



IPDES Negotiated Rulemaking Response to Comments

Docket 58-0125-2001, April 23, 2020 Comment Deadline

IDEXX

1. Suggest revising the bacteria indicator from fecal coliform to Escherichia coli (*E. coli*), as indicated within sections: 07 (d) i. (pg 8); 07 (f) iii. (pg 9); 08 (b) iii. (pg 12); 08 (c) i. (pg 13), 11 (g) ii. (1) (pg 19); 18 (b) iv. (2) c. (pg 38).

Rationale: *E. coli* are a better indicator for fecal contamination versus fecal coliform, thus more protective to human health.

DEQ Response: We agree and added, “(including E. coli)” to each citation of fecal coliform in the rule.

2. Suggest clarifying all references to the bacteria parameter of fecal streptococcus.

Rationale: Enterococci is referenced as a bacteria parameter within section 07 (d) i. (pg8). This parameter is noted within the rules to have been “previously known as fecal streptococcus.” It’s unclear if all remaining references, within the regulation, to fecal streptococcus are to be enterococci.

DEQ Response: We agree and added, “enterococci (previously known as fecal streptococcus)” to each citation of fecal streptococcus in the rule.

Clearwater Paper

3. IDAPA 58.01.25.105.06.i states that an applicant shall provide an indication of whether the facility uses cooling water and the source of the cooling water. Clearwater Paper requests that 40 CFR 125 Subparts I and J be referenced in IDAPA 58.01.25.105.06.i.

DEQ Response: No change was made to the rule. IDAPA 58.01.25.105.06.i. requires indicating if cooling water is used and the source; alternatively, CFR 125 Subparts I and J refer to the applicability and requirements of cooling water intake structures.

Aberdeen-Springfield Canal Company (“ASCC”) via Parson Behle & Latimer

4. ASCC supports the definitional clarification that “pesticide discharges” do not include, or in any way modify, the irrigation return flow exemption in the Clean Water Act, as contained in 33 U.S.C. 1342(l) and 33 U.S.C. 1362(14). IDAPA 58.01.25.10.xx (proposed definition of “Pesticide Discharges”). We understand that the proposed

addition of this definition is prompted by recent changes to the federal National Pollutant Discharge Elimination System (“NPDES”) permitting regulations and the need for conformance in DEQ’s Rules Regulating the Idaho Pollutant Discharge Elimination System (“IPDES”) Program, IDAPA 58.01.25 (“IPDES Rules”)...

...We support the existing \$0 fee for the Pesticide General Permit, consistent with the existing DEQ rationale for charging no fee for the permit and the Idaho State Legislature’s previous approval of the IPDES fee structure. We see no reason to change it.

DEQ Response: No change was made to the rule. Thank you for the comment.

Bennett Lumber Products, Inc. via Riley Stegner and Associates

5. Regarding conforming language in the IPDES rulemaking on definitions of “Pesticide Discharges” and “Pesticide Residue” and permit application procedures for “Pesticide Applicators”, we support DEQ’s clarification that an IPDES permit is only required for point source discharges into waters of the United States. The U.S. Environmental Protection Agency’s (EPA) silviculture rule recognizes that water quality impacts from forest management and forest roads are most effectively regulated by states as nonpoint sources (NPS) through Best Management Practices. State Best Management Practices have proven to reduce water quality impacts of silviculture activities and ensure the greatest flexibility for landowners to effectively manage their lands.

Similar to language in the proposed rule excluding agricultural storm water discharges from acquiring an IPDES permit, we recommend DEQ include clarifying language that recognizes forest management as NPS and excludes all IPDES permit requirements for silvicultural discharges.

DEQ Response: No change was made to the rule. Certain silvicultural activities are regulated under the NPDES program at 40 CFR 122.27 (Silvicultural Activities).

Idaho Conservation League

6. ICL recommends DEQ propose an appropriate fee schedule that will ensure the costs associated with administering the general permit for suction dredging are covered both now, and in the event that suction dredge permits continue to increase. To assess an appropriate fee, DEQ should provide the stakeholders in this negotiated rulemaking a discussion paper that analyzes and evaluates the following items:
 - Re-evaluate and provide DEQ’s workload requirements for permitting, inspecting, enforcing, and administering the general permit for suction dredge mining according to the process and model established in Appendix C of DEQ’s Program Description of the Idaho Pollutant Discharge Elimination System, as revised in July 2017.
 - In addition, the analysis should include, but not be limited to, the following:
 - An accounting of the number of suction dredge operations that were authorized in Idaho over the past five years;
 - A forecast of the number of permits DEQ expects to process and issue over the next five years;

- A discussion of whether and why the general permit for suction dredging is modeled as a complex or simple general permit;
- The definition of “small scale suction dredges;” and
- An update of current permitting costs associated with IDWR’s suction dredge permitting program.

DEQ Response: No change was made to the rule. First, DEQ previously analyzed and estimated the overall program costs associated with implementing all of the NPDES sectors and developed a supporting fee structure through the negotiated rulemaking process. Additionally, NPDES permitting authority has not yet been transferred to DEQ for general permits, storm water, or biosolids—DEQ committed to re-evaluate the fee structure’s ability to adequately support the program once the entire program was transferred and we had an opportunity to fully implement fee collection.

Association of Idaho Cities

7. AIC supports the proposed changes of IDAPA 58.01.25 and appreciates IDEQ staff efforts to improve and update rules pertinent to the NPDES permitting program. AIC and our members understand the advantages Clean Water Act discharge permit program delegation to Idaho including (1) access to regulators and technical compliance assistance, (2) increased competency of state regulators and technical compliance assistance, and (3) access to and improved coordination of state and federal financial and technical resources for facility planning and capital improvements.

DEQ Response: No change was made to the rule. Thank you for the comment.