

# **Idaho Pollutant Discharge Elimination System (IPDES) — Discussion Paper #1**

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**Incorporate Pertinent NPDES Rules by  
Reference  
or  
Reprint Pertinent NPDES Rules**



**State of Idaho  
Department of Environmental Quality**

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**Idaho Pollutant Discharge Elimination System (IPDES)  
Discussion Paper #1  
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January 23, 2015**

In order to gain approval for the Idaho Pollutant Discharge Elimination System (IPDES) program, the Department of Environmental Quality (DEQ) must put in place permitting provisions that are as stringent as those required by federal law and federal regulations. The Idaho legislature has also mandated that state rules to implement the IPDES program not be more stringent or broader in scope than the Clean Water Act (CWA) and federal regulations. Two of the key decisions needed for developing the IPDES program are: (1) identifying those permitting provisions required by the federal regulations that DEQ can and should modify or rewrite to reflect an Idaho specific program, and (2) for those required permitting provisions that DEQ determines should not be modified or rewritten, determining how to best reflect those provisions in Idaho program rules (IDAPA 58.01.25).

The decision regarding whether to modify or rewrite the permitting provisions in federal regulations depends upon: (1) whether there is enough flexibility in the federal requirement to allow DEQ to modify or rewrite the federal provision and still be as stringent as necessary to gain program approval, (2) whether DEQ has the expertise to craft a new requirement, (3) the benefits to be gained by modifying or rewriting the federal requirement, and (4) whether, given the Idaho statutory deadline for submitting the IPDES program to EPA for approval and the resources available to DEQ, it makes sense to modify or rewrite the federal requirements.

Once DEQ has identified those federal requirements that it cannot or should not modify or rewrite, then DEQ must decide how to reflect the federal requirements in the Idaho rules. Potential approaches for creating IPDES-specific rules include: (1) incorporating pertinent National Pollutant Discharge Elimination (NPDES) rules by reference, from the Code of Federal Regulations (CFR); (2) re-printing pertinent NPDES rules into the IPDES rules or; (3) a hybrid approach. This paper addresses these different approaches to reflecting federal requirements in Idaho rules.

The implications of this decision will directly affect the workload, cost, effectiveness, and convenience for DEQ, IPDES permittees, and the citizens of Idaho (hereafter, referred to as “users”). There is no perfect solution, but the Hybrid Approach, which is DEQ’s recommended option, should result in the overall greatest program benefits. For all three approaches, any

change made by EPA in the CFR would need to be reflected in new Idaho IPDES rulemaking by either incorporation by reference or by reprinting.

### **1. Incorporate Pertinent NPDES Rules by Reference (IBR)**

The first approach involves incorporating pertinent NPDES rules from the CFR directly into IPDES program rules. This is a cost-effective and legally-rigorous approach, but may be confusing and less convenient for users. IBR is based on a specific date of adopted CFRs. Changes in the CFR will need to be reflected in the IPDES rules via the normal DEQ rulemaking process.

- A. IBR would help ensure that IPDES rules are as stringent as federal NPDES rules (as required in 40 CFR 123), but not more stringent (as required by the Idaho Legislature).
- B. IBR is more efficient for the State of Idaho by reducing considerable personnel time and monetary expenses associated with copying and re-printing rules that are already published in the CFR. For example, the State of Alaska utilized IBR for more than 1,000 pages of federal NPDES rules. Conversely, if Idaho chose to reprint the rules, it could cost users more than \$50,000 annually (assuming \$50/page).
- C. IBR would result in users needing to cross-reference IPDES rules with NPDES rules in the CFR.

### **2. Reprint Pertinent NPDES Rules (Reprinting)**

A second approach involves copying and reprinting pertinent NPDES rules from the CFR directly into IPDES program rules. This approach would be more convenient but more costly for users.

- A. Reprinting would help ensure that IPDES rules meet all federal regulatory requirements and the intent of the Idaho Legislature, similar to the IBR approach.
- B. Reprinting would be more costly for the State of Idaho because it requires considerable personnel time and monetary expenses associated with copying, reprinting, and publishing rules that are already published in the CFR. These additional expenses would likely be paid by IPDES users and Idaho taxpayers (see part B in IBR approach, above).
- C. Reprinting would provide a complete set of rules available in one location, and minimize the need for users to cross reference IPDES rules with NPDES rules in the CFR.

### **3. Hybrid (DEQ-Recommended Approach)**

States typically implement hybrid approaches that combine IBR along with referencing CFRs and adapting federal NPDES rules to meet state-specific needs, when practicable. Similarly, DEQ believes the most feasible, efficient, and cost effective approach for Idaho is to utilize IBR,

whenever practicable, and to otherwise reference and adapt additional NPDES rules to meet federal requirements and Idaho-specific needs.

- A. The hybrid approach allows DEQ to utilize IBR for federal rules that the IPDES program has no flexibility to modify, and helps ensure that IPDES rules meet all federal NPDES regulatory requirements and the intent of the Idaho Legislature.
- B. The hybrid approach allows DEQ to reference and adapt additional NPDES rules in order to meet Idaho-specific needs where regulatory flexibility exists, thereby improving the IPDES program efficiency and effectiveness.
- C. The hybrid approach allows DEQ to clearly and concisely identify which federal NPDES rules are incorporated by reference, which would improve the users' ability to efficiently cross-reference NPDES rules in the CFR.

### **Examples from Other States**

Alaska is the most recent state to obtain NPDES primacy in 2008. Alaska has one of the most comprehensive lists of rules incorporated by reference, in addition to adopting state-specific rules.

Arizona is the second-most recent state to obtain NPDES primacy in 2002 and 2004. Arizona has a comprehensive list of rules incorporated by reference, in addition to adopting state-specific rules.

