# IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

## DOCKET NO. 58-0000-2000F (FEE RULE)

## NOTICE OF OMNIBUS RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to the following Idaho Code provisions. Citations to any federal statutes that provide the basis of authority or requirement for the rulemaking are also included.

- IDAPA 58.01.01 – Sections 39-105, 39-107, 39-114(4), 39-115(3), and 39-116B, Idaho Code;
  Clean Air Act, 42 U.S.C. § 7401 et seq.
- IDAPA 58.01.05 – Chapters 44 and 58, Title 39, Idaho Code;
  Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*
- IDAPA 58.01.06 – Sections 39-105, 39-107, and 39-7408C, Idaho Code;
  Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*
- IDAPA 58.01.07 – Chapters 1 and 88, Title 39, Idaho Code;
  Solid Waste Disposal Act, 42 U.S.C. §§ 6991 – 6991m
- IDAPA 58.01.08 – Chapter 1, Title 39, Idaho Code; Chapter 21, Title 37, Idaho Code;
  Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*
- IDAPA 58.01.09 – Sections 39-104A, 39-105, and 39-107, Idaho Code
- IDAPA 58.01.11 – Sections 39-105, 39-107, 39-120, and 39-126, Idaho Code
- IDAPA 58.01.12 – Chapters 1 and 36, Title 39, Idaho Code;
  Clean Water Act, 33 U.S.C. § 1251 *et seq.*
- IDAPA 58.01.13 – Chapter 1, Title 39, Idaho Code
- IDAPA 58.01.14 – Sections 39-105, 39-107, and 39-119, Idaho Code
- IDAPA 58.01.18 – Sections 39-105, 39-107, 39-4405, and 39-7210, Idaho Code
- IDAPA 58.01.20 – Chapters 1 and 76, Title 39, Idaho Code;
  Safe Drinking Water Act, 42 U.S.C. § 300j *et seq.*
- IDAPA 58.01.25 – Chapter 1, Title 39, Idaho Code;
  Clean Water Act, 33 U.S.C. §§ 1342 and 1345

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222, Idaho Code, a public hearing has been scheduled and will be held as follows:

### PUBLIC HEARING

**Contingent upon COVID 19 safety protocols, the public may attend in person or remotely via telephone and video conferencing. Remote attendance is encouraged. Information for signing up is provided below.**

### Wednesday, October 7, 2020 – 9:30 a.m. (MDT)

**In Person:**
**DEQ State Office**
**1410 N. Hilton Street**
**Conference Center**
**Boise, Idaho 83706**

**All attendees must comply with current COVID-19 safety protocols for public gatherings.**

### Via Telephone and Video Conferencing:

**To sign up for remote attendance via telephone and video conferencing, contact Paula Wilson by September 30, 2020.**

The hearing location will be accessible to persons with disabilities, and language translators will be made available upon request. To request accommodations for language translation, contact the undersigned by September 30, 2020.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of the purpose of the proposed rulemaking:

On February 13, 2020, the Board adopted as temporary fee rules the IDAPA 58 rule chapters as they were presented in the pending rule dockets adopted by the Board in 2019 and submitted to the Second Regular Session of the 65th Idaho Legislature for review (2019 pending rule dockets). The 2019 pending rule dockets are posted in the 2020 Legislative Rules Review Books. The IDAPA 58 fee rule chapters and the 2019 pending rule dockets are listed below.

This proposed rule includes 1) the temporary fee rules adopted by the Board in February 2020, and 2) revisions to several fee rule chapters as described below.

Revisions made to the February 2020 temporary fee rules are not considered changes to existing rules and, therefore, are not shown in strike-out/underline format. For revisions that were negotiated, the strike-out/underline format proposed revisions are available for viewing in the latest posted negotiated rule drafts. The negotiated rulemaking records, including negotiated rulemaking summaries and negotiated rule drafts, are available on the web page links provided below.

More information regarding this rule docket is available at deq.idaho.gov/58-0000-2000F.

▪ **IDAPA 58.01.01, *Rules for the Control of Air Pollution in Idaho***
- Docket No. 58-0101-1903
- Docket No. 58-0101-1904
- Docket No. 58-0101-1905
- Revisions Updating Federal Regulations Incorporated by Reference:

  These proposed revisions are to ensure that the state rules remain consistent with federal regulations. The Rules for the Control of Air Pollution in Idaho, IDAPA 58.01.01, are updated annually to maintain consistency with federal regulations implementing the Clean Air Act. This proposed rule updates federal regulations incorporated by reference with the July 1, 2020 Code of Federal Regulations (CFR) effective date.

▪ **IDAPA 58.01.05, *Rules and Standards for Hazardous Waste***
- Docket No. 58-0000-1900F
- Docket No. 58-0105-1901
- Revisions Updating Federal Regulations Incorporated by Reference:

  These proposed revisions are to ensure that the state rules remain consistent with federal regulations. Idaho's Rules and Standards for Hazardous Waste, IDAPA 58.01.05, are updated annually to maintain consistency with the federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). This proposed rule updates federal regulations incorporated by reference with the July 1, 2020 Code of Federal Regulations (CFR) effective date. The proposed rule also includes minor non-substantive corrections.

▪ **IDAPA 58.01.06, *Solid Waste Management Rules***
- Docket No. 58-0000-1900F
- Revisions Negotiated Under Docket No. 58-0106-1901:

  These revisions are proposed in response to Executive Order No. 2019-02, Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that certain rules are outdated, unnecessary, or redundant. Various sections throughout IDAPA 58.01.06, Solid Waste Management Rules, have been identified for deletion, simplification, or consolidation with other sections. The negotiated rulemaking record is available at deq.idaho.gov/58-0106-1901.

▪ **IDAPA 58.01.07, *Rules Regulating Underground Storage Tank Systems***
- Docket No. 58-0000-1900F

▪ **IDAPA 58.01.08, *Idaho Rules for Public Drinking Water Systems***
- Docket No. 58-0000-1900F

▪ **IDAPA 58.01.09, *Rules Regulating Swine Facilities***
- Docket No. 58-0109-1901

▪ **IDAPA 58.01.11, *Ground Water Quality Rule***
- Docket No. 58-0111-1901

▪ **IDAPA 58.01.12, *Rules for Administration of Water Pollution Control Loans***
- Docket No. 58-0000-1900F
- Revisions Negotiated Under Docket No. 58-0112-1901:

These revisions are proposed in response to Executive Order No. 2019-02, Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program, and merge necessary and relevant sections of IDAPA 58.01.20 with IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans. DEQ has initiated a separate rulemaking for the deletion of IDAPA 58.01.20 (Docket No. 58-0120-1901). The negotiated rulemaking record is available at deq.idaho.gov/58-0112-1901.

▪ **IDAPA 58.01.13, *Rules for Ore Processing by Cyanidation***
- Docket No. 58-0000-1900F
- Revisions Negotiated Under Docket No. 58-0113-1901:

The Idaho Mining Association (IMA) requested, via letter submitted to the Director on March 18, 2019, that DEQ revise the rules to move away from prescriptive design and construction requirements to performance-based outcomes for design, construction and closure. IMA's letter is posted at deq.idaho.gov/58-0113-1901.The current rules, adopted by the Board in 2005 and approved by the Idaho Legislature in 2006, adopted minimum design and construction criteria for all cyanidation facilities. IMA's letter to DEQ states that technologies and industry best practices for cyanidation facilities have changed since 2006. DEQ initiated negotiated rulemaking to evaluate such changes and to determine if the rules should be updated.

The proposed rule includes revisions to account for current best available technologies or best practices for design, construction and closure of cyanidation facilities that can achieve necessary regulatory goals of protecting human health and the environment and addresses the following:

(1) applicability of the design criteria to different types of cyanidation facilities;
(2) consideration of a broader range of acceptable materials included in the design;
(3) broader interpretation of performance and compliance regarding constructability of leak detection systems;
(4) variability in design approach based on the physical characteristics of impounded materials; and
(5) variability in design approach based on the chemical characteristics of impounded materials and process water; and
(6) cyanidation permit application and administration, including recovery of costs incurred by DEQ in processing permit applications and administering issued permits.

The negotiated rulemaking record is available at deq.idaho.gov/58-0113-1901.

▪ **IDAPA 58.01.14, *Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services***
- Docket No. 58-0000-1900F

▪ **IDAPA 58.01.18, *Idaho Land Remediation Rules***
- Docket No. 58-0000-1900F

▪ **IDAPA 58.01.20, *Rules for Administration of Drinking Water Loan Program***
- Docket No. 58-0000-1900F
- Revisions Negotiated Under Docket No. 58-0120-1901 (Chapter Repeal):

These revisions are proposed in response to Executive Order No. 2019-02, Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program, and merge necessary and relevant sections of IDAPA 58.01.20 with IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans. DEQ has initiated a separate rulemaking for the revisions to IDAPA 58.01.12 (Docket No. 58-0112-1901). The negotiated rulemaking record is available at deq.idaho.gov/58-0120-1901.

▪ **IDAPA 58.01.25, *Rules Regulating the Idaho Pollutant Discharge Elimination System Program***

- Docket No. 58-0000-1900F
- Revisions Negotiated Under Docket No. 58-0125-2001:

To maintain delegated authority for the IPDES program, state rules need to be updated routinely to maintain consistency with federal regulations implementing the Clean Water Act. The purpose of this rulemaking is to ensure the Rules Regulating the Idaho Pollutant Discharge Elimination System (IPDES) Program, IDAPA 58.01.25, remain consistent with federal regulations and to make clarifications in response to ambiguities identified during DEQ's administration of the IPDES program.

In 2015, 2017, 2019, and 2020, updated federal regulations became effective for National Pollutant Discharge Elimination System (NPDES) permitting authorities. These regulations require commensurate changes to portions of the IPDES rules with regard to updating definitions, applications, and reporting requirements for the state and facilities permitted under the program. DEQ is proposing to update those items incorporated by reference impacted by the federal changes. DEQ also proposes changes to the IPDES rules to clarify requirements related to fee payment, public comments, appeals, and other ambiguities identified since implementation of the program in July 2018.

This proposed rule updates federal regulations incorporated by reference with the July 1, 2020 Code of Federal Regulations (CFR) effective date. To maintain consistency for all federal regulations listed in IDAPA 58.01.25.003, this update includes the regulations that have not been revised since the initial incorporation by reference. DEQ negotiated the original rule language and incorporated by reference federal regulations affecting the program.

The negotiated rulemaking record is available at deq.idaho.gov/58-0125-2001.

After consideration of public comments, DEQ intends to present the final proposal to the Board in November 2020 for adoption as pending rules. With respect to IDAPA 58.01.13, Ore Processing by Cyanidation, DEQ intends to present the final proposal to the Board for adoption as both an amendment to the temporary rules and as pending rules.

**FEE SUMMARY:** With the exception of revisions to IDAPA 58.01.13, Rules for Ore Processing by Cyanidation, this rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules. A description of each fee category is provided below.

Listed below are the DEQ fee rule chapters, fee categories, and the statutory authority for imposition of the fees.

IDAPA 58.01.01, *Rules for the Control of Air Pollution* in Idaho - crop residue burn fee, Idaho Code § 39-114(4); application fee for industrial or commercial air pollution source permits, Idaho Code § 39-115(3); motor vehicle inspection fee, Idaho Code § 39-116B

IDAPA 58.01.05, *Rules and Standards for Hazardous Waste* - hazardous waste siting license fee,
Idaho Code § 39-5813(3)

IDAPA 58.01.06, *Solid Waste Management Rules* - commercial solid waste siting license fee,
Idaho Code § 39-7408(C)

IDAPA 58.01.07, *Rules Regulating Underground Storage Tank Systems* – annual UST program fee, Idaho Code §§ 39-119, 39-8802(d)

IDAPA 58.01.08, *Idaho Rules for Public Drinking Water Systems* – annual drinking water system fee,
Idaho Code § 39-119

IDAPA 58.01.09, *Rules Regulating Swine Facilities* - permit application fee, Idaho Code § 39-119

IDAPA 58.01.11, *Ground Water Quality Rule* - point of compliance application fee, Idaho Code § 39-119

IDAPA 58.01.12, *Rules for Administration of Water Pollution Control Loans* – loan fee to offset costs of administering loan program, Idaho Code §§ 39-119, 39-3627(4)

IDAPA 58.01.13, *Rules for Ore Processing by Cyanidation* – fee for processing permit applications, Idaho Code § 39-118A(2)(c)
**Fee Summary - Revisions in IDAPA 58.01.13 Negotiated Under Docket No. 58-0113-1901:**
The current rule requires applicants to submit a fee ranging from $5,000 for a pilot facility not processing more than 10,000 tons of ore to $20,000 for a facility processing more than 120,000 tons of ore during the life of the facility. The current rule also includes the option for the applicant to enter into an agreement with the Department for actual costs incurred to process an application and issue a final permit in lieu of paying a fee. This proposed rule eliminates the fee schedule and requires the applicant to enter into an agreement with the Department for actual costs incurred to process an application and issue a final permit. Section 39-118A(2)(c), Idaho Code, authorizes the Director of DEQ to require a reasonable fee for processing permit applications.

IDAPA 58.01.14, *Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services* – fees for environmental operating permits, licenses, inspection services and waiver application processing, Idaho Code § 39-119

IDAPA 58.01.18, *Idaho Land Remediation Rules* – voluntary remediation program application fee, Idaho Code § 39-7210(5)

IDAPA 58.01.20, *Rules for Administration of Drinking Water Loan Program* – loan fee to offset costs of administering loan program, Idaho Code §§ 39-119, 39-3627(4)

IDAPA 58.01.25, *Rules Regulating the Idaho Pollutant Discharge Elimination System Program* – application fee and/or annual fee, Idaho Code § 39-175C

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year:
This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.
**Fiscal Impact - Revisions in IDAPA 58.01.13 Negotiated Under Docket No. 58-0113-1901:**
Section 39-118A(2)(c), Idaho Code, authorizes the Director of DEQ to require a reasonable fee for processing permit applications. The proposed rule includes a fee for processing a permit application but does not include any fees following issuance of the permit. As facilities are permitted, there will be an impact to the state general fund for administration of a cyanidation permit program; however, it would vary based on the number and size of permitted facilities operating in Idaho. The estimated average annual general fund impact is $6,000 per permitted facility.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, agencies shall proceed through negotiated rulemaking whenever it is feasible to do so. DEQ made the following determinations regarding feasibility to conduct negotiated rulemaking:

Negotiated rulemaking was not feasible for the temporary fee rules adopted by the Board in February 2020 because engaging in negotiated rulemaking for the previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

Negotiated rulemaking was not feasible for the revisions updating federal regulations incorporated by reference in IDAPA 58.01.01, *Rules for the Control of Air Pollution in Idaho*, and IDAPA 58.01.05, *Rules and Standards for Hazardous Waste*, due to the simple nature and because DEQ has no discretion with respect to adopting federal regulations necessary to maintain state primacy of the federal programs. Whenever possible, DEQ incorporates federal regulations by reference to ensure that the state rules are consistent with federal regulations.

Negotiated rulemaking was feasible for revisions in the following rule chapters. These revisions were negotiated with stakeholders and members of the public. The negotiated rulemaking record for each docket is available on the listed web pages.

IDAPA 58.01.06, Solid Waste Management Rules
Docket No. 58-0106-1901 - deq.idaho.gov/58-0106-1901

IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans
Docket No. 58-0112-1901 - deq.idaho.gov/58-0112-1901

IDAPA 58.01.13, Rules for Ore Processing by Cyanidation
Docket No. 58-0113-1901 - deq.idaho.gov/58-0113-1901

IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program (Chapter Repeal)
Docket No. 58-0120-1901 - deq.idaho.gov/58-0120-1901.

IDAPA 58.01.25, Rules Regulating the Idaho Pollutant Discharge Elimination System Program
Docket No. 58-0125-2001 - deq.idaho.gov/58-0125-2001

**INCORPORATION BY REFERENCE:** The following rule chapters include revisions updating federal regulations incorporated by reference:

IDAPA 58.01.01, *Rules for the Control of Air Pollution in Idaho*
IDAPA 58.01.05, *Rules and Standards for Hazardous Waste*
IDAPA 58.01.25, *Rules Regulating the Idaho Pollutant Discharge Elimination System Program*

Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief summary of why the incorporation by reference is necessary:

Adoption of federal regulations is necessary to maintain program primacy. Incorporation by reference allows DEQ to keep its rules up to date with federal regulation changes and simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rules.

In compliance with Idaho Code 67-5223(4), for each fee rule chapter with updates to federal regulations incorporated by reference, DEQ prepared a brief synopsis detailing the substantive differences between the previously incorporated material and the latest revised edition or version of the incorporated material being proposed for incorporation by reference. The Overview of Incorporations by Reference documents are available at deq.idaho.gov/58-0000-2000F.

**IDAHO CODE SECTION 39-107D STATEMENT:** With the exception of revisions to IDAPA 58.01.13, *Rules for Ore Processing by Cyanidation*, these rules are either (1) not broader in scope or more stringent than federal law nor propose to regulate an activity not regulated by the federal government, or (2) have previously been approved as meeting the requirements of Section 39-107D, Idaho Code.

**IDAHO CODE SECTION 39-107D STATEMENT FOR REVISIONS IN IDAPA 58.01.13 NEGOTIATED UNDER DOCKET NO. 58-0113-1901:** IDAPA 58.01.13, *Rules for Ore Processing by Cyanidation*, regulates activities not regulated by the federal government. The following is a summary of additional information required by Sections 39-107D(2) through (3), Idaho Code, supporting the adoption of these rules. These rules establish the procedures and requirements for the issuance and maintenance of a permit to construct, operate, and close that portion of a cyanidation facility that is intended to contain, treat, or dispose of process water or process-contaminated water containing cyanide.

***Section 107D(2)(a), Idaho Code. To the degree that a department action is based on science, in proposing any rule or portions of any rule subject to this section, the department shall utilize the best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices.***

The requirements set forth in this proposed rule are based upon best available peer reviewed science provided by participants in the negotiated rulemaking conducted pursuant to Section 67-5220, Idaho Code. In addition, the requirements set forth in this proposed rule are industry accepted standards and proven regulatory requirements shown to be generally protective of human health and the environment.

To the extent practicable, the proposed rule reflects derivations of the standards and evaluation criteria used in the state of Nevada to regulate cyanidation facilities. Nevada's rules more broadly address mining facilities, not cyanidation facilities specifically. The standards specific to cyanidation facilities were developed based on numerous references providing the best available peer reviewed science. These references are included in the rulemaking record and available at deq.idaho.gov/58-0113-1901.

***Section 39-107D(2)(b), Idaho Code. To the degree that a department action is based on science, in proposing any rule or portions of any rule subject to this section, the department shall utilize data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justifies use of the data.***

Data was not collected or analyzed as part of this rulemaking process.

***Section 39-107D(3)(a), Idaho Code. Identification of each population or receptor addressed by an estimate of public health effects or environmental effects.***

The release of contaminants from cyanidation facilities may adversely impact beneficial uses in both surface and ground water. The populations and receptors of contaminants generated by these facilities potentially include, depending on a facility's location, domestic and community drinking water systems, recreationists, agriculture, and wildlife. Contaminants of concern with the potential of release from cyanidation facilities include, but are not limited to, cyanide, nitrates, chlorine, heavy metals, and sediment.

In Idaho, ground water supplies drinking water to approximately 95% of Idaho's citizens. Of these consumers, approximately one million rely on regulated public water systems for drinking water. Another 500,000 Idahoans utilize ground water from private wells for drinking water. Protection of this resource is critical to the health of the citizens of Idaho.

Ground water also replenishes surface water supplies throughout Idaho. In areas with degraded ground water, the quality of the interconnected surface water can be negatively impacted. The release of contaminants to surface water either directly or indirectly through the ground water can have adverse environmental effects on aquatic habitats, such as increased algal blooms and systemic or neurological effects in susceptible species. The release of contaminants to surface water may also affect communities or individuals who use surface water as a drinking water source by, for example, making the water unfit for consumption or increasing treatment costs.

***Section 107D(3)(b) through (e), Idaho Code. Identification of the expected risk or central estimate of risk for the specific population or receptor and identification of each appropriate upper bound or lower bound estimate of risk, of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty, and studies known to the department that support, are directly relevant to, or fail to support any estimate of public health effect or environmental effects and the methodology used to reconcile inconsistencies in the data.***

The proposed rule includes permitting process requirements and criteria for the design, construction, operation, and closure of a cyanidation facility. The design criteria are intended to ensure that cyanidation facilities are constructed, operated, and closed in a manner that complies with Idaho's existing standards for protection of human health and the environment, including surface and ground water quality standards. Because specific standards for protecting of human health and the environment already exist in other rules, there is no need to duplicate them in this proposed rule. The criteria included as part of this proposed rule are not based on any express estimate or analysis of risk to public health or the environment. Instead, the criteria are based on best available peer reviewed science and generally accepted design principles used by engineers and regulators to safely contain, control, and treat pollutants associated with ore processing by cyanidation consistent with other existing standards. Application of the criteria in this proposed rule and other rules administered by the Department or other state agencies will result in minimal risk of release of contaminants from the cyanidation facility into the environment and appropriate response in the event of a release.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the proposed rule, contact the undersigned.

**SUBMISSION OF WRITTEN COMMENTS:** Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before October 16, 2020.

Dated this 19th day of August, 2020.

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1410 N. Hilton Street
Boise, Idaho 83706
Phone: (208) 373-0418
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# 58.01.25 – RULES REGULATING THE IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM

## 000. LEGAL AUTHORITY.

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, Sections 39-101 et seq., Idaho Code. The rules in this chapter are not effective until the requirements in Section 39-175C, Idaho Code, have been met and the United States EPA has approved, under 33 U.S.C. 1342(b), Idaho's administration of the IPDES program. ( )

## 001. TITLE AND SCOPE.

**01. Title**. The rules are titled IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program." ( )

**02. Scope**. These rules establish the procedures and requirements for the issuance and maintenance of permits for facilities or activities for which a person is required by Idaho Code and the Clean Water Act to obtain authorization to discharge pollutants to waters of the United States. These permits are referred to in these rules as "IPDES permits" or "permits." ( )

## 002. CONFIDENTIALITY OF RECORDS.

**01. Identifying Confidential Information**. Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 1, Title 74, Idaho Code, and IDAPA 58.01.21 (Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality). In accordance with Sections 74-101 through 74-119, Idaho Code, any information submitted to the Department pursuant to these rules may be claimed as confidential by the submitter. It is the responsibility of the submitter to give notice of the existence of a claim of confidentiality on each page or other portion of information at the time of submittal and such person has the burden of demonstrating that the information is confidential. ( )

**02. Denial of Confidential Claims**. In accordance with Section 74-114, Idaho Code, a claim of confidentiality, including but not limited to a claim as to information claimed confidential as a trade secret, will 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 ( )

**d.** Effluent data as defined in 40 CFR 2.302. ( )

## 003. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.

**01. Availability of Reference Material**. Codes, standards and regulations may be incorporated by reference in this rule pursuant to Section 67-5229, Idaho Code. Codes, standards or regulations adopted by reference throughout this rule are available in the following locations: ( )

**a.** Department of Environmental Quality. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255. ( )

**b.** Law Library. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051. ( )

**c.** Electronic Code of Federal Regulations (eCFR) http://www.ecfr.gov/cgi-bin/ECFR. ( )

**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 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, 2020 (Application Requirements for Facilities with Cooling Water Intake Structures); ( )

**b.** 40 CFR 122.23, revised as of July 1, 2020 (Concentrated Animal Feeding Operations); ( )

**c.** 40 CFR 122.24, revised as of July 1, 2020 (Concentrated Aquatic Animal Production Facilities); ( )

**d.** 40 CFR 122.25, revised as of July 1, 2020 (Aquaculture Projects); ( )

**e.** 40 CFR 122.26(a) through (b) and 40 CFR 122.26(e) through (g), revised as of July 1, 2020 (Storm Water Discharges); ( )

**f.** 40 CFR 122.27, revised as of July 1, 2020 (Silvicultural Activities); ( )

**g.** 40 CFR 122.29(d), revised as of July 1, 2020 (Effect of Compliance with New Source Performance Standards); ( )

**h.** 40 CFR 122.30 and 40 CFR 122.32 through 40 CFR 122.37, revised as of July 1, 2020 (Requirements and Guidance for Small Municipal Separate Storm Sewer Systems); ( )

**i.** 40 CFR 122.42(e), revised as of July 1, 2020 (Additional Conditions Applicable to NPDES Permits for Concentrated Animal Feeding Operations); ( )

**j.** Appendix A to 40 CFR 122, revised as of July 1, 2020 (NPDES Primary Industry Categories); ( )

**k.** Appendix C to 40 CFR 122, revised as of July 1, 2020 (Criteria for Determining a Concentrated Aquatic Animal Production Facility); ( )

**l.** Appendix D to 40 CFR 122, revised as of July 1, 2020 (NPDES Permit Application Testing Requirements); ( )

**m.** Appendix J to 40 CFR 122, revised as of July 1, 2020 (NPDES Permit Testing Requirements for Publicly Owned Treatment Works); ( )

**n.** 40 CFR 125.1 through 40 CFR 125.3 (Subpart A), revised as of July 1, 2020 (Criteria and Standards for Imposing Technology-Based Treatment Requirements Under Sections 301(b) and 402 of the Clean Water Act); ( )

**o.** 40 CFR 125.10 through 40 CFR 125.11 (Subpart B), revised as of July 1, 2020 (Criteria for Issuance of Permits to Aquaculture Projects); ( )

**p.** 40 CFR 125.30 through 40 CFR 125.32 (Subpart D), revised as of July 1, 2020 (Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A) and 301(b)(2)(A) and (E) of the Clean Water Act); ( )

**q.** 40 CFR 125.70 through 40 CFR 125.73 (Subpart H), revised as of July 1, 2020 (Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Clean Water Act); ( )

**r.** 40 CFR 125.80 through 40 CFR 125.89 (Subpart I), revised as of July 1, 2020 (Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Clean Water Act); ( )

**s.** 40 CFR 125.90 through 40 CFR 125.99 (Subpart J), revised as of July 1, 2020 (Requirements Applicable to Cooling Water Intake Structures for Phase II Existing Facilities Under Section 316(b) of the Clean Water Act); ( )

**t.** 40 CFR 127.11 through 40 CFR 127.16 (Subpart B), revised as of July 1, 2020 (Electronic reporting of NPDES Information from NPDES-Regulated Facilities); ( )

**u.** 40 CFR 129.1 through 40 CFR 129.105 (Subpart A), revised as of July 1, 2020 (Toxic Pollutant Effluent Standards and Prohibitions); ( )

**v.** 40 CFR 133.100 through 40 CFR 133.105, revised as of July 1, 2020 (Secondary Treatment Regulation); ( )

**w.** 40 CFR Part 136, revised as of July 1, 2020 (Guidelines Establishing Test Procedures for the Analysis of Pollutants, including Appendices A, B, C, and D); ( )

**x.** 40 CFR Part 401, revised as of July 1, 2020 (General Provisions); ( )

**y.** 40 CFR 403.1 through 40 CFR 403.3; 40 CFR 403.5 through 40 CFR 403.18, revised as of July 1, 2020 (General Pretreatment Regulations for Existing and New Sources of Pollution, including Appendices D, E, and G); ( )

**z.** 40 CFR Part 405 through 40 CFR Part 471, revised as of July 1, 2020 (Effluent Limitations and Guidelines); and ( )

**aa.** 40 CFR 503.2 through 40 CFR 503.48, revised as of July 1, 2020 (Sewage Sludge, including Appendices A and B). ( )

**bb.** The term "Waters of the United States or waters of the U.S.," as defined in 40 CFR 122.2, revised as of June 22, 2020, by 85 Federal Register 22250-22342 (April 21, 2020), unless said revision is stayed, overturned or invalidated by a court of law or withdrawn by EPA, in which case the Department incorporates by reference the term "Waters of the United States or waters of the U.S." as defined in 40 CFR 122.2, revised as of December 23, 2019. ( )

**03. Term Interpretation**. For the federal regulations incorporated by reference into these rules, unless the context in which a term is used clearly requires a different meaning, terms in this section have the following meanings: ( )

**a.** The term Administrator or Regional Administrator means the EPA Region 10 Administrator; ( )

**b.** The term Control Authority means the POTW for a facility with a Department-approved pretreatment program and the Department for a POTW without a Department-approved pretreatment program; ( )

**c.** The term Director or State Director means the Director of the Department of Environmental Quality with an NPDES permit program approved pursuant to section 402(b) of the Clean Water Act; ( )

**d.** The term National Pollutant Discharge Elimination System (NPDES) means the Idaho Pollutant Discharge Elimination System (IPDES); ( )

**e.** The term Permitting Authority (also preceded by the terms NPDES or State) means the Idaho Department of Environmental Quality with an NPDES permit program approved pursuant to section 402(b) of the Clean Water Act. ( )

**004. ADMINISTRATIVE PROVISIONS.**
Persons may be entitled to appeal final IPDES permit decisions pursuant to Section 204 (Appeals Process) of these

rules. ( )

**005. WRITTEN INTERPRETATIONS.**
As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255. ( )

**006. OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**
The state office of the Department of Environmental Quality is located at 1410 N. Hilton, Boise, Idaho 83706, (208) 373-0502, www.deq.idaho.gov. The office hours are 8 a.m. to 5 p.m. Monday through Friday. ( )

**007. -- 009. (RESERVED)**

**010. DEFINITIONS.**
For the purpose of the rules contained in IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program," the following definitions apply. Terms not expressly defined in this section have the meaning provided by IDAPA 58.01.02, Section 010, "Water Quality Standards," or IDAPA 58.01.16, Section 010, "Wastewater Rules." ( )

**01. Animal Feeding Operation**. A lot or facility (other than an aquatic animal production facility) where the following conditions are met: ( )

**a.** Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12)-month period; and ( )

**b.** Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. ( )

**02. Applicable Standards and Limitations**. All state, interstate, and federal standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under the Clean Water Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal under the Clean Water Act sections 301, 302, 303, 304, 306, 307, 308, 402 and 405. ( )

**03. Application**. The IPDES forms for applying for a permit or the EPA equivalent standard national forms when deemed acceptable by the Department, including any additions, revisions or modifications to the forms. ( )

**04. Approved Program or Approved State**. A state or interstate program which has been approved or authorized by EPA under 40 CFR Part 123. ( )

**05. Aquaculture Project**. A defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals. ( )

**06. Average Monthly Discharge Limitation**. The highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month. ( )

**07. Average Weekly Discharge Limitation**. The highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week. ( )

**08. Background**. The biological, chemical or physical condition of waters measured at a point immediately upstream (up-gradient) of the influence of an individual point or nonpoint source discharge. If several discharges to the water exist or if an adequate upstream point of measurement is absent, the Department will determine where background conditions should be measured. ( )

**09. Best Management Practices (BMPs)**. Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. ( )

**10. Biochemical Oxygen Demand (BOD)**. The measure of the amount of oxygen necessary to satisfy the biochemical oxidation requirements of organic materials at the time the sample is collected; unless otherwise specified, this term will mean the five (5) day BOD incubated at twenty (20) degrees C. ( )

**11. Biological Monitoring or Biomonitoring**. The use of a biological entity as a detector and its response as a measure to determine environmental conditions. Toxicity tests and biological surveys, including habitat monitoring, are common biomonitoring methods. ( )

**12. Bypass**. The intentional diversion of wastewater from any portion of a treatment facility. ( )

**13. Chemical Oxygen Demand (COD)**. A bulk parameter that measures the oxygen-consuming capacity of organic and inorganic matter present in water or wastewater. It is expressed as the amount of oxygen consumed from a chemical oxidant in a specific test. ( )

