

Idaho Pollutant Discharge Elimination System

Rule Update – Discussion Paper #2



**State of Idaho
Department of Environmental Quality**

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1. Introduction

1.1 Purpose and Scope

This discussion paper presents the Idaho Department of Environmental Quality's (DEQ) justification and recommendations for changing parts of IDAPA 58.01.25 to comply with recent changes to the Code of Federal Regulations regarding the National Pollutant Discharge Elimination System (NPDES) Program and to address other rule issues encountered.

1.2 Background

As Idaho implements delegated authority for the NPDES Program, it is necessary to ensure that Idaho's rules comply with federal requirements for regulating dischargers under the Idaho Pollutant Discharge Elimination System (IPDES) Program. With help from stakeholders in 2015 and 2017, DEQ drafted, adopted, and revised a chapter of rules (IDAPA 58.01.25) regarding the IPDES Program. Updates to this rule chapter are required to remain consistent with 40 CFR 122 through 503.

DEQ is also seeking to make clarifying changes to some portions of the rule and to update sections to address issues encountered as DEQ continues with program implementation.

2 Proposed Changes Since April 14 Meeting

2.1 Section 02 – Incorporation by Reference

Section bb – DEQ is proposing to update the definition of “Waters of the United States or waters of the U.S.” to ensure compliance with the Navigable Waters Protection Rule (Federal Register / Vol. 85, No. 77 / Tuesday, April 21, 2020).

2.2 Other Changes

In the course of implementing the IPDES Program DEQ believes additional detail and clarification are needed in the following areas.

2.2.1 Section 010 – Definitions

Section 35. – DEQ is proposing to update the definition of “Equivalent Dwelling Unit (EDU)” to clarify EDU calculations should be based on the most recent Census Bureau annual data or statistics (not just the 10-year census).

Section xx. DEQ is proposing to update the definition of “Proposed Settlement of a State Enforcement Action” to clarify they are the result of a notice of violation and do not include amendments or extensions.

2.2.2 105 – Application for an Individual IPDES Permit

Section 06.d., 11.c.ii., 17.b.ii., 18.a.i. – DEQ is proposing to clarify that an Employer Identification Number (EIN) or DEQ equivalent must be submitted. This is needed for the IPDES electronic recordkeeping data structure.

Section 07.f.iii., 08.b.iii., 08.c.i., 11.g.ii(1), 18.b.iii(1)(c)(vi)-(vii), 18.b.iv(2)(c) – DEQ is proposing to clarify that fecal coliform includes *E. coli* and that enterococci was previously known as fecal streptococcus. This resulted from a comment submitted by IDEXX.

2.2.3 110 – Fee Schedule for IPDES Permitted Facilities

Section 02.b – DEQ is proposing to add footnote 1 to clarify that the fee includes NOIs for construction that will disturb one or more acres of land, or will disturb less than one acre of land but are part of a common plan of development or sale that will ultimately disturb one or more acres of land.

2.2.4 130 – General Permits

Section 05.b.iv(1) – DEQ is proposing to clarify that Employer Identification Number (EIN) or DEQ equivalent must be submitted. This is needed for the IPDES electronic recordkeeping data structure.

2.3 General Housekeeping

DEQ is proposing the following general housekeeping changes to 58.01.25:

- Section 105.06 – grammar correction
- Section 109.d.iii. – grammar corrections