Montana obtained NPDES primacy in stages from 1974-1983 and has primarily written state-specific NPDES rules, but also references CFRs throughout.

Oregon obtained NPDES primacy in stages from 1973-1982 and has primarily written state-specific NPDES rules, but also references CFRs throughout.

Utah obtained NPDES primacy in 1987 and 1996. Utah has a comprehensive list of rules incorporated by reference, in addition to adopting state-specific rules.

Washington obtained NPDES primacy in stages from 1973-1989 and has primarily re-written its NPDES rules, but also references CFRs.

## Pros and cons of IPDES rule development approaches.

|                                   | Pros   | Cons  |
|-----------------------------------|--|---|
| <b>Incorporation by Reference</b> | <ul style="list-style-type: none"> <li>• Minimizes risk of failing to meet CFR requirements</li> <li>• Ensures waters receive appropriate protection</li> <li>• Reduces upfront and ongoing workload and costs</li> <li>• Cost effective for DEQ personnel, permittees, and taxpayers</li> <li>• Prevents transcriptions errors</li> <li>• Changes made on a federal level would not be immediately effective in Idaho</li> </ul>  | <ul style="list-style-type: none"> <li>• Less convenience in identifying IPDES program rules</li> <li>• Cross-referencing necessary between Idaho rules and CFRs</li> <li>• Less program and rules flexibility</li> <li>• Idaho would have to react when choosing to remove specific sections from the list of rules incorporated by reference</li> <li>• Changes made in the CFR would need to be reflected in new rulemaking</li> </ul> |
| <b>Reprinting Rules</b>           | <ul style="list-style-type: none"> <li>• One set of IPDES rules</li> <li>• Cross-referencing Idaho rules and CFR not necessary</li> </ul>  | <ul style="list-style-type: none"> <li>• Increases upfront and ongoing DEQ workload and costs</li> <li>• More costly for IPDES users and Idaho taxpayers</li> <li>• Changes made in the CFR would need to be reflected in new rulemaking</li> </ul>   |
| <b>Hybrid (Recommended)</b>       | <ul style="list-style-type: none"> <li>• Provides Idaho the opportunity to determine which rules should be incorporated by reference</li> <li>• Ensures meeting federal NPDES regulatory requirements and the intent of the Idaho Legislature, while providing IPDES program flexibility where possible</li> <li>• Probably the best combination of efficiency and effectiveness for DEQ personnel, IPDES users, and Idaho taxpayers</li> <li>• Minimize the need to cross-reference Idaho rules and CFRs to the extent possible</li> <li>• Seems to be most common and practicable</li> </ul> | <ul style="list-style-type: none"> <li>• Idaho must decide which rules should be incorporated by reference</li> <li>• Still requires some cross-referencing between Idaho rules and CFR</li> <li>• Changes made in the CFR would need to be reflected in new rulemaking</li> </ul>  |

## NPDES rules incorporated by reference into Alaska, Arizona, and Utah state administrative codes.

| Alaska | Arizona | Utah | CFRs Incorporated by Reference   |
|--------|---------|------|--|
|        | ✓       |      | 40 CFR 122.7 (Confidentiality Information)   |
|        | ✓       |      | 40 CFR 122.21, except 40 CFR 122.21(a) through (e) and (l) (Application for a Permit)                            |
|        |         | ✓    | 40 CFR 122.21(i) (...Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities)            |
|        | ✓       |      | 40 CFR 122.22 (Signatories to Permit Applications and Reports)   |
| ✓      |         | ✓    | 40 C.F.R. 122.23 (Concentrated Animal Feeding Operations)  |
|        |         | ✓    | 40 CFR 122.23(a)   |
|        |         | ✓    | 40 CFR 122.23(b)(3)  |
|        |         | ✓    | 40 CFR 122.23(b)(5)  |
|        |         | ✓    | 40 CFR 122.23(b)(7)  |
|        |         | ✓    | 40 CFR 122.23(b)(8)  |
|        |         | ✓    | 40 CFR 122.23(c)   |
|        |         | ✓    | 40 CFR 122.23(d)(2)  |
|        |         | ✓    | 40 CFR 122.23(e)   |
|        |         | ✓    | 40 CFR 122.23(h)   |
| ✓      |         |      | 40 C.F.R. 122.25 (Aquaculture Projects)  |
| ✓      |         |      | 40 C.F.R. 122.26 (Storm Water Discharges)  |
|        | ✓       |      | 40 CFR 122.26, except 40 CFR 122.26(c)(2), and 40 CFR 122.26(e)(2)   |
|        |         | ✓    | 40 CFR 122.28(b)(2) (General Permits)  |
| ✓      | ✓       |      | 40 C.F.R. 122.29(d) (Effect of Compliance with New Source Performance Standards)                                 |
| ✓      |         |      | 40 C.F.R. 122.30 - 40 C.F.R. 122.37 (Requirements and Guidance for Small Municipal Separate Storm Sewer Systems) |
|        |         | ✓    | 40 CFR 122.30  |
|        | ✓       | ✓    | 40 CFR 122.32  |