**14. Class I Sludge Management Facility**. Any POTW identified under 40 CFR 403.8(a) as being required to have an approved pretreatment program (including such POTWs where the Department has elected to assume local program responsibilities pursuant to 40 CFR 403.10(e)) and any other treatment works treating domestic sewage (TWTDS) classified as a Class I sludge management facility by the Department, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment. ( )

**15. Clean Water Act**. Formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972. Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483 and Public Law 97-117, 33 U.S.C. 1251 et seq. ( )

**16. Clean Water Act and Regulations**. The Clean Water Act and applicable regulations promulgated thereunder. In the case of an approved IPDES program, it includes Department program requirements. ( )

**17. Compliance Schedule or Schedule of Compliance**. A schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Clean Water Act and these rules. ( )

**18. Concentrated Animal Feeding Operation (CAFO)**. Animal feeding operation that is defined as a Large CAFO in accordance with 40 CFR 122.23(b)(4), as a Medium CAFO in accordance with 40 CFR 122.23(b)(6), or that is designated as a CAFO in accordance with 40 CFR 122.23(c). Two (2) or more animal feeding operations under common ownership are considered to be a single animal feeding operation for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes. ( )

**19. Concentrated Aquatic Animal Production (CAAP)**. A hatchery, fish farm, or other facility which meets the criteria in Appendix C of 40 CFR Part 122, or which the Department designates under 40 CFR 122.24(c). ( )

**20. Continuous Discharge**. A discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities. ( )

**21. Daily Discharge**. The discharge of a pollutant measured during a calendar day or any twenty-four (24)-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day. ( )

**22.** **Department**. The Idaho Department of Environmental Quality. ( )

**23.** **Design Flow**. The average or maximum point source discharge volume per unit time that a facility or system is constructed to accommodate. ( )

**24.** **Direct Discharge**. The discharge of a pollutant to waters of the United States. ( )

**25.** **Director**. The Director of the Idaho Department of Environmental Quality or authorized agent. ( )

**26.** **Discharge Monitoring Report (DMR)**. The facility or activity report containing monitoring and discharge quality and quantity information and data required to be submitted periodically, as defined in the discharge permit. These reports must be submitted to the Department on a Department-approved format. ( )

**27.** **Discharge**. When used without qualification means the discharge of a pollutant. ( )

**28.** **Discharge of a Pollutant**. Any addition of any pollutant or combination of pollutants to waters of the United States from any point source. This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger. ( )

**29.** **Draft Permit**. A document prepared under these rules indicating the Department's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in Subsections 107.01 and 203.02, are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination, as discussed in Subsection 201.01, is not a draft permit. A proposed permit is not a draft permit. ( )

**30.** **Effluent**. Any discharge of treated or untreated pollutants into waters of the United States. ( )

**31.** **Effluent Limitation**. Any restriction imposed by the Department on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the United States, in accordance with these rules and the Clean Water Act. ( )

**32.** **Effluent Limitations Guidelines**. A regulation published by the EPA under the Clean Water Act section 304(b) to adopt or revise effluent limitations. ( )

**33.** **Electronic Signature**. Information in digital form that is included in or associated with an electronic document for the purpose of expressing the same meaning and intention as would a handwritten signature. ( )

**34.** **Environmental Protection Agency (EPA)**. The United States Environmental Protection Agency. ( )

**35.** **Equivalent Dwelling Unit (EDU)**. A measure where one (1) EDU is equivalent to wastewater generated from one (1) single-family residence. For the purposes of assessing fees associated with publicly or privately owned domestic sewage treatment, the number of EDUs is calculated as the population served divided by the average household size as defined in the most recent Census Bureau data (for that municipality, county, or average number of persons per household for the state of Idaho). For fees associated with industrial wastewater treatment owned by a municipality, EDUs are calculated in accordance with the definition of EDU in IDAPA 58.01.16, Section 010, "Wastewater Rules." ( )

**36.** **Existing Source**. Any source which is not a new source or a new discharger. ( )

**37.** **Facilities or Equipment**. Buildings, structures, process or production equipment or machinery

which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source. ( )

**38. Facility or Activity**. Any point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the IPDES program. ( )

**39. Fundamentally Different Factors**. The factors relating to a discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national effluent limits. ( )

**40. General Permit**. An IPDES permit issued under Section 130 (General Permits) authorizing a category of discharges within a geographical area. ( )

**41. Hazardous Substance**. Any substance designated under 40 CFR Part 116 pursuant to the Clean Water Act section 311. ( )

**42. Idaho Pollutant Discharge Elimination System (IPDES)**. Idaho's program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under these rules and the Clean Water Act sections 307, 402, 318, and 405. ( )

**43. Indian Country**. ( )

**a.** All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; ( )

**b.** All dependent Indian communities within the borders of the United States, whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of the state; and ( )

**c.** All Indian allotments, the Indian titles to which have not been extinguished including rights-of-way running through the same. ( )

**44. Indian Tribe**. Any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a federal Indian reservation. ( )

**45. Indirect Discharger**. A nondomestic discharger introducing pollutants to a privately or publicly owned treatment works. ( )

**46. Industrial Wastewater**. Any waste, together with such water as is present that is the by-product of industrial processes including, but not limited to, food processing or food washing wastewater (see Process Wastewater). ( )

**47. Infiltration**. Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow. ( )

**48. Inflow**. Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration. ( )

**49. Interstate Agency**. An agency of two (2) or more states established by or under an agreement or compact, or any other agency of two (2) or more states having substantial powers or duties pertaining to the control of

pollution. ( )

**50.** **Load Allocation (LA)**. The portion of a receiving water body's loading capacity that is attributed either to one (1) of its existing or future nonpoint sources of pollution or to natural background sources. ( )

**51.** **Major Facility**. A facility or activity that is: ( )

**a.** A publicly or privately owned treatment works with a design flow equal to or greater than one million gallons per day (1 MGD), or serves a population of ten thousand (10,000) or more, or causes significant water quality impacts; or ( )

**b.** A non-municipal facility that equals or exceeds the eighty (80) point accumulation as described in the Score Summary of the NPDES Non-Municipal Permit Rating Work Sheet (June 27, 1990) or the Department equivalent guidance document. ( )

**52.** **Maximum Daily Discharge Limitation**. The highest allowable daily discharge. ( )

**53.** **Maximum Daily Flow**. The largest volume of flow to be discharged during a continuous twenty-four-hour period expressed as a volume per unit time. ( )

**54.** **Mixing Zone**. A defined area or volume of the receiving water surrounding or adjacent to a wastewater discharge where the receiving water, as a result of the discharge, may not meet all applicable water quality criteria or standards. It is considered a place where wastewater mixes with receiving water and not as a place where effluents are treated. ( )

**55.** **Municipality**. A city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under the Clean Water Act section 208. ( )

**56.** **National Pollutant Discharge Elimination System (NPDES)**. The national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under the Clean Water Act sections 307, 402, 318, and 405. ( )

**57.** **New Discharger**. Any building, structure, facility, or installation: ( )

**a.** From which there is or may be a discharge of pollutants; ( )

**b.** That did not commence the discharge of pollutants at a particular site prior to August 13, 1979; ( )

**c.** Which is not a new source; and ( )

**d.** Which has never received a finally effective NPDES or IPDES permit for discharges at that site. ( )

**e.** This definition includes an indirect discharger which commences discharging into waters of the United States after August 13, 1979. It also includes any existing mobile point source such as an aggregate plant, that begins discharging at a site for which it does not have a permit; ( )

**58.** **New Source**. Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced: ( )

**a.** After promulgation of standards of performance under the Clean Water Act section 306 which are applicable to such source; or ( )

**b.** After proposal of standards of performance in accordance with the Clean Water Act section 306

which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within one hundred twenty (120) days of their proposal. ( )

**59.** **Notice of Intent to Deny**. A type of draft permit that shall convey to a permit applicant or permittee, the Department's intent to not issue or renew an IPDES permit. ( )

**60.** **Notice of Intent to Obtain Coverage under an IPDES General Permit**. An applicant seeking discharge coverage under an IPDES general permit shall submit a notice of intent to obtain coverage for discharges to waters of the United States under general permit classifications, including, but not limited to: ( )

**a.** Storm Water Construction General Permit (CGP); ( )

**b.** Multi-Sector General Permit (MSGP) for Industrial Storm Water Requirements; ( )

**c.** Municipal Separate Storm Sewer System (MS4) General Permit; ( )

**d.** Concentrated Animal Feeding Operation (CAFO) General Permit; ( )

**e.** Concentrated Aquatic Animal Production (CAAP) Facility General Permit; ( )

**f.** Ground Water Remediation General Permit; ( )

**g.** Suction Dredge General Permit; or ( )

**h.** Pesticide General Permit (PGP). ( )

**61.** **Notice of Intent to Terminate**. A notice of intent to terminate shall: ( )

**a.** Convey to a permittee the Department's intent to terminate an existing IPDES permit for cause; or ( )

**b.** Convey to the Department a permittee's intent to terminate coverage for an activity under an Individual or General Permit. A construction general permit holder is obligated to submit a notice of intent to terminate upon completion of construction activities and, in the case of storm water control, that final stabilization has been achieved. ( )

**62.** **Owner or Operator**. The person, company, corporation, district, association, or other organizational entity that is an owner or operator of any facility or activity subject to regulation under the IPDES program. ( )

**63.** **Pesticide Discharges**. The discharges that result from the application of biological pesticides, and the application of chemical pesticides that leave a residue, from point sources to waters of the United States. In the context of this definition of pesticide discharges, this does not include agricultural storm water discharges and return flows from irrigated agriculture, which are excluded by law (33 U.S.C. 1342(l); 33 U.S.C. 1362(14)). ( )

**64.** **Pesticide Residue**. For the purpose of determining whether an IPDES permit is needed for discharges to waters of the United States from pesticide application, means that portion of a pesticide application that is discharged from a point source to waters of the United States and no longer provides pesticidal benefits. It also includes any degradates of the pesticide. ( )

**65.** **Permit**. The authorization, license, or equivalent control document issued by the Department to implement the requirements of these rules. This does not include any permit which has not yet been the subject of final Department action, such as a draft permit or a proposed permit. ( )

**66.** **Person**. An individual, public or private corporation, partnership, association, firm, joint stock company, joint venture, trust, estate, state, municipality, commission, political subdivision of the state, state or federal agency, department or instrumentality, special district, interstate body or any legal entity, or an agent or employee

thereof, which is recognized by law as the subject of rights and duties. ( )

**67. Point Source**. Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. ( )

**68. Pollutant**. Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean: ( )

**a.** Sewage from vessels; or ( )

**b.** Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state in which the well is located, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources.
NOTE: Radioactive materials covered by the Atomic Energy Act are those encompassed in its definition of source, byproduct, or special nuclear materials. Examples of materials not covered include radium and accelerator-produced isotopes. See Train v. Colorado Public Interest Research Group, Inc., 426 U.S. 1 (1976). ( )

**69. Potable Water**. Water which is free from impurities in such amounts that it is safe for human consumption without treatment. ( )

**70. Pretreatment**. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR 403.6(e). ( )

**71. Primary Industry Category**. Any industry category listed in Appendix A of 40 CFR Part 122. ( )

**72. Privately Owned Treatment Works**. Any device or system which is used to treat wastes and is not a Publicly Owned Treatment Works (POTW). ( )

**73. Process Wastewater**. Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product (see Industrial Wastewater definition). ( )

**74. Proposed Permit**. An IPDES permit prepared after the close of the public comment period (and, when applicable, any public meeting and administrative appeals) which is sent to EPA for review before final issuance by the Department. A proposed permit is not a draft permit. ( )

**75. Proposed Settlement of a State Enforcement Action**. A Department consent order or compliance agreement schedule issued in response to a notice of violation that is to be signed by the Director. This does not include amendments or extensions of consent orders or compliance agreement schedules. ( )

**76. Publicly Owned Treatment Works (POTW)**. A treatment works as defined by the Clean Water Act section 212, which is owned by a state or municipality, as defined by the Clean Water Act section 502(4). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal

sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in the Clean Water Act section 502(4), which has jurisdiction over the indirect discharges to and the discharges from such a treatment works. ( )

**77.** **Receiving Waters**. Those waters of the United States to which there is a discharge of pollutants. ( )

**78.** **Recommencing Discharger**. A source which renews discharges after terminating operations. ( )

**79.** **Regional Administrator**. The Region 10 Administrator of the Environmental Protection Agency or the authorized representative of the Regional Administrator. ( )

**80.** **Secondary Industry Category**. Any industry category which is not a primary industry category. ( )

**81.** **Secondary Treatment**. Technology-based requirements for direct discharging POTWs, based on the expected performance of a combination of physical and biological processes typical for the treatment of pollutants in municipal sewage. Standards are expressed as a minimum level of effluent quality in terms of: BOD5, total suspended solids (TSS), and pH (except as provided by treatment equivalent to secondary treatment and other special considerations). ( )

**82.** **Secretary**. The Secretary of the Army, acting through the Chief of Engineers. ( )

**83.** **Septage**. The liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained. ( )

**84.** **Severe Property Damage**. Substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production. ( )

**85.** **Sewage**. The water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. ( )

**86.** **Sewage from Vessels**. Human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under the Clean Water Act section 312. ( )

**87.** **Sewage Sludge**. Any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 CFR Part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge. ( )

**88.** **Sewage Sludge Use or Disposal Practice**. The collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge. ( )

**89.** **Significant Industrial User**. ( )

**a.** All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Parts 400 through 471; and ( )

**b.** Any other industrial user that: ( )

i. Discharges an average of twenty-five thousand (25,000) gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); ( )

ii. Contributes a process waste stream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or ( )

iii. Is designated as such by the Control Authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement (in accordance with 40 CFR 403.8(f)(6)). ( )

**90. Silvicultural Point Source**. Any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a Clean Water Act section 404 permit. ( )

**91. Site**. The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity. ( )

**92. Sludge**. The semi-liquid mass produced and removed by the wastewater treatment process. ( )

**93. Sludge-Only Facility**. Any TWTDS whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to the Clean Water Act section 405(d) and is required to obtain an IPDES permit. ( )

**94. Source**. Any building, structure, facility, or installation from which there is or may be discharge of pollutants. ( )

**95. Standards for Sewage Sludge Use or Disposal**. Regulations promulgated pursuant to the Clean Water Act section 405(d) and these rules which govern minimum requirements for sewage sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person. ( )

**96. State**. The state of Idaho. ( )

**97. State/EPA Agreement**. An agreement between the EPA Regional Administrator and the state of Idaho which coordinates EPA and Department activities, responsibilities and programs including those under the Clean Water Act programs. ( )

**98. Storm Water**. Storm water runoff, snow melt runoff, and surface runoff and drainage. ( )

**99. Technology-Based Effluent Limitation (TBEL)**. Treatment requirements under the Clean Water Act that represent the minimum level of control that must be imposed in a permit issued under section 402 of the Clean Water Act. ( )

**100. Total Dissolved Solids**. The total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136. ( )

**101. Toxic Pollutant**. Any substance, material or disease-causing agent, or a combination thereof, which after discharge to waters of the United States and upon exposure, ingestion, inhalation, or assimilation into any organism (including humans), either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, malignancy, genetic mutation, physiological abnormalities (including malfunctions in reproduction) or physical deformations in affected organisms or their offspring. Toxic pollutants include, but are not limited to, the one hundred twenty-six (126) priority pollutants identified by EPA

pursuant to the Clean Water Act section 307(a), or in the case of sewage sludge use or disposal practices, any pollutant identified in regulations implementing the Clean Water Act section 405(d). ( )

**102. Treatment**. A process or activity conducted for the purpose of removing pollutants from wastewater. ( )

**103. Treatment Facility**. Any physical facility or land area for the purpose of collecting, treating, neutralizing, or stabilizing pollutants including treatment plants; the necessary collecting, intercepting, outfall and outlet sewers; pumping stations integral to such plants or sewers; disposal or reuse facilities; equipment and furnishing thereof; and their appurtenances. For the purpose of these rules, a treatment facility may also be known as a treatment system, a wastewater system, wastewater treatment system, wastewater treatment facility, wastewater treatment plant, or privately or publicly owned treatment works. ( )

**104. Treatment Works Treating Domestic Sewage (TWTDS)**. A POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, domestic sewage includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. ( )

**105. Upset**. An exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. ( )

**106. User**. Any person served by a wastewater system. ( )

**107. Variance**. Any mechanism or provision under the Clean Water Act section 301 or 316 or under 40 CFR Part 125, or in the applicable effluent limitations guidelines allowing modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the Clean Water Act. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on Clean Water Act sections 301(c), 301(g), 301(h), 301(i), or 316(a). ( )

**108. Wasteload Allocation (WLA)**. The portion of a receiving water's loading capacity that is allocated to one (1) of its existing or future point sources of pollution. ( )

**109. Wastewater**. Any combination of liquid or water and pollutants from activities and processes occurring in dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any ground water, surface water, and storm water that may be present; liquid or water that is chemically, biologically, physically or rationally identifiable as containing blackwater, gray water or commercial or industrial pollutants; and sewage. ( )

**110. Water Pollution**. Any alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters of the United States, or the discharge of any pollutant into the waters of the United States, which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to fish and wildlife, or to domestic, commercial, industrial, recreational, aesthetic, or other beneficial uses. ( )

**111. Water Quality-Based Effluent Limitation (WQBEL)**. An effluent limitation determined by selecting the most stringent of the effluent limits calculated using all applicable water quality criteria (e.g., aquatic life, human health, wildlife, translation of narrative criteria) for a specific point source to a specific receiving water. ( )

**112. Water Transfer**. An activity that conveys or connects waters of the United States without subjecting the transferred water to intervening industrial, municipal, or commercial use. ( )

**113. Wetlands**. Areas inundated or saturated by surface or ground water at a frequency and duration

sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. ( )

**114. Whole Effluent Toxicity**. The aggregate toxic effect of an effluent measured directly by a toxicity test. ( )

**011. -- 049. (RESERVED)**

**050. COMPUTATION OF TIME.**

**01. Computing Time**. In computing any period of time scheduled to begin after or before the occurrence of an act or event, the date of the act or event is not included. The last day of the period is included, unless it is a Saturday, a Sunday, or a legal holiday, in which case the period runs until the end of the next day which is neither a Saturday, a Sunday, nor holiday. The section does not apply to submission deadlines for twenty-four (24) hour reporting, permit applications, or notices of intent for coverage under a general permit ( )

**02. Notice by Mail**. Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper and the notice or paper is served upon him or her by mail, three (3) days will be added to the prescribed time. ( )

**051. -- 089. (RESERVED)**

**090. SIGNATURE REQUIREMENTS.**

**01. Permit Applications and Notices of Intent**. All IPDES permit applications and notices of intent must be signed by a certifying official as follows: ( )

**a.** For a corporation, a responsible corporate officer shall sign the application or notice of intent. In this subsection, a responsible corporate officer means: ( )

i. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or ( )

ii. The manager of one (1) or more manufacturing, production, or operating facilities, if: ( )

(1) The manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental statutes and regulations; ( )

(2) The manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for IPDES permit application requirements; and ( )

(3) Authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; ( )

**b.** For a partnership or sole proprietorship, the general partner or the proprietor, respectively, shall sign the application; and ( )

**c.** For a municipality, state, or other public agency, either a principal executive officer or ranking elected official shall sign the application. In this subsection, a principal executive officer of an agency means: ( )

i. The chief executive officer of the agency; or ( )

ii. A senior executive officer having responsibility for the overall operations of a principal geographic

unit or division of the agency. ( )

**02. Reports and Other Information Submitted**. Any report or information required by an IPDES permit, notice of intent, monitoring and reporting provisions, and any other information requested by the Department, must be signed by a person described in Subsection 090.01, or by a duly authorized representative of that person. A person is a duly authorized representative only if: ( )

**a.** The authorization is made in writing by a person described in Subsection 090.01; ( )

**b.** The authorization specifies either: ( )

i. An individual or a position having responsibility for the overall operation of the regulated facility or activity, including the position of manager, operator, superintendent or position of equivalent responsibility; or ( )

ii. An individual or position having overall responsibility for environmental matters for the company; and ( )

**c.** The written authorization is submitted to the Department. ( )

**03. New Authorization**. If an authorization is no longer accurate due to a change in staffing or personnel for the overall operation of the facility, a new authorization satisfying the requirements of Subsection 090.01 must be submitted to the Department before or together with any report, information, or application to be signed by an authorized representative. ( )

**04. Certification**. Any person signing a document under Subsections 090.01 or 090.02 shall certify as follows: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations." ( )

**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. ( )

**06. Electronic Reporting**. When documents described in Subsection 090.01 or 090.02 of this rule are submitted electronically by or on behalf of the IPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section, and shall ensure that all of the relevant requirements of 40 CFR Part 3 (Cross-Media Electronic Reporting) and 40 CFR Part 127 (NPDES Electronic Reporting Requirements) are met for that submission. ( )

**091. -- 099. (RESERVED)**

**100. EFFECT OF A PERMIT.**

**01. Rights**. The issuance of, or coverage under, an IPDES permit does not convey any property rights or any exclusive privilege nor does it authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations. The issuance of, or coverage under, an IPDES permit does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity, and does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits. ( )

**02. Compliance**. Except for any toxic effluent standards and prohibitions imposed under the Clean Water Act section 307, and standards for sewage sludge use or disposal under the Clean Water Act section 405(d),

compliance with an IPDES permit during its term constitutes compliance, for purposes of enforcement, with Clean Water Act sections 301, 302, 306, 307, 318, 403, and 405(a) through (b). However, a permit or coverage under a permit may be modified, revoked and reissued, or terminated during its term for cause as set out in Sections 130 (General Permits), 201 (Modification, or Revocation and Reissuance of IPDES Permits), and 203 (Termination of IPDES Permits). ( )

**101. DURATION.**

**01. Permit Term**. IPDES permits shall be issued for a fixed duration not to exceed five (5) years. ( )

**a.** The Department may issue a permit for a period of less than five (5) years. An explanation of the reasoning behind issuing a permit for a shorter period shall be provided in the fact sheet. ( )

**b.** The duration of a permit may not be modified to lengthen the effective term of the permit past the maximum five (5) year duration. ( )

**c.** A permit may be issued to expire on or after the statutory deadline set forth in the Clean Water Act sections 301(b)(2)(A), (C), and (E), if the permit includes effluent limitations to meet the requirements of the Clean Water Act sections 301(b)(2)(A), (C), (D), (E) and (F), whether or not applicable effluent limitations guidelines have been promulgated or approved. ( )

**d.** A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under Subsection 101.01.c. is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated. ( )

**e.** A federally-issued NPDES permit, the administration of which has been transferred to the Department upon or after EPA approval of the IPDES program, shall continue in effect and be enforceable by the Department, subject to Subsections 101.02 and 101.03. ( )

**02. Continuation of Individual Permits**. The conditions of an expired individual permit, whether a federal NPDES permit (except for permits over which EPA retains authority) or a state-issued IPDES permit, will remain fully effective and enforceable until the effective date of a new permit or the date of the Department's final decision to deny the application for the new permit, if: ( )

**a.** The permittee has submitted a timely and complete application for a new permit under Section 105 (Application for an Individual IPDES Permit); and ( )

**b.** The Department, because of time, resource, or other constraints, but through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit. ( )

**03. Continuation of General Permits**. The conditions of an expired general permit, whether a federal NPDES permit or a state-issued IPDES permit, will remain fully effective and enforceable (except for permits over which EPA retains authority) until the date the authorization to discharge under the new permit is determined, if: ( )

**a.** The permittee has submitted a timely notice of intent to obtain coverage under the new general permit as specified in Section 130 (General Permits); and ( )

**b.** The Department, because of time, resource, or other constraints, but through no fault of the permittee, does not issue a new general permit with an effective date on or before the expiration date of the previous permit. ( )

**04. Continuation of Permits During an Appeal**. Whether the conditions of an expired permit remain effective and enforceable during an appeal of a new permit, or an appeal of the denial of a permit application, is

governed by Section 204 (Appeals Process). ( )

**102. OBLIGATION TO OBTAIN AN IPDES PERMIT.**

**01. Persons Who Must Obtain a Permit**. Any person who discharges or proposes to discharge a pollutant from any point source into waters of the United States, or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 40 CFR Part 503 or these rules, and who does not have an IPDES or NPDES permit in effect, shall submit a complete IPDES permit application to the Department, unless the discharge, proposed discharge, or TWTDS: ( )

**a.** Is covered by one (1) or more general permits in compliance with Section 130 (General Permits). Any applicant must complete a notice of intent for any discharge or proposed discharge that is covered by one (1) or more general permits; ( )

**b.** Is excluded from IPDES permit requirements under Subsection 102.05; ( )

**c.** Is by a user to a privately owned treatment works, and the Department, under Section 370 (Pretreatment Standards), does not otherwise require the person to apply for a permit; or ( )

**d.** Is a TWTDS facility that uses or disposes of sewage sludge to which a standard applicable to its sewage sludge use or disposal practices have not been published. Such facilities shall submit limited background information, as specified in Subsection 105.17.o., within one (1) year after publication of applicable standards. ( )

**02. Operator's Duty to Obtain a Permit**. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit. ( )

**03. Permits Under the Clean Water Act Section 405(f)**. All new and currently permitted TWTDS whose sewage sludge use or disposal practices are regulated by 40 CFR Part 503 must submit permit applications according to the applicable schedule in Subsection 105.17. The Department may require permit applications from any TWTDS at any time if the Department determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge. ( )

**04. Designation of Small Municipal Separate Storm Sewer Systems (MS4s)**. DEQ shall designate a small MS4 that is not located in an urbanized area, as determined by the latest Decennial Census by the Bureau of Census, as a regulated small MS4 that must be covered by an IPDES permit if the Department determines that: ( )

**a.** The storm water discharge results in or has the potential to result in exceedance of water quality standards or other significant water quality impacts; or ( )

**b.** The storm water discharge contributes substantially to the pollutant loadings of a physically interconnected municipal separate storm sewer that is regulated by the IPDES storm water program. ( )

**05. Exclusions from Permit**. A person shall not discharge pollutants from any point source into waters of the United States without first obtaining an IPDES permit from the Department or coverage under an IPDES general permit, unless the discharge is excluded from IPDES permit requirements or the discharge is authorized by an IPDES or NPDES permit that continues in effect. The Department will not require persons to obtain IPDES permits for facilities or activities that are not required to obtain NPDES permits from EPA under the Clean Water Act and federal Clean Water Act regulations. Discharges excluded from IPDES permit requirements, but that may be regulated by other state or federal regulations include: ( )

**a.** Any sewage discharge from vessels and any effluent from properly functioning marine engines, laundry, shower and galley sink wastes, or any other discharge incidental to the normal operation of a vessel of the U.S. Armed Forces within the meaning of the Clean Water Act section 312, and a recreational vessel within the meaning of the Clean Water Act section 502(25). None of these exclusions apply to: ( )

i. Rubbish, trash, garbage, or other such materials discharged overboard; nor to ( )

ii. Other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as: ( )

(1) An energy or mining facility; ( )

(2) A storage facility, or when secured to a storage facility; or ( )

(3) When secured to the bed of the waters of the United States for the purposes of mineral or oil exploration or development; ( )

**b.** Any discharge of dredged or fill material into waters of the United States that is regulated under the Clean Water Act section 404; ( )

**c.** Sewage, industrial wastes, or other pollutants discharged into publicly owned treatment works (POTWs) by an indirect discharger who has received a will-serve letter authorizing the discharge to the POTW. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the United States are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works; ( )

**d.** Any discharge in compliance with the instructions of an on-scene coordinator under 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan), or 33 CFR 153.10(e) (Control of Pollution by Oil and Hazardous Substances, Discharge Removal); ( )

**e.** Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands; however, this exclusion does not apply to discharges from concentrated animal feeding operations (CAFO) as defined in 40 CFR 122.23, discharges from concentrated aquatic animal production (CAAP) facilities, discharges to aquaculture projects, and discharges from silvicultural point sources; ( )

**f.** Any return flow from irrigated agriculture; ( )

**g.** Discharges into a privately owned treatment works, except as the Department may otherwise require under Subsection 302.15; and ( )

**h.** Discharges from a water transfer. This exclusion does not apply to pollutants introduced by the water transfer activity itself to the water being transferred. ( )

**103. PERMIT PROHIBITIONS.**
The Department will not issue an IPDES permit for a discharge: ( )

**01. Clean Water Act Compliance**. Unless the conditions of the permit provide for compliance with the applicable requirements of IDAPA 58.01.02, "Water Quality Standards" and 58.01.25 "Rules Regulating the Idaho Pollutant Discharge Elimination System Program"; ( )

**02. EPA Objection**. When the Department has received written objection pursuant to 40 CFR 123.44 from the EPA Regional Administrator to issuance of the permit and until the objections are resolved according to the process identified in the Memorandum of Agreement between EPA and the Department; ( )

**03. Water Quality Requirements**. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states; ( )

**04. Anchorage and Navigation Impaired**. When, in the judgment of the Secretary of the United States Army through the Army Corp Chief of Engineers, anchorage and navigation in or on any of the waters of the

United States would be substantially impaired by the discharge; ( )

**05. Banned Content**. Of any radiological, chemical, or biological warfare agent or high level radioactive waste; ( )

**06. Area Wide Waste Treatment Management Plans**. That is inconsistent with a plan or plan amendment approved under the Clean Water Act section 208(b); or ( )

**07. New Sources or New Dischargers**. For a new source or new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. ( )

**a.** When the owner or operator of a new source or new discharge proposes to discharge into a water segment that does not meet applicable water quality standards, or that is not expected to meet those standards even after the application of the effluent limitations required by Clean Water Act sections 301(b)(1)(A) and (B), and for which the state or interstate agency has performed a pollutant load allocation for the pollutant to be discharged, then the owner or operator must demonstrate that: ( )

i. There are sufficient remaining pollutant load allocations to allow for the discharge; and ( )

ii. The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. ( )

**b.** The Department may waive the submission of the information by the permit applicant required in Subsection 103.07.a. if the Department determines that it already has adequate information to evaluate the request. ( )

**c.** An explanation of the development of limitations to meet the criteria of this section is to be included in the fact sheet to the permit. ( )

**104. PRE-APPLICATION PROCESS.**

Any person who intends to apply for a permit or who proposes to discharge a pollutant into the waters of the United States should contact the Department to schedule a meeting prior to submitting an application to discuss: ( )

**01. IPDES Permit Applicability**. Whether the actions or facility will require an IPDES permit, and whether other suitable permitting options are available; ( )

**02. Application Content**. The IPDES permit application requirements; and ( )

**03. Application Schedule**. The IPDES permit application submittal schedule. ( )

**105. APPLICATION FOR AN INDIVIDUAL IPDES PERMIT.**

**01. Electronic Submittals**. The Department may require an applicant to electronically submit information required by this section, if the Department approves an electronic method of submittal. ( )

**02. Application Retention Schedule**. An applicant must keep records of all data used to complete a permit application and any supplemental information submitted for a period of at least three (3) years from the date the application is signed. ( )

**03. Time to Apply**. Any person required under Subsections 102.01 through 102.03 to obtain an IPDES permit must submit to the Department a complete application for a permit in compliance with the requirements of this subsection. A permit application must be signed and certified as required by Section 090 (Signature Requirements). ( )

**a.** A person proposing a new discharge must submit an application at least one hundred eighty (180) days before the date on which the discharge is to commence, unless the Department has granted permission to submit the application on a later date as specified in Subsections 105.03.e. and f. A facility proposing a new discharge of storm water associated with industrial activity must submit an application one hundred eighty (180) days before that

facility commences industrial activity that may result in a discharge of storm water associated with that industrial activity, unless the Department has granted permission to submit the application on a later date as specified in Subsections 105.03.e. and f. ( )

