCESS)

❖ 204.25 Final Agency Action for Purposes of Judicial Review

25. Final Agency Action for Purposes of Judicial Review.

- a. Filing a **p**etition for **r**eview is a prerequisite to seeking judicial review of the Department's permitting decision.
- b. For purposes of judicial review under Sections 39-107 and 67-5270, Idaho Code, final agency action or determination regarding an appeal of a permit occurs when: **A a** final order that affirms the Department's permitting decision ~~becomes effective~~ **is issued**.
 - i. ~~A final order that affirms the Department's permitting decision becomes effective~~ **is issued**; or
 - ii. ~~A preliminary order that affirms the Department's permitting decision becomes final~~;
- c. An order that vacates and remands the decision to the Department with instructions is not a final agency action for purposes of judicial review.



SECTION 204 (APPEALS PROCESS)

❖ 204.26 Petition for Judicial Review

c. Pursuant to Section 67-5273, Idaho Code, a petition for judicial review of a final agency action must be filed within twenty-eight (28) days of the date of the final agency action as set forth in Section 204.06 a preliminary order becomes final or twenty-eight (28) days from the service date of a final order issued by the Hearing Authority.



SECTION 205 (CONTESTED PERMIT CONDITIONS)

❖ 205.06

❖ Deleted language not applicable to IPDES program

06. Uncontested conditions shall include:

a. Preliminary design and engineering studies or other requirements necessary to achieve the final permit conditions which do not entail substantial expenditures:

b. Permit conditions which will have to be met regardless of the outcome of the appeal under Section 204 (Appeals Procedure):

i. When the discharger proposed a less stringent level of treatment than contained in the final permit, any permit conditions appropriate to meet the levels proposed by the discharger, if the measures required to attain that less stringent level of treatment are consistent with the measures required to attain the limits proposed by any other party; and

ii. Construction activities, such as segregation of waste streams or installation of equipment, which would partially meet the final permit conditions and could also be used to achieve the discharger's proposed alternative conditions.

07. Appeal of an Existing Duplicate Permit Conditions. In addition to the requirements of Subsection 206.03.b, when an appeal is filed under Section 204 (Appeals Process) on an application for a renewal of an existing permit and upon written request from the applicant, the Department may delete requirements from the existing permit which unnecessarily duplicate uncontested provisions of the new permit.



SECTION 380 (SLUDGE)

❖ 380.01 Purpose

❖ Address runoff from land application or disposal

- ii. Include: pathogen and alternative vector attraction reduction requirements for sludge applied to the land or placed on a surface disposal site;
 - (1) Pathogen and alternative vector attraction reduction requirements for sludge applied to the land or placed on a surface disposal site; and
 - (2) Controls for storm water runoff from lands where sludge or septage has been placed for treatment or disposal.



SECTION 380 (SLUDGE)

- ❖ 380.05 Non-Municipal Sludge Management (Next Slide)
 - ❖ Modified from DEQ Wastewater Rules 58.01.16.650.01-03.

05. Non-Municipal Sludge Management.

a. Sludge accumulated from non-municipal facilities and operations can be reused or disposed if in conformance with:

i. A Department approved sludge management plan; or

ii. Procedures approved by the Department on a site-by-site basis.

b. Sludge management plans and sludge utilization proposals will be evaluated by the Department in regard to their protection of water quality and public health.

c. Plans and proposals must at a minimum provide:

i. That only stabilized sludge will be used.

ii. The criteria utilized for site selection, including:

(1) Soil description;

(2) Geological features;

(3) Ground water characteristics;

(4) Surrounding land use;

(5) Topography; and

(6) Climate.

iii. A description of the method of sludge land application.

iv. A statement detailing procedures to prevent application which could result in a reduction of soil productivity or in the percolation of excess nutrients.

v. A thorough analysis of the sludge constituents.

vi. Identification of potential adverse health effects in regard to the sludge and its proposed use.

vii. Delineation of methods or procedures to be used to alleviate or eliminate adverse health effects.

- Blue highlighted change was not in the rules posted for this meeting, but will appear in the proposed rule.



SECTION 010 (DEFINITIONS)

❖ Proposed Definition of Stabilized Sludge

Stabilized Sludge. Sludge that has been treated biologically, physically, chemically, or any suitable combination of these process types which eliminate offensive odors, reduce or inhibit the potential for putrefaction, and reduce the pathogen content.

- Blue highlighted change was not in the rules posted for this meeting, but will appear in the proposed rule.



SECTION 600 (ADMINISTRATIVE RECORDS AND DATA MANAGEMENT)

❖ 600.01 Administrative Record for Draft Permits

❖ New subsection addressing draft permits (40 CFR 124.9)

a. The provisions of a draft permit prepared by the Department under Subsection 108.01 shall be based on the administrative record defined in this section.

b. For preparing a draft permit, the record shall consist of:

i. The application, if required, and any supporting data furnished by the applicant;

ii. The draft permit or notice of intent to deny the application or to terminate the permit;

iii. The fact sheet;

iv. All documents cited in the fact sheet; and

v. Other documents contained in the supporting file for the draft permit.

c. Material readily available at the Department or published material that is generally available, and that is included in the administrative record under Subsection 600.01.b and c, need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet.

d. This subsection applies to all draft permits when public notice was given after the effective date of these rules.



SECTION 600 (ADMINISTRATIVE RECORDS AND DATA MANAGEMENT)

❖ 600.03 Electronic Submittals

- ❖ New subsection addressing electronic submittal of documents

03. Electronic Submittals. The Department may require any information required under these rules to be submitted electronically, with an electronic signature approved by the Department.



QUESTIONS/COMMENTS/CONCERNS