| Alaska | Arizona | Utah | CFRs Incorporated by Reference   |
|--------|---------|------|--|
|        | ✓       | ✓    | 40 CFR 122.33  |
|        | ✓       | ✓    | 40 CFR 122.34  |
|        | ✓       | ✓    | 40 CFR 122.35  |
|        |         | ✓    | 40 CFR 122.36  |
|        | ✓       |      | 40 CFR 122.41, except 40 CFR 122.41(a)(2) and (a)(3) (Conditions Applicable to all Permits)                                |
|        | ✓       |      | 40 CFR 122.42 (Additional Conditions Applicable to Specified Categories of NPDES Permits)                                  |
| ✓      |         | ✓    | 40 C.F.R. 122.42(e) (Additional Conditions Applicable to NPDES Permits for Concentrated Animal Feeding Operations)         |
|        | ✓       |      | 40 CFR 122.43 (Establishing Permit Conditions)   |
|        | ✓       |      | 40 CFR 122.44 (Establishing Limitations, Standards, and other Permit Conditions)   |
|        | ✓       |      | 40 CFR 122.45 (Calculating NPDES Permit Conditions)  |
|        | ✓       |      | 40 CFR 122.47 (Schedule of Compliance)   |
|        | ✓       |      | 40 CFR 122.48 (Requirements for Recording and Reporting of Monitoring Results)   |
|        | ✓       |      | 40 CFR 122.50 (Disposal of Pollutants into Wells, into Publicly Owned Treatment Works or by Land Application)              |
|        | ✓       |      | 40 CFR 122.62(a) and (b) (Modification or Revocation and Reissuance of Permits)  |
|        |         | ✓    | 40 CFR 122.62(a)   |
|        |         | ✓    | 40 CFR 122.63(h) (Minor Modifications of Permits)  |
| ✓      |         |      | Appendix A to 40 C.F.R. Part 122 (NPDES Primary Industry Categories)   |
| ✓      |         |      | Appendix C to 40 C.F.R. Part 122 (Criteria for Determining a Concentrated Aquatic Animal Production Facility)              |
| ✓      |         |      | Appendix D to 40 C.F.R. Part 122 (NPDES Permit Application Testing Requirements)   |
| ✓      |         |      | Appendix J to 40 C.F.R. Part 122 (NPDES Permit Testing Requirements for Publicly Owned Treatment Works)                    |
|        | ✓       |      | 40 CFR 124.8, except 40 CFR 124.8(b)(3); (Fact Sheet)  |
|        | ✓       |      | 40 CFR 124.56 (Fact Sheets)  |
|        | ✓       |      | 40 CFR 125, subparts A, B, D, H, and I (Criteria and Standards for the National Pollutant Discharge Elimination System)    |
| ✓      |         |      | Subpart A (40 C.F.R. 125.1 - 40 C.F.R. 125.3; Criteria and Standards for Imposing Technology-Based Treatment Requirements) |
| ✓      |         |      | Subpart B (40 C.F.R. 125.10 - 40 C.F.R. 125.11; Criteria for Issuance of Permits to Aquaculture Projects)                  |

| Alaska | Arizona | Utah | CFRs Incorporated by Reference   |
|--------|---------|------|--|
| ✓      |         |      | Subpart D (40 C.F.R. 125.30 - 40 C.F.R. 125.32; Criteria and Standards for Determining Fundamentally Different Factors)                      |
| ✓      |         |      | Subpart G (40 C.F.R. 125.56 - 40 C.F.R. 125.68; Criteria for Modifying Secondary Treatment Requirements)                                     |
| ✓      |         |      | Subpart H (40 C.F.R. 125.70 - 40 C.F.R. 125.73; Criteria for Determining Alternative Effluent Limitations)                                   |
| ✓      |         |      | Subpart I (40 C.F.R. 125.80 - 40 C.F.R. 125.89; Requirements Applicable to Cooling Water Intake Structures for New Facilities)               |
| ✓      |         |      | Subpart J (40 C.F.R. 125.90 - 40 C.F.R. 125.99; Requirements Applicable to Cooling Water Intake Structures for Phase II Existing Facilities) |
|        | ✓       |      | 40 CFR 129 (Toxic Pollutant Effluent Standards)  |
| ✓      |         |      | 40 C.F.R. Part 129, Subpart A (40 C.F.R. 129.1 - 40 C.F.R. 129.105; Toxic Pollutant Effluent Standards and Prohibitions)                     |
| ✓      | ✓       | ✓    | 40 C.F.R. Part 133 (Secondary Treatment Regulation)  |
| ✓      | ✓       | ✓    | 40 C.F.R. Part 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants)  |
| ✓      |         |      | Provisions of Subchapter N (40 C.F.R. Part 400 - 40 C.F.R. Part 471; Effluent Standards)...  |
| ✓      | ✓       |      | 40 C.F.R. Part 401 (General Provisions)  |
|        | ✓       |      | 40 CFR 403 and Appendices A, D, E, and G (General pretreatment regulations for existing and new sources of pollution)                        |
| ✓      |         |      | 40 C.F.R. 403.1 - 40 C.F.R. 403.18 (General Pretreatment Regulations for Existing and New Sources of Pollution) and Appendices D, E, and G   |
|        |         | ✓    | 40 CFR 403.6 (National Pretreatment Standards and Categorical Standards)   |
|        |         | ✓    | 40 CFR 403.7 (Removal Credits)   |
|        |         | ✓    | 40 CFR 403.13, effective as of May 16, 2008, (Variances from Categorical Pretreatment Standards for Fundamentally Different Factors)         |
| ✓      | ✓       |      | 40 C.F.R. Part 405 - 40 C.F.R. Part 471, containing industry sector effluent limitations and guidelines                                      |
|        |         | ✓    | 40 CFR Parts 405 through 411   |
|        |         | ✓    | 40 CFR Part 412 (Concentrated Animal Feeding Operations)   |
|        |         | ✓    | 40 CFR Parts 413 through 471   |
|        |         | ✓    | 40 CFR 503 (Standards for the Use or Disposal of Sewage Sludge)  |
|        | ✓       |      | 40 CFR 503, Subpart C (Standards for the Use or Disposal of Sewage Sludge)   |

\*Some of the CFRs incorporated by reference include additional state-specific substitutions (e.g. substitute "UPDES" for all federal regulation references to "NPDES").