**b.** Facilities described under 40 CFR 122.26(b)(14)(x) or (b)(15)(i) must submit an application at least ninety (90) days before the date on which construction is to commence unless otherwise required by the terms of an applicable general permit. ( )

**c.** Any TWTDS that commences operations after promulgation of any applicable "standard for sewage sludge use or disposal" must submit an application to the Department at least one hundred eighty (180) days prior to the date proposed for commencing operations. ( )

**d.** A person discharging from a permitted facility with a currently effective permit must 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 Subsections 105.03.e. and f. ( )

**e.** 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. ( )

**f.** The application will not 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. ( )

**04. Individual Permit Application Forms**. An applicant must submit an application on one (1) or more Department-approved forms appropriate to the number and type of discharge or outfall at the applicant's facility. A person required by Subsections 102.01 through 102.03 to obtain an individual IPDES permit must submit an application to the Department providing the information required by this subsection and Subsections 105.05 through 105.19, as applicable. The application must be submitted on one (1) or more of the EPA forms listed in this subsection, or on the Department equivalent of the listed EPA form: ( )

**a.** All applicants, other than a POTW, TWTDS, and pesticide applicators (see Subsection 105.06), EPA Form 1 and the following additional forms, if applicable: ( )

i. Applicants for a concentrated animal feeding operation (CAFO; see Subsection 105.09) or concentrated aquatic animal production (CAAP; see Subsection 105.10) facility, EPA Form 2B; ( )

ii. Applicants for an existing industrial facility, including manufacturing facilities, commercial facilities, mining activities, and silviculture activities (see Subsection 105.07), EPA Form 2C; ( )

iii. Applicants for a new industrial facility that discharges process wastewater (see Subsection 105.16), EPA Form 2D; ( )

iv. Applicants for a new or existing industrial facility that discharges only non-process wastewater (see Subsection 105.08.a.), EPA Form 2E; ( )

v. Applicants for a new or existing facility whose discharge is composed entirely of storm water associated with industrial activity (see Subsection 105.19), EPA Form 2F unless the applicant is exempted by 40 CFR 122.26(c)(1)(ii). If the applicant's discharge is composed of storm water and non-storm water (see Subsections 105.07, 105.08, and 105.16), EPA Forms 2C, 2D, or 2E, as appropriate, are also required; or ( )

vi. Applicants that operate a sludge-only facility (see Subsection 105.17), that currently does not have and is not applying for, an IPDES permit for a direct discharge to a surface water body, EPA Form 2S; ( )

**b.** For an applicant that is a new or existing POTW (see Subsections 105.11 through 105.15): ( )

i. EPA Form 2A; and ( )

ii. EPA Form 2S, if applicable. ( )

**05. Application Information for All Dischargers**. In addition to the application information required for specific dischargers, the Department may require the submittal of any information necessary to ensure compliance with Section 103 (Permit Prohibitions). Such information includes, but is not limited to: ( )

**a.** Information required to determine compliance with the antidegradation policy and antidegradation implementation provisions set forth in IDAPA 58.01.02.051 and 052, "Water Quality Standards"; ( )

**b.** Information required to determine compliance with the mixing zone provisions set forth in IDAPA 58.01.02.060, "Water Quality Standards"; or ( )

**c.** Information necessary for the Department to authorize a compliance schedule under IDAPA 58.01.02.400, "Water Quality Standards." ( )

**06. Application Requirements for Dischargers Other than Treatment Works Treating Domestic Sewage (TWTDS), Publicly Owned Treatment Works (POTWs), and Pesticide Applicators**. An applicant for an IPDES permit other than a POTW and other TWTDS, must provide the following information to the Department, using the appropriate forms specified in Subsection 105.04: ( )

**a.** The applicant's activity that requires an IPDES permit; ( )

**b.** The name, mailing address, e-mail address, and location of the facility for which the application is submitted; ( )

**c.** Up to four (4) Standard Industrial Classification (SIC) codes that best identify the principal products or services provided by the facility; ( )

**d.** The operator's name, mailing address, e-mail address, telephone number, ownership status, Employer Identification Number (EIN) or Department equivalent, and status as federal, state, private, public, or other entity; ( )

**e.** A statement that the facility is located in Indian country, if applicable; ( )

**f.** A listing of all permits or construction approvals received or applied for under any of the following programs: ( )

i. Hazardous waste management program under IDAPA 58.01.05, "Rules and Standards for Hazardous Waste"; ( )

ii. Underground injection control (UIC) program under the Idaho Department of Water Resources UIC program at IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells"; ( )

iii. IPDES program under IDAPA 58.01.25 "Rules Regulating the Idaho Pollutant Discharge Elimination System Program"; ( )

iv. Prevention of significant deterioration (PSD) program under IDAPA 58.01.01, "Rules for Control of Air Pollution in Idaho"; ( )

v. Nonattainment program under IDAPA 58.01.01, "Rules for Control of Air Pollution in Idaho"; ( )

vi. National emission standards for hazardous pollutants (NESHAPS) preconstruction approval under IDAPA 58.01.01, "Rules for Control of Air Pollution in Idaho"; ( )

vii. Dredge or fill permits under the Clean Water Act section 404; or ( )

viii. Other relevant environmental permits, programs or activities, including those subject to state jurisdiction, approval, and permits; and ( )

**g.** A topographic map, or other map if a topographic map is unavailable, extending one (1) mile beyond the property boundaries of the source, depicting: ( )

i. The facility and each of its intake and discharge structures; ( )

ii. The location of the facility's hazardous waste treatment, storage, or disposal areas; ( )

iii. The location of each well where fluids from the facility are injected underground; and ( )

iv. The location of wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known by the applicant to exist in the map area; and ( )

**h.** A brief description of the nature of the business; ( )

**i.** An indication of whether the facility uses cooling water and the source of the cooling water; and ( )

**j.** An indication of whether the facility is requesting any of the variances in Subsection 310.01 if known at the time of application. ( )

**07. Application Requirements for Existing Manufacturing, Commercial, Mining and Silviculture Dischargers**. ( )

**a.** Except for a facility subject to the requirements in Subsection 105.08, an applicant for an IPDES permit for an existing discharge from a manufacturing, commercial, mining, or silviculture facility or activity must provide the following information to the Department, using the applicable forms specified in Subsection 105.04: ( )

i. For each outfall: ( )

(1) The latitude and longitude to the nearest second and the name of each receiving water; ( )

(2) A narrative identifying each type of process, operation, or production area that contributes wastewater to the effluent from that outfall, including process wastewater, cooling water, and storm water runoff; processes, operations, or production areas may be described in general terms, such as dye-making reactor or distillation tower; ( )

(3) The average flow that each process contributes and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge; ( )

(4) For a privately owned treatment works, the identity of each user of the treatment works; and ( )

(5) The average flow of point sources composed of storm water. For this subsection, the average flow may be estimated, and the basis for the rainfall event with the method of estimation must be submitted; ( )

ii. A description of the frequency, duration, and flow rate of each discharge occurrence for any of the discharges described in Subsections 105.07.a.i(2) through (5) that are intermittent or seasonal, except for storm water runoff, spillage, or leaks; ( )

iii. A reasonable measure of the applicant's actual production reported in the units used in the

applicable effluent guideline, if an effluent guideline promulgated under the Clean Water Act section 304 applies to the applicant and is expressed in terms of production or other measure of operation. The reported measure must reflect the actual production of the facility as required by Subsection 303.02.b.; ( )

iv. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading, or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates; ( )

v. A listing of any toxic pollutant that the applicant currently uses or manufactures as an intermediate or final product or byproduct, except that the Department may waive or modify this requirement; ( )

(1) If the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant; and ( )

(2) The Department has adequate information to issue the permit; ( )

vi. An identification of any biological toxicity tests that the applicant knows or has reason to believe have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge; and ( )

vii. The identity of each laboratory or firm and the analyses performed, if a contract laboratory or consulting firm performed any of the analyses required by Subsection 105.07.c. through m. ( )

**b.** The owner or operator of a facility subject to this subsection must submit, with an application, a line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. ( )

i. In the line drawing, similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under Subsections 105.07.a.i(2) through (5). ( )

ii. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. ( )

iii. If a water balance cannot be determined for certain activities, the applicant may instead provide a pictorial description of the nature and amount of any sources of water and any collection and treatment measures. ( )

**c.** In addition to the items of information listed in Subsections 105.07.a. through 105.07.b., and except for information on storm water discharges required by 40 CFR 122.26, an applicant for an IPDES permit for an existing facility described in Subsection 105.07.a. must: ( )

i. Collect, prepare, and submit information regarding the effluent characteristics and discharge of pollutants specified in this section; and ( )

ii. When quantitative data for a pollutant are required, collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136, except that when no analytical method is approved, the applicant may use any suitable method but must describe the method. ( )

**d.** An applicant under this subsection must: ( )

i. Use grab samples in providing information regarding cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including E. coli), enterococci (previously known as fecal streptococcus), and volatile organics; temperature, pH, dissolved oxygen, and residual chlorine effluent data may be obtained from grab samples or from calibrated and properly maintained continuous monitors; ( )

ii. For all other pollutants, use twenty-four (24) hour composite samples, unless specified otherwise at 40 CFR Part 136, with a minimum of four (4) grab samples, except that a minimum of one (1) grab sample may be

taken for effluents from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours; ( )

**e.** For purposes of Subsection 105.07.c., exceptions to testing and data provision requirements for effluent characteristics include: ( )

i. When an applicant has two (2) or more outfalls with substantially identical effluents, the Department may allow the applicant to test only one (1) outfall and report that the quantitative data also apply to the substantially identical outfall; and ( )

ii. An applicant's duty under Subsections 105.07.j., k., and l. to provide quantitative data for certain pollutants known or believed to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report that those pollutants are present. ( )

**f.** For storm water discharges, associated with an existing facility described in Subsection 105.07.a., from storm events which yield more than one-tenth (0.1) inch of rainfall: ( )

i. All samples must be collected from the discharge resulting from a storm event and at least seventy-two (72) hours after the previously measurable storm event exceeding one-tenth (0.1) inch rainfall. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed fifty percent (50%) from the average or median rainfall event in that area; and ( )

ii. For all applicants, a flow-weighted composite sample must be taken for either the entire discharge or for the first three (3) hours of the discharge, except for the following: ( )

(1) The sampling may be conducted with a continuous sampler or as a combination of a minimum of three (3) sample aliquots taken in each hour of discharge for the entire discharge or for the first three (3) hours of the discharge, with each aliquot being separated by a minimum period of fifteen (15) minutes. If the Department approves, an applicant for a storm water discharge permit under Subsection 105.18 may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots; ( )

(2) A minimum of one (1) grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours; or ( )

(3) For a flow-weighted composite sample, only one (1) analysis of the composite of aliquots is required; ( )

iii. For samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty (30) minutes, or as soon thereafter as practicable, of the discharge for all pollutants specified in Subsection 105.19 except that for all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 40 CFR 122.26(a) through (b) and (e) through (g), Subsections 105.18 and 105.19, but not for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including *E. coli*), and enterococci (previously known as fecal streptococcus; ( )

iv. The Department may, on a case-by-case basis, allow or establish appropriate site-specific sampling procedures or requirements, including: ( )

(1) Sampling locations; ( )

(2) The season in which the sampling takes place; ( )

(3) The minimum duration between the previous measurable storm event and the sampled storm event; ( )

(4) The minimum or maximum level of precipitation required for an appropriate storm event; ( )

(5) The form of precipitation sampled, whether snow melt or rain fall; ( )

(6) Protocols for collecting samples under 40 CFR Part 136; and ( )

(7) Additional time for submitting data; and ( )

v. An applicant is deemed to know or have reason to believe that a pollutant is present in an effluent if an evaluation of the expected use, production, or storage of the pollutant, or any previous analyses for the pollutant, show that pollutant's presence. ( )

**g.** Unless a reporting requirement is waived under Subsection 105.07.h., every applicant subject to this subsection must report quantitative data for the following pollutants for every outfall: ( )

i. 5-day biochemical oxygen demand (BOD5); ( )

ii. Chemical oxygen demand (COD); ( )

iii. Total organic carbon (TOC); ( )

iv. Total suspended solids (TSS); ( )

v. Ammonia, as N; ( )

vi. Temperature (both winter and summer); and ( )

vii. pH. ( )

**h.** The Department may waive the reporting requirements under Subsection 105.07.g. for individual point sources or for a particular industry category for one (1) or more of the pollutants listed in Subsection 105.07.g. if the applicant demonstrates that information adequate to support issuance of a permit can be obtained with less stringent requirements. ( )

**i.** Except as provided in Subsection 105.07.o., an applicant with an existing facility described in Subsection 105.07.a. that has processes that qualify in one (1) or more of the primary industry categories shown in Appendix A to 40 CFR Part 122 contributing to a discharge, must report quantitative data for pollutants in each outfall containing process wastewater as follows: ( )

i. Data for the organic toxic pollutants listed in Table II of Appendix D to 40 CFR Part 122 in the fractions designated in Table I of Appendix D to 40 CFR Part 122. For purposes of this subsection: ( )

(1) Table II of Appendix D to 40 CFR Part 122, lists the organic toxic pollutants in each fraction that result from the sample preparation required by the analytical procedure that uses gas chromatography/mass spectrometry; and ( )

(2) If the Department determines that an applicant falls within an industrial category for the purposes of selecting fractions for testing, that determination does not establish the applicant's category for any other purpose; see Notes 2 and 3 to 40 CFR 122.21; and ( )

ii. Data for the toxic metals, cyanide, and total phenols listed in Table III of Appendix D to 40 CFR Part 122. ( )

**j.** An applicant under this section must disclose whether the applicant knows or has reason to believe that any of the conventional and nonconventional pollutants in Table IV of Appendix D to 40 CFR Part 122 are discharged from each outfall. If an applicable effluent limitations guideline limits the pollutant either directly or indirectly by express limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged that is not limited in an effluent limitations guideline, the applicant must either report quantitative data or

briefly describe the reasons the pollutant is expected to be discharged. ( )

**k.** An applicant under this subsection must disclose whether the applicant knows or has reason to believe that any of the organic toxic pollutants listed in Table II or the toxic metals, cyanide, or total phenols listed in Table III of Appendix D to 40 CFR Part 122 for which quantitative data are not otherwise required under Subsection 105.07.i., are discharged from each outfall. Unless an applicant qualifies as a small business under Subsection 105.07.o., the applicant must: ( )

i. Report quantitative data for every pollutant expected to be discharged in concentrations of ten (10) parts per billion or greater; ( )

ii. Report quantitative data for acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, if any of these four (4) pollutants are expected to be discharged in concentrations of one hundred (100) parts per billion or greater; and ( )

iii. For every pollutant expected to be discharged in concentrations less than ten (10) parts per billion, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, in concentrations less than one hundred (100) parts per billion, either submit quantitative data, or briefly describe the reasons the pollutant is expected to be discharged and submit any supporting documentation. ( )

**l.** An applicant under this subsection must disclose whether the applicant knows or has reason to believe that asbestos or any of the hazardous substances listed in Table V of Appendix D to 40 CFR Part 122 are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged and report any quantitative data it has for any pollutant. ( )

**m.** An applicant under this subsection must disclose and report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7, 8-tetrachlorodibenzo-p-dioxin (TCDD) if the applicant: ( )

i. Uses or manufactures the following: ( )

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); ( )

(2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); ( )

(3) 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); ( )

(4) o,o-dimethyl o-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); ( )

(5) 2,4,5-trichlorophenol (TCP); or ( )

(6) Hexachlorophene (HCP); or ( )

ii. Knows or has reason to believe that TCDD is or may be present in an effluent. ( )

**n.** Where quantitative data are required in Subsections 105.07.c. through m., existing data may be used, if available, in lieu of sampling done solely for the purpose of the application, provided that: ( )

i. All data requirements are met; sampling was performed, collected, and analyzed no more than four and one-half (4 ½) years prior to submission; ( )

ii. All data are representative of the discharge; and ( )

iii. All available representative data are considered in the values reported. ( )

**o.** An applicant under this subsection is exempt from the quantitative data requirements in Subsections 105.07.i. or 105.07.j. for the organic toxic pollutants listed in Table II of Appendix D to 40 CFR Part

122, if that applicant qualifies as a small business under one (1) of the following criteria: ( )

i. The applicant is a coal mine with an expected total annual production of less than one hundred thousand (100,000) tons per year; or ( )

ii. The applicant has gross total annual sales averaging less than two hundred eighty-seven thousand, three hundred dollars ($287,300) per year in 2014 dollars. ( )

**p.** In addition to the information reported on the application form, an applicant under this subsection must provide at the Department's request, any other information that may be reasonably required to assess the discharges of the facility and to determine whether to issue an IPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and information required to determine the cause of the toxicity. ( )

**08. Application Requirements for New or Existing Manufacturing, Commercial, Mining, and Silviculture Facilities that Discharge only Non-Process Wastewater**. ( )

**a.** An applicant that is a manufacturing, commercial, mining, or silvicultural discharger that discharges only non-process wastewater not regulated by an effluent limitations guideline or new source performance standard must provide the following information to the Department for all discharges, except for storm water discharges, using the applicable forms specified in Subsection 105.04: ( )

i. The number of each outfall, the latitude and longitude to the nearest second, and the name of each receiving water; ( )

ii. For a new discharger, the date of expected commencement of discharge; ( )

iii. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or non-contact cooling water; ( )

iv. An identification of cooling water additives, if any, that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available; ( )

v. Effluent characteristics prepared and submitted as described in Subsections 105.08.b. and 105.08.c.; ( )

vi. A description of the frequency of flow and duration of any seasonal or intermittent discharge, except for storm water runoff, leaks, or spills; ( )

vii. A brief description of any treatment system used or to be used; ( )

viii. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits under Subsection 303.07; and ( )

ix. The signature of the certifying official under Section 090 (Signature Requirements). ( )

**b.** Except as otherwise provided in Subsections 105.08.d. through g., an application for a discharger described in Subsection 105.08.a. must include quantitative data for the following pollutants or parameters: ( )

i. 5-day biochemical oxygen demand (BOD5); ( )

ii. Total suspended solids (TSS); ( )

iii. Fecal coliform (including *E. coli*), if believed present or if sanitary waste is or will be discharged; ( )

iv. Total residual chlorine (TRC), if chlorine is used; ( )

v. Oil and grease; ( )

vi. Chemical oxygen demand (COD), if non-contact cooling water is or will be discharged; ( )

vii. Total organic carbon (TOC), if non-contact cooling water is or will be discharged; ( )

viii. Ammonia, as N; ( )

ix. Discharge flow; ( )

x. pH; and ( )

xi. Temperature, both in winter and summer, respectively. ( )

**c.** For purposes of the data required under Subsection 105.08.b.: ( )

i. Grab samples must be used for oil and grease, fecal coliform (including *E. coli*), and volatile organics. Temperature, pH, and TRC effluent data may be obtained from grab samples or from calibrated and properly maintained continuous monitors; ( )

ii. Twenty-four (24) hour composite samples must be used for pollutants listed in Subsection 105.08.b., other than those specified in Subsection 105.08.c.i., unless specified otherwise at 40 CFR Part 136. Twenty-four (24) hour composite samples must, at a minimum, be composed of four (4) grab samples unless specified otherwise at 40 CFR Part 136. For a composite sample, only one (1) analysis of the composite aliquots is required; ( )

iii. The quantitative data may be collected over the past three hundred sixty-five (365) days, as long as the data is representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken; and ( )

iv. The applicant must collect and analyze samples in accordance with 40 CFR Part 136. ( )

**d.** The Department may waive the testing and reporting requirements for any of the pollutants or flow listed in Subsection 105.08.c. if the applicant requests a waiver with its application or earlier, and demonstrates that information adequate to support permit issuance can be obtained through less stringent requirements. ( )

**e.** If the applicant is a new discharger, the applicant must: ( )

i. Complete and submit Item IV of EPA Form 2E, or the Department equivalent, according to Subsection 105.04.a.iv., by providing quantitative data in compliance with that section no later than two (2) years after the discharge commences, except that the applicant need not complete those portions of Item IV requiring tests that the applicant has already performed and reported under the discharge monitoring requirements of its IPDES or NPDES permit; and ( )

ii. Include estimates and the source of each estimate instead of sampling data for the pollutants or parameters listed in Subsection 105.08.b.; ( )

**f.** For purposes of the data required under this subsection, all pollutant levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature. Submittal of all estimated data must be accompanied by documents supporting the estimated value. ( )

**g.** An applicant's duty, under Subsections 105.08.b., c., and e., to provide quantitative data or estimates of certain pollutants does not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report the presence of those pollutants. If the requirements of Subsection 303.07 are met, net credit may be provided for the presence of pollutants in intake water. ( )

**09. Application Requirements for New and Existing Concentrated Animal Feeding Operations (CAFO)**. An applicant for an IPDES permit for a new or existing CAFO, as defined in 40 CFR 122.23(b) must provide the following information to the Department, using the applicable forms specified in Subsection 105.04: ( )

**a.** The name of the owner or operator; ( )

**b.** The facility location and mailing addresses; ( )

**c.** Latitude and longitude of the production area to the nearest second, measured at the entrance to the production area; ( )

**d.** A topographic map of the geographic area in which the concentrated animal feeding operation is located, showing the specific location of the production area; ( )

**e.** Specific information about the number and type of animals, including, if applicable: beef cattle, broilers, layers, swine weighing fifty-five (55) pounds or more, swine weighing less than fifty-five (55) pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, or other animals, whether in open confinement or housed under roof; ( )

**f.** The type of containment and total capacity in tons or gallons of any anaerobic lagoon, roofed storage shed, storage pond, under-floor pit, above-ground storage tank, below-ground storage tank, concrete pad, impervious soil pad, or other structure or area used for containment and storage of manure, litter, and process wastewater; ( )

**g.** The total number of acres available and under the applicant's control for land application of manure, litter, or process wastewater; ( )

**h.** Estimated amounts of manure, litter, and process wastewater generated per year in tons or gallons; ( )

**i.** Estimated amounts of manure, litter, and process wastewater transferred to other persons per year in tons or gallons; and ( )

**j.** A nutrient management plan that has been completed and will be implemented upon the date of permit coverage. A nutrient management plan must meet, at a minimum, the requirements specified in 40 CFR 122.42(e), including for all CAFOs subject to 40 CFR 412.30 through 412.37, 412.40 through 412.47, or the requirements of 40 CFR 412.4(c), as applicable. ( )

**10. Application Requirements for New and Existing Concentrated Aquatic Animal Production (CAAP) Facilities**. An applicant for an IPDES permit for a new or existing CAAP facility must provide the following information, using the applicable forms specified in Subsection 105.04: ( )

**a.** The maximum daily and average monthly flow from each outfall; ( )

**b.** The number of ponds, raceways, and similar structures; ( )

**c.** The name of the receiving water and the source of intake water; ( )

**d.** For each species of aquatic animal, the total yearly and maximum harvestable weight; and ( )

**e.** The calendar month of maximum feeding and the total mass of food fed during that month. ( )

**11. Application Requirements for New and Existing POTWs and Other Dischargers Designated by the Department**. ( )

**a.** Except as provided in Subsection 105.11.b., an applicant that is a POTW and any other discharger designated by the Department must provide the information in this subsection, using the applicable forms specified in Subsection 105.04.b. An applicant under this subsection must submit all information available at the time of application; however, they may provide information by referencing information previously submitted to the Department. ( )

**b.** The Department may waive any requirement of this subsection if it has access to substantially identical information or if that information is not of material concern for a specific permit, if approved by the EPA Regional Administrator. The waiver request to the Regional Administrator must include the Department's justification for the waiver. A Regional Administrator's disapproval of a Department's proposed waiver does not constitute final agency action, but does provide notice to the state and permit applicant(s) that EPA may object to any state-issued permit issued in the absence of the required information. ( )

**c.** An applicant under this subsection must provide: ( )

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

ii. Name, mailing address, e-mail address, EIN or Department equivalent, 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: ( )

(1) Hazardous waste management program under IDAPA 58.01.05, "Rules and Standards for Hazardous Waste"; ( )

(2) Underground injection control (UIC) program under the Idaho Department of Water Resources UIC program at IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells"; ( )

(3) IPDES program under IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program"; ( )

(4) Prevention of significant deterioration (PSD) program under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; ( )

(5) Nonattainment program under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; ( )

(6) National emission standards for hazardous pollutants (NESHAPS) preconstruction approval under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; ( )

(7) Dredge or fill permits under the Clean Water Act section 404; ( )

(8) Sludge Management Program under IDAPA 58.01.16.650, "Wastewater Rules," and Section 380 (Sewage Sludge) of these rules; and ( )

(9) Other relevant environmental permits, programs, or activities, including those subject to state jurisdiction, approval, and permits; ( )

iv. The name, population, and EDUs 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; ( )

v. A statement whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country; ( )

vi. The facility's design flow rate, or the wastewater flow rate the plant was built to handle, annual average daily flow rate, and maximum daily flow rate for each of the previous three (3) years; ( )

vii. A statement identifying the types of collection systems, either separate sanitary sewers or combined storm and sanitary sewers, used by the treatment works, and an estimate of the percent of sewer line that each type comprises; ( )

viii. The following information for outfalls to waters of the United States and other discharge or disposal methods: ( )

(1) For effluent discharges to waters of the United States, the total number and types of outfalls including treated effluent, combined sewer overflows, bypasses, constructed emergency overflows; ( )

(2) For wastewater discharged to surface impoundments, the location of each surface impoundment, the average daily volume discharged to each surface impoundment, and a statement whether the discharge is continuous or intermittent; ( )

(3) For wastewater applied to the land, the location of each land application site, the size in acres of each land application site, the average daily volume in gallons per day applied to each land application site, and a statement whether the land application is continuous or intermittent; ( )

(4) For effluent sent to another facility for treatment prior to discharge, the means by which the effluent is transported, the name, mailing address, e-mail address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant, the name, mailing address, e-mail address, contact person, phone number, and IPDES or NPDES permit number, if any, of the receiving facility, and the average daily flow rate from this facility into the receiving facility in million gallons per day (MGD); and ( )

(5) For wastewater disposed of in a manner not included in Subsections 105.11.c.viii(1) through (4), including underground percolation and underground injection, a description of the disposal method, the location and size of each disposal site, if applicable, the annual average daily volume in gallons per day disposed of by this method, and a statement whether disposal by this method is continuous or intermittent; and ( )

ix. The name, mailing address, e-mail address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the POTW facility. ( )

x. An indication of whether applicant is operating under or requesting to operate under a variance as specified in Subsection 310.02 if known at the time of application. ( )

**d.** In addition to the information described in Subsection 105.11.c., an applicant under this subsection with a design flow greater than or equal to zero point one (0.1) million gallons per day (MGD) must provide: ( )

i. The current average daily volume in gallons per day of inflow and infiltration, and a statement describing steps the facility is taking to minimize inflow and infiltration; ( )

ii. A topographic map, or other map if a topographic map is unavailable, extending at least one (1) mile beyond property boundaries of the treatment plant including all unit processes, and showing: ( )

(1) The treatment plant area and unit processes; ( )

(2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant, including outfalls from bypass piping, if applicable; ( )

(3) Each well where fluids from the treatment plant are injected underground; ( )

(4) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within one-quarter (1/4) mile of the property boundaries of the treatment works; ( )

(5) Sewage sludge management facilities including on-site treatment, storage, and disposal sites; and ( )

(6) Each location at which waste classified as hazardous under IDAPA 58.01.05, "Rules and Standards for Hazardous Waste," enters the treatment plant by truck, rail, or dedicated pipe; ( )

iii. A process flow diagram or schematic as follows: ( )

(1) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system, including a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points and approximate daily flow rates between treatment units; and ( )

(2) A narrative description of the diagram; and ( )

iv. The following information regarding scheduled improvements: ( )

(1) The outfall number of each affected outfall; ( )

(2) A narrative description of each required improvement; ( )

(3) Scheduled dates for commencement and completion of construction, commencement of discharge and attainment of operational level, and actual completion date for any event listed in this subsection that has been completed; and ( )

(4) A description of permits and authorizations concerning other federal and state requirements. ( )

**e.** An applicant under this subsection must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable: ( )

i. For each outfall: ( )

(1) The outfall number; ( )

(2) The county, and city or town in which the outfall is located; ( )

(3) The latitude and longitude, to the nearest second; ( )

(4) The distance from shore and depth below surface; ( )

(5) The average daily flow rate, in million gallons per day (MGD); ( )

(6) If the outfall has a seasonal or periodic discharge, the number of times per year the discharge occurs, the duration of each discharge, the flow of each discharge, and the months in which discharge occurs; and ( )

(7) A statement whether the outfall is equipped with a diffuser and the type of diffuser used, such as high-rate; ( )

ii. For each outfall discharging effluent to waters of the United States, the following receiving water information, if the information is available: ( )

(1) The name of each receiving water; ( )

(2) The critical flow of each receiving stream; and ( )

(3) The total hardness of the receiving stream at critical low flow; and ( )

iii. For each outfall discharging to waters of the United States, the following information describing the treatment of the discharges: ( )

(1) The highest level of treatment, including primary, equivalent to secondary, secondary, advanced, or other treatment level provided for: ( )

(a) The design biochemical oxygen demand removal percentage; ( )

(b) The design suspended solids removal percentage; ( )

(c) The design phosphorus removal percentage; ( )

(d) The design nitrogen removal percentage; and ( )

(e) Any other removals that an advanced treatment system is designed to achieve; and ( )

(2) A description of the type of disinfection used, and a statement whether the treatment plant de-chlorinates, if disinfection is accomplished through chlorination. ( )

**f.** In addition to Subsection 105.11.a., and except as provided in Subsection 105.11.h., an applicant under this subsection must undertake sampling and analysis and submit effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the United States, except for combined sewer overflows, including the following if applicable: ( )

i. Sampling and analysis for the pollutants listed in Appendix J, Table 1A to 40 CFR Part 122; ( )

ii. For an applicant with a design flow greater than or equal to zero point one (0.1) million gallons per day (MGD), sampling and analysis for the pollutants listed in Appendix J, Table 1 to 40 CFR Part 122, except that a facility that does not use chlorine for disinfection, does not use chlorine elsewhere in the treatment process, and has no reasonable potential to discharge chlorine in the facility's effluent, is not required to sample or analyze chlorine; ( )

iii. Sampling and analysis for the pollutants listed in Appendix J, Table 2 to 40 CFR Part 122 and for any other pollutants for which the state or EPA has established water quality standards applicable to the receiving waters if the facility is: ( )

(1) A POTW that has a design flow rate equal to or greater than one (1) million gallons per day (MGD); ( )

(2) A POTW that has an approved pretreatment program; ( )

(3) A POTW that is required to develop a pretreatment program; or ( )

(4) Any POTW, as required by the Department to ensure compliance with these rules; ( )

iv. Sampling and analysis for additional pollutants, as the Department may require, on a case-by-case basis; ( )

v. Data from a minimum of three (3) samples taken within four and one-half (4 ½) years before the date of the permit application; to meet this requirement: ( )

(1) Samples must be representative of the seasonal variation in the discharge from each outfall; ( )

(2) Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application; and ( )

(3) Additional samples may be required by the Department on a case-by-case basis; and ( )

vi. All existing data for pollutants specified in Subsections 105.11.f.i. through iv. collected within four and one-half (4 ½) years of the application. This data must be included in the pollutant data summary submitted by the applicant, except that if the applicant samples for a specific pollutant on a monthly or more frequent basis, only the data collected for that pollutant within one (1) year of the application must be provided. ( )

**g.** To meet the information requirements of Subsection 105.11.f., an applicant must: ( )

i. Collect samples of effluent and analyze the samples for pollutants in accordance with analytical methods approved under 40 CFR Part 136 unless an alternative is specified in the existing IPDES or NPDES permit; ( )

ii. Use the following methods: ( )

