PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, or the private sector, or both.

Department or Agency: Department of Environmental Quality

Agency Contact: Barry Burnell Phone: 208-373-0194

Date: October 14, 2014

IDAPA, Chapter and Title Number and Chapter Name:

IDAPA 58.01.15, Rules Regulating the Idaho Pollutant Discharge Elimination System Program

Fee Rule Status: X Proposed ___ Temporary

Rulemaking Docket Number: 58-0125-1401

STATEMENT OF ECONOMIC IMPACT:

How Program Costs Were Determined

Managing permits for Idaho's estimated 904 NPDES-permitted facilities would require the equivalent of about 25 full time DEQ employees dedicated to the program, at a total cost of $2,500,000 per year. These updated estimated program costs were determined using a national model (spreadsheet) developed together by EPA and states with NPDES primacy to estimate the cost of managing a state permit program. See Decision Analysis Report #3: http://www.deq.idaho.gov/media/490946-npdes_primacy_report3.pdf

In broad terms, an NPDES permit program includes the following activities and costs:

- Writing and issuing permits
- Conducting annual inspections
- Managing the required data
- Maintaining compliance assurance/enforcement
- Administering the program

Basic assumptions and criteria for each category of permittee are unchanged and are listed in Decision Analysis Report 2 to illustrate how the model determined costs. In December 2005,

revisions were made in the cost estimates to reflect the following changes in expected permitting practices as EPA currently operates:

- Added biosolids general permits for six regions of Idaho, as EPA is currently in this process.
- Modified municipal storm water permitting to be individual permits rather than general permits.
- Adjusted minor municipal permits to be all individual permits rather than some general permits. The general permit concept for municipal facilities has proven unworkable for EPA.
- Reviewed staff salaries and overhead costs but did not change the average cost per FTE. However, future cost increases in this area are inevitable over time, so a mechanism should be built-in to account for increased costs.
- The single general permit for aquaculture that was contemplated has been replaced with one individual permit and two general permits.
- The permit inventory was reviewed but not changed. Although there have been some changes in permittees, the net effect is mostly unchanged. (It should be noted that the inventory has some legacy issues and therefore should only be used as an estimate.)

Key Assumptions

Biosolids permitting and management is not a required element of a state primacy program. Biosolids are the treated solids from wastewater treatment processing that is land applied to crops or disposed of in landfills. The lack of having the biosolids program would offset some of the advantages of having primacy. DEQ would still have to manage state regulations in this area, and EPA would administer their own regulations, creating some confusion for permittees.

It should also be noted that the costs for confined animal feeding operations (CAFO) only include permitting costs shown for DEQ but not the compliance and enforcement costs that would continue to be funded by the Department of Agriculture, as is currently being done.

Funding Options

NPDES primacy has been discussed in the past, but never pursued because permit holders could not agree on a fee based funding structure.

Criteria for Funding NPDES Primacy

At an October 2001 meeting, a report prepared by CH2MHILL following an investigation of other states' fee structures was reviewed and discussed. (The report is available in the appendix of NPDES Decision Analysis Report 2.) While none of the states researched seemed to have just

the right fee mix for Idaho, it was apparent that any funding approach suitable for Idaho needs to meet the following general criteria:

- The system should be simple, with little administrative burden on permit holders or the agency.
- Fees should be annual and constant.
- Individual permit fees should not be greater than the cost of issuing and managing the permit.
- Funding for the program should be spread between permit fees, state funds, and federal funds, if possible.

The proposed fee structure would use five cost categories that group similar sources:

- Municipal
- Industrial
- Aquaculture
- Storm water
- CAFO

Originally, it was hoped that the program could be funded by one-third fees, one-third federal funds, and one-third state general funds. However, after discussions with EPA, it was apparent that the only funds available from EPA that could be used would be an existing grant that funds a portion of other DEQ activities, including surface water programs, wastewater land application permitting, wastewater plan reviews, NPDES certifications, and about fifty NPDES inspections. The latter two activities would be covered by the primacy program but would only amount to approximately one FTE.

Realistically, funding will be necessary from some combination of permittee fees and state general funds.

Benefits of an Idaho NPDES Program

It is difficult to make a cost comparison between a state run NPDES program and a federally run NPDES program. Some of the benefits of a state run program are difficult to measure because they do not have an easily identifiable “cash value,” but they include the following:

- Idaho state employees, who have familiarity and understanding of Idaho specific issues, will oversee the Idaho program.
- Permittees will have only one set of rules and regulations and one agency with which to interact, resulting in less confusion for permittees and less overlap of responsibilities for regulatory agencies.

- The state would have a fully functioning program to protect Idaho natural resources and human health.
- The state will have the ability to interpret and apply Idaho water quality standards to determine when permit limits are necessary and what alternate or innovative approaches are appropriate.
- The state will coordinate water programs—such as the total maximum daily load program (TMDL) and the state loan and grant programs—with the permitting program, providing a more comprehensive approach to water quality protection.
- The state will focus on upfront compliance assistance before enforcement.
- The state will use a streamlined process so no permit-by-permit ESA consultation is required.
- The state will coordinate all of the available tools, including using other sections of the Idaho water quality standards, such as variances and use attainability analyses, to develop commonsense solutions during the permitting process.
- The state will use innovative, cost-effective solutions to water quality issues, such as those issues involving temperature, nutrients, and mercury.
- The state will have the ability to pool state and private funding for research when opportunities arise to work together on desirable program changes or standards development.

All of these issues need to be considered together.