## Appendix A: NPDES Rules for incorporation

DEQ proposes incorporating by reference specific regulations found in Title 40 of the Code of Federal Regulations (40CFR). Idaho DEQ has identified several of the sections identified in 40 CFR §123.25 as being appropriate for crafting state specific language, but in the interest of time and cost savings, proposes that the sections shown in the following table be incorporated by reference. Sections identified as being required for authorization of a state program by §123.25 are identified in the table. A brief summary of each regulation is provided after the table as well as a rationale for incorporating the regulation by reference.

| <b>Req'd<br/>by<br/>123.25</b> | <b># of<br/>pages</b> | <b>Section Proposed for Incorporation</b>  |
|--------------------------------|-----------------------|--|
| Y                              | 4                     | 40 CFR 122.23 (Concentrated Animal Feeding Operations);  |
| Y                              | 1                     | 40 CFR 122.24 (Concentrated Aquatic Animal Production Facilities)  |
| Y                              | 1                     | 40 CFR 122.25 (Aquaculture Projects);  |
| Y                              | 21                    | 40 CFR 122.26 (Storm Water Discharges);  |
| Y                              | 1                     | 40 CFR 122.27 (Silvicultural activities);  |
|                                | 2                     | 40 CFR 122.29(d)(Effect of Compliance with New Source Performance Standards);  |
| Y                              | 9                     | 40 CFR 122.30-40 CFR 122.37 (Requirements and Guidance for Small Municipal Separate Storm Sewer Systems);            |
| Y                              | 6                     | 40 CFR 122.42(e)(Additional Conditions Applicable to NPDES Permits for Concentrated Animal Feeding Operations);      |
|                                | 1                     | Appendix A to 40 CFR 122. (NPDES Primary Industry Categories);   |
|                                | 1                     | Appendix C to 40 CFR 122. (Criteria for Determining a Concentrated Aquatic Animal Production Facility);              |
|                                | 4                     | Appendix D to 40 CFR 122. (NPDES Permit Application Testing Requirements);   |
|                                | 1                     | Appendix J to 40 CFR 122. (NPDES Permit Testing Requirements for Publicly Owned Treatment Works).                    |
| Y                              | 4                     | Subpart A (40 CFR 125.1 – 40 CFR 125.3 Criteria and Standards for imposing Technology-Based Treatment Requirements); |
| Y                              | 1                     | Subpart B (40 CFR 125.10 – 40 CFR 125.11 Criteria for Issuance of Permits to Aquaculture Projects);                  |
| Y                              | 2                     | Subpart D (40 CFR 125.30 – 40 CFR 125.32 Criteria and Standards for Determining Fundamentally Different Factors);    |

| <b>Req'd<br/>by<br/>123.25</b> | <b># of<br/>pages</b> | <b>Section Proposed for Incorporation</b>   |
|--------------------------------|-----------------------|---|
|                                | 20                    | Subpart G (40 CFR 125.56 - 40 CFR 125.68 Criteria for Modifying Secondary Treatment Requirements);  |
| Y                              | 2                     | Subpart H (40 CFR 125.70 - 40 CFR 125.73 Criteria for Determining Alternative Effluent Limitations);  |
| Y                              | 12                    | Subpart I (40 CFR 125.80 - 40 CFR 125.89 Requirements Applicable to Cooling Water Intake Structures for New Facilities);                    |
| Y                              | 18                    | Subpart J (40 CFR 125.90 - 40 CFR 125.99 Requirements Applicable to Cooling Water Intake Structures for Phase II Existing Facilities);      |
| Y                              | 11                    | 40 CFR Part 129 Subpart A (40 CFR 129.1 - 40 CFR 129.105 Toxic Pollutant Effluent Standards and Prohibitions);                              |
| Y                              | 4                     | 40 CFR 133 (Secondary Treatment Regulation);  |
|                                | 333                   | 40 CFR 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants);  |
| Y                              | 5                     | 40 CFR 401 (General Provisions);  |
| Y                              | 48                    | 40 CFR 403.1 - 40 CFR 403.18 (General Pretreatment Regulations for Existing and New Sources of Pollution) including Appendices D, E, and G; |
| Y                              | 661                   | 40 CFR 405 - 40 CFR 471 containing industry sector effluent limitations and guidelines  |

*1,172 pages recommended for incorporation by reference*

## **Summary of, and rationale for, regulations proposed for incorporation by reference.**

The purpose of this section is to provide a summary of the individual sections being proposed for incorporation and a short rationale for why the section should be incorporated. This is not an exact rendering of the language in the Code of Federal Regulations therefore parties interested in the specific language may find it beneficial to refer to the exact CFR reference.

DEQ proposes to incorporate the following sections of the CFR to comply with the requirements of the federal program. At this time DEQ does not have the time or resources to devote to fully re-writing these sections of the CFR making them specific to the needs of the citizens of Idaho while maintaining consistency with the overall intent of the federal regulation. Incorporating the following sections by reference will allow DEQ to proceed with the application for delegated

authority for the NPDES program while providing stability for those users affected by the regulations.

#### **A. 40 CFR 122.23 (Concentrated Animal Feeding Operations);**

- (a) Defines CAFOs as point sources subject to NPDES permitting requirements. Includes all animals and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of type. For example, this would include poultry raised secondary to the main production at a dairy facility.
- (b) Defines CAFO, Large CAFO, Medium CAFO, Small CAFO, production area.
- (c) Defines how an AFO may be designated as a CAFO.
- (d) NPDES permit authorization covers information to submit with permit application or notice of intent,
- (e) Land application discharges subject to NPDES requirements permit requirements,
- (f) When a permit is required
- (g) Reserved
- (h) Procedures for CAFOs seeking coverage under a general permit.