(1) Grab samples for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including *E. coli*), and volatile organics. Temperature, pH, dissolved oxygen, and residual chlorine data may be obtained from grab samples or from calibrated and properly maintained continuous monitors; ( )

(2) Twenty-four (24) hour composite samples for all other pollutant, unless specified otherwise at 40 CFR Part 136, using a minimum of four (4) grab samples; for a composite sample, only one (1) analysis of the composite of aliquots is required; and ( )

iii. Provide at least the following information for each parameter: ( )

(1) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values; ( )

(2) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value; ( )

(3) The analytical method used; and ( )

(4) The threshold level, such as the method detection limit, minimum level, or other designated method endpoint for the analytical method used; and ( )

iv. Report metals as total recoverable, unless the Department requires otherwise. ( )

**h.** When an applicant under this subsection has two (2) or more outfalls with substantially identical effluent discharging to the same receiving water segment, the Department may, on a case-by-case basis, allow the applicant to submit sampling data for only one (1) outfall. The Department may also allow an applicant to composite samples from one (1) or more outfalls that discharge into the same mixing zone, pursuant to IDAPA 58.01.02, "Water Quality Standards." For POTWs applying prior to commencement of discharge, data must be submitted no later than twenty-four (24) months after the commencement of discharge. ( )

**12. Whole Effluent Toxicity (WET) Monitoring for POTWs**. ( )

**a.** An applicant for a permit under Subsection 105.11 must submit information on effluent monitoring for WET, including an identification of any WET tests conducted during the four and one-half (4 ½) years before the date of the application on any of the applicant's discharges or on any receiving water near the discharge. For POTWs applying prior to commencement of discharge, data must be submitted no later than twenty-four (24) months after the

commencement of discharge. ( )

**b.** An applicant under Subsection 105.11 must submit to the Department, in compliance with Subsections 105.12.c. through f., the results of valid WET tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows, if the applicant: ( )

i. Has a design flow rate greater than or equal to one (1) million gallons per day (MGD); ( )

ii. Has an approved pretreatment program or is required to develop a pretreatment program; or ( )

iii. Is required to comply with this subsection by the Department, based on consideration of the following factors: ( )

(1) The variability of the pollutants or pollutant parameters in the POTW effluent based on chemical-specific information, the type of treatment plant, and types of industrial contributors; ( )

(2) The ratio of effluent flow to receiving stream flow; ( )

(3) Existing controls on point or non-point sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW; ( )

(4) Receiving water characteristics, including possible or known water quality impairment, and whether the POTW discharges to a water designated as an outstanding natural resource water; or ( )

(5) Other considerations, including the history of toxic impacts and compliance problems at the POTW that the Department determines could cause or contribute to adverse water quality impacts. ( )

**c.** When an applicant under Subsection 105.11 has two (2) or more outfalls with substantially identical effluent discharging to the same receiving water segment, the Department may, on a case-by-case basis, allow the applicant to submit whole effluent toxicity data for only one (1) outfall. The Department may also allow an applicant to composite samples from one (1) or more outfalls that discharge into the same mixing zone. ( )

**d.** An applicant under Subsection 105.12.b. that is required to perform WET testing must provide: ( )

i. Results of a minimum of four (4) quarterly tests for a year, from the year preceding the permit application or results from four (4) tests performed at least annually in the four and one-half (4 ½) year period before the application, if the results show no appreciable toxicity using a safety factor determined by the Department; ( )

ii. The number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance; ( )

iii. The results using the form provided by the Department, or test summaries, if available and comprehensive, for each WET test conducted under this subsection for which the information has not been reported previously to the Department; ( )

iv. For WET data submitted to the Department within four and one-half (4 ½) years before the date of the application, the dates on which the data were submitted and a summary of the results; and ( )

v. Any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any WET test conducted within the past four and one-half (4 ½) years revealed toxicity. ( )

**e.** An applicant under Subsection 105.11 must conduct tests with no less than two (2) species, including fish, invertebrate, or plant, and test for acute or chronic toxicity, depending on the range of receiving water

dilution. Unless the Department directs otherwise, an applicant must conduct acute or chronic testing based on the following dilutions: ( )

i. Acute toxicity testing if the dilution of the effluent is greater than a ratio of one thousand to one (1,000:1) at the edge of the mixing zone; ( )

ii. Acute or chronic toxicity testing, if the dilution of the effluent is between a ratio of one hundred to one (100:1) and one thousand to one (1,000:1) at the edge of the mixing zone; acute testing may be more appropriate at the higher end of this range (one thousand to one (1,000:1)), and chronic testing may be more appropriate at the lower end of this range (one hundred to one (100:1)); or ( )

iii. Chronic testing if the dilution of the effluent is less than a ratio of one hundred to one (100:1) at the edge of the mixing zone. ( )

**f.** For purposes of the WET testing required by this section, an applicant must conduct testing using methods approved under 40 CFR Part 136. ( )

**13. Application Requirements for POTWs Receiving Industrial Discharges**. ( )

**a.** An applicant for an IPDES permit as a POTW under Subsection 105.11 must state in its application the number of significant industrial users (SIU) and non-significant categorical industrial users (NSCIU), as defined at 40 CFR 403.3(v), including SIUs and NSCIUs that truck or haul waste, discharging to the POTW. A POTW with one (1) or more SIUs must provide the following information for each SIU that discharges to the POTW: ( )

i. The name and mailing address of the SIU; ( )

ii. A description of all industrial processes that affect or contribute to the SIU's discharge; ( )

iii. The principal products and raw materials of each SIU that affects or contributes to that SIU's discharge; ( )

iv. The average daily volume of wastewater discharged by the SIU, indicating the amount attributable to process flow and non-process flow; ( )

v. A statement whether the SIU is subject to local limits; ( )

vi. A statement whether the SIU is subject to one (1) or more categorical standards, and if so, under which category and subcategory; and ( )

vii. A statement whether any problems at the POTW, including upsets, pass-through, or interference have been attributed to the SIU in the past four and one-half (4 ½) years. ( )

**b.** The information required in Subsection 105.13.a. may be waived by the Department for a POTW with a pretreatment program if the applicant has submitted either of the following that contains information substantially identical to the information required in Subsection 105.13.a.: ( )

i. An annual report submitted within one (1) year of the application; or ( )

ii. A pretreatment program. ( )

**14. Application Requirements for POTWs Receiving Discharges from Hazardous Waste Generators and from Waste Cleanup or Remediation Sites**. ( )

**a.** A POTW receiving hazardous or corrective action wastes or wastes generated at another type of cleanup or remediation site must provide the following information: ( )

i. If the POTW receives, or has been notified that it will receive by truck, rail, or dedicated pipe, any

wastes that are regulated as hazardous wastes under 40 CFR Part 261 and IDAPA 58.01.05, "Rules and Standards for Hazardous Waste," the applicant must report the following: ( )

(1) The method of delivery, including by truck, rail, or dedicated pipe, by which the waste is received; and ( )

(2) The applicable hazardous waste number designated in IDAPA 58.01.05, "Rules and Standards for Hazardous Waste" for the transported waste, and the amount received annually of each hazardous waste; and ( )

ii. If the POTW receives, or has been notified that it will receive, wastewater that originates from remedial activities, including those undertaken under Comprehensive Environmental Response, Compensation, and Liability Act, and the Resource Conservation and Recovery Act sections 3004(u) or 3008(h), the applicant must report the following: ( )

(1) The identity and description of each site or facility at which the wastewater originates; ( )

(2) The identity of any known hazardous constituents specified in IDAPA 58.01.05, "Rules and Standards for Hazardous Waste," in the wastewater; and ( )

(3) The extent of any treatment the wastewater receives or will receive before entering the POTW. ( )

**b.** An applicant under this subsection is exempt from the requirements of Subsection 105.14.a.ii. if the applicant receives no more than fifteen (15) kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in IDAPA 58.01.05, "Rules and Standards for Hazardous Waste." ( )

**15. Application Requirements for POTWs with Combined Sewer Systems and Overflows**. A POTW applicant with a combined sewer system must provide the following information on the combined sewer system and outfalls: ( )

**a.** A system map indicating the location of: ( )

i. All combined sewer overflow discharge points; ( )

ii. Any sensitive use areas potentially affected by combined sewer overflows including beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems; ( )

iii. Outstanding national resource waters potentially affected by combined sewer overflows; and ( )

iv. Waters supporting threatened and endangered species potentially affected by combined sewer overflows; ( )

**b.** A system diagram of the combined sewer collection system that includes the locations of: ( )

i. Major sewer trunk lines, both combined and separate sanitary; ( )

ii. Points where separate sanitary sewers feed into the combined sewer system; ( )

iii. In-line and off-line storage structures; ( )

iv. Flow-regulating devices; and ( )

v. Pump stations; ( )

**c.** Information on each outfall for each combined sewer overflow discharge point covered by the permit application, including: ( )

i. The outfall number; ( )

ii. The county and city or town in which the outfall is located; ( )

iii. The latitude and longitude, to the nearest second; and ( )

iv. The distance from shore and depth below surface; ( )

**d.** A statement whether the applicant monitored any of the following in the past year for a combined sewer overflow: ( )

i. Rainfall; ( )

ii. Overflow volume; ( )

iii. Overflow pollutant concentrations; ( )

iv. Receiving water quality; ( )

v. Overflow frequency; and ( )

vi. The number of storm events monitored in the past year; ( )

**e.** Information regarding the number of combined sewer overflows from each outfall in the past year and, if available: ( )

i. The average duration per event; ( )

ii. The average volume for each event; and ( )

iii. The minimum rainfall that caused a combined sewer overflow event in the last year; ( )

**f.** The name of each receiving water; ( )

**g.** A description of any known water quality impact caused by the combined sewer overflow operations, including permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or the exceedance of any applicable state water quality standard, on the receiving water; and ( )

**h.** All applicants must provide the name, mailing address, e-mail address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility. ( )

**16. Application Requirements for New Sources and New Discharges**. ( )

**a.** An applicant for an IPDES permit for a new manufacturing, commercial, mining, silviculture, or other discharge, except for a new discharge from a facility subject to the requirements of Subsection 105.08 or a new discharge of storm water associated with industrial activity that is subject to the requirements of Subsection 105.19, except as provided by Subsection 105.19.c., must provide the following information to the Department, using the applicable forms specified in Subsection 105.04.b.: ( )

i. The latitude and longitude to the nearest second of the expected outfall location and the name of each receiving water; ( )

ii. The expected date the discharge will commence; ( )

iii. The following information on flows, sources of pollution, and treatment technologies: ( )

(1) A narrative describing the treatment that the wastewater will receive, identifying all operations contributing wastewater to the effluent, stating the average flow contributed by each operation, and describing the ultimate disposal of any solid or liquid wastes not discharged; ( )

(2) A line drawing of the water flow through the facility with a water balance as described in Subsection 105.07.b.; and ( )

(3) If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration, and maximum daily flow rate of each discharge occurrence, except for storm water runoff, spillage, or leaks; ( )

iv. If a new source performance standard promulgated under the Clean Water Act section 306 or an effluent limitation guideline applies to the applicant and is expressed in terms of production or other measure of operation, a reasonable calculation of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard, as required by Subsection 303.02.b., for each of the first three (3) years. The applicant may submit alternative estimates if production is likely to vary; ( )

v. The effluent characteristics information as described in Subsection 105.16.b.; ( )

vi. The existence of any technical evaluation concerning the applicant's wastewater treatment, along with the name and location of similar plants of which the applicant has knowledge; ( )

vii. Any optional information the permittee wishes the Department to consider. ( )

**b.** An applicant under this section must provide the following effluent characteristics information: ( )

i. Estimated daily maximum, daily average, and the source of that information for each outfall for the following pollutants or parameters: ( )

(1) Five (5)-day biochemical oxygen demand (BOD5); ( )

(2) Chemical oxygen demand (COD); ( )

(3) Total organic carbon (TOC); ( )

(4) Total suspended solids (TSS); ( )

(5) Flow; ( )

(6) Ammonia, as N; ( )

(7) Temperature, in both winter and summer; and ( )

(8) pH. ( )

ii. Estimated daily maximum, daily average, and the source of that information for each outfall for all the conventional and nonconventional pollutants in Table IV of Appendix D to 40 CFR Part 122, if the applicant knows or has reason to believe any of the pollutants will be present or if any of the pollutants are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant; ( )

iii. Estimated daily maximum, daily average, and the source of that information for the following pollutants for each outfall, if the applicant knows or has reason to believe the pollutants will be present in the discharge from any outfall: ( )

(1) All pollutants in Table IV of Appendix D to 40 CFR Part 122; ( )

(2) The toxic metals, total cyanide, and total phenols listed in Table III of Appendix D to 40 CFR Part 122; ( )

(3) The organic toxic pollutants in Table II of Appendix D to 40 CFR Part 122 except bis (chloromethyl) ether, dichlorofluoromethane, and trichlorofluoromethane; however, this requirement is waived for: ( )

(a) An applicant with expected gross sales of less than two hundred eighty-seven thousand three hundred dollars ($287,300) per year in 2014 dollars for the next three (3) years (see also Subsection 105.07.o.ii.); or ( )

(b) A coal mine with expected average production of less than one hundred thousand (100,000) tons of coal per year (see also Subsection 105.07.o.i.); ( )

iv. The information that 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) may be discharged if the applicant uses or manufactures one (1) of the following compounds, or if the applicant knows or has reason to believe that TCDD will or may be present in an effluent: ( )

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); Chemical Abstract Service (CAS) #93-76-5; ( )

(2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1); ( )

(3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4); ( )

(4) o,o-dimethyl o-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3); ( )

(5) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or ( )

(6) Hexachlorophene (HCP) (CAS #70-30-4); and ( )

v. The potential presence of any of the pollutants listed in Table V of Appendix D to 40 CFR Part 122 if the applicant believes these pollutants will be present in any outfall, except that quantitative estimates are not required unless they are already available at the time the applicant applies for the permit. ( )

**c.** No later than twenty-four (24) months after the commencement of discharge from the proposed facility, the applicant is required to complete and submit Items V and VI of EPA application Form 2C or the Department equivalent. The applicant need not complete those portions of Item V or the Department equivalent requiring tests already performed and reported under the discharge monitoring requirements of its permit. ( )

**d.** The effluent characteristics requirements in Subsections 105.08.b., c., and e. that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report that a pollutant is present. For purposes of this subsection, net credits may be provided for the presence of pollutants in intake water if the requirements of Subsection 303.07 are met, and (except for discharge flow, temperature, and pH) all levels must be estimated as concentration and as total mass. ( )

**e.** The Department may waive the reporting requirements for any of the pollutants and parameters in Subsection 105.16.b. if the applicant requests a waiver with its application, or earlier, and demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements. ( )

**17. Application Requirements for Treatment Works Treating Domestic Sewage (TWTDS)**. All TWTDS with a currently effective NPDES or IPDES permit must submit a permit application at the time of the next IPDES permit renewal application, using Form 2S or another application form approved by the Department. New applicants must submit all information available at the time of permit application. The information may be provided

by referencing information previously submitted to the Department. ( )

**a.** The Department may waive any requirement of this subsection if there is access to substantially identical information. The Department may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the EPA Regional Administrator. The waiver request to the Regional Administrator must include the Department's justification for the waiver. A Regional Administrator's disapproval of a Department's proposed waiver does not constitute final agency action, but does provide notice to the state and permit applicant(s) that EPA may object to any state-issued permit issued in the absence of the required information. ( )

**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, e-mail address, EIN or Department equivalent, 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); ( )

v. The total population and equivalent dwelling units (EDU) served; and ( )

vi. The TWTDS's status as federal, state, private, public, or other entity. ( )

**c.** All applicants must submit the facility's NPDES or IPDES permit number, if applicable, and a listing of all other federal, state, and local permits or construction approvals received or applied for under any of the following programs: ( )

i. Hazardous waste management program under IDAPA 58.01.05, "Rules and Standards for Hazardous Waste"; ( )

ii. Underground injection control (UIC) program under the Idaho Department of Water Resources UIC program at IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells"; ( )

iii. IPDES program under IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program"; ( )

iv. Prevention of significant deterioration (PSD) program under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; ( )

v. Nonattainment program under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; ( )

vi. National emission standards for hazardous pollutants (NESHAPS) preconstruction approval under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; ( )

vii. Dredge or fill permits under the Clean Water Act section 404; ( )

viii. Sludge Management Program under IDAPA 58.01.16.650, "Wastewater Rules," and Section 380 (Sewage Sludge) of these rules; and ( )

ix. Other relevant environmental permits, programs or activities, including those subject to state jurisdiction, approval, and permits. ( )

**d.** All applicants must identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs in Indian country. ( )

**e.** All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one (1) mile beyond property boundaries of the facility and showing the following information: ( )

i. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and ( )

ii. Wells, springs, and other surface water bodies that are within one-quarter (¼) mile of the property boundaries and listed in public records or otherwise known to the applicant. ( )

**f.** All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge, the destination(s) of all liquids and solids leaving each such unit, and all processes used for pathogen reduction and vector attraction reduction. ( )

**g.** The applicant must submit sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in 40 CFR Part 503 for the applicant's use or disposal practices on the date of permit application. ( )

i. The Department may require sampling for additional pollutants, as appropriate, on a case-by-case basis; ( )

ii. Applicants must provide data from a minimum of three (3) samples taken within four and one-half (4 ½) years prior to the date of the permit application. Samples must be representative of the sewage sludge and should be taken at least one (1) month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application; ( )

iii. Applicants must collect and analyze samples in accordance with analytical methods approved under SW-846 (Test Methods for Evaluating Solid Waste, Physical/Chemical Methods) unless an alternative has been specified in an existing sewage sludge permit; and ( )

iv. The monitoring data provided must include at least the following information for each parameter: ( )

(1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values; ( )

(2) The analytical method used; and ( )

(3) The method detection level. ( )

**h.** If the applicant is either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge, the following information must be provided: ( )

i. If the applicant's facility generates sewage sludge, the total dry metric tons per three hundred sixty-five (365)-day period generated at the facility; ( )

ii. If the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received: ( )

(1) The name, mailing address, and location of the other facility; ( )

(2) The total dry metric tons per three hundred sixty-five (365)-day period received from the other facility; and ( )

(3) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics; ( )

iii. If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information must be submitted: ( )

(1) Whether the Class A pathogen reduction requirements in 40 CFR 503.32(a) or the Class B pathogen reduction requirements in 40 CFR 503.32(b) are met, and a description of any treatment processes used to reduce pathogens in sewage sludge; ( )

(2) Whether any of the vector attraction reduction options of 40 CFR 503.33(b)(1) through (b)(8) are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and ( )

(3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge; ( )

iv. If sewage sludge from the applicant's facility meets the ceiling concentrations in 40 CFR 503.13(b)(1), the pollutant concentrations in 40 CFR 503.13(b)(3), the Class A pathogen requirements in 40 CFR 503.32(a), and one (1) of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (b)(8), and if the sewage sludge is applied to the land, the applicant must provide the total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to this subsection that is applied to the land; ( )

v. If sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to Subsection 105.17.h.iv., the applicant must provide the following information: ( )

(1) The total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to this subsection that is sold or given away in a bag or other container for application to the land; and ( )

(2) A copy of all labels or notices that accompany the sewage sludge being sold or given away; and ( )

vi. If sewage sludge from the applicant's facility is provided to another person who generates sewage sludge during the treatment of domestic sewage in a treatment works or a person who derives a material from sewage sludge, and the sewage sludge is not subject to Subsection 105.17.h.iv., the applicant must provide the following information for each facility receiving the sewage sludge: ( )

(1) The name, e-mail address, and mailing address of the receiving facility; ( )

(2) The total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to this subsection that the applicant provides to the receiving facility; ( )

(3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic; ( )

(4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 40 CFR 503.12(g); and ( )

(5) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge. ( )

**i.** If sewage sludge from the applicant's facility is applied to the land in bulk form, and is not subject to Subsection 105.17.h.iv., v., or vi., the applicant must provide the following information: ( )

i. The total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to

this subsection that is applied to the land; ( )

ii. If any land application sites are located in states other than the state where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the state(s) where the land application sites are located; ( )

iii. The following information for each land application site that has been identified at the time of permit application: ( )

(1) The name (if any), and location for the land application site; ( )

(2) The site's latitude and longitude to the nearest second, and method of determination; ( )

(3) A topographic map (or other map if a topographic map is unavailable) that shows the site's location; ( )

(4) The name, mailing address, e-mail address, and telephone number of the site owner, if different from the applicant; ( )

(5) The name, mailing address, e-mail address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant; ( )

(6) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined under 40 CFR 503.11; ( )

(7) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation; ( )

(8) Whether either of the vector attraction reduction options of 40 CFR 503.33(b)(9) or (b)(10) is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and ( )

(9) Other information that describes how the site will be managed, as specified by the permitting authority. ( )

iv. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) to the site: ( )

(1) Whether the applicant has contacted the permitting authority in the state where the bulk sewage sludge subject to 40 CFR 503.13(b)(2) will be applied, to ascertain whether bulk sewage sludge subject to 40 CFR 503.13(b)(2) has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name, phone number, and e-mail address, if available, of a contact person at the permitting authority; ( )

(2) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) to the site since July 20, 1993, if, based on the inquiry in Subsection 105.17.i.iv(1) bulk sewage sludge subject to cumulative pollutant loading rates in 40 CFR 503.13(b)(2) has been applied to the site since July 20, 1993; ( )

v. If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum: ( )

(1) Describes the geographical area covered by the plan; ( )

(2) Identifies the site selection criteria; ( )

(3) Describes how the site(s) will be managed; ( )

(4) Provides for advance notice to the permit authority of specific land application sites and reasonable time for the permit authority to object prior to land application of the sewage sludge; and ( )

(5) Provides for advance public notice of land application sites in the manner prescribed by state and local law. When state or local law does not require advance public notice, it must be provided in a manner reasonably calculated to apprise the general public of the planned land application. ( )

**j.** If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information: ( )

i. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per three hundred sixty-five (365)-day period; ( )

ii. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate: ( )

(1) The site name or number, contact person, mailing address, e-mail address, and telephone number for the surface disposal site; and ( )

(2) The total dry metric tons from the applicant's facility per three hundred sixty-five (365)-day period placed on the surface disposal site; ( )

iii. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates: ( )

(1) The name or number and the location of the active sewage sludge unit; ( )

(2) The unit's latitude and longitude to the nearest second, and method of determination; ( )

(3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location; ( )

(4) The total dry metric tons placed on the active sewage sludge unit per three hundred sixty-five (365)-day period; ( )

(5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit; ( )

(6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of $1 \times 10^{-7}$ cm/sec; ( )

(7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any federal, state, and local permit number(s) for leachate disposal; ( )

(8) If the active sewage sludge unit is less than one hundred fifty (150) meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line; ( )

(9) The remaining capacity (dry metric tons) for the active sewage sludge unit; ( )

(10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified; ( )

(11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit: ( )

(a) The name, contact person, and mailing address of the facility; and ( )

(b) Available information regarding the quality of the sewage sludge received from the facility,

including any treatment at the facility to reduce pathogens or vector attraction characteristics; ( )

(12) Whether any of the vector attraction reduction options of 40 CFR 503.33(b)(9) through (b)(11) is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge; ( )

(13) The following information, as applicable to any ground water monitoring occurring at the active sewage sludge unit: ( )

(a) A description of any ground water monitoring occurring at the active sewage sludge unit; ( )

(b) Any available ground water monitoring data, with a description of the well locations and approximate depth to ground water; ( )

(c) A copy of any ground water monitoring plan that has been prepared for the active sewage sludge unit; and ( )

(d) A copy of any certification that has been obtained from a qualified ground water scientist that the aquifer has not been contaminated; and ( )

(14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request. ( )

**k.** If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information: ( )

i. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per three hundred sixty-five (365)-day period; ( )

ii. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate: ( )

(1) The name and/or number, contact person, mailing address, e-mail address, and telephone number of the sewage sludge incinerator; and ( )

(2) The total dry metric tons from the applicant's facility per three hundred sixty-five (365)-day period fired in the sewage sludge incinerator; ( )

iii. The following information for each sewage sludge incinerator that the applicant owns or operates: ( )

(1) The name and/or number and the location of the sewage sludge incinerator; ( )

(2) The incinerator's latitude and longitude to the nearest second, and method of determination; ( )

(3) The total dry metric tons per three hundred sixty-five (365)-day period fired in the sewage sludge incinerator; ( )

(4) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Beryllium in 40 CFR Part 61 will be achieved; ( )

(5) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Mercury in 40 CFR Part 61 will be achieved; ( )

(6) The dispersion factor for the sewage sludge incinerator, as well as modeling results and supporting documentation; ( )

(7) The control efficiency for parameters regulated in 40 CFR 503.43, as well as performance test results and supporting documentation; ( )

(8) Information used to calculate the risk specific concentration (RSC) for chromium, including the results of incinerator stack tests for hexavalent and total chromium concentrations, if the applicant is requesting a chromium limit based on a site-specific RSC value; ( )

(9) Whether the applicant monitors total hydrocarbons (THC) or Carbon Monoxide (CO) in the exit gas for the sewage sludge incinerator; ( )

(10) The type of sewage sludge incinerator; ( )

(11) The maximum performance test combustion temperature, as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies; ( )

(12) The following information on the sewage sludge feed rate used during the performance test: ( )

(a) Sewage sludge feed rate in dry metric tons per day; ( )

(b) Identification of whether the feed rate submitted is average use or maximum design; and ( )

(c) A description of how the feed rate was calculated; ( )

(13) The incinerator stack height in meters for each stack, including identification of whether actual or creditable stack height was used; ( )

(14) The operating parameters for the sewage sludge incinerator air pollution control device(s), as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies; ( )

(15) Identification of the monitoring equipment in place, including (but not limited to) equipment to monitor the following: ( )

(a) Total hydrocarbons or Carbon Monoxide; ( )

(b) Percent Oxygen; ( )

(c) Percent moisture; and ( )

(d) Combustion temperature; and ( )

(16) A list of all air pollution control equipment used with this sewage sludge incinerator. ( )

**l.** If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent: ( )

i. The name, contact person, mailing address, e-mail address location, and all applicable permit numbers of the MSWLF; ( )

ii. The total dry metric tons per three hundred sixty-five (365)-day period sent from this facility to the MSWLF; ( )

iii. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and ( )

iv. Information, if known, indicating whether the MSWLF complies with criteria set forth in 40 CFR Part 258. ( )

**m.** All applicants must provide the name, mailing address, e-mail address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal. ( )

**n.** At the request of the Department, the applicant must provide any other information necessary to determine the appropriate standards for permitting under 40 CFR Part 503 and any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements. ( )

**o.** TWTDS facilities using or disposing of sewage sludge to which a standard applicable to its sewage sludge use or disposal practices have been published must submit the following information on EPA Form 2S, Part I, or on the Department equivalent form: ( )

i. The TWTDS's name, mailing address, location, and status as federal, state, private, public, or other entity; ( )

ii. The applicant's name, address, e-mail address, telephone number, and ownership status; ( )

iii. A description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the requirements of Subsection 105.17.h.iv., the description must include the name and address of any facility where sewage sludge is sent for treatment or disposal, and the location of any land application sites; ( )

iv. Annual amount of sewage sludge generated, treated, used or disposed (estimated dry weight basis); and ( )

v. The most recent data the TWTDS may have on the quality of the sewage sludge. ( )

**18. Application Requirements for Municipal Separate Storm Sewer Discharges**. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Department under 40 CFR 122.26(a)(1)(v), may submit a jurisdiction-wide or system-wide permit application. Where more than one (1) public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a co-applicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under 40 CFR 122.26 (a)(1)(v) must include: ( )

**a.** In Part 1 of the application ( )

i. The applicants' name, address, e-mail address, EIN or Department equivalent, telephone number of contact person, ownership status and status as a state or local government entity; ( )

ii. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in Subsection 105.18.b.i., the description must list additional authorities as will be necessary to meet the criteria and include a schedule and commitment to seek such additional authority that will be needed to meet the criteria; ( )

iii. A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any POTW serving the same area as the municipal separate storm sewer system, include all of the following: ( )

(1) A USGS seven point five (7.5) minute topographic map (or equivalent topographic map with a scale between one to ten thousand (1:10,000) and one to twenty-four thousand (1:24,000) if cost effective) extending one (1) mile beyond the service boundaries of the municipal storm sewer system covered by the permit application; ( )

(2) The location of known municipal storm sewer system outfalls discharging to waters of the United States; ( )

(3) A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agricultural and industrial uses) accompanied with estimates of population densities and projected growth for a ten (10) year period within the drainage area served by the separate storm sewer and an estimate of an average runoff coefficient for each land use type; ( )

(4) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste; ( )

(5) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a NPDES or IPDES permit; ( )

(6) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and ( )

(7) The identification of publicly owned parks, recreational areas, and other open lands. ( )

iv. A description of the discharge including: ( )

(1) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events; ( )

(2) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used; ( )

(3) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts must include a description of whether the water bodies receiving such discharges have been: ( )

(a) Assessed and reported in the Clean Water Act section 305(b) reports submitted by the Department, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act goals (fishable and swimmable waters), and causes of nonsupport of designated uses; ( )

(b) Listed under the Clean Water Act section 304(l)(1)(A)(i), 304(l)(1)(A)(ii), or 304(l)(1)(B) that is not expected to meet water quality standards or water quality goals; ( )

(c) Listed in state Nonpoint Source Assessments required by the Clean Water Act section 319(a), without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards); ( )

(d) Identified and classified according to eutrophic condition of publicly owned lakes listed in state reports required under the Clean Water Act section 314(a) (include the following: A description of those publicly owned lakes for which uses are known to be impaired, a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes, and a description of methods and procedures to restore the quality of such lakes); ( )

(e) Recognized by the applicant as highly valued or sensitive waters; ( )

(f) Defined by the state as wetlands; and ( )

(g) Found to have pollutants in bottom sediments, fish tissue, or biosurvey data. ( )

(4) Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis includes a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two (2) grab samples are to be collected during a twenty-four (24)-hour period with a minimum period of four (4) hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping must be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) must be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR Part 136, the applicant must provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points are either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points are established using the following guidelines and criteria: ( )

(a) Overlay a grid system consisting of perpendicular north-south and east-west lines spaced one-quarter (¼) mile apart on a map of the municipal storm sewer system, creating a series of cells; ( )

(b) Identify all cells that contain a segment of the storm sewer system; select one (1) field screening point in each cell; major outfalls may be used as field screening points; ( )

(c) Field screening points should be located downstream of any sources of suspected illegal or illicit activity; ( )

(d) Locate field screening points to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination; ( )

(e) Hydrological conditions, total drainage area of the site, population density of the site, traffic density, age of the structures or buildings in the area, history of the area, and land use types; ( )

(f) For medium municipal separate storm sewer systems, no more than two hundred fifty (250) cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than five hundred (500) cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than two hundred fifty (250) cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system are subject to field screening (unless access to the separate storm sewer system is impossible); and ( )

(g) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in Subsection 105.18.a.iv(4)(a) through (f), because a sufficiently detailed map of the separate storm sewer systems is unavailable, must field screen no more than five hundred (500) or two hundred fifty (250) major outfalls respectively (or all major outfalls in the system, if less). In such circumstances, the applicant must establish a grid system consisting of north-south and east-west lines spaced one-quarter (¼) mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells. The applicant will then select major outfalls in as many cells as possible until at least five hundred (500) major outfalls (large municipalities) or two hundred fifty (250) major outfalls (medium municipalities) are selected; a field screening analysis must occur at these major outfalls; and ( )

(5) Information and a proposed program to meet the requirements of Subsection 105.18.b.iii., including at least: the location of outfalls or field screening points appropriate for representative data collection under Subsection 105.18.b.iii(1), a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (see Subsection 105.18.a.iv(3)) to the extent practicable; ( )

v. A description of the existing management programs to control pollutants from the municipal separate storm sewer system including existing source controls and operation and maintenance measures for structural controls that are currently being implemented. Such controls may include, but are not limited to: procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under state law as well as local requirements; ( )

vi. A description of the existing program to identify illicit connections to the municipal storm sewer system, that includes inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented; and ( )

vii. A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs. ( )

**b.** In Part 2 of the application: ( )

i. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance, or series of contracts which authorizes or enables the applicant at a minimum to: ( )

(1) Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity; ( )

(2) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer; ( )

(3) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water; ( )

(4) Control through interagency agreements among co-applicants the contribution of pollutants from a portion of the municipal system to another portion of the municipal system; ( )

(5) Require compliance with conditions in ordinances, permits, contracts or orders; and ( )

(6) Carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer. ( )

ii. The location of any major outfall that discharges to waters of the United States that was not reported under Subsection 105.18.a.iii(2). Provide an inventory, organized by watershed of the name and address, and a description (such as Standard Industrial Classification (SIC) codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity; ( )

iii. When quantitative data for a pollutant are required under Subsection 105.18.b.iii(1)(c), the applicant must collect a sample of effluent in accordance with Subsection 105.07.c. through 105.07.m. and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including: ( )

(1) Quantitative data from representative outfalls designated by the Department developed as follows (based on information received in part 1 of the application. The Department will designate between five (5) and ten (10) outfalls or field screening points as representative of the commercial, residential and industrial land use activities

of the drainage area contributing to the system or, where there are less than five (5) outfalls covered in the application, the Department will designate all outfalls): ( )

(a) For each outfall or field screening point designated under this subsection, samples must be collected of storm water discharges from three (3) storm events occurring at least one (1) month apart in accordance with the requirements at Subsection 105.07.c. through 105.07.m. (the Department may allow exemptions to sampling three (3) storm events when climatic conditions create good cause for such exemptions); ( )

(b) A narrative description must be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than one-tenth (0.1) inch rainfall) storm event; ( )

(c) For samples collected and described under Subsections 105.18.b.iii(1)(a) and (b), quantitative data will be provided for the organic pollutants listed in Table II and the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of Appendix D of 40 CFR Part 122, and for the following pollutants: ( )

(i) Total suspended solids (TSS); ( )

(ii) Total dissolved solids (TDS); ( )

(iii) Chemical oxygen demand (COD); ( )

(iv) Five (5)-day biochemical oxygen demand (BOD5); ( )

(v) Oil and grease; ( )

(vi) Fecal coliform (including *E. coli*); ( )

(vii) Enterococci (previously known as fecal streptococcus); ( )

(viii) pH; ( )

(ix) Total Kjeldahl nitrogen; ( )

(x) Nitrate plus nitrite; ( )

(xi) Total ammonia plus organic nitrogen; ( )

(xii) Dissolved phosphorus; and ( )

(xiii) Total phosphorus; ( )

(d) Additional limited quantitative data required by the Department for determining permit conditions (the Department may require that quantitative data be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representativeness); ( )

(2) Estimates of the annual pollutant load of the cumulative discharges to waters of the United States from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the United States from all identified municipal outfalls during a storm event for BOD5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates must be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods; ( )

(3) A proposed schedule to provide estimates for each major outfall identified in either Subsection 105.18.b.ii. or 105.18.a.iii(2) of the seasonal pollutant load and of the event mean concentration of a representative

storm for any constituent detected in any sample required under Subsection 105.18.b.iii(1); and ( )

(4) A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment; ( )

iv. A proposed management program covering the duration of the permit, that includes a comprehensive planning process involving public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program must also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each co-applicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Department when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs must describe priorities for implementing controls. Such programs must be based on: ( )

(1) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description must include: ( )

(a) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers; ( )

(b) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan must address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed (controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in Subsection 105.18.b.iv(4)); ( )

(c) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities; ( )

(d) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible; ( )

(e) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage, or disposal facilities for municipal waste that identifies priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under Subsection 105.18.b.iv(3)); and ( )

(f) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides, and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities; ( )

(2) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate IPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program must include: ( )

(a) A description of a program, including inspections, to implement and enforce an ordinance, orders

or similar means to prevent illicit discharges to the municipal separate storm sewer system. This program description must address all types of illicit discharges; however, the following categories of non-storm water discharges or flows must be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the United States: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined in Section 010) to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions must address discharges or flows from firefighting only where such discharges or flows are identified as significant sources of pollutants to waters of the United States); ( )

(b) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens; ( )

(c) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform (including *E. coli*), enterococci (previously known as fecal streptococcus), surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description must include the location of storm sewers that have been identified for such evaluation); ( )

(d) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer; ( )

(e) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers; ( )

(f) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and ( )

(g) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary; ( )

(3) A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program must: ( )

(a) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges; and ( )

(b) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in Subsection 105.18.b.iv(3), to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing NPDES or IPDES permit for a facility; oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under Subsections 105.07.j. through l.; ( )

(4) A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system that includes: ( )

(a) A description of procedures for site planning which incorporate consideration of potential water quality impacts; ( )

(b) A description of requirements for nonstructural and structural best management practices; ( )

(c) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and ( )

(d) A description of appropriate educational and training measures for construction site operators; ( )

v. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment must also identify known impacts of storm water controls on ground water; ( )

vi. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under Subsections 105.18.b.iii. and iv. Such analysis must include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds; ( )

vii. Where more than one (1) legal entity submits an application, the application must contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination; and ( )

viii. Where requirements under Subsections 105.18.a.iv(5), 105.18.b.ii., 105.18.b.iii.(2), and 105.18.b.iv. are not practicable or are not applicable, the Department may exclude any operator of a discharge from a municipal separate storm sewer which is designated under 40 CFR 122.26(a)(1)(v), (b)(4)(ii) or (b)(7)(ii) from such requirements. The Department must not exclude the operator of a discharge from a municipal separate storm sewer identified in Appendix F, G, H or I of 40 CFR Part 122, from any of the permit application requirements under this subsection except where authorized under this section. ( )

**19. Application Requirements for Industrial and Construction Storm Water Discharges**. Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity. ( )

**a.** Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit or any discharge of storm water which the Department is evaluating for designation (see Section 130, General Permits) under 40 CFR 122.26(a)(1)(v) and is not a municipal storm sewer, must submit an IPDES application in accordance with the requirements of Section 105 (Application for an Individual IPDES Permit) as modified and consistent with this subsection. ( )

**b.** Except as provided in Subsections 105.19.c. through e., the operator of a storm water discharge associated with industrial activity subject to this section must provide: ( )

i. A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: ( )

(1) Each of its drainage and discharge structures; ( )

(2) The drainage area of each storm water outfall; ( )

(3) Paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a Resource Conservation and Recovery Act permit which is used for accumulating hazardous waste under 40 CFR 262.34); ( )

(4) Each well where fluids from the facility are injected underground; and ( )

(5) Springs, and other surface water bodies which receive storm water discharges from the facility; ( )

ii. An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: ( )

(1) Significant materials that in the three (3) years prior to the submittal of this application have been treated, stored, or disposed in a manner to allow exposure to storm water; ( )

(2) Method of treatment, storage or disposal of such materials; materials management practices employed, in the three (3) years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; ( )

(3) Materials loading and access areas; ( )

(4) The location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; ( )

(5) The location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and ( )

(6) A description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge; ( )

iii. A certification that all outfalls containing storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by an IPDES permit, including a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test. Tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests.; ( )

iv. Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three (3) years prior to the submittal of this application; ( )

v. Quantitative data based on samples collected during storm events and collected in accordance with Subsection 105.07 from all outfalls containing a storm water discharge associated with industrial activity for the following parameters: ( )

(1) Any pollutant limited in an effluent guideline to which the facility is subject; ( )

(2) Any pollutant listed in the facility's NPDES or IPDES permit for its process wastewater (if the facility is operating under an existing NPDES or IPDES permit); ( )

(3) Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen; ( )

(4) Any information on the discharge required under Subsections 105.07.j. through l.; ( )

(5) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and ( )

(6) The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration (in hours) between the storm event sampled and the end of the previous measurable (greater than one-tenth (0.1) inch rainfall) storm event; ( )

vi. Operators of a discharge which is composed entirely of storm water are exempt from the requirements of Subsections 105.07.b., 105.07.a.i(2) through (5), 105.07.a.ii., 105.07.a.iii., 105.07.g., 105.07.h., 105.07.i., and 105.07.m.; and ( )

vii. Operators of new sources or new discharges (as defined in Section 010, Definitions) which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in Subsection 105.19.b.v. instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in Subsection 105.19.b.v. within two (2) years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the IPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of Subsections 105.16.a.iii.(2) and (3), and 105.16.b. ( )

**c.** An operator of an existing or new storm water discharge that is associated with industrial activity solely under 40 CFR 122.26(b)(14)(x) or is associated with small construction activity solely under 40 CFR 122.26 (b)(15), is exempt from the requirements of Subsection 105.07 and Subsection 105.19.b. Such operator must provide a narrative description of: ( )

i. The location (including a map) and the nature of the construction activity; ( )

ii. The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit; ( )

iii. Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable state and local erosion and sediment control requirements; ( )

iv. Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable state or local erosion and sediment control requirements; ( )

v. An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and ( )

vi. The name of the receiving water. ( )

**d.** The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with Subsection 105.19.b., unless the facility: ( )

i. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at any time since November 16, 1987; or ( )

ii. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or ( )

iii. Contributes to a violation of a water quality standard. ( )

**e.** The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations. ( )

**f.** Applicants must provide such other information the Department may reasonably require under

Subsection 105.07.o. to determine whether to issue a permit and may require any facility subject to Subsection 105.19.c. to comply with Subsection 105.19.b. ( )

**106. INDIVIDUAL PERMIT APPLICATION REVIEW.**

**01. Completeness Criteria**. The Department will not begin processing or issue an individual IPDES permit application before receiving a complete application. An application is complete when an application form and any supplemental information are completed and submitted to the Department's satisfaction. The Department will not consider a permit application to be complete until all applicable fees required under Section 110 (Permit Fee Schedule for IPDES Permitted Facilities) are paid. ( )

**02. Sufficiently Sensitive Methods**. Except as specified in Subsection 106.02.c., a permit application shall not be considered complete unless all required quantitative data are collected in accordance with sufficiently sensitive analytical methods approved under 40 CFR Part 136 or required under 40 CFR Parts 400 through 471 and 501 through 503. ( )

**a.** A method approved under 40 CFR Part 136 or required under 40 CFR Parts 400 through 471 and 501 through 503 is "sufficiently sensitive" when: ( )

i. The method minimum level (ML) is at or below the level of the applicable water quality criterion for the measured pollutant or pollutant parameter; or ( )

ii. The method ML is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility's discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or ( )

iii. The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR Parts 400 through 471 and 501 through 503 for the measured pollutant or pollutant parameter. ( )

**b.** For Subsection 106.02.a., consistent with 40 CFR Part 136, applicants have the option of providing matrix or sample specific minimum levels rather than the published levels. Further, where an applicant can demonstrate that, despite a good faith effort to use a method that would otherwise meet the definition of "sufficiently sensitive," the analytical results are not consistent with the QA/QC specifications for that method, then the Department may determine that the method is not performing adequately and the applicant should select a different method from the remaining EPA-approved methods that is sufficiently sensitive consistent with Subsection 106.02.a. Where no other EPA-approved methods exist, the applicant should select a method consistent with Subsection 106.02.c. ( )

**c.** When there is no analytical method that has been approved under 40 CFR Part 136, required under 40 CFR Parts 400 through 471 and 501 through 503, and is not otherwise required by the Department, the applicant may use any suitable method but shall provide a description of the method. When selecting a suitable method, other factors such as a method's precision, accuracy, or resolution, may be considered when assessing the performance of the method. ( )

**03. Independence**. The Department shall judge the completeness of any IPDES permit application independently of any other permit application or permit. ( )

**04. Schedule**. The Department will notify an applicant in writing whether the application is deemed complete for purposes of this section within: ( )

**a.** Thirty (30) days if the application is for a new source or new discharger under the IPDES program, or ( )

**b.** Sixty (60) days if the application is for an existing source or sludge-only facility. ( )

**05. Additional Information**. Notification that an application is complete does not preclude the

Department from requiring the applicant submit additional information for the Department's use in processing the application. This additional information may only be requested when necessary to clarify, modify, or supplement previously submitted material. ( )

**a.** Requests for additional information will not render an application incomplete. ( )

**b.** If the Department decides that a site visit is necessary for any reason in connection with the processing of an application, the Department shall notify the applicant and a date shall be scheduled. Failure to schedule or refusal of a requested site visit are grounds for permit denial. ( )

**c.** The applicant's failure or refusal to correct deficiencies, or supply requested information may result in permit denial, and appropriate enforcement actions may be initiated, if warranted. ( )

**06. Incomplete Due to Waiver Denial**. The Department will not consider a permit application to be complete if the Department waived application requirements under Subsection 105.11 or 105.17 and the EPA has disapproved the waiver. ( )

**07. Impact of Waiver Delay**. If a person required to reapply for a permit submits a waiver request to the Department more than two hundred ten (210) days before an existing permit expires, and the EPA does not disapprove the waiver request one hundred eighty-one (181) days before the permit expires, the Department will consider the permit application to be complete without the information that is the subject of the waiver request. ( )

**08. Application Completeness Date**. The completeness date of an application is the date on which the Department notifies the applicant that the application is complete. ( )

**107. DECISION PROCESS.**

After the Department has determined that a permit application is complete the Department will decide whether to tentatively deny the application, or prepare an IPDES draft permit. ( )

**01. Application Denial**. If the Department decides to tentatively deny the application: ( )

**a.** A notice of intent to deny the permit application shall be issued. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit and shall be made available for public comment, and the Department shall give notice of opportunity for a public meeting, as specified in Section 109 (Public Notification and Comment); ( )

**b.** The Department shall generate a response to public comment; and ( )

**c.** Issue a final decision. The final decision may: ( )

i. Be to withdraw the notice of intent to deny the application, and proceed to prepare a draft permit and fact sheet as defined in Section 108 (Draft Permit and Fact Sheet); or ( )

ii. Confirm the decision to deny the application. ( )

**d.** The applicant may appeal the final decision to deny the application by adhering to the requirements of Section 204 (Appeals Process). ( )

**02. Draft Permit**. If the Department decides to generate a draft permit and fact sheet it will comply with Section 108 (Draft Permit and Fact Sheet). ( )

**a.** Upon completion of the draft permit and fact sheet the Department shall issue a public notification as required in Subsection 109.01. ( )

**b.** An opportunity for the public to comment and request a public meeting shall be provided. ( )

**c.** The Department shall generate a response to public comment as stipulated in Subsection 109.03.

( )

**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 and fact sheet. ( )

**04. Final Permit**. After the close of the public comment period on a draft permit, and after receipt of comments on the proposed permit, if any, from EPA, the Department shall issue a final permit decision and fact sheet. A final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit. ( )

**a.** The Department shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. ( )

**b.** A final permit decision shall become effective twenty-eight (28) 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 filed with the Department as specified in Section 204 (Appeals Process). ( )

**108. DRAFT PERMIT AND FACT SHEET.**

**01. Draft Permit**. ( )

**a.** If the Department decides to prepare a draft permit, it shall contain the following information: ( )

i. All conditions established under Section 300 (Conditions Applicable to All Permits); ( )

ii. All conditions for specific categories established under Section 301 (Permit Conditions for Specific Categories) and 40 CFR 122.42(e). ( )

iii. All conditions established under Section 302 (Establishing Permit Provisions); ( )

iv. All conditions established under Section 303 (Calculating Permit Provisions); ( )

v. All monitoring requirements established under Section 304 (Monitoring and Reporting Requirements); ( )

vi. Schedules of compliance established under Section 305 (Compliance Schedules); and ( )

vii. Any variances that are approved. ( )

**b.** General and individual proposed permits shall be available to the EPA Region 10 Administrator for comment as specified in Subsections 107.03 (Proposed Permit) and 107.04 (Final Permit). ( )

**02. Fact Sheets**. ( )

**a.** A fact sheet containing the information required in Subsection 108.02.b. must accompany the draft permit prepared for: ( )

i. A major IPDES facility or activity; ( )

ii. A Class I sludge management facility; ( )

iii. An IPDES general permit; ( )

iv. A permit that incorporates a variance or requires an explanation under Subsection 108.02.b.ix. through 108.02.b.x.; ( )

v. A permit that includes a sewage sludge land application plan under 40 CFR 501.15(a)(2)(ix); and ( )

vi. A permit that the Department finds is the subject of wide-spread public interest or raises major issues. ( )

**b.** A fact sheet must briefly set out the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit and must include, if applicable, the following information: ( )

i. A brief description of the type of facility or activity that is the subject of the draft permit; ( )

ii. The type and quantity of wastes, fluids, or pollutants that are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged; ( )

iii. A brief summary of the basis for the draft permit conditions, including references to applicable statutes or regulations and appropriate supporting references to the administrative record; ( )

iv. Reasons for the Department's tentative decision on any requested variances or alternatives to required standards; ( )

v. A description of the procedures for reaching a final decision on the draft permit, including: ( )

(1) The beginning and ending dates of the comment period under Subsection 109.02 and the address where comments should be submitted; ( )

(2) The procedure for requesting a public meeting and the nature of that meeting; and ( )

(3) Any other procedures by which the public may participate in the final decision; ( )

vi. The name and telephone number of a person to contact for additional information; ( )

vii. The justification for waiver of any application requirements under Section 105 (Application for an Individual IPDES Permit) for new and existing POTWs; ( )

viii. Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guideline or performance standard as required by Section 302 (Establishing Permit Provisions), and reasons why the effluent limitations and conditions are applicable, or an explanation of how any alternate effluent limitation was developed; ( )

ix. If applicable, an explanation of why the draft permit contains the following conditions or waivers: ( )

(1) Limitations to control toxic pollutants under Subsection 302.07; ( )

(2) Limitations on internal waste streams under Section 304 (Monitoring and Reporting Requirements); ( )

(3) Limitations on indicator pollutants under 40 CFR 125.3(g); ( )

(4) Limitations established on a case-by-case basis under 40 CFR 125.3 (c)(2) or (c)(3) or pursuant to the Clean Water Act section 405(d)(4); ( )

(5) Limitations to meet the criteria for permit issuance under Subsection 103.07; or ( )

(6) Waivers from monitoring requirements granted under Subsection 302.03; ( )

x. For a draft permit for a treatment works owned by a person other than a state or municipality, an explanation of the Department's decision on regulation of users under Subsection 302.15; ( )

xi. If appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application; and ( )

xii. For permits that include a sewage sludge land application plan under 40 CFR 501.15(a)(2)(ix), a brief description of how each of the required elements of the land application plan are addressed in the permit. ( )

**109. PUBLIC NOTIFICATION AND COMMENT.**

**01. Public Notification**. ( )

**a.** The Department will give notice to the public that: ( )

i. A draft permit has been prepared under Subsection 108.01; ( )

ii. The Department intends to deny a permit application under Subsection 107.01; ( )

iii. A public meeting is scheduled; or ( )

iv. An IPDES new source determination has been made. ( )

**b.** A public notice may describe more than one (1) permit or permit action. ( )

**c.** The Department will allow at least thirty (30) days for public comment on the items in the notice, and will provide at least thirty (30) days' notice before the public meeting. Notice of the draft permit and the meeting may be combined and given at the same time. ( )

**d.** Public notice that a draft permit has been prepared, and any public meeting on the draft permit must be given by the following methods: ( )

i. By mailing a copy of the notice to the following persons, unless any person entitled to receive notice under this subsection waives that person's right to receive notice for any classes and categories of permits: ( )

(1) The applicant, unless there is no applicant for an IPDES general permit; ( )

(2) Any other agency (including EPA when the draft permit is prepared by the state) that the Department knows has issued or is required to issue a permit for the same facility or activity under the following laws and programs: ( )

(a) Resource Conservation and Recovery Act, under IDAPA 58.01.05, "Rules and Standards for Hazardous Waste"; ( )

(b) Underground Injection Control (UIC) Program under Idaho Department of Water Resources as authorized under Idaho Code Title 42 Chapter 39 and regulated under IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells"; ( )

(c) Clean Air Act, under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; ( )

(d) Idaho Pollution Discharge Elimination System Program, under IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program"; or ( )

(e) Sludge Management Program, under IDAPA 58.01.16.650, "Wastewater Rules"; and ( )

(f) Dredge and Fill Permit Program (Clean Water Act section 404); ( )

(3) Affected federal and state agencies with jurisdiction over fish, shellfish, wildlife, and other natural resources, state historic preservation officers, and any affected Indian tribe; ( )

(4) Any state agency responsible for plan development under the Clean Water Act sections 208(b)(2), 208(b)(4), or 303(e), and the United States Army Corps of Engineers, the United States Fish and Wildlife Service, and the National Marine Fisheries Service; ( )

(5) Any user identified in the permit application of a privately owned treatment works; ( )

(6) Persons on a mailing list developed by: ( )

(a) Recording those who request in writing to be on the list; ( )

(b) Soliciting persons for area lists from participants in past permit proceedings in that area; and ( )

(c) Publishing notice of the opportunity to be on the mailing list on the Department's website and through periodic publication in the local press and in regional and state-funded newsletters, environmental bulletins, state law journals or similar publications. The Department may update the mailing list from time to time by requesting written indication of continued interest from those listed, and may delete from the list the name of any person who fails to respond to the Department's request; ( )

(7) Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and ( )

(8) Each state agency having any authority under state law with respect to the construction or operation of the facility; ( )

ii. For a major facility permit, a general permit, and a permit that includes sewage sludge land application plans, by publishing a notice in a daily or weekly newspaper within the area affected by the facility or activity; and ( )

iii. By any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or use of any other forum or media to elicit public participation. For IPDES major permits and general permits, in lieu of the requirement for publication of a notice in a daily or weekly newspaper, the Department may publish all notices of activities described in Subsection 109.01.a. to the Department's website. If the Department selects this option for a draft permit, in addition to meeting the requirements in Subsection 109.01.e., the Department will post the draft permit and fact sheet on the website for the duration of the public comment period. The Department will ensure the methods of public notice effectively inform all interested communities and allow access to the permitting process for those seeking to participate. ( )

**e.** A public notice issued under this subsection must contain at least the following information: ( )

i. Name and address of the office processing the permit action for which notice is being given and where comments may be submitted; ( )

ii. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of IPDES draft general permits; ( )

iii. A brief description of the business conducted at the facility or activity described in the permit

application, or for general permits when there is no application, in the draft permit; ( )

iv. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, fact sheet, and the application; ( )

v. A brief description of the comment and public meeting procedures required by this subsection and the time and place of any meeting that will be held; if no meeting has already been scheduled, a statement of procedures to request a meeting and other procedures by which the public may participate in the final permit decision; ( )

vi. A general description of the location of each existing or proposed discharge point and the name of the receiving water; ( )

vii. The sludge use and disposal practices and the location of each sludge TWTDS and use or disposal sites known at the time of permit application; ( )

viii. A description of requirements applicable to cooling water intake structures under the Clean Water Act section 316(b), in accordance with 40 CFR 125.80 through 89, 125.90 through 99, and 125.130 through 139; and ( )

ix. Directions to the Department's website where interested parties can obtain copies of the draft permit, fact sheet, and the permit application, if any; and ( )

**f.** In addition to the information required by Subsection 109.01.e., the public notice for a draft permit for a discharge for which a request has been filed under the Clean Water Act section 316(a) must include: ( )

i. A statement that the thermal component of the discharge is subject to effluent limitations under the Clean Water Act sections 301 or 306, and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under the Clean Water Act sections 301 or 306; ( )

ii. A statement that a request has been filed under the Clean Water Act section 316(a), that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under the Clean Water Act section 316(a), and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and ( )

iii. If the applicant has filed an early screening request under 40 CFR 125.72 for a variance under the Clean Water Act section 316(a), a statement that the applicant has submitted that early screening request. ( )

**g.** In addition to the general public notice described in Subsection 109.01.e., the public notice of a meeting under this section must contain the following information: ( )

i. Reference to the date of previous public notices relating to the permit; ( )

ii. Date, time, and place of the meeting; and ( )

iii. A brief description of the nature and purpose of the meeting, including the applicable rules and procedures. ( )

**h.** The Department will mail a copy of the general public notice described in Subsection 109.01.e. to all persons identified in Subsections 109.01.d.i(1), (2), (3), and (4). ( )

**i.** The Department will hold a public meeting whenever the Department finds, on the basis of requests, a significant degree of public interest in a draft permit. The Department may also hold a public meeting if a meeting might clarify one (1) or more issues involved in the permit decision or for other good reason in the Department's discretion. ( )

**02. Public Comment**. ( )

**a.** During the public comment period, any interested person may submit written comments on the draft permit. Written comments must be submitted to the person identified in the notice and as specified in Subsection 109.01.e. ( )

**b.** During the public comment period, any interested person may request a public meeting if no public meeting has been scheduled. The Department will schedule and hold a public meeting if the Department determines that significant public interest exists in the draft permit. ( )

i. A request for a public meeting must be in writing and be submitted to the Department within fourteen (14) days after the date of the public notice required by Subsection 109.01. ( )

ii. If a public meeting is held for the purpose of receiving comments, the Department will make an audio recording or hire a court reporter to record the meeting and will prepare a transcript of the meeting if an appeal is filed. ( )

**c.** If, during the comment period for an IPDES draft permit, the district engineer of the United States Army Corps of Engineers advises the Department in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the Department will deny the permit and notify the applicant of the denial. If the district engineer advises the Department that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, the Department will include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the district engineer must be sought through the applicable procedures of the United States Army Corps of Engineers and not through the state procedures. If a court of competent jurisdiction stays the conditions or if applicable procedures of the United States Army Corps of Engineers result in a stay of the conditions, those conditions must be considered stayed in the IPDES permit for the duration of the stay. ( )

**d.** If, during the comment period for an IPDES draft permit, the United States Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the Department in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Department may include the specified conditions in the permit to the extent the Department determines they are necessary to comply with the provisions of the Clean Water Act. ( )

**e.** In some cases, the Department may confer with one (1) or more of the agencies referred to in Subsections 109.02.c. and 109.02.d. before issuing a draft permit and may set out an agency's view in the fact sheet or the draft permit. ( )

**f.** The Department will consider all comments in making the final decision and will answer the comments as provided in this subsection. ( )

**g.** Requests for extending a public comment period must be received in writing by the Department prior to the last day of the comment period. ( )

**h.** After the close of the public comment period and prior to the issuance of the final permit decision, the Department will 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. ( )

**03. Response to Comments**. When the Department issues a final permit, the Department will issue a response to comments, that will be available to the public. The response must: ( )

**a.** Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and ( )

**b.** Briefly describe and respond to all significant comments on the draft permit raised during the

public comment period, or during any meeting. ( )

**110. FEE SCHEDULE FOR IPDES PERMITTED FACILITIES.**

**01. Effective Date**. Annual fees must be paid for each fee year beginning one (1) year after the effective date of the IPDES program for the affected category of discharger and continuing for each succeeding year. ( )

**02. Fee Schedule**. ( )

**a.** Publicly and privately owned treatment works, and any other discharger designated by the Department (Subsection 105.11.a.), must pay an annual fee based on the number of equivalent dwelling units (EDUs). The fee is $1.74 per EDU. EDUs and the appropriate annual fee will be calculated according to the definition of EDUs in Section 010 by the following: ( )

i. The Department calculates facility EDUs; or ( )

ii. Existing facilities may annually report to the Department the number of EDUs served; 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. ( )

**b.** All other permitted IPDES dischargers, excluding small scale suction dredges, must pay an annual fee, an application fee, or both according to the following schedule:

| Permit Type | Application | Annual |
|---|---|---|
| **Non-POTW Individual Permits** | | |
| **Major** | $0 | $13,000 |
| **Minor** | $0 | $4,000 |
| **Storm Water General Permits** | | |
| **Construction (CGP)** | | |
| **1-10 acres[1]** | $200 | $0 |
| **≥10-50 acres** | $400 | $75 |
| **≥50-100 acres** | $750 | $100 |
| **≥100-500 acres** | $1,000 | $400 |
| **>500 acres** | $1,250 | $400 |
| **Low Erosivity Waiver (CGP)** | $125 | $0 |
| **Industrial (MSGP) Permits** | $1,500 | $1,000 |
| **Cert. of No Exposure (MSGP)** | $250 | $100 |
| **Other General Permits** | $0 | $0 |

[1]This 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. ( )

**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.** Application Fees and Annual Fees. ( )

i. Application fees, as identified in Subsection 110.02.b., are assessed at the time of application for coverage under an individual permit, or notice of intent for coverage under a general permit. ( )

ii. Owners or operators of multi-year storm water facilities or construction projects are subject to annual fees that will be assessed in the year (October through September) immediately following the receipt of the application or notice of intent for coverage. ( )

**c.** Assessment of annual fees will consider the number of months a permittee was covered under either a general or an individual permit in a given year (October through September of the following calendar year). If the permittee was covered for less than a full twelve (12) months, the assessed fee will be pro-rated to account for less than a full year's coverage under the permit. ( )

**04. Billing**. For those permitted facilities subject to an annual fee, the annual fee will be assessed and a statement will be mailed by the Department on or before July 1 of each year. ( )

**05. Payment**. ( )

**a.** Payment of the annual fee is due on October 1, unless it is a Saturday, Sunday, or legal holiday, in which event the payment is due on the successive business day. ( )

**b.** If a POTW serves five hundred seventy-five (575) EDUs or more, the facility may request to divide its annual fee payment into equal monthly or quarterly installments by submitting a request to the Department on the proper request form provided with the initial billing statement. ( )

i. The Department will notify an applicable POTW, in writing, of approval or denial of a requested monthly or quarterly installment plan within ten (10) business days of the Department receiving such a request. ( )

ii. If a POTW has been approved to pay monthly installments then each installment is due by the first day of each month, unless it is a Saturday, a Sunday, or a legal holiday, in which event the installment is due on the next business day. ( )

iii. If a POTW has been approved to pay quarterly installments then each installment is due by the first day of the month of each quarter (October 1, January 1, April 1, and July 1), unless it is a Saturday, a Sunday, or a legal holiday, in which event the installment is due on the next business day. ( )

**c.** Payment of the application fee is due with the application for an individual permit or notice of intent for coverage under a general permit. ( )

**06. Delinquent Unpaid Fees**. A permittee covered under either a general permit or an individual permit will be delinquent in payment if the annual fee assessed has not been received by the Department by November 1; or if having first opted to pay monthly or quarterly installments, its monthly or quarterly installment has not been received by the Department by the last day of the month in which the monthly or quarterly payment is due. ( )

**07. Suspension of Services and Disapproval Designation**. For any permittee delinquent in payment of fees assessed under Subsections 110.02 and 110.06: ( )

**a.** In excess of ninety (90) days, the Department will suspend all technical services it provides. The permittee will receive a warning letter that identifies administrative enforcement actions the Department may pursue if the permittee does not comply with the terms of the permit. ( )

**b.** In excess of one hundred and eighty (180) days, the Department will consider the permittee in non-compliance with permit conditions and these rules, and subject to provisions described in Section 500 (Enforcement) of these rules. ( )

**08. Reinstatement of Suspended Services and Approval Status**. For any permittee for which delinquency of fee payment pursuant to Subsection 110.07 has resulted in the suspension of technical services, determination of non-compliance of permit condition, or both, the continuation of technical services, determination of compliance based on payment of fee, or both will occur upon payment of delinquent annual fee assessments. ( )

**09. Enforcement Action**. Nothing in Section 110 (Fee Schedule for IPDES Permitted Facilities) waives the Department's right to undertake a non-fee related enforcement action at any time, including seeking penalties, as provided in Sections 39-108, 39-109, and 39-117, Idaho Code. ( )