**40 CFR 122.23 pertains to CAFO operations and is required by §123.25. DEQ proposes this section for incorporation to cover CAFO operations under general and individual permits.**

#### **B. 40 CFR 122.24 (Concentrated Aquatic Animal Production Facilities)**

- (a) Requires permit
- (b) Defines what a concentrated aquatic animal production facility is
- (c) Authorizes the Director to make a case by case designation of concentrated aquatic animal production facility, lays out factors the Director shall consider, and requires an on-site inspection of the facility before designation as a concentrated aquatic animal production facility.

**40 CFR 122.24 pertains to concentrated aquatic animal production facilities and is required by §123.25. DEQ proposes to incorporate this section of the CFR to comply with the requirements of the federal program.**

#### **C. 40 CFR 122.25 (Aquaculture Projects);**

- (a) Requires permit
- (b) Defines aquaculture project and designated project area

**40 CFR 122.25 pertains to discharges into a surface water used for an aquaculture project and is required by §123.25. DEQ proposes to incorporate this section of the CFR to comply with the requirements of the federal program.**

**40 CFR 122.25 pertains**

**D. 40 CFR 122.26 (Storm Water Discharges);**

- (a) Defines those needing a permit
- (b) Defines co-permittee, illicit discharge, incorporated place, large municipal separate storm sewer system, major municipal separate storm sewer outfall, major outfall, medium municipal separate storm sewer system, municipal separate storm sewer, outfall, overburden, runoff coefficient, significant materials, storm water, storm water discharge associated with industrial activity, storm water discharge associated with small construction activity, small municipal separate storm sewer system, Small MS4, municipal separate storm sewer system, and uncontrolled sanitary landfill
- (c) Application requirements for industrial storm water and small construction storm water.
  - (1) Requirements for individual application
  - (2) Reserved
- (d) Application requirements for large and medium municipal separate storm sewer discharges
  - (1) Components for part 1 of the application
  - (2) Components for part 2 of the application
- (e) Application deadlines for various types of dischargers
- (f) Petitions
- (g) Conditional exclusion for “no exposure” of industrial activities and materials to storm water.
  - (1) Qualification
  - (2) Industrial materials and activities not requiring storm resistant shelter
  - (3) Limitations
- (h) Certification

**40 CFR 122.26 pertains to storm water discharges and is required by §123.25. DEQ proposes incorporating this section of the CFR to cover discharges of storm water.**

**E. 40 CFR 122.27 (Silvicultural activities)**

- (a) Requires permit for silvicultural point sources

(b) Defines silvicultural point source

- (1) Includes discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities operated in connection with silvicultural activities and from which pollutants are discharged in waters of the US. Does not include non-point source activities such as nursery operations, site prep, reforestation and subsequent cultural treatment, thinning prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance with natural runoff.
- (2) Defines rock crushing and gravel washing facilities
- (3) Defines log sorting and log storage facilities

**40 CFR 122.27 pertains to discharges from silvicultural activities and is required by §123.25. DEQ proposes incorporating this section of the CFR to cover discharges from these activities.**

**F. 40 CFR 122.29(d)(Effect of Compliance with New Source Performance Standards;**

(d) Effect of compliance with new source performance standards

- (1) New discharger or new source meeting applicable new source performance standards before commencing discharge may not be subject to any more stringent new source performance standards or tech based standards for the soonest ending of the following periods.
  - (i) 10 years from data of completed construction
  - (ii) 10 years from data source begins to discharge
  - (iii) period of depreciation or amortization of the facility
- (2) Protection of previous stringency clause does not apply to
  - (i) water quality based effluent limits for a discharge
  - (ii) additional permit conditions in accordance with 125.3
- (3) What happens when a permit expires after the protection period expires
- (4) Owner/operator of a new source or discharger commencing after 8/13/1979 shall have in operating condition all pollution control equipment to meet permit requirements
- (5) After the effective date of new source performance standards, it shall be unlawful to operate the source in violation of applicable standards.

**40 CFR 122.29(d) is specifically referenced in Subpart A 40 CFR 125.3 which is a required component under §123.25. Therefore this section is proposed for incorporation to maintain consistency with Subpart A.**

## **G. 40 CFR 122.30-40 CFR 122.37 (Requirements and Guidance for Small Municipal Separate Storm Sewer Systems);**

- (a) 122.30 – The objectives of the storm water regulations for small MS4s
- (b) 122.31 – Role of Tribes under the NPDES storm water program
- (c) 122.32 – Regulation of small MS4s under the NPDES storm water program
- (d) 122.33 – How and when to apply for an NPDES permit as a small MS4 operator
- (e) 122.34 – What NPDES permits require of small MS4s
  - (1) Storm water management program
  - (2) Minimum control measures
    - (i) public education and outreach
    - (ii) public involvement/participation
    - (iii) Illicit discharge detection and elimination
    - (iv) Construction site storm water runoff control
    - (v) Post construction storm water management in new development and redevelopment
    - (vi) Pollution prevention/good house-keeping for municipal operations.
  - (3) Conditions requiring a qualifying local program
  - (4) Information required in permit application
  - (5) Applying more stringent effluent limitations in the case of a TMDL or equivalent analysis
  - (6) Other permit conditions
  - (7) Evaluation and assessment of compliance including recordkeeping and reporting
- (f) 122.35 – Responsibility of MS4 to implement minimum control measures with other entities
- (g) 122.36 – What happens if small MS4 does not comply with permit requirements

**40 CFR 122.30- 40 CFR 122.37 pertains to small municipal separate storm sewer systems and is required by §123.25. DEQ proposes incorporating this section of the CFR to cover discharges from these sources.**