**10. Responsibility to Comply**. Subsection 110.07 does not relieve any permittee from its obligation to comply with all applicable state and federal statutes, rules, regulations, permits, or orders. ( )

**111. -- 119. (RESERVED)**

**120. NEW SOURCES AND NEW DISCHARGES.**

**01. Criteria for New Source Determination**. Except as otherwise provided in an applicable new source performance standard, a source is a new source if it meets the definition in Section 010 (Definitions), and: ( )

**a.** Is constructed at a site at which no other source is located; or ( )

**b.** Totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or ( )

**c.** Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the Department shall consider such factors as: ( )

i. The extent to which the new facility is integrated with the existing plant; and ( )

ii. The extent to which the new facility is engaged in the same general type of activity as the existing source. ( )

**02. New Source vs. New Discharger**. A source meeting the requirements of Subsection 120.01 is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger, as defined in Section 010 (Definitions). ( )

**03. Modification vs. New Source/Discharger**. Construction on a site at which an existing source is located, results in a modification subject to Subsection 201.02, rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of Subsection 120.01, but otherwise alters, replaces, or adds to existing process or production equipment. ( )

**04. New Source Construction**. Construction of a new source has commenced if the owner or operator has: ( )

**a.** Begun, or caused to begin as part of a continuous on-site construction program: ( )

i. Any placement, assembly, or installation of facilities or equipment; or ( )

ii. Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or ( )

**b.** Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Items which do not constitute contractual obligations under this section include: ( )

i. Options to purchase or contracts which can be terminated or modified without substantial loss; ( )

ii. Contracts for feasibility engineering; and ( )

iii. Design studies. ( )

**121. -- 129. (RESERVED)**

**130. GENERAL PERMITS.**

**01. Coverage**. The Department may issue a general permit in accordance with the following: ( )

**a.** Within a geographic area, the general permit will be written to cover one (1) or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under Subsection 130.01.b.ii., except those covered by individual permits within a geographic area. The area should correspond to existing geographic or political boundaries such as: ( )

i. Designated planning areas under the Clean Water Act sections 208 and 303; ( )

ii. Sewer districts or sewer authorities; ( )

iii. City, county, or state political boundaries; ( )

iv. State highway systems; ( )

v. Standard metropolitan statistical areas as defined by state or federal agencies; ( )

vi. Urbanized areas as designated by the U.S. Census Bureau; or ( )

vii. Any other appropriate division or combination of boundaries. ( )

**b.** The general permit may be written to regulate one (1) or more categories or subcategories of discharges or sludge use or disposal practices or facilities, within the area described in Subsection 130.01.a., where the sources within a covered subcategory of discharges are either: ( )

i. Storm water point sources; or ( )

ii. One (1) or more categories or subcategories of point sources other than storm water point sources or TWTDS, if the point sources or TWTDS within each category or subcategory all: ( )

(1) Involve the same or substantially similar types of operations; ( )

(2) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices; ( )

(3) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal; ( )

(4) Require the same or similar monitoring; and ( )

(5) In the opinion of the Department, are more appropriately controlled under a general permit than under individual permits. ( )

**c.** Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed pursuant to Section 302 (Establishing Permit Provisions), the sources in that specific category or subcategory are subject to the same water quality-based effluent limitations. ( )

**d.** Other requirements: ( )

i. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or TWTDS covered by the permit; and ( )

ii. The general permit may exclude specified sources or areas from coverage. ( )

iii. For general permits issued under Subsection 130.01.b. for small MS4s, the Department must establish the terms and conditions necessary to meet the requirements of 40 CFR 122.34 using one (1) of the two (2) permitting approaches described in Subsections 130.01.d.iii(1) and (2). The Department must indicate in the permit or fact sheet which approach is being used. ( )

(1) Comprehensive general permit. The Department includes all required permit terms and conditions in the general permit; or ( )

(2) Two-step general permit. The Department includes required permit terms and conditions in the general permit applicable to all eligible small MS4s and, during the process of authorizing small MS4s to discharge, establishes additional terms and conditions not included in the general permit to satisfy one (1) or more of the permit requirements in 40 CFR 122.34 for individual small MS4 operators. ( )

(a) The general permit must require that any small MS4 operator seeking authorization to discharge under the general permit submit a Notice of Intent (NOI) consisting of the minimum required information in Subsection 130.05.b., and any other information the Director identifies as necessary to establish additional terms and conditions that satisfy the permit requirements of 40 CFR 122.34, such as the information required under Subsection 130.05.b. The general permit will explain any other steps necessary to obtain permit authorization. ( )

(b) The Department must review the NOI submitted by the small MS4 operator to determine whether the information in the NOI is complete and to establish the additional terms and conditions necessary to meet the requirements of 40 CFR 122.34. The Department may require the small MS4 operator to submit additional information. If the Department makes a preliminary decision to authorize the small MS4 operator to discharge under the general permit, the Department must give the public notice of and opportunity to comment and request a public meeting on its proposed authorization and the NOI, the proposed additional terms and conditions, and the basis for these additional requirements. The public notice, the process for submitting public comments and meeting requests, and the meeting process if a request for a meeting is granted, must follow the procedures applicable to draft permits set forth in Sections 108 and 109 except Subsection 109.01.d. The Department must respond to significant comments received during the comment period as provided in Subsection 109.03. ( )

(c) Upon authorization for the MS4 to discharge under the general permit, the final additional terms and conditions applicable to the MS4 operator become effective. The Department must notify the permittee and inform the public of the decision to authorize the MS4 to discharge under the general permit and of the final additional terms and conditions specific to the MS4. ( )

**02. Electronic Submittals**. As of December 21, 2020, all notices of intent submitted in compliance with this section must be submitted electronically by the discharger (or treatment works treating domestic sewage) to the Department unless waived pursuant to 40 CFR 127.15. ( )

**03. Information Retention Schedule**. An applicant must keep records of all data used to complete a notice of intent and any supplemental information submitted for a period of at least three (3) years from the date the notice of intent is signed. ( )

**04. Notice of Intent**. ( )

**a.** Any person required under Subsections 102.01 through 102.03 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). ( )

**05. Administration**. ( )

**a.** General permits may be issued, modified, revoked and reissued, or terminated in accordance with Sections 201 (Modification, or Revocation and Reissuance of IPDES Permits) and 203 (Termination of IPDES Permits). ( )

**b.** Authorization to discharge, or authorization to engage in sludge use and disposal practices will follow these procedures: ( )

i. Except as provided in Subsections 130.05.b.xi. and 130.05.b.xii., a discharger must submit, in accordance with general permit requirements, a complete and timely notice of intent which will fulfill the requirements for permit applications; ( )

ii. A discharger (or TWTDS) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge (or in the case of sludge disposal permit, to engage in a sludge use or disposal practice) under the terms of the general permit unless: ( )

(1) The general permit, in accordance with Subsections 130.05.b.xi., contains a provision that a notice of intent is not required; or ( )

(2) The Department notifies a discharger (or TWTDS) that it is covered by a general permit in accordance with Subsection 130.05.b.xii.; ( )

iii. All notices of intent must be signed as required in Section 090 (Signature Requirements); ( )

iv. The general permit will specify the contents of the notice of intent and require the submission of information necessary for adequate program implementation, including at a minimum: ( )

(1) The legal name, address, and EIN or Department equivalent of the owner or operator; ( )

(2) The facility name and address; ( )

(3) Type of facility or discharges; and ( )

(4) The receiving stream(s); ( )

v. Coverage under a general permit may be terminated or revoked in accordance with Subsection 130.05.c. through e.; ( )

vi. Notices of intent for coverage under a general permit for CAFOs must include the information specified in Subsection 105.09 and 40 CFR 122.21(i)(1), including a topographic map; ( )

vii. A CAFO owner or operator may be authorized to discharge under a general permit only in accordance with the process described in 40 CFR 122.23(h); ( )

viii. General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative notice of intent requirements; ( )

ix. General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit; ( )

x. General permits shall specify whether a discharger (or TWTDS), who has submitted a complete and timely notice of intent to be covered in accordance with the general permit and is eligible for coverage under the permit, is authorized to discharge (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice) in accordance with the permit either: ( )

(1) Upon receipt of the notice of intent by the Department; ( )

(2) After a waiting period specified in the general permit; ( )

(3) On a date specified in the general permit; or ( )

(4) Upon receipt of notification of inclusion by the Department; ( )

xi. Discharges other than discharges from POTWs, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Department, be authorized to discharge under a general permit without submitting a notice of intent where the Department finds that a notice of intent requirement would be inappropriate. The Department shall provide in the public notice of the general permit the reasons for not requiring a notice of intent. In making such a finding, the Department shall consider: ( )

(1) The type of discharge; ( )

(2) The expected nature of the discharge; ( )

(3) The potential for toxic and conventional pollutants in the discharges; ( )

(4) The expected volume of the discharges; ( )

(5) Other means of identifying discharges covered by the permit; and ( )

(6) The estimated number of discharges to be covered by the permit; and ( )

xii. The Department may notify a discharger (or TWTDS) that it is covered by a general permit, even if the discharger (or TWTDS) has not submitted a notice of intent to be covered. A discharger (or TWTDS) so notified may request an individual permit as specified in Subsection 130.05.d. ( )

**c.** The Department may terminate, revoke, or deny coverage under a general permit, and require the discharger or applicant to apply for and obtain an individual IPDES permit. Any interested person may petition the Department to take action under this subsection. Cases where an individual IPDES permit may be required include the following: ( )

i. The discharger or TWTDS is not in compliance with the conditions of the general permit; ( )

ii. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or TWTDS; ( )

iii. Effluent limitation guidelines are promulgated for point sources covered by the general permit; ( )

iv. A Water Quality Management plan containing requirements applicable to such point sources is approved; ( )

v. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary; ( )

vi. Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general IPDES permit; or ( )

vii. The discharge(s) is a significant contributor of pollutants. In making this determination, the Department may consider the following factors: ( )

(1) The location of the discharge with respect to waters of the United States; ( )

(2) The size of the discharge; ( )

(3) The quantity and nature of the pollutants discharged to waters of the United States; and ( )

(4) Other relevant factors. ( )

**d.** Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. ( )

i. The owner or operator shall submit an application under Section 105 (Application for an Individual IPDES Permit), with reasons supporting the request, to the Department no later than ninety (90) days after the publication of the general permit. ( )

ii. The Department shall process the request under Sections 106 (Individual Permit Application Review), 107 (Decision Process), 108 (Draft Permit and Fact Sheet) and 109 (Public Notification and Comment). ( )

iii. The Department shall grant a request by issuing an individual permit if the reasons cited by the owner or operator are adequate to support the request. ( )

**e.** When an individual IPDES permit is issued to an owner or operator otherwise subject to a general IPDES permit, the applicability of the general permit to the individual IPDES permittee is automatically terminated on the effective date of the individual permit. ( )

**f.** A source excluded from a general permit, solely because it already has an individual permit, may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source. ( )

**06. Case-by-Case Requirements for Individual Permits**. ( )

**a.** The Department may require any owner or operator authorized by a general permit to apply for an individual IPDES permit as provided in Subsection 130.05.c., only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, a statement that on the effective date of the individual IPDES permit, the general permit as it applies to the individual permittee shall automatically terminate, and a statement that the owner or operator may appeal the Department's decision as provided in Section 204 (Appeals Process). The Department may grant additional time upon request of the applicant. ( )

**b.** Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this section (see 40 CFR 122.26(a)(1)(v), (a)(9)(iii), and Subsection 105.19), the Department may require the discharger to submit a permit application or other information regarding the discharge described in the Clean Water Act section 308. ( )

i. In requiring such information, the Department shall notify the discharger in writing and shall send an application form with the notice. ( )

ii. The discharger must apply for a permit within one hundred eighty (180) days of notice, unless permission for a later date is granted by the Department. ( )

**131. -- 199. (RESERVED)**

**200. RENEWAL OF IPDES PERMITS.**

**01. Interim Effluent Limits**. Except as provided in Subsection 200.02, when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was based: ( )

**a.** Have materially and substantially changed since the time the permit was issued; and ( )

**b.** Would constitute cause for permit modification or revocation and reissuance under Subsection 201.02. ( )

**02. Final Clean Water Act Section 402(a)(1)(B) Effluent Limits**. In the case of effluent limitations established by the Department on the basis of the Clean Water Act section 402(a)(1)(B), a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under Clean Water Act section 304(b) after the original issuance of a permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit, except a permit may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if: ( )

**a.** Material and substantial alterations or additions to the permitted facility occurred after permit issuance, which justify the application of a less stringent effluent limitation; ( )

**b.** Information is available: ( )

i. Which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or ( )

ii. Which the Department determines indicates that technical mistakes or mistaken interpretations of law were made in issuing the permit under the Clean Water Act section 402(a)(1)(b); ( )

**c.** A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy; ( )

**d.** The permittee has received a permit modification under the Clean Water Act section 301(c), 301(g), 301(i), 301(k), 301(n), or 316(a); or ( )

**e.** The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification). ( )

**03. Final Clean Water Act Section 301(b)(1)(C) or 303 Effluent Limits.** In the case of effluent limitations established on the basis of Clean Water Act section 301(b)(1)(C) or section 303(d) or (e), a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except when: ( )

**a.** One of the exceptions in Subsection 200.02 apply; or ( )

**b.** The water to which the discharge occurs is identified as impaired on Idaho's Integrated Report and the effluent limitation is based on a total maximum daily load or other waste load allocation established under Clean Water Act section 303, if the cumulative effect of all revised effluent limitations based on such total maximum daily load or waste load allocation will assure the attainment of applicable water quality standards; or ( )

**c.** The water quality in the water to which the discharge occurs meets or exceeds levels required by applicable water quality standards and the effluent limitation is based on a total maximum daily load or other waste load allocation established under Clean Water Act section 303, any water quality standard, or any permitting standard, if such revision is subject to and consistent with the antidegradation policy and implementation procedures in the water quality standards. ( )

**04. Effluent Limits and Water Quality Standards**. In no event may a permit with respect to which Subsection 200.02 or 200.03 applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters of the United States be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under IDAPA 58.01.02, "Water Quality Standards." ( )

## 201. MODIFICATION, OR REVOCATION AND REISSUANCE OF IPDES PERMITS.

**01. Procedures to Modify, or Revoke and Reissue Permits**. ( )

**a.** Permits may be modified, or revoked and reissued either at the request of any interested person (including the permittee) or upon the Department's initiative. However, permits may only be modified or revoked and reissued for the reasons specified in Subsection 201.02. All requests shall be in writing and shall contain facts or reasons supporting the request. ( )

**b.** If the Department tentatively decides to modify or revoke and reissue a permit, the Department shall prepare a draft permit under Section 108 (Draft Permit and Fact Sheet), incorporating the proposed changes. ( )

i. The Department may request additional information and, in the case of a modified permit, may require the submission of an updated application. If the tentative decision is to revoke and reissue a permit, the Department shall require the submission of a new application. ( )

ii. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. ( )

iii. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued. ( )

iv. Minor modifications, as defined in Subsection 201.03, do not require the development of a draft permit, fact sheet, nor must minor modifications be subjected to public notification and comment. ( )

**02. Causes to Modify, or Revoke and Reissue Permits**. When the Department receives any pertinent information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance under Subsection 201.01, or conducts a review of the permit file), the Department may determine whether or not one (1) or more of the causes listed in Subsections 201.02.c. and 201.02.d. for modification or revocation and reissuance or both exist. ( )

**a.** If cause exists, the Department may modify or revoke and reissue the permit accordingly, subject to the limitations of Subsection 201.01.b., and may request a new or updated application, if necessary. ( )

**b.** If cause does not exist under this section, the Department shall not modify or revoke and reissue the permit. ( )

**c.** The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees: ( )

i. There are material and substantial alterations or additions to the permitted facility or activity

(including a change or changes in the permittee's sludge use or disposal practice), which occurred after permit issuance, and which justify the application of permit conditions that are different or absent in the existing permit. ( )

ii. The Department has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance: ( )

(1) For IPDES general permits (Section 130) this cause includes any information indicating that cumulative effects on the environment are unacceptable; and ( )

(2) For new source or new discharger IPDES permits (Section 120), this cause shall include any significant information derived from effluent testing required under Subsection 105.08 or 105.16 after issuance of the permit. ( )

iii. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows: ( )

(1) For promulgation of amended standards or regulations, when: ( )

(a) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations under 40 CFR Part 133; ( )

(b) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a state action with regard to a water quality standard on which the permit condition was based; and ( )

(c) A permittee requests modification in accordance with Subsection 201.01 or 203.01 within ninety (90) days after notice of the action on which the request is based; and ( )

(2) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA or Idaho promulgated regulations or effluent limitation guidelines, if the remand and stay concerns that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with Subsection 201.01 or 203.01 within ninety (90) days of judicial remand. ( )

iv. The Department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an IPDES compliance schedule be modified to extend beyond an applicable Clean Water Act statutory deadline. ( )

v. When the permittee has filed a request for a variance under Clean Water Act section 301(c), 301(g), 301(i), 301(k), or 316(a) or for fundamentally different factors within the time specified in Section 310 (Variances). ( )

vi. When required to incorporate an applicable Clean Water Act 307(a) toxic effluent standard or prohibition, under Subsection 302.04. ( )

vii. When required by the reopener conditions in a permit, which are established in the permit under Subsection 302.05 or 40 CFR 403.18(e) (Pretreatment Standards). ( )

viii. Upon request of a permittee who qualifies for effluent limitations on a net basis, or when a discharger is no longer eligible for net limitations, as provided in Subsection 303.07. ( )

ix. As necessary under 40 CFR 403.8(e) (Pretreatment Program Requirements: Development and

Implementation by POTW). ( )

x. Upon failure of an approved state to notify, as required by the Clean Water Act section 402(b)(3), another state whose waters may be affected by a discharge from the approved state. ( )

xi. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c). ( )

xii. To establish a notification level as provided in Subsection 302.08. ( )

xiii. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a loan under IDAPA 58.01.12, "Rules for Administration of Water Pollution Control Loans." In no case shall the compliance schedule be modified to extend beyond an applicable Clean Water Act statutory deadline. ( )

xiv. For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in 40 CFR 122.34(b) when: ( )

(1) The permit does not include such measure(s) based upon the determination that another entity was responsible for implementation of the requirement(s), and ( )

(2) The other entity fails to implement measure(s) that satisfy the requirement(s). ( )

xv. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions. ( )

xvi. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under the Clean Water Act section 402(a)(1) and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline). ( )

xvii. The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit when a CAFO obtains coverage under a general permit in accordance with 40 CFR 122.23(h) and Section 130 (General Permits) is not a cause for modification pursuant to the requirements of this section. ( )

xviii. When required by a permit condition to incorporate a land application or sludge disposal plan for beneficial reuse of sewage sludge, to revise an existing land application or sludge disposal plan, or to add a land application or sludge disposal plan as required by IDAPA 58.01.16.650, "Wastewater Rules," and Section 380 (Sewage Sludge) of these rules. ( )

**d.** The following are causes to modify or, alternatively, revoke and reissue a permit: ( )

i. Cause exists for termination under Subsection 203.03, and the Department determines that modification or revocation and reissuance is appropriate; ( )

ii. The Department has received notification, as required in the permit, of a proposed transfer of the permit; or ( )

iii. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (Subsection 202.02) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee. ( )

**03. Minor Modifications of Permits**. Upon the consent of the permittee, the Department may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this subsection without

following the procedures of Sections 108 (Draft Permit and Fact Sheet), 109 (Public Notification and Comment), and Subsection 201.01. Any permit modification not processed as a minor modification under this subsection must be made for cause and must meet the requirements of Section 108 (Draft Permit and Fact Sheet) and Section 109 (Public Notification and Comment). Minor modifications may: ( )

**a.** Correct typographical errors; ( )

**b.** Require more frequent monitoring or reporting by the permittee; ( )

**c.** Change an interim compliance date in a schedule of compliance, provided the new date is not more than one hundred twenty (120) days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; ( )

**d.** Allow for a change in ownership or operational control of a facility where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department; ( )

**e.** Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under Section 120 (New Sources and New Discharges), and 40 CFR 122.29(d); ( )

**f.** Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits; ( )

**g.** Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR 403.11 or a modification that has been approved in accordance with the procedures in 40 CFR 403.18 as enforceable conditions of the POTW's permits; ( )

**h.** Incorporate changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements of 40 CFR 122.42(e)(6); or ( )

**i.** Require electronic reporting requirements (to replace paper reporting requirements) including those specified in 40 CFR Part 127 (NPDES Electronic Reporting). ( )

**202. TRANSFER OF IPDES PERMITS.**

**01. Transfers by Modification**. Except as provided in Subsection 202.02, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued under Subsection 201.02.d., or a minor modification made under Subsection 201.03, to identify the new permittee and incorporate such other requirements as may be necessary under the Clean Water Act. ( )

**02. Automatic Transfers**. As an alternative to transfers by modification, any IPDES permit may be automatically transferred to a new permittee if: ( )

**a.** The current permittee notifies the Department at least thirty (30) days in advance of the proposed transfer date; ( )

**b.** The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee; and ( )

**c.** The Department does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. A modification under this subsection may also be a minor modification under Subsection 201.03. If this notice is not received, the transfer is effective on the date specified in the agreement. ( )

**203. TERMINATION OF IPDES PERMITS.**

**01. Request to Terminate or Termination Initiated by the Department**. Permits may be terminated either at the request of any interested person (including the permittee) or upon the Department's own initiative. However, permits may only be terminated for the reasons specified in Subsection 203.03 or 203.04. ( )

**a.** Request for termination by persons other than the permittee must be submitted in writing to the Department. ( )

**b.** As of December 21, 2020, all NOTs submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, the permittee may be required to report electronically if specified by a particular permit. ( )

**02. Tentative Permit Termination**. Except as provided in Subsection 203.04, if the Department tentatively decides to terminate a permit under Subsection 203.03, the Department will issue a notice of intent to terminate. A notice of intent to terminate will be available for public comment, and the Department will give notice of an opportunity for public meetings, as specified in Section 109 (Public Notification and Comment). ( )

**03. Cause to Terminate Permits**. The following are causes for terminating a permit during its term, or for denying a permit renewal application: ( )

**a.** Noncompliance by the permittee with any condition of the permit; ( )

**b.** The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; ( )

**c.** A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or ( )

**d.** A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW), or other situations where the Department has sufficiently reliable basis for determining discharge will cease. ( )

**04. Expedited Termination Process for Terminated or Eliminated Discharge**. If the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW (but not by land application or disposal into a well), the Department may terminate the permit by notice to the permittee. ( )

**a.** Termination by notice becomes effective thirty (30) days after notice is sent (expedited permit termination), unless the permittee objects within that time. ( )

**b.** If the permittee objects during that period, the Department will follow procedures for termination in Subsection 203.02. ( )

**c.** Expedited permit termination procedures are not available to permittees that are subject to pending state and/or federal enforcement actions including citizen suits brought under federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under federal law. ( )

**204. APPEALS PROCESS.**

**01. Petition for Review of a Permit Decision**. Appeal of 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 is limited to the permit holder or applicant, and any person or entity who filed comments or who participated in the public meeting on the draft permit. ( )

**b.** A Petition for Review must be filed with the Department's Hearing Coordinator within twenty-eight (28) days after the Department serves notice of the final permit decision under Section 107 (Decision Process). A petition is filed when it is received by the Department's Hearing Coordinator at the address specified in Subsection 204.13. ( )

**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; and ( )

v. Set forth the basis for asserting that the petitioner is an aggrieved person. ( )

**02. Public Notice of the Petition for Review**. Within fourteen (14) days of the date a Petition for Review has been filed, the Hearing Authority must give reasonable notice to the public of the petition. ( )

**03. Administrative Record Filed By the Department**. The Department shall file a certified copy of the administrative record, as identified in Section 600 (Administrative Records and Data Management), with an index within twenty-eight (28) days of the date the Petition for Review was filed. ( )

**04. Participation by the Permit Applicant or Permit Holder**. A permit applicant or permit holder who did not file a petition but who wishes to participate in the appeal process must file a notice of appearance within twenty-eight (28) days of the date the Petition for Review was filed. ( )

**05. Petition to Intervene**. Any person who has a direct and substantial interest in the outcome of the Petition for Review may file a Petition to Intervene. ( )

**a.** The Petition to Intervene must set forth the interest of the intervener, and why intervention would not unduly broaden the issues and cause delay or prejudice to the parties. ( )

**b.** Petitions to Intervene must be filed within fourteen (14) days of the notice of filing of the Petition for Review. ( )

**c.** Any party opposing a Petition to Intervene must file objections within seven (7) days after service of the Petition to Intervene and serve the objection upon all parties of record and upon the person petitioning to intervene. ( )

**d.** If a Petition to Intervene shows direct and substantial interest in the outcome of the Petition for Review, does not unduly broaden the issues, and will not cause delay or prejudice to the parties, the Hearing Authority shall grant intervention. ( )

**06. Content and Form Requirements for Petitions and Briefs**. All petitions and briefs filed under this section must: ( )

**a.** Identify, in the caption, the permit applicant or holder, the permitted facility, and the permit number.

The caption should also include the case number, if available at the time of filing, and the title of the document, and ( )

**b.** Specify on the upper left corner of the first page, the name, address, telephone number, e-mail address and facsimile number, if any, of the person filing the document. If the person filing the document is a representative of a party as provided in Subsection 204.11, the document must identify the name of the person or entity represented. No more than two (2) representatives for service of documents may be listed. ( )

**07. Augmenting the Administrative Record**. Consideration of the Petition for Review by the Hearing Authority is limited to the certified administrative record unless, upon the request of a party, the Hearing Authority allows the record to be augmented. A request to augment the record must be filed within fourteen (14) days of the filing of the certified administrative record, unless intervention is granted, in which case the request to augment must be filed within fourteen (14) days of the date the order granting intervention is issued. The Hearing Authority may allow the record to be augmented if the requesting party shows that the additional information is material, is relevant to the issues raised in the appeal and that: ( )

**a.** There were good reasons for failure to present the information during the permitting proceeding; or ( )

**b.** There were alleged irregularities in the permitting proceeding and the party wishes to introduce evidence of the alleged irregularities. ( )

**08. Brief of the Petitioner**. Once all requests to augment the record and motions to intervene have been determined, the Hearing Authority shall issue an order notifying the parties that the administrative record has been settled and of the date by which the petitioner must file petitioner's brief in support of the Petition for Review. In addition to meeting the requirements of Subsection 204.06, the brief must include: ( )

**a.** The legal arguments and citations to legal authority that support the allegations in the Petition for Review; and ( )

**b.** The factual support for the allegations in the Petition for Review, including citations to the administrative record. ( )

**c.** A statement regarding whether the party desires an opportunity for oral argument. ( )

**09. Response Briefs**. Unless an alternative date is set by the Hearing Authority, the Department and all other parties must file response briefs within twenty-eight (28) days of the service of the petitioner's brief. In addition to meeting the requirements of Subsection 204.06, the response briefs must include: ( )

**a.** A response to the arguments and assertions in the petitioner's brief (either in support or opposed); ( )

**b.** A citation to all legal authorities and facts in the administrative record relied upon; and ( )

**c.** A statement regarding whether the party desires an opportunity for oral argument. ( )

**10. Reply Briefs by the Petitioner**. Unless an alternative date is set by the Hearing Authority, the petitioner may file a reply brief within fourteen (14) days after service of response briefs. A petitioner may not raise new issues or arguments in the reply. ( )

**11. Representation of Parties**. Unless otherwise authorized or required by law, appearances and representation of parties or other persons shall be as follows: ( )

**a.** A natural person may represent himself or herself or be represented by an attorney or, if the person lacks full legal capacity to act for himself or herself, then by a legal guardian or guardian ad litem or representative of an estate; ( )

**b.** A general partnership may be represented by a partner or an attorney; ( )

**c.** A corporation, or any other business entity other than a general partnership, must be represented by an attorney; ( )

**d.** A municipal corporation, local government agency, unincorporated association or nonprofit organization must be represented by an attorney; or ( )

**e.** A state, federal or tribal governmental entity or agency must be represented by an attorney. ( )

**12. Substitution and Withdrawal of Representatives**. A party's representative may be changed and a new representative may be substituted by notice to all parties so long as the proceedings are not unreasonably delayed. Representatives who wish to withdraw from a proceeding must immediately file a motion to withdraw representation and serve that motion on the party represented and all other parties. ( )

**13. Filing and Service Requirements**. ( )

**a.** All documents concerning actions governed by these rules must be filed with the Hearing Coordinator at the following address: Hearing Coordinator, Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706. Documents may also be filed by fax or may be filed electronically. The Hearing Coordinator's fax number and email address for filing electronically are available at www.deq.idaho.gov/petitions-for-review. The documents are deemed to be filed on the date received by the Hearing Coordinator. Upon receipt of the filed document, the Hearing Coordinator will provide confirmation to the originating party. ( )

**b.** All documents subsequent to the petition must be served on all parties or representatives, unless otherwise directed by the Hearing Authority. ( )

**c.** Service of documents on the named representative is valid service upon the party for all purposes in the proceeding. ( )

**14. Proof of Service**. Every document meeting the requirements for service must be attached to or accompanied by proof of service containing the following certificate:

> I hereby certify that on this (insert date), a true and correct copy of the foregoing (insert name of document) was served on the following as indicated below:
>
> (insert names and addresses of parties and method of delivery (first class U.S. mail, facsimile, hand-delivery, or overnight express))
>
> (Signature)

( )

**15. Motions**. A request for an interlocutory or procedural order or other relief must be made by written motion unless these rules prescribe another form. ( )

**a.** A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support the motion. In advance of filing a motion, parties must attempt to ascertain whether the other parties concur or object to the motion and must indicate in the motion the attempt made and the response obtained. ( )

**b.** Any party may file a response to a motion. Responses must state with particularity the grounds for opposition and the legal argument necessary to support the motion. The response must be filed within fifteen (15) days after service of the motion unless the Hearing Authority shortens or extends the time for response. ( )

**c.** Any reply to a response must be filed within ten (10) days after service of the response. A reply must not introduce any new issues or arguments and may respond only to matters presented in the response. ( )

**d.** The Hearing Authority may act on a motion for a procedural order at any time without awaiting a response. ( )

**e.** Parties must file motions for extensions of time sufficiently in advance of the due date to allow other parties to have a reasonable opportunity to respond to the request for more time and to provide the Hearing Authority with a reasonable opportunity to issue an order prior to the due date. ( )

**16.** **Oral Argument**. The Hearing Authority may hold oral argument on its own initiative or at its discretion in response to a request by one or more of the parties. ( )

**17.** **Withdrawal of Permit or Portions of Permit by the Department**. The Department may, at any time, upon notification to the Hearing Authority and all parties, withdraw the permit or specified portions of the permit and prepare a new draft permit under Section 108 (Draft Permit and Fact Sheet) addressing the portions so withdrawn. The new draft permit must proceed through the same process of public comment and opportunity for a public meeting as would apply to any other draft permit. If applicable, any portions of the permit that are not withdrawn continue to apply, unless stayed under Sections 205 (Contested Permit Conditions) and 206 (Stays of Contested Permit Conditions). The appeal shall continue with respect to those portions of the permit that are contested in the appeal that the Department does not withdraw. ( )

**18.** **Request to Dismiss Petition**. The petitioner, by motion, may request to have the Hearing Authority dismiss its appeal. The motion must briefly state the reason for its request. ( )

**19.** **Burden of Proof**. The petitioner has the burden of proving the allegations in the Petition for Review. Factual allegations must be proven by a preponderance of the evidence. ( )

**20.** **Appointment of Hearing Officers**. The Hearing Authority shall be a Hearing 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. Notice of appointment of a Hearing 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). ( )