## **H. 40 CFR 122.42(e) (Additional Conditions Applicable to NPDES Permits for Concentrated Animal Feeding Operations);**

- (e) any permit issued to a CAFO must include these requirements:
  - (1) Requirement to implement a nutrient management plan (NMP) – lists 9 requirements
  - (2) Recordkeeping requirements – 5 years maintenance for records, have NMP on hand
  - (3) Requirements relating to transfer of manure or process wastewater to other persons
  - (4) Annual reporting requirements for CAFOs – lists 8 components for annual report
  - (5) Terms of the nutrient management plan

(6) What to do to changes a NMP

**40 CFR 122.42(e) pertains to small municipal separate storm sewer systems and is required by §123.25. DEQ proposes incorporating this section of the CFR to cover discharges from these sources.**

### **I. Appendix A to 40 CFR 122. (NPDES Primary Industry Categories);**

**This list of 34 Primary Industries (PI) includes at least 10 PIs that current Idaho industries fall within. If Idaho does not IBR Appendix A of 40 CFR 122, the industries will still be subject to the federal requirements, but the IPDES permit writers will not have jurisdiction to include the required Compliance Schedules (CS) and Effluent Limits (EL) required by Appendix A of 40 CFR 122 for these 34 PIs. This shortfall will prohibit the IPDES Program from issuing a permit that the EPA will find acceptable, increasing the probability that EPA will take over the draft permit and issue it under their jurisdiction.**

### **J. Appendix C to 40 CFR 122. (Criteria for Determining a Concentrated Aquatic Animal Production Facility);**

- (a) Defines concentrated aquatic animal production facility as a hatchery, fish farm or other facility in the following categories:
- (b) Cold water fish or other cold water aquatic animals in ponds raceways or other similar structures which discharge at least 30 days per year but not including:
  - (1) less than 9,090 harvest weight kilograms of aquatic animals per year, and
  - (2) feed less than 2,272 kg of food during the calendar month of maximum feeding
- (c) Warm water fish or other warm water aquatic animals in ponds, raceways, or other similar structures discharging at least 30 days per year excluding:
  - (1) Closed ponds which discharge only during periods of excess runoff, or
  - (2) Facilities producing less than 45,454 harvest weight kg of aquatic animals per year.

**40 CFR 122.24 is required by §123.25. 40 CFR 122.24(b), Definition, references Appendix C as containing the criteria defining what constitutes a Concentrated Aquatic Animal Production (CAAP) facility. Appendix C categorizes both warm and cold water CAAP facilities using facility attributes such as days of discharge annually, pounds of feed consumed, and harvest weight of CAAP facility yield. These facility attributes need to be IBR so that IPDES Permit writers have adequately defined jurisdiction to issue CAAP permits that comply with EPA's expectations.**

## **K. Appendix D to 40 CFR 122. (NPDES Permit Application Testing Requirements);**

The tables in Appendix D of 40 CFR 122 identify the chemical testing required of the PIs listed in Appendix A of 40 CFR 122. IBR of Appendix D would provide the IPDES Permit writers the authority to include these testing requirements in the draft permits thereby forestalling EPA's rejection of a facility's draft permit.

## **L. Appendix J to 40 CFR 122. (NPDES Permit Testing Requirements for Publicly Owned Treatment Works);**

40 CFR 122.21(j) is required by §123.25. 40 CFR 122.21(j)(4)(ii) requires that all POTW "applicants must sample and analyze for the pollutants listed in appendix J, Table 1A of this part." Additionally, 40 CFR 122.21(j)(4)(iv) identifies POTWs that have (A) a design flow rate equal to or greater than 1.0 MGD; (B) a pretreatment programs; or (C) as required by the Director, must also sample and analyze for those chemicals listed in Appendix J, Table 2.

## **M. Subpart A (40 CFR 125.1 – 40 CFR 125.3 Criteria and Standards for imposing Technology-Based Treatment Requirements);**

125.1 Purpose and scope

125.2 Definitions

125.3 Technology based effluent limits

(a) General – Technology based treatment requirements represent minimum level of control that must be imposed in a permit

(1) For POTWs, effluent limitations based upon

(i) Secondary treatment – from date of permit issuance and

(ii) The best practicable waste treatment technology – not later than July 1 1983

(2) For other dischargers except as provided in 122.29(d), effluent limitations requiring (provides exceptions within each subheading)

(i) The best practicable control technology currently available (BPT)

(ii) For conventional pollutants, the best conventional pollutant control technology (BCT)

(iii) For all toxic referred to in Committee Print No. 95-30 House Committee on Public Works and Transportation, the best available technology economically achievable (BAT)

- (iv) For all toxic pollutants not listed in Committee Print No. 95-30, effluent limits based on BAT
- (v) for all pollutants that are not toxics nor conventionals, effluent limits based on BAT
- (b) Statutory variances and extensions
  - (1) The following variance from tech based treatment are authorized and may be applied for
    - (i) POTWs, a section 301(h) marine discharge variance from secondary treatment
    - (ii) for dischargers other than POTWs
      - (A) section 301(c) water quality related variance from BAT
      - (B) section 301(g) economic variance from BAT
      - (C) section 316(a) thermal variance from BPT, BCT and BAT
  - (2) The following extension of deadlines for compliance the tech based requirements are authorized and may be applied for
    - (i) for POTWs, section 301(i) extension of the secondary treatment deadline
    - (ii) for dischargers other than POTWs
      - (A) section 301(i) extension of BPT deadline
      - (B) section 301(k) extension of the BAT deadline
- (c) Methods of imposing technology based treatment requirements in permits
  - (1) Application of EPA promulgated effluent limits.
  - (2) Case by case basis under section 402(a)(1), to the extent that EPA promulgated effluent limits are inapplicable
  - (3) Limits may be expressed, in terms of toxicity provided that its shown limits reflect the appropriate requirements
- (d) Provides items that case by case limits must consider
  - (1) For BPT – 6 items
  - (2) For BCT – 7 items
  - (3) For BAT – 6 items
- (e) Tech based treatment applied prior to or at point of discharge
- (f) Tech based treatment cannot be satisfied through the use of “non-treatment” techniques such as flow augmentation and instream mechanical aerators. These techniques may be considered as a method of achieving water quality standards on a case by case basis when:
  - (1) The tech based treatment applicable to the discharge are not sufficient to achieve the standards
  - (2) Discharger agrees to waive any opportunity to request a variance under section 301(c), (g), or (h) of the act.
  - (3) Discharger demonstrates that such a technique is the preferred environmental and economic method to achieve standards after consideration of alternatives such as advanced waste treatment etc.

- (g) Tech based effluent limits shall be established for solids sludges, filter backwash and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants
- (h) Provides terms when the Director may set permit limits more or less stringent than BCT for conventionals and non-conventionals

**Subpart A pertains to technology based effluent limits (TBELs) and is required by §123.25. DEQ proposes incorporating this section of the CFR to address the minimum levels of control that must be imposed in a permit.**

## **N. Subpart B (40 CFR 125.10 – 40 CFR 125.11 Criteria for Issuance of Permits to Aquaculture Projects);**

### 125.10 Purpose and Scope

- (a) Establish guidelines under 318 and 402 of the CWA for approval of any discharge associated with an aquaculture project;
- (b) Authorize controlled discharges otherwise unlawful under CWA to determine feasibility of using pollutants to grow aquatic organisms for beneficial harvest and use;
- (c) Permits issued under this subpart are NPDES permits subject to applicable requirements. Permit shall include such conditions deemed necessary to comply with parts 122, 123, and 124. Tech based limits need not be applied to discharges into the approved project except with respect to toxics.

### 125.11 Criteria

- (a) No NPDES permit shall be issued to an aquaculture project unless:
  - (1) The Director determines that the project:
    - (i) is intended by the operator to produce a crop which has significant direct or indirect commercial value (or is intended to be operated for research) and
    - (ii) does not occupy a designated project area which is larger than can be economically operated for the crop under cultivation or than is necessary for research purposes
  - (2) The applicant demonstrates that using the pollutant discharges will increase harvest over what would naturally occur in the area;
  - (3) The applicant demonstrates, to the satisfaction of the Director, that if the species cultivated in the project is not indigenous to the immediate geographic area, there will be minimal adverse effects on flora and fauna indigenous to the area and the total commercial value of the introduced species is at least equal to the displaced or affected flora and fauna;

- (4) The Director determines that the crop will not have significant potential for human health hazards
- (5) The Director determines that migration of pollutants from the project area will not cause or contribute to a violation of water quality standards or a violation of the applicable standards and limits applicable to the supplier of the pollutant that would govern if the project were itself a point source. The approval of the project shall not result in the enlargement of a pre-existing mixing zone.
- (b) No permit shall be issued for any aquaculture project in conflict with a plan or amendment to a plan approved under section 208(b) of the CWA.
- (c) No permit shall be issued for any project located in the territorial sea, waters of the contiguous zone, or the oceans...
- (d) Designated project areas shall not include a portion of a body of water large enough to expose a substantial portion of the indigenous biota to the conditions within the designated project area.
- (e) Any modifications caused by the construction or creation of a reef, barrier or containment structure shall not unduly alter the tidal regimen of an estuary or interfere with migrations of unconfined aquatic species.
- (f) Any pollutants not required by or beneficial to the aquaculture crop shall not exceed applicable standards and limitations when entering the designated project area.

**Subpart B pertains to issuing permits to aquaculture projects and is required by §123.25. DEQ proposes incorporating this section of the CFR to address the approval of a discharge associated with an aquaculture project.**

## **O. Subpart D (40 CFR 125.30 – 40 CFR 125.32 Criteria and Standards for Determining Fundamentally Different Factors);**

### 125.30 Purpose and Scope

- (a) Establishes criteria and standards used in determining where effluent limits alternative to those required by promulgated EPA guidelines should be imposed on a discharger due to factors relating to the discharger's facilities, equipment, processes or other factors that are fundamentally different from the factors considered by EPA in developing national limits.
- (b) National limits take into account information regarding factors listed in 304(b) and 304(g) of the CWA. However, data that could affect the national limits as applied to a particular discharge may not have been available or considered during development. This means that it may be necessary on a case by case basis to adjust national limits. This will only be done if data specific to the discharge indicates it presents fundamentally different factors than were used in developing national limits

## 125.31 Criteria

- (a) A request for effluent limits under this subpart shall be approved only if:
  - (1) There is an applicable national limit applied in the permit which specifically controls the pollutant that alternative limits or standards are being requested for;
  - (2) Factors relating to the discharge are fundamentally different from those considered by EPA; and
  - (3) The request is made in accordance with the procedural requirements of part 124.
- (b) A request for effluent limits less stringent than national limits shall be approved only if:
  - (1) The alternative limit or standards is no less stringent than justified by the fundamental difference; and
  - (2) The alternative limit or standard will ensure compliance with 208(e) and 301(b)(1)(C) of the CWA; and
  - (3) Compliance with national limits would result in:
    - (i) a removal cost wholly out of proportion to the removal cost considered during development of the national limits; or
    - (ii) a non-water quality environmental impact fundamentally more adverse than the impact considered during development of the national limit
- (c) A request for alternate limits more stringent than required by national limits shall be approved only if:
  - (1) The alternate limit or standard requested is no more stringent than justified by the fundamental difference; and
  - (2) Compliance with the alternate limit or standard would not result in:
    - (i) a removal cost wholly out of proportion to the removal cost considered during development of the national limits; or
    - (ii) a non-water quality environmental impact fundamentally more adverse than the impact considered during development of the national limit
- (d) Factors which may be considered fundamentally different are:
  - (1) The nature or quality of pollutants in the raw waste load of the applicant's process wastewater;
  - (2) The volume of the discharger's process wastewater and effluent discharged;
  - (3) Non-water quality environmental impact of control and treatment of the discharger's raw waste load;
  - (4) Energy requirements of the application of control and treatment technology;
  - (5) Age, size, land availability and configuration as they relate to equipment of facilities; processes employed; process changes; and engineering aspects of the application of control tech;
  - (6) Cost of compliance with required control technology;
- (e) A variance request or portion of such a request under this section shall not be granted on any of the following grounds