**21.** **Scope of Authority of the Hearing Authority**. The Hearing Authority shall have the following authority: ( )

**a.** The authority to set schedules and take such other actions to ensure an efficient and orderly adjudication of the issues raised in the Petition for Review; ( )

**b.** The authority to hear and decide motions; and ( )

**c.** The authority to issue an order that decides the issues raised in the appeal and includes findings of fact and conclusions of law. The required contents of an order are set forth in Subsection 204.24. ( )

**22.** **Ex Parte Communications**. The Hearing Authority shall not communicate, directly or indirectly, regarding any substantive issue in the permit appeal with any party, except upon notice and opportunity for all parties to participate in the communication. The Hearing Authority may communicate ex parte with a party concerning procedural matters (e.g., scheduling). When the Hearing Authority becomes aware of a written ex parte communication regarding any substantive issue from a party or representative of a party during an appeal, the Hearing Authority shall place a copy of the communication in the file for the case and order the party providing the written communication to serve a copy of the written communication upon all parties of record. Written communications from a party showing service upon all other parties are not ex parte communications. ( )

**23.** **Alternative Dispute Resolution**. Parties to the permit appeal may agree to use a means of alternative dispute resolution. ( )

**24.** **Final Orders**. ( )

**a.** Final orders are issued by the Hearing Authority upon review of the petitions, briefs and the

administrative record on appeal. ( )

**b.** Every final order shall contain the following: ( )

i. A reasoned statement in support of the decision; ( )

ii. Findings of fact, with reference to the portions of the administrative record that support the findings. The findings of fact must be based exclusively on the administrative record, or if augmented during the appeal, the augmented record; ( )

iii. Conclusions of law with respect to legal issues raised in the appeal; ( )

iv. The final order shall either affirm the permitting decision, or vacate and remand the decision to the Department with instructions; and ( )

v. A statement of the right to judicial review as set forth in Section 204.26. ( )

**c.** Motions for reconsideration of any final order shall not be considered. ( )

**25. Final Agency Action for Purposes of Judicial Review**. ( )

**a.** Filing a Petition for Review 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 final order that affirms the Department's permitting decision is issued. ( )

**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. ( )

**26. Petition for Judicial Review**. ( )

**a.** Any person aggrieved by a final agency action or determination by the Department as defined in Subsection 204.25 has a right to judicial review by filing a petition for judicial review. ( )

**b.** The petition for judicial review must be filed with the Hearing Coordinator as set out in Subsection 204.13 and with the district court and served on all parties. The petition for judicial review shall also be served upon the Hearing Authority, the Director of the Department, and upon the Attorney General of the State of Idaho. Pursuant to Section 67-5272, Idaho Code, petitions for judicial review may be filed in the District Court of the county in which: ( )

i. The hearing was held; ( )

ii. The final agency action was taken; ( )

iii. The party seeking review of the agency action resides; or ( )

iv. The real property or personal property that was the subject of the agency action is located. ( )

**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 service date of a final order issued by the Hearing Authority. ( )

**27. IPDES General Permits**. ( )

**a.** Persons affected by an IPDES general permit may not file a petition under this section or otherwise

challenge the conditions of a general permit in further Department proceedings. Instead, they may do either of the following: ( )

i. Challenge the conditions in a general permit by filing an action in court; or ( )

ii. Apply for an individual IPDES permit under Section 105 (Application for an Individual IPDES Permit), as authorized in Section 130 (General Permits), and may then petition the Hearing Authority to review the individual permit as provided by in these rules. ( )

**b.** As provided in Subsection 130.05.c., any interested person may also petition the Department to require an individual IPDES permit for any discharger eligible for authorization to discharge under an IPDES general permit. ( )

**c.** The Department's decision to terminate, revoke or deny coverage under a general permit and to require application for an individual permit may be appealed pursuant to the provisions of Section 204 (Appeals Process). ( )

**28. Appeals of Variances**. ( )

**a.** When the Department issues a permit on which EPA has made a variance decision, separate appeals of the Department permit and of the EPA variance decision are possible. If the owner or operator is challenging the same issues in both proceedings, the EPA Region 10 Administrator will decide, in consultation with the Department, which case will be heard first. ( )

**b.** Variance decisions made by EPA may be appealed under the provisions of 40 CFR 124.19. ( )

**c.** Stays for variances other than Clean Water Act section 301(g) variances are governed by Section 205 (Contested Permit Conditions) and 206 (Stays of Contested Permit Conditions). ( )

## 205. CONTESTED PERMIT CONDITIONS.

**01. Force and Effect of Conditions**. As provided in Subsection 206.01, if an appeal of a permit decision is filed under Section 204 (Appeals Process), the force and effect of the contested conditions of the permit are stayed until final Department action. The Department must notify the discharger and all interested parties of the uncontested conditions of the permit that are enforceable obligations of the discharger in accordance with Subsection 206.01.c. ( )

**02. Control Technologies**. When effluent limitations are contested, but the underlying control technology is not, the notice must identify the installation of the technology in accordance with the permit compliance schedules as an uncontested, enforceable obligation of the permit. ( )

**03. Combination of Technologies**. When a combination of technologies is contested, but a portion of the combination is not contested, that portion must be identified as uncontested if compatible with the combination of technologies proposed by the requester. ( )

**04. Inseverable Conditions**. Uncontested conditions, if inseverable from a contested condition, must be considered contested. ( )

**05. Enforceable Dates**. Uncontested conditions become enforceable thirty (30) days after the date of notice under Subsection 205.01. ( )

**06. Uncontested Conditions**. Uncontested conditions include: ( )

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

**b.** Permit conditions which will have to be met regardless of the outcome of the appeal under Section

204 (Appeals Procedure). ( )

**206. STAYS OF CONTESTED PERMIT CONDITIONS.**

**01. Stays**. ( )

**a.** If a Petition for Review of an IPDES permit under Section 204 (Appeals Process) is filed, the effect of the contested permit conditions are stayed pending final Department action. Uncontested permit conditions are stayed only until the date specified in Subsection 206.01.b. If the permit involves a new facility or new injection well, new source, new discharger or a recommencing discharger, the applicant will not be issued a permit for the proposed new facility, injection well, source or discharger pending final Department action. ( )

**b.** Uncontested conditions which are not severable from those contested are stayed together with the contested conditions. The Department must identify the stayed provisions of permits for existing facilities, injection wells, and sources. All other provisions of the permit for the existing facility, injection well, or source become fully effective and enforceable thirty (30) days after the date of the notification required in Subsection 206.01.c. ( )

**c.** As soon as possible after receiving notification from the Hearing Coordinator of the filing of a Petition for Review, the Department must notify the Hearing Authority, the applicant, and all other parties of the uncontested (and severable) conditions of the final permit that will become fully effective enforceable obligations of the permit as of the date specified in Subsection 206.01.b., and the notice must comply with the requirements of Section 205 (Contested Permit Conditions). ( )

**02. Stays Based on Cross Effects**. ( )

**a.** The Department may grant a stay based on the grounds that an appeal to the Hearing Authority under Section 204 (Appeals Process) of one permit may result in changes to another Department-issued IPDES permit only when each of the permits involved has been appealed to the Department. ( )

**b.** No stay of an EPA-issued NPDES permit may be granted based on the staying of any Department-issued IPDES permit except at the discretion of the EPA Region 10 Administrator and only upon written request from the Department. ( )

**03. Permittee Responsibilities**. Any facility or activity holding an existing permit must: ( )

**a.** Comply with the conditions of that permit during any modification or revocation and reissuance proceeding under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits); and ( )

**b.** To the extent conditions of any new permit are stayed under this section, comply with the conditions of the existing permit which correspond to the stayed conditions, unless compliance with the existing conditions would be technologically incompatible with compliance with other conditions of the new permit which have not been stayed. ( )

**207. -- 299. (RESERVED)**

**300. CONDITIONS APPLICABLE TO ALL PERMITS.**
The following conditions apply to all IPDES permits. Additional conditions applicable to IPDES permits are in Sections 301 (Permit Conditions for Specific Categories), 302 (Establishing Permit Provisions), and 40 CFR 122.42(e). All conditions applicable to IPDES permits will be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation must be given in the permit. ( )

**01. Duty to Comply**. The permittee must comply with all conditions of the permit. ( )

**a.** Any permit noncompliance constitutes a violation of Idaho law, the Clean Water Act, and is grounds for: ( )

i. Enforcement action; ( )

ii. Permit termination, revocation and reissuance, or modification; or ( )

iii. Denial of a permit renewal application. ( )

**b.** The permittee shall comply with effluent standards or prohibitions established under the Clean Water Act section 307(a) for toxic pollutants and with standards for sewage sludge use or disposal established under the Clean Water Act section 405(d), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, "Wastewater Rules," within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement. ( )

**02. Duty to Reapply**. If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must apply for and obtain a new permit. If the permittee complies with the application requirements of Section 105 (Application for an Individual IPDES Permit), or the notice of intent requirements of Section 130 (General Permits) for a general permit, and a permit is not issued prior to the permit's expiration date, the permit shall remain in force as stipulated in Subsections 101.02 and 101.03. ( )

**03. Need to Halt or Reduce Activity**. In an enforcement action, a permittee may not assert as a defense that compliance with the conditions of the permit would have made it necessary for the permittee to halt or reduce the permitted activity. ( )

**04. Duty to Mitigate**. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment. ( )

**05. Proper Operation and Maintenance**. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. ( )

**a.** Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. ( )

**b.** This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit or are required by IDAPA 58.01.16 "Wastewater Rules." ( )

**06. Permit Actions**. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition. ( )

**07. Property Rights**. The permit does not convey any property rights of any sort, or any exclusive privilege. ( )

**08. Duty to Provide Information**. The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The permittee shall also furnish to the Department upon request, copies of records required to be kept by the permit. ( )

**09. Inspection and Entry**. The permittee shall provide the Department's inspectors, or authorized representatives, including authorized contractors acting as representatives of the Department, upon presentation of credentials and other documents as may be required by law, access to: ( )

**a.** Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit; ( )

**b.** Any records that must be kept under the conditions of the permit and, at reasonable times, to copy

such records; ( )

**c.** Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and ( )

**d.** Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location. ( )

**10. Monitoring and Records**. A permittee must comply with the following monitoring and recordkeeping conditions: ( )

**a.** Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. ( )

**b.** The permittee shall retain the following records: ( )

i. All monitoring information, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time; and ( )

ii. The permittee's sewage sludge use and disposal activities shall be retained for a period of at least five (5) years or longer as required by 40 CFR Part 503. ( )

**c.** Records of monitoring information shall include: ( )

i. All calibration and maintenance records; ( )

ii. All original strip chart recordings for continuous monitoring instrumentation or other forms of data approved by the Department; ( )

iii. Copies of all reports required by the permit; ( )

iv. Records of all data used to complete the application or notice of intent for the permit; ( )

v. The date, exact place, and time of sampling or measurements; ( )

vi. The name of any individual(s) who performed the sampling or measurements; ( )

vii. The date(s) any analyses were performed; ( )

viii. The name of any individual(s) who performed the analyses; ( )

ix. The analytical techniques or methods used; and ( )

x. The results of the analysis. ( )

**d.** Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another test method is required by 40 CFR Part 401 through 471 or Part 501 through 503. ( )

**11. Signatory Requirements**. All applications, reports, or information submitted to the Department shall be signed and certified in accordance with Section 090 (Signature Requirements) and must include penalty provisions pursuant to Section 500 (Enforcement). ( )

**12. Reporting Requirements**. ( )

**a.** The permittee must give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility if: ( )

i. The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source as defined in Section 120 (New Sources and New Discharges) and 010 (Definitions); ( )

ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Subsection 301.01.a.; or ( )

iii. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites: ( )

(1) Not reported during the permit application process, or ( )

(2) Not reported pursuant to an approved land application or sludge disposal plan. ( )

**b.** The permittee must give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. ( )

**c.** The permit is not transferable to any person except after notice to the Department. The Department may modify or revoke and reissue a permit to change the name of the permittee and incorporate such other requirements as may be necessary under Section 202 (Transfer of IPDES Permits). ( )

**d.** Monitoring results must be reported at the intervals specified in the permit and meet the following requirements: ( )

i. Monitoring results will be reported on a Discharge Monitoring Report (DMR) or forms (which may be electronic) provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices. All reports and forms submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, permittees may be required to report electronically if specified by a particular permit. ( )

ii. If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136, or another method required for an industry-specific waste stream specified in the permit or under 40 CFR Part 401 through 471 or Part 501 through Part 503, the results of such monitoring will be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department. ( )

iii. Calculations for all limitations which require averaging of measurements will utilize an arithmetic mean unless otherwise specified by the Department in the permit. ( )

**e.** A permittee must submit reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit no later than fourteen (14) days following each schedule date of each requirement. As of December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. ( )

**f.** The permittee must report to the Department any noncompliance which may endanger health or the environment as follows: ( )

i. Within twenty-four (24) hours from the time the permittee becomes aware of the circumstances, provide any information orally; ( )

ii. Within five (5) days from the time the permittee becomes aware of the circumstances, provide a written submission that contains a description of: ( )

(1) The noncompliance and its cause; ( )

(2) The period of noncompliance, including exact dates and times; ( )

(3) If the noncompliance has not been corrected, the anticipated time it is expected to continue; and ( )

(4) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance; ( )

(5) For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described in Subsections 300.12.f.ii(1) through (4), as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), type of sewer overflow structure (e.g., manhole, combine sewer overflow outfall), discharge volumes untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the sewer overflow event, and whether the noncompliance was related to wet weather. ( )

(6) As of December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. ( )

iii. The following information must be reported within twenty-four (24) hours: ( )

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit (see Subsection 300.07, Property Rights); ( )

(2) Any upset which exceeds any effluent limitation in the permit; and ( )

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within twenty-four (24) hours (see Subsection 302.09, Twenty-Four Hour Reporting); and ( )

iv. The Department may waive the written report on a case-by-case basis for reports under Subsection 300.12.f.iii. if the oral report has been received within twenty-four (24) hours. ( )

**g.** The permittee must report all instances of noncompliance not reported under Subsections 300.12.d., e., and f., at the time monitoring reports are submitted. The reports of noncompliance must contain the information listed in Subsection 300.12.f. As of December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. ( )

**h.** Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it must promptly submit such facts or correct information. ( )

**13. Bypass Terms and Conditions**. ( )

**a.** Bypass, as defined in Section 010 (Definitions), is prohibited, and the Department may take enforcement action against a permittee for bypass, unless: ( )

i. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; ( )

ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and ( )

iii. The permittee submitted a notice of a bypass to the Department in accordance with Subsections 300.13.c. and d. As of December 21, 2020, all notices submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of CFR Part 127, permittees may be required to report electronically if specified by a particular permit. ( )

**b.** The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three (3) conditions listed in Subsection 300.13.a. ( )

**c.** If the permittee knows in advance of the need for a bypass, it shall submit prior notice to the Department, if possible at least ten (10) days before the date of the bypass. ( )

**d.** The permittee shall submit notice of an unanticipated bypass as required in Subsection 300.12.f. (24-hour notice). ( )

**e.** Bypasses not exceeding limitations, are allowed to occur, and are not subject to Subsection 300.13.a. or 300.13.d. if: ( )

i. The bypass does not cause effluent limitations to be exceeded, and ( )

ii. Only if it also is for essential maintenance to assure efficient operation. ( )

**14. Upset Terms and Conditions**. ( )

**a.** In any enforcement action for noncompliance with technology-based permit effluent limitations, a permittee may claim upset, as defined in Section 010 (Definitions), as an affirmative defense. A permittee seeking to establish the occurrence of an upset has the burden of proof. ( )

**b.** Any determination made in administrative review of a claim that noncompliance was caused by upset, before an action for noncompliance is commenced, is not final administrative action subject to judicial review. ( )

**c.** The following conditions are necessary for a permittee to demonstrate that an upset occurred. A permittee who wishes to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that: ( )

i. An upset occurred and that the permittee can identify the cause(s) of the upset; ( )

ii. The permitted facility was at the time being properly operated; ( )

iii. The permittee submitted twenty-four (24)-hour notice of the upset as required Subsection 300.12.f.iii(2); and ( )

iv. The permittee complied with any remedial measures required under Subsection 300.04. ( )

**15. Penalties and Fines**. Permits must include penalty and fine requirements pursuant to Section 500 (Enforcement). ( )

**301. PERMIT CONDITIONS FOR SPECIFIC CATEGORIES.**
In addition to conditions set forth in Section 300 (Conditions Applicable to all Permits), conditions identified in this section apply to all IPDES permits within the categories specified below. ( )

**01. Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers**. In addition to the reporting requirements under Subsection 300.12, all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Department as soon as they know or have reason to believe: ( )

**a.** That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit if that discharge will exceed the highest of the following notification levels: ( )

i. One hundred micrograms per liter (100 µg/L); ( )

ii. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; ( )

iii. Five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and ( )

iv. One milligram per liter (1 mg/L) for antimony; ( )

v. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Subsection 105.07; or ( )

vi. The level established by the Department in accordance with Subsection 302.08; and ( )

**b.** That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit if that discharge will exceed the highest of the following notification levels: ( )

i. Five hundred micrograms per liter (500 µg/L); ( )

ii. One milligram per liter (1 mg/L) for antimony; ( )

iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Subsection 105.07; or ( )

iv. The level established by the Department in accordance with Subsection 302.08. ( )

**02. Publicly Owned Treatment Works**. All POTWs must provide adequate notice to the Department of the following: ( )

**a.** Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to the Clean Water Act section 301 or 306 if it were directly discharging those pollutants; and ( )

**b.** Any substantial change in the volume or character of pollutants being introduced into that POTW

by a source introducing pollutants into the POTW at the time of issuance of the permit. For purposes of this subsection, adequate notice shall include information on: ( )

i. The quality and quantity of effluent introduced into the POTW, and ( )

ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW. ( )

**03. Municipal Separate Storm Sewer Systems**. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Department under 40 CFR 122.26(a)(1)(v) must submit an annual report by the anniversary of the date of the issuance of the permit for such system. As of December 21, 2020, all reports submitted in compliance with this section must be submitted electronically by the owner, operator, or the duly authorized representative of the MS4 to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, the owner, operator, or the duly authorized representative of the MS4 may be required to report electronically if specified by a particular permit. The report shall include: ( )

**a.** The status of implementing the components of the storm water management program that are established as permit conditions; ( )

**b.** Proposed changes to the storm water management programs that are established as permit conditions. Such proposed changes shall be consistent with Subsection 105.18.b.iii.; ( )

**c.** Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under Subsection 105.18.b.iv. and 105.18.b.v.; ( )

**d.** A summary of data, including monitoring data, that is accumulated throughout the reporting year; ( )

**e.** Annual expenditures and budget for the year following each annual report; ( )

**f.** A summary describing the number and nature of enforcement actions, inspections, and public education programs; and ( )

**g.** Identification of water quality improvements or degradation. ( )

**04. Storm Water Dischargers**. The initial permits for discharges composed entirely of storm water issued pursuant to 40 CFR 122.26(e)(7) shall require compliance with the conditions of the permit as expeditiously as practicable but in no event later than three (3) years after the date of issuance of the permit. ( )

**05. Concentrated Animal Feeding Operations (CAFOs)**. Any applicable permit must include provisions pursuant to 40 CFR 122.42(e). ( )

**302. ESTABLISHING PERMIT PROVISIONS.**

The Department will establish conditions, as required on a case-by-case basis, to provide for and ensure compliance with all applicable requirements of the Clean Water Act and state rules, including conditions under Section 101 (duration of permits), Section 305 (compliance schedules), Section 304 (monitoring), and electronic reporting requirements identified under 40 CFR Part 127. An IPDES permit must include conditions meeting the following requirements, when applicable, in addition to other applicable sections of these rules. ( )

**01. Incorporation**. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit. ( )

**02. Applicable Requirements**. The Department shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the Clean Water Act and Section

101 (Duration), and Subsections 304.01, and 305.01 of these rules. ( )

**a.** Applicable requirements include all statutory or regulatory requirements which take effect prior to final administrative disposition of the permit. ( )

**b.** Applicable requirements also include any requirement which takes effect prior to the modification or revocation and reissuance of a permit under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits). ( )

**c.** New or reissued permits, and to the extent allowed under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits) for modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in Sections 200 (Renewal of IPDES Permits), and 302 (Establishing Permit Provisions) through 304 (Monitoring and Reporting Requirements). ( )

**03. Technology-Based Effluent Limitations and Standards**. ( )

**a.** Technology-based effluent limitations and standards shall be based on: ( )

i. Effluent limitations and standards promulgated under the Clean Water Act section 301; ( )

ii. New source performance standards promulgated under the Clean Water Act section 306; ( )

iii. Effluent limitations determined on a case-by-case basis under the Clean Water Act section 402(a)(1); or ( )

iv. A combination of the three (3), in accordance with 40 CFR 125.3. ( )

**b.** For new sources or new dischargers, these technology based limitations and standards are subject to the provisions of 40 CFR 122.29(d). ( )

**c.** The Department may authorize a discharger, subject to technology-based effluent limitations guidelines and standards in an IPDES permit, to forgo sampling of a pollutant found at 40 CFR Parts 401 through 471, if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. ( )

i. This waiver is good only for the term of the permit and is not available during the term of the first NPDES or IPDES permit issued to a discharger. ( )

ii. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. ( )

iii. Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet. ( )

iv. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards. ( )

**04. Other Effluent Limitations and Standards**. ( )

**a.** If any applicable toxic effluent limitations and standards under the Clean Water Act sections 301, 302, 303, 307, 318, and 405 or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under the Clean Water Act section 307(a) for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Department shall initiate

proceedings under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits) to modify or revoke and reissue the permit to conform to the more stringent toxic effluent standard or prohibition (see also Subsection 300.01). ( )

**b.** Standards for sewage sludge use or disposal under the Clean Water Act section 405(d), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, "Wastewater Rules," shall be applied, unless those standards have been included in a permit issued under the appropriate provisions of: ( )

i. Subtitle C of the Solid Waste Disposal Act; ( )

ii. Part C of Safe Drinking Water Act; ( )

iii. The Clean Air Act; or ( )

iv. State permit programs approved by the EPA. ( )

**c.** When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. ( )

**d.** If any applicable standard for sewage sludge use or disposal is promulgated under the Clean Water Act section 405(d), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, "Wastewater Rules," that standard is more stringent than any limitation on the pollutant or practice in the permit, the Department may initiate proceedings under these regulations to modify or revoke and reissue the permit, in compliance with Section 201 (Modification, or Revocation and Reissuance of IPDES Permits), to conform to the standard for sewage sludge use or disposal. ( )

**e.** Include any requirements applicable to cooling water intake structures under the Clean Water Act section 316(b), in accordance with 40 CFR 125.80 through 125.99. ( )

**05. Reopener Clause**. For any permit issued to a TWTDS (including sludge-only facilities), the Department shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under the Clean Water Act section 405(d). The Department may promptly modify or revoke and reissue any permit containing the reopener clause required by this subsection if the standard for sewage sludge use or disposal: ( )

**a.** Is more stringent than any requirements for sludge use or disposal in the permit, or ( )

**b.** Controls a pollutant or practice not limited in the permit. ( )

**06. Water Quality Standards and Requirements**. Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under the Clean Water Act sections 301, 304, 306, 307, 318 and 405 shall be included in a permit if they are necessary to: ( )

**a.** Achieve water quality standards established in IDAPA 58.01.02, "Water Quality Standards," including narrative criteria for water quality and antidegradation provisions. ( )

i. Effluent limitations in a permit must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Department determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including narrative criteria for water quality. ( )

ii. When the Department determines whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a water quality standard, the Department shall use procedures which account for: ( )

(1) Existing controls on point and nonpoint sources of pollution; ( )

(2) The variability of the pollutant or pollutant parameter in the effluent; ( )

(3) The sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity); and where appropriate, ( )

(4) The dilution of the effluent in the receiving water; ( )

iii. When the Department determines, using the procedures in Subsection 302.06.a.ii., that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a state numeric criteria within a state water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant. ( )

iv. When the Department determines, using the procedures in Subsection 302.06.a.ii., that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity. ( )

v. Except as provided in this subsection, when the Department determines, using the procedures in Subsection 302.06.a.ii., toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the Department demonstrates in the fact sheet of the IPDES permit, using the procedures in Subsection 302.06.a.ii., that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative state water quality standards. ( )

vi. When the state has not established a numeric water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable state water quality standard, the Department must establish effluent limits using one (1) or more of the following options: ( )

(1) Establish effluent limits using a calculated numeric water quality target or concentration value for the pollutant which the Department demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a target or concentration value may be derived: ( )

(a) Using a proposed criterion, or an explicit policy or regulation interpreting its narrative water quality criterion, and ( )

(b) Supplemented with other relevant information which may include EPA's Water Quality Standards Handbook, as currently revised, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration (FDA), and current EPA criteria documents; ( )

(2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under the Clean Water Act section 304(a), supplemented where necessary by other relevant information; or ( )

(3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided: ( )

(a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation; ( )

(b) The required fact sheet sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards; ( )

(c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and ( )

(d) The permit contains a reopener clause allowing the Department to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards. ( )

vii. When developing water quality-based effluent limits under this subsection, the Department shall ensure that: ( )

(1) The level of water quality to be achieved by limits on point sources established under this subsection is derived from, and complies with all applicable water quality standards; and ( )

(2) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the state and approved by EPA pursuant to 40 CFR 130.7; ( )

**b.** Attain or maintain a specified water quality through water quality related effluent limits established under the Clean Water Act section 302; ( )

**c.** Conform to applicable water quality requirements under the Clean Water Act section 402(b)(5) when the discharge affects a state other than Idaho; ( )

**d.** Incorporate any more stringent limitations, treatment standards, or schedules of compliance requirements established under federal or state law or regulations in accordance with the Clean Water Act section 301(b)(1)(C); ( )

**e.** Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under the Clean Water Act section 208(b); or ( )

**f.** Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 CFR 125.30 through 125.32. ( )

**07. Technology-Based Controls for Toxic Pollutants**. ( )

**a.** In determining whether to include limitations on toxic pollutants in a permit under this section, the Department will establish limits in accordance with Subsections 302.03, 302.04, and 302.06 and in a notification under Section 301 (Permit Conditions for Specific Categories), or other relevant information. The fact sheet must explain the development of limitations included in the permit. ( )

**b.** An IPDES permit must include limitations to control all toxic pollutants which the Department determines (based on information reported in a permit application under Subsection 105.07 and 301.01.a., or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c). ( )

**c.** The requirement that the limitations control the pollutants meeting the criteria of Subsection 302.07.b. will be satisfied by: ( )

i. Limitations on those toxic pollutants; or ( )

ii. Limitations on other pollutants which, in the judgment of the Department, will provide treatment of the pollutants under Subsection 302.07.b. to the levels required by 40 CFR 125.3(c). ( )

**08. Notification Level**. An IPDES permit must include a condition requiring a notification level which exceeds the notification level of Subsection 301.01.a., upon a petition from the permittee or on the Department's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c). ( )

**09. Twenty-Four (24) Hour Reporting**. A permit will list pollutants for which the permittee is

required to report violations of maximum daily discharge limitations within twenty-four (24) hours under Subsection 300.12.f.iii(3), including any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance. ( )

**10.** **Permit Durations**. Permits must include permit durations pursuant to Subsection 101.01. ( )

**11.** **Monitoring Requirements**. Permits must include monitoring requirements pursuant to Section 304 (Monitoring and Reporting Requirements). ( )

**12.** **Pretreatment Program for POTWs**. A POTW permit must include pretreatment program conditions requiring the permittee to: ( )

**a.** Identify, in terms of character and volume of pollutants, any Significant Industrial Users discharging into the POTW subject to Pretreatment Standards under the Clean Water Act section 307(b) and 40 CFR Part 403; ( )

**b.** Submit a local program when required by and in accordance with 40 CFR Part 403, to ensure compliance with pretreatment standards to the extent applicable under the Clean Water Act section 307(b): ( )

i. The local program shall be incorporated into the permit as described in 40 CFR Part 403, and ( )

ii. The program must require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR Part 403; ( )

**c.** Provide written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1), following permit issuance or reissuance; and ( )

**d.** POTWs which are sludge-only facilities, are required to develop a pretreatment program under 40 CFR Part 403, when the Department determines that a pretreatment program is necessary to assure compliance with the Clean Water Act section 405(d). ( )

**13.** **Best Management Practices**. An IPDES permit must include best management practices (BMPs) to control or abate the discharge of pollutants when: ( )

**a.** Authorized under the Clean Water Act section 304(e) for the control of toxic pollutants and hazardous substances from ancillary industrial activities; ( )

**b.** Authorized under the Clean Water Act section 402(p) for the control of storm water discharges; ( )

**c.** Numeric effluent limitations are infeasible; or ( )

**d.** The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Clean Water Act. ( )

**14.** **Reissued Permits**. When a permit is renewed or reissued, it must include provisions pursuant to Section 200 (Renewal of IPDES Permits). ( )

**15.** **Privately-Owned Treatment Works**. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this section. ( )

**a.** Alternatively, the Department may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. ( )

**b.** The Department's decision to issue a permit with no conditions applicable to any user, to impose

conditions on one (1) or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works. ( )

**16.** **Grants**. An IPDES permit must include any conditions imposed in grants made by the EPA to POTWs under the Clean Water Act sections 201 and 204, which are reasonably necessary for the achievement of effluent limitations under the Clean Water Act section 301. ( )

**17.** **Sewage Sludge**. An IPDES permit must include any requirements under the Clean Water Act section 405 governing the disposal of sewage sludge from POTWs or any other TWTDS for any use for which regulations have been established, in accordance with any applicable regulations. ( )

**18.** **Navigation**. An IPDES permit must include any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with Subsection 103.04 and 109.02. ( )

**19.** **Qualifying State or Local Programs**. ( )

**a.** For storm water discharges associated with small construction activity disturbing one (1) acre or more, but less than five (5) acres as specified in 40 CFR 122.26(b)(15), the Department may include permit conditions that incorporate by reference qualifying state or local erosion and sediment control program requirements. Where a qualifying state or local program does not include one (1) or more of the elements in this subsection, then the Department must include those elements as conditions in the permit. ( )

**b.** A qualifying state or local erosion and sediment control program is one that includes: ( )

i. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices; ( )

ii. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality; ( )

iii. Requirements for construction site operators to develop and implement a storm water pollution prevention plan, which must include: ( )

(1) Site descriptions; ( )

(2) Descriptions of appropriate control measures; ( )

(3) Copies of approved state or local requirements; ( )

(4) Maintenance procedures; ( )

(5) Inspection procedures; ( )

(6) Identification of non-storm water discharges; and ( )

iv. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts. ( )

**c.** For storm water discharges from a construction activity disturbing five (5) acres or more, including activities that disturb less than acres (5) acres but are part of a larger common plan of development or sale that will ultimately disturb five (5) acres or more, as specified in 40 CFR 122.26(b)(14)(x), the Department may include permit conditions that incorporate by reference qualifying state or local erosion and sediment control program requirements. A qualifying state or local erosion and sediment control program is one that includes the elements listed in Subsections 302.19.a. and b. and any additional requirements necessary to achieve the applicable technology-based standards of best available technology and best conventional technology based on the best

professional judgment of the permit writer. ( )

**20. Water Quality Trading**. The Department may include provisions in IPDES permits that allow for compliance with water quality based permit limits to be achieved through water quality trading. ( )

**303. CALCULATING PERMIT PROVISIONS.**

**01. Outfalls and Discharge Points**. All permit effluent limitations, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under Subsection 302.13, (Best Management Practices,) and Subsection 303.08, (Internal Waste Streams.) ( )

**02. Production-Based Limitations**. ( )

**a.** In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow. ( )

**b.** Except in the case of POTWs or as provided in Subsection 303.02.b.ii., calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based upon a reasonable measure of actual production of the facility. ( )

i. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations. ( )

ii. The Department may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels. ( )

iii. For the automotive manufacturing industry only, the Department shall establish an alternate condition under 303.02.b.ii., if the applicant satisfactorily demonstrates to the Department, at the time the application is submitted, that: ( )

(1) Its actual production, as indicated in Subsections 303.02.b. and 303.02.b.i. is substantially below maximum production capability, and ( )

(2) There is a reasonable potential for an increase above actual production during the duration of the permit. ( )

iv. If the Department establishes permit conditions under Subsection 303.02.b.ii.: ( )

(1) The permit shall require the permittee to notify the Department at least two (2) business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify: ( )

(a) The anticipated level, and the period during which the permittee expects to operate at the alternate level; and ( )

(b) If the notice covers more than one (1) month, the notice shall specify the reasons for the anticipated production level increase; and ( )

(c) New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two (2) consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice; ( )

(2) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Department under Subsection

303.02.b.ii., in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice; and ( )

(3) The permittee shall submit, with the Discharge Monitoring Report, the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production. ( )

**03. Metals**. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of total recoverable metal as defined in 40 CFR Part 136, unless: ( )

**a.** An applicable effluent standard or limitation has been promulgated under the Clean Water Act and specifies the limitation for the metal in the dissolved or valent or total form; ( )

**b.** In establishing permit limitations on a case-by-case basis under 40 CFR 125.3, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the Clean Water Act; or ( )

**c.** All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium). ( )

**04. Continuous Discharges**. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall, unless impracticable, be stated as: ( )

**a.** Maximum daily and average monthly discharge limitations for all dischargers other than POTWs; or ( )

**b.** Average weekly and average monthly discharge limitations for POTWs. ( )

**05. Noncontinuous Discharges**. Discharges which are not continuous, as defined in Section 010 (Definitions), shall be particularly described and limited, considering the following factors, as appropriate: ( )

**a.** Frequency (for example, a batch discharge shall not occur more than once every three (3) weeks); ( )

**b.** Total mass (for example, not to exceed one hundred (100) kilograms of zinc and two hundred (200) kilograms of chromium per batch discharge); ( )

**c.** Maximum rate of discharge of pollutants during the discharge (for example, not to exceed two (2) kilograms of zinc per minute); and ( )

**d.** Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than one-tenth (0.1) mg/L zinc or more than two hundred fifty (250) grams (one-fourth (¼) kilogram) of zinc in any discharge). ( )

**06. Mass Limitations**. ( )

**a.** All pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except: ( )

i. pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass; ( )

ii. When applicable standards and limitations are expressed in terms of other units of measurement; or ( )

iii. If in establishing permit limitations on a case-by-case basis under 40 CFR 125.3, limitations

expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment. ( )

**b.** Pollutants limited in terms of mass, may also be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations. ( )

**07. Pollutant Credits for Intake Water**. ( )

**a.** The following definitions apply to the consideration of intake credits in determining reasonable potential and establishing technology based and water quality based effluent limits for IPDES permits. ( )

i. An intake pollutant is the amount of a pollutant that is present in waters of the United States (including ground water as provided in Subsection 303.07.a.iv.) at the time water is removed from the same body of water by the discharger or other facility supplying the discharger with intake water. ( )

ii. An intake pollutant must be from the same body of water as the discharge in order to be eligible for an intake credit. An intake pollutant is considered to be from the same body of water as the discharge if the Department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. This finding will be established if: ( )

(1) The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water; ( )

(2) There is a direct hydrological connection between the intake and discharge points; and ( )

(3) Water quality characteristics (e.g., temperature, pH, hardness) are similar in the intake and receiving waters. ( )

iii. The Department may also consider other site-specific factors relevant to the transport and fate of the pollutant to make the finding in a particular case that a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. ( )

iv. An intake pollutant from ground water may be considered to be from the same body of water if the Department determines that the pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee, except that such a pollutant is not from the same body of water if the ground water contains the pollutant partially or entirely due to human activity, such as industrial, commercial, or municipal operations, disposal actions, or treatment processes. ( )

v. The determinations made under Subsections 303.07.b. and c. will be made on a pollutant-by-pollutant and outfall-by-outfall basis. ( )

vi. These provisions do not alter Department's obligation under Subsection 302.06.a.vii(2) to develop effluent limitations consistent with the assumptions and requirements of any available waste load allocations for the discharge, that is part of a TMDL prepared by the Department and approved by EPA pursuant to 40 CFR 130.7, or prepared by EPA pursuant to 40 CFR 130.7(d). ( )

**b.** Consideration of intake pollutants for technology based effluent limitations: ( )

i. Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if: ( )

(1) The applicable effluent limitations and standards contained in 40 CFR Part 401 through 471, specifically provide that they shall be applied on a net basis; or ( )

(2) The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and

standards in the absence of pollutants in the intake waters. ( )

ii. Credit for generic pollutants such as BOD or TSS should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere. ( )

iii. Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits. ( )

iv. Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Department may waive this requirement if the Department finds that no environmental degradation will result. ( )

v. This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water. ( )

**c.** Consideration of intake pollutants for water quality based effluent limitations: ( )

i. The Department will evaluate if there is reasonable potential for the discharge of an identified intake pollutant to cause or contribute to an exceedance of a narrative or numeric water quality criterion. If the Department determines that an intake pollutant in the discharge does not have the reasonable potential to cause or contribute to an exceedance of an applicable water quality standard, the Department is not required to include a water quality-based effluent limit for the identified intake pollutant in the facility's permit. ( )

ii. If a reasonable potential exists, then water quality-based effluent limits may be established that reflect a credit for intake pollutants where a discharger demonstrates that the following conditions are met: ( )

(1) The facility removes the intake water containing the pollutant from the same body of water into which the discharge is made; ( )

(2) The ambient background concentration of the pollutant does not meet the most stringent applicable water quality criterion for that pollutant; ( )

(3) The facility does not alter the identified intake pollutant chemically or physically in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutants had not been removed from the body of water; ( )

(4) The timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the identified intake pollutant had not been removed from the body of water; ( )

(5) For the purpose of determining water quality-based effluent limits, the facility does not increase the identified intake pollutant concentration at the point of discharge as compared to the pollutant concentration in the intake water. ( )

iii. Where the conditions in Subsection 303.07.c.i. and ii are met, the Department may establish a water quality-based effluent limitation allowing a facility to discharge a mass and concentration of the intake pollutant that are no greater than the mass and concentration found in the facility's intake water. A discharger may add mass of the pollutant to its waste stream if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water. ( )

iv. Where intake water for a facility is provided by a municipal water supply system and the supplier provides treatment of the raw water that removes an intake water pollutant, the concentration of the intake water pollutant will be determined at the point where the water enters the water supplier's distribution system. ( )

v. Where a facility discharges intake pollutants from multiple sources that originate from the

receiving water body and from other water bodies, the Department may derive an effluent limit reflecting the flow-weighted amount of each source of the pollutant provided that conditions in 303.07.c.ii. of this subsection are met and adequate monitoring to determine compliance can be established and is included in the permit. ( )

vi. The permit will specify how compliance with mass and concentration-based limitations for the intake water pollutant will be assessed. This may be done by basing the effluent limitation on background concentration data. Alternatively, the Department may determine compliance by monitoring the pollutant concentrations in the intake water and in the effluent. This monitoring may be supplemented by monitoring internal waste streams or by a Department evaluation of the use of best management practices. ( )

vii. Effluent limitations must be established to comply with all other applicable state and federal laws and regulations including technology-based requirements and anti-degradation policies. ( )

viii. When determining whether water quality based effluent limitations are necessary, information from chemical-specific, whole effluent toxicity and biological assessments will be considered independently. ( )

ix. Permit limits must be consistent with the assumptions and requirement of waste load allocations or other provisions in a TMDL that has been approved by the EPA. ( )

**08. Internal Waste Streams**. ( )

**a.** When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by Section 304 (Monitoring and Reporting Requirements) shall also be applied to the internal waste streams. ( )

**b.** Limits on internal waste streams will be imposed only when the fact sheet sets forth the exceptional circumstances which make such limitations necessary, such as: ( )

i. When the final discharge point is inaccessible (for example, under ten (10) meters of water); ( )

ii. The wastes at the point of discharge are so diluted as to make monitoring impracticable; or ( )

iii. The interferences among pollutants at the point of discharge would make detection or analysis impracticable. ( )

**09. Disposal of Pollutants into Wells, into POTWs, or by Land Application**. ( )

**a.** When part of a discharger's process wastewater is not being discharged into waters of the United States because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the United States, applicable effluent standards and limitations for the discharge in an IPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one (1) of the following methods: ( )

i. If none of the waste from a particular process is discharged into waters of the United States, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards; or ( )

ii. In all cases other than those described in Subsection 303.09.a.i., effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the United States, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under 40 CFR Part 125, subpart D, to make them more or less stringent if discharges to wells, POTWs, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method may be algebraically expressed as:

P=(E x N)/T; where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the United States, and T is the total wastewater flow.

( )

**b.** Subsection 303.09.a. does not apply to the extent that promulgated effluent limitations guidelines: ( )

i. Control concentrations of pollutants discharged but not mass; or ( )

ii. Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs. ( )

**c.** Subsection 303.09.a. does not alter a discharger's obligation to meet any more stringent requirements established under Sections 300 (Conditions Applicable to all Permits), 301 (Permit Conditions for Specific Categories), 40 CFR 122.42(e), and 302 (Establishing Permit Provisions). ( )

**d.** Disposal of discharge into injection wells is regulated by: ( )

i. Idaho Department of Water Resources, in compliance with the IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells," for a Class I injection well; or ( )

ii. Health District having jurisdiction, in compliance with IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules," for a Class V injection well. ( )

**e.** Disposal of discharge onto the surface of the land is regulated by the Department under IDAPA 58.01.17, "Recycled Water Rules." ( )

**304. MONITORING AND REPORTING REQUIREMENTS.**

**01. Monitoring Requirements**. A permit must include the following requirements for monitoring: ( )

**a.** Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate); ( )

**b.** The type, intervals, and frequency of monitoring sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring; ( )

**c.** Provisions for reporting the results of monitoring, including frequency, appropriate for the regulated activity based on the impact of that activity and as specified in 40 CFR Part 127 (NPDES Electronic Reporting). Reporting shall be no less frequent than specified in 40 CFR 122.44; ( )

**d.** The mass (or other measurement specified in the permit) for each pollutant limited in the permit; ( )

**e.** The volume of effluent discharged from each outfall; ( )

**f.** Other measurements as appropriate, including: ( )

i. Pollutants in internal waste streams under Subsection 303.08; ( )

ii. Pollutants in intake water for net limitations under Subsection 303.07; ( )

iii. Frequency, rate of discharge, etc., for non-continuous discharges under Subsection 303.05; ( )

iv. Pollutants subject to notification requirements under Subsection 301.01; and ( )

v. Pollutants in sewage sludge or other monitoring as specified in 40 CFR Part 503; or as determined to be necessary on a case-by-case basis pursuant to the Clean Water Act section 405(d)(4), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, "Wastewater Rules"; ( )

**g.** According to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 for the analysis of pollutants or pollutant parameters, or another method required under 40 CFR Part 401 through 471 or Part 501 through 503. Consistent with 40 CFR Part 136, applicants or permittees have the option of providing matrix or sample specific minimum levels rather than the published levels. Further, where an applicant or permittee can demonstrate that, despite a good faith effort to use a method that would otherwise meet the definition of "sufficiently sensitive," the analytical results are not consistent with the QA/QC specifications for that method, then the Department may determine that the method is not performing adequately and the Department should select a different method from the remaining EPA-approved methods that is sufficiently sensitive consistent with provisions outlined in Subsections 304.01.g.i. and ii. For the purposes of this section, a method is "sufficiently sensitive" when: ( )

i. The method minimum level (ML) is at or below the level of the effluent limit established in the permit for the measured pollutant or pollutant parameter; or ( )

ii. The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapter N or O, for the measured pollutant or pollutant parameter; and ( )

**h.** In the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR Part 136, or methods are not otherwise required under 40 CFR Part 401 through 471 or Part 501 through 503, monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters. ( )

**02. Reporting Monitoring Results**. ( )

**a.** Except as provided in Subsections 304.02.d. and 304.02.e., the Department will establish requirements to report monitoring results on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. All results must be electronically reported in compliance with 40 CFR Part 127. ( )

**b.** For sewage sludge use or disposal practices, the Department will establish requirements to monitor and report results on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in 40 CFR Part 503, Section 380 (Sewage Sludge) of these rules, and Idaho's Wastewater Rules, IDAPA 58.01.16.650, "Wastewater Rules," (where applicable), but in no case less than once a year. All results must be electronically reported in compliance with 40 CFR Part 127. ( )

**c.** The Department will establish requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. ( )

**d.** The Department will establish requirements to report monitoring results for storm water discharges associated with industrial activity, other than those addressed in Subsection 304.02.c., on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require the discharger to: ( )

i. Conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity; ( )

ii. Evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed; ( )

iii. Maintain for a period of three (3) years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance; ( )

iv. Sign the report and certification in accordance with Section 090 (Signature Requirements); and ( )

v. Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification that the facility is in compliance with the permit, or alternative requirements, once every three (3) years by an Idaho licensed professional engineer. ( )

**e.** A permit that does not require monitoring results reports at least annually must require the permittee to report, at least annually, all instances of noncompliance not reported under Subsection 300.12. ( )

**305. COMPLIANCE SCHEDULES.**

**01. General**. An IPDES permit may, when appropriate, specify a schedule of compliance leading to compliance with the Clean Water Act and these rules. ( )

**a.** Any schedules of compliance under this section shall require compliance as soon as possible. ( )

**b.** The first IPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction, but less than three (3) years before commencement of the relevant discharge. ( )

**c.** For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three (3) years before recommencement of discharge. ( )

**d.** If a permit establishes a schedule of compliance under this section that exceeds one (1) year from the date of permit issuance, the schedule must set out interim requirements and dates for achievement of the interim requirements. If the schedule includes interim requirements: ( )

i. The time between interim dates shall not exceed one (1) year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six (6) months; or ( )

ii. If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than one (1) year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date. ( )

**e.** Within fourteen (14) days following each interim and final date of compliance, the permittee shall notify the Department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if Subsection 305.01.d.ii. is applicable. ( )

**f.** Permits may incorporate compliance schedules which allow a discharger to phase in, over time, compliance with water quality-based effluent limitations in accordance with IDAPA 58.01.02.400, "Water Quality Standards." ( )

**02. Alternative Schedules of Compliance**. An IPDES permit applicant or permittee may cease conducting regulated activities (by terminating direct discharge for point sources) rather than continuing to operate and meet permit requirements as follows: ( )

**a.** If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued: ( )

i. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or ( )

ii. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit. ( )

**b.** If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline. ( )

**c.** If the permittee is undecided whether to cease conducting regulated activities, the Department may issue or modify a permit to contain two (2) schedules, as follows: ( )

i. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities; ( )

ii. One (1) schedule shall lead to timely compliance with applicable requirements, no later than the statutory deadline; ( )

iii. The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements no later than the statutory deadline; and ( )

iv. Each permit containing two (2) schedules shall include a requirement that after the permittee has made a final decision under Subsection 305.02.c., it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities. ( )

**d.** The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Department, such as a resolution of the board of directors of a corporation. ( )

**306. -- 309. (RESERVED)**

**310. VARIANCES.**

**01. Variance Requests by non-POTWs**. ( )

**a.** A discharger which is not a POTW may request a variance from otherwise applicable effluent limitations under the following statutory or regulatory provisions, within the times specified in this subsection. ( )

i. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based must be filed as follows: ( )

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period under Section 109 (Public Notification and Comment); or ( )

(2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than one hundred eighty (180) days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987. ( )

ii. The request must explain how the requirements of the applicable regulatory and/or statutory criteria

have been met. ( )

**b.** An applicant may request a variance for non-conventional pollutants under this section for the following: ( )

i. A variance from the BAT requirements for Clean Water Act section 301(b)(2)(F) pollutants (commonly called non-conventional pollutants) pursuant to the Clean Water Act section 301(c) because of the economic capability of the owner or operator; or ( )

ii. A variance pursuant to the Clean Water Act section 301(g) provided: ( )

(1) The variance may only be requested for ammonia; chlorine; color; iron; total phenols (4AAP), when determined by the EPA Administrator to be a pollutant covered by the Clean Water Act section 301(b)(2)(F); and ( )

(2) Any other pollutant which the EPA Administrator lists under the Clean Water Act section 301(g)(4). ( )

**c.** The request for variance as outlined in Subsection 310.01.b. must be made as follows: ( )

i. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline, by submitting an initial request to the Department no later than two hundred seventy (270) days after promulgation of the applicable effluent limitation guideline followed by a completed request no later than the close of the public comment period under Section 109 (Public Notification and Comment). ( )

(1) The initial request to the Department must contain: ( )

(a) The name of the discharger; ( )

(b) The permit number; ( )

(c) The outfall number(s); ( )

(d) The applicable effluent guideline; and ( )

(e) Whether the discharger is requesting a Clean Water Act section 301(c) or section 301(g) modification or both. ( )

(2) The completed request must demonstrate that the applicable requirements of 40 CFR Part 125 have been met. Notwithstanding this provision, the complete application for a request under Clean Water Act section 301(g) must be filed one hundred eighty (180) days before the Department must make a decision (unless the Department establishes a shorter or longer period). ( )

ii. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with Subsection 310.01.c.i(2) and need not be preceded by an initial request under Subsection 310.01.c.i(1). ( )

**d.** A modification under the Clean Water Act section 302(b)(2) of requirements under the Clean Water Act section 302(a) for achieving water quality related effluent limitations may be requested no later than the close of the public comment period under Section 109 (Public Notification and Comment) on the permit from which the modification is sought. ( )

**e.** A variance under the Clean Water Act section 316(a) for the thermal component of any discharge must be filed with a timely application for a permit under Section 105 (Application for an Individual IPDES Permit), except that if thermal effluent limitations are established under the Clean Water Act section 402(a)(1) or are based on water quality standards, the request for a variance may be filed by the close of the public comment period under Section 109 (Public Notification and Comment). ( )

**02. Variance Requests by POTWs**. A discharger which is a POTW may request a variance from water quality based effluent limitations. A modification under the Clean Water Act section 302(b)(2) of the requirements under the Clean Water Act section 302(a) for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period under Section 109 (Public Notification and Comment) on the permit from which the modification is sought. ( )

**03. Permit Variance Decision Process**. ( )

**a.** The Department may deny requests for variances. A variance that has been denied by the Department may be appealed according to the process identified in Section 204 (Appeals Process). ( )

**b.** The Department may grant (subject to EPA objection under Subsection 103.02 or 40 CFR 123.44): ( )

i. Variances for extensions under the Clean Water Act section 301(i) based on delay in completion of a POTW; ( )

ii. Variances after consultation with EPA, extensions under the Clean Water Act section 301(k) based on the use of innovative technology; ( )

iii. Variances under the Clean Water Act section 316(a) for thermal pollution; or ( )

iv. Variances from water quality standards under IDAPA 58.01.02.260, "Water Quality Rules." ( )

**c.** The Department may forward to EPA with or without a recommendation: ( )

i. A variance based on the economic capability of the applicant under the Clean Water Act section 301(c); or ( )

ii. A variance based on water quality related effluent limitations under the Clean Water Act section 302(b)(2). ( )

**d.** The Department may forward to EPA with a written concurrence: ( )

i. A variance based on the presence of fundamentally different factors from those on which an effluent limitations guideline was based (Clean Water Act section 301(n)); or ( )

ii. A variance based upon certain water quality factors under the Clean Water Act section 301(g). ( )

**e.** The EPA may grant or deny a request for a variance that is forwarded by the Department. If the EPA Administrator (or his delegate) approves the variance, the Department shall prepare a draft permit incorporating the variance. ( )

**f.** Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision under Section 204 (Appeals Process). ( )

**04. Expedited Variance Procedures and Time Extensions**. ( )

**a.** Notwithstanding the time requirements in Subsections 310.01 and 310.02, the Department may notify a permit applicant before a draft permit is issued under Section 108 (Draft Permit and Fact Sheet) that the draft permit will likely contain limitations which are eligible for variances. ( )

i. In the notice, the Department may require the applicant, as a condition of consideration of any

potential variance request, to submit a request explaining how the requirements of 40 CFR Part 125, applicable to the variance, have been met and may require its submission within a specified reasonable time after receipt of the notice. ( )

ii. The Department may send the notice before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance. ( )

**b.** A discharger who cannot file a timely complete request required under Subsections 310.01.c.i.(2) or 310.01.c.ii. may request an extension. ( )

i. The extension may be granted or denied at the discretion of the Department. ( )

ii. The extension shall be no more than six (6) months in duration. ( )

**05. Special Procedures for Decisions on Thermal Variances**. ( )

**a.** The only issues connected with issuance of a particular permit on which the Department will make a final decision before the final permit is issued, are whether alternative effluent limitations would be justified under the Clean Water Act section 316(a) or whether cooling water intake structures will use the best available technology under section 316(b). ( )

i. Permit applicants who wish an early decision on these issues should make a request to the Department, furnished with supporting reasons at the time their permit applications are filed. ( )

ii. The Department will then decide whether or not to make an early decision. If it is granted, both the early decision on Clean Water Act section 316 (a) or (b) issues and the grant of the balance of the permit shall be: ( )

(1) Considered permit issuance under these regulations, and ( )

(2) Subject to the same requirements of public notice and comment and the same opportunity for an appeal. ( )

**b.** If the Department, on review of the administrative record, determines that the information necessary to decide whether or not the Clean Water Act section 316(a) issue is not likely to be available in time for a decision on permit issuance, the Department may issue a permit for a term up to five (5) years. ( )

i. The permit shall require achievement of the effluent limitations initially proposed for the thermal component of the discharge, no later than the date otherwise required by law. ( )

ii. However, the permit shall also afford the permittee an opportunity to file a demonstration under Clean Water Act section 316(a), after conducting such studies as are required under 40 CFR 125.70 through 125.73. ( )

iii. A new discharger may not exceed the thermal effluent limitation which is initially proposed unless and until its Clean Water Act section 316(a) variance request is finally approved. ( )

**c.** Any proceeding held under Subsection 310.05.a. shall be: ( )

i. Publicly noticed as required by Section 109 (Public Notification and Comment), and ( )

ii. Conducted at a time allowing the permittee to take necessary measures to meet the final compliance date in the event its request for modification of thermal limits is denied. ( )

**d.** Whenever the Department defers the decision under the Clean Water Act section 316(a), any decision under the Clean Water Act section 316(b) may be deferred. ( )

**311. -- 369. (RESERVED)**

**370. PRETREATMENT STANDARDS.**

**01. Purpose and Applicability**. This section and 40 CFR Part 403 apply to: ( )

**a.** Pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined in Subsection 370.04 and 40 CFR 403.3; ( )

**b.** POTWs which receive wastewater from sources subject to National Pretreatment Standards; and ( )

**c.** Any new or existing source subject to Pretreatment Standards. National Pretreatment Standards do not apply to sources which discharge to a sewer which is not connected to a POTW Treatment Plant. ( )

**02. Objectives of General Pretreatment Regulations**. This section and 40 CFR Part 403 fulfill three (3) objectives: ( )

**a.** To prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge; ( )

**b.** To prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and ( )

**c.** To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges. ( )

**03. Department Program in Lieu of a POTW Program**. 40 CFR 403.8(a) requires certain POTWs develop a pretreatment program. The Department may, however, assume responsibility for implementing the POTW pretreatment program requirements set forth in 40 CFR 403.8(f) in lieu of requiring the POTW to develop a pretreatment program. This does not preclude POTWs from independently developing pretreatment programs. ( )

**04. Term Interpretation**. When used in the context of 40 CFR Part 403, unless the context in which a term is used clearly requires a different meaning, terms 40 CFR Part 403 that are incorporated by reference in these rules have the following meanings: ( )

**a.** The terms Administrator or Regional Administrator mean the EPA Region 10 Administrator; ( )

**b.** The term Approval Authority means the Department of Environmental Quality; ( )

**c.** The term Approved POTW Pretreatment Program or Program or POTW Pretreatment Program means a program administered by a POTW that meets the criteria established in 40 CFR 403.8 and 403.9, and which has been approved by the Department in accordance with 40 CFR 403.1; ( )

**d.** The term Control Authority means the POTW for a facility with a Department-approved pretreatment program and the Department for a POTW without a Department-approved pretreatment program; ( )

**e.** The term Director means the Department of Environmental Quality with an NPDES permit program approved pursuant to the Clean Water Act section 402(b); ( )

**f.** The terms National Pretreatment Standard, Pretreatment Standard, or Standard mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act,

which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to 40 CFR 403.5; and ( )

**g.** The term Water Management Division Director means a Director of the Water Management Division within the Region 10 office of the Environmental Protection Agency or this person's delegated representative. ( )

**05. Exceptions to Incorporation by Reference**. The following sections of 40 CFR Part 403 are excluded from the incorporation by reference in Section 003 (Incorporation by Reference) of these rules. ( )

**a.** 40 CFR 403.4 (State or Local Law). ( )

**b.** 40 CFR 403.19 (Provisions of Specific Applicability to the Owatonna Wastewater Treatment Facility). ( )

**c.** 40 CFR 403.20 (Pretreatment Program Reinvention Pilot Projects Under Project XL). ( )

**371. -- 379. (RESERVED)**

**380. SEWAGE SLUDGE.**

**01. Purpose**. The purpose of this section and 40 CFR Part 503 is to: ( )

**a.** Establish standards, which consist of general requirements, pollutant limits, management practices, and operational standards, for the final use or disposal of sewage sludge. ( )

i. Include standards for sewage sludge applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator. ( )

ii. Include: ( )

(1) Pathogen and alternative vector attraction reduction requirements for sewage sludge applied to the land or placed on a surface disposal site; and ( )

(2) On a case-by-case basis, controls for storm water runoff from lands where sewage sludge or septage has been placed for treatment or disposal. ( )

**b.** Include the frequency of monitoring and recordkeeping requirements when sewage sludge is: ( )

i. Applied to the land; ( )

ii. Placed on a surface disposal site; or ( )

iii. Fired in a sewage sludge incinerator; and ( )

**c.** Include reporting requirements for: ( )

i. Class I sludge management facilities; ( )

ii. POTWs with a design flow rate equal to or greater than one million gallons per day (1 MGD); and ( )

iii. POTWs that serve ten thousand (10,000) people or more. ( )

**02. Applicability**. This section and 40 CFR Part 503 applies to: ( )

**a.** Any person, who prepares sewage sludge, applies sewage sludge to the land, or fires sewage sludge in a sewage sludge incinerator and to the owner or operator of a surface disposal site; ( )

**b.** Sewage sludge applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator; ( )

**c.** The exit gas from a sewage sludge incinerator stack; or ( )

**d.** Land where sewage sludge is applied, to a surface disposal site, and to a sewage sludge incinerator. ( )

**03. Term Interpretation**. When used in the context of 40 CFR Part 503, unless the context in which a term is used clearly requires a different meaning, terms in the 40 CFR Part 503 that are incorporated by reference in these rules have the following meanings: ( )

**a.** The terms Administrator or Regional Administrator mean the EPA Region 10 Administrator; ( )

**b.** The terms Director or State Program Director mean the Department of Environmental Quality as the agency designated by the Governor as having the lead responsibility for managing or coordinating the approved IPDES program; and ( )

**c.** The term permitting authority is the Department of Environmental Quality. ( )

**04. Exceptions to Incorporation by Reference**. 40 CFR 503.1 (Purpose and Applicability) is excluded from the incorporation by reference found in Section 003 (Incorporation by Reference) of these rules. ( )

**381. -- 399. (RESERVED)**

**400. COMPLIANCE EVALUATION.**

**01. Non-Compliance Actions**. When the permittee is not in compliance with any condition of the existing or expired permit that has been administratively continued, the Department may choose to do one (1) or more of the following: ( )

**a.** Initiate an enforcement action; ( )

**b.** Issue a notice of intent to deny the new application. If the application is denied and the expired permit is no longer effective as provided in Subsection 101.02, the owner or operator must cease the activities authorized by the permit or be subject to enforcement action for operating without a permit; ( )

**c.** Issue a new permit with appropriate conditions; or ( )

**d.** Take other actions authorized by state law. ( )

**401. -- 499. (RESERVED)**

**500. ENFORCEMENT.**

**01. General Enforcement and Penalties**. Any person who violates any permit condition, filing or reporting requirement, duty to allow or carry out inspections, entry or monitoring requirements or any other provision in these rules shall be subject to administrative, civil or criminal enforcement and those remedies authorized in the Environmental Protection and Health Act, Sections 39-101 et seq., Idaho Code, including without limitation, civil and criminal penalties as provided in Sections 39-108 and 39-117, Idaho Code. ( )

**02. Truth in Reporting**. It is a violation of these rules for any person to falsify, tamper with, or

knowingly render inaccurate any monitoring device or method required to be maintained under an IPDES permit. In addition to any other remedy available to the Department, such a violation is punishable by a fine as provided in Section 39-117, Idaho Code. ( )

**03. False Statements**. It is a violation of these rules for any person to knowingly make any false statement, representation, or certification in any record or other document submitted or required to be maintained under an IPDES permit, including monitoring reports or reports of compliance or non-compliance. In addition to any other remedy available to the Department, such a violation is punishable by a fine as provided in Section 39-117, Idaho Code. ( )

**04. Public Participation in Enforcement**. The Department shall provide for public participation in the state enforcement process by: ( )

**a.** Investigating and providing written responses to citizen complaints; ( )

**b.** Not opposing intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and ( )

**c.** Publishing notice of and providing at least thirty (30) days for public comment on any proposed settlement of a state enforcement action. ( )

**501. -- 599. (RESERVED)**

**600. ADMINISTRATIVE RECORDS AND DATA MANAGEMENT.**

**01. Administrative Record for Draft Permits**. ( )

**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, 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. ( )

**02. Administrative Record for Final Permits**. ( )

**a.** The Department shall base final permit decisions on the administrative record defined in this section. ( )

**b.** The administrative record for any final permit, including issuance, denial, transfer, modification, revocation and reissuance, or termination shall consist of the administrative record for the draft permit and fact sheet, as defined in Subsection 600.01, the proposed permit and associated information, and the following: ( )

i. All comments received during the public comment period provided under Section 109 (Public Notification and Comment); ( )

ii. The record of, and any written materials submitted as part of, any meeting(s) held under Section 109 (Public Notification and Comment); ( )

iii. The application or notice of intent to obtain coverage under a general permit, notice of intent to deny the application, or to terminate the permit, and any supporting data furnished by the applicant; ( )

iv. The response to comments required by Subsections 109.02 and 109.03 and any new material placed in the record under that section; and ( )

v. Any other relevant correspondence and documents. ( )

**c.** The final permit and fact sheet shall become part of the administrative record after the final permit is issued. ( )

**d.** The additional documents identified under Subsection 600.02.b., 107.03, and 109.02 should be added to the record as soon as possible after their receipt or publication by the Department. The record shall be complete on the date the final permit is issued. ( )

**e.** This subsection applies to all IPDES permits when the draft permit was included in a public notice. ( )

**f.** Material readily available from the Department or published materials which are generally available and which are included in the administrative record under Subsection 600.02 or Section 109 (Public Notification and Comment), need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the fact sheet or in the response to comments. ( )

**03. Electronic Submittals**. Any information which the Department requires to be submitted electronically, with an electronic signature approved by the Department, will become part of the Administrative Record in accordance with Subsections 600.01 and 02. ( )

**601. -- 999. (RESERVED)**