- (1) The infeasibility of installing the required waste treatment equipment within the time the Act allows.
  - (2) The assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factor(s) listed in paragraph (d) of this section;
  - (3) The discharger's ability to pay for the required waste treatment; or
  - (4) The impact of a discharge on local receiving water quality
- (f) Nothing in this section shall be construed to impair the right of any State or locality under section 510 of the CWA to impose more stringent limits than required by Federal Law.

**Subpart D pertains to evaluation of factors to be considered when determining if a facility should be assigned effluent limits different from EPA effluent guidelines and is required by §123.25. DEQ proposes incorporating this section of the CFR to identify those factors that may be fundamentally different from factors used to determine national guidelines and allow the agency to implement different and more facility specific effluent limits.**

## **P. Subpart G (40 CFR 125.56 - 40 CFR 125.68 Criteria for Modifying Secondary Treatment Requirements);**

125.56 Scope and Purpose

125.57 Law governing issuance of a section 301(h) modified permit

125.58 Definitions

125.59 General

125.60 Primary or equivalent treatment requirements

125.61 Existence of and compliance with applicable water quality standards

125.62 Attainment or maintenance of water quality which assures protection of public water supplies; assures the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife; and allows recreational activities

125.63 Establishment of a monitoring program

125.64 Effect of the discharge on other point and nonpoint sources

125.65 Urban area pretreatment program

125.66 Toxics control program

125.67 Increase in effluent volume or amount of pollutants discharged

125.68 Special conditions for section 301(h) modified permits

Appendix to subpart G of Part 125 – Applicant questionnaire for modification of secondary treatment requirements

**While subpart G is not specifically called out as a requirement for authorization of a state program, it directly impacts the overall NPDES program. Idaho DEQ does not at this time possess the time or technical expertise to fully address modifications to this section that would be appropriate to address state specific concerns. Therefore, it is proposed to incorporate this section by reference at this time while reserving the option to make modifications to Idaho’s rules in the future that may address items regulated under this section.**

## **Q. Subpart H (40 CFR 125.70 - 40 CFR 125.73 Criteria for Determining Alternative Effluent Limitations);**

125.70 Purpose and Scope

125.71 Definitions

125.72 Early screening of applications for section 316(a) variances

125.73 Criteria and standards for the determination of alternative effluent limits under section 316(a)

**Subpart H pertains to determining thermal effluent limits different from EPA effluent guidelines and is required by §123.25. DEQ proposes incorporating this section of the CFR to address the criteria and standards necessary for determining thermal discharge effluent limits different from national guidelines.**

## **R. Subpart I (40 CFR 125.80 - 40 CFR 125.89 Requirements Applicable to Cooling Water Intake Structures for New Facilities);**

125.80 Purpose and scope

125.81 Who is subject to this subpart

125.82 When must I comply with this subpart

125.83 What special definitions apply to this subpart

125.84 As an owner or operator of a new facility, what must I do to comply with this subpart

125.85 May alternative requirements be authorized

125.86 As an owner or operator of a new facility, what must I collect and submit when I apply for my new or reissued NPDES permit

125.87 As an owner or operator of a new facility, must I keep records and report

125.89 As the Director, what must I do to comply with the requirements of this subpart

**Subpart I pertains to requirements for new cooling water intake structures and is required by §123.25. DEQ proposes incorporating this section of the CFR to address effluent limits and establish best available technology standards for these types of facilities.**

## **S. Subpart J (40 CFR 125.90 - 40 CFR 125.99 Requirements Applicable to Cooling Water Intake Structures for Phase II Existing Facilities);**

125.90 Purpose of this subpart.

125.91 Applicability.

125.92 Special definitions.

125.93 [Reserved]

125.94 As an owner or operator of an existing facility, what must I do to comply with this subpart?

125.95 Permit application and supporting information requirements.

125.96 Monitoring requirements.

125.97 Other permit reporting and recordkeeping requirements.

125.98 Director requirements.

125.99 [Reserved]

**Subpart J is similar to the previous subpart (I) and is required by §123.25. Subpart J addresses existing cooling water intake structures. As with Subpart I, DEQ proposes incorporating this section of the CFR by reference.**

## **T. 40 CFR Part 129 Subpart A (40 CFR 129.1 - 40 CFR 129.105 Toxic Pollutant Effluent Standards and Prohibitions);**

129.1 Scope and purpose.

129.2 Definitions.

129.3 Abbreviations.

129.4 Toxic pollutants. Defines the provisions of this subpart as being specific to Aldrin/Dieldrin, DDR, Endrin, Toxaphene, Benzidine, and polychlorinated biphenyls (PCBs).

129.5 Compliance.

- (a) Sets forth conditions where an owner or operator with a discharge subject to these provision must notify the Director
- (b) Requires the permitting authority to proceed using 40 CFR 124 or 125 (whichever is applicable) upon receiving application for permit or modification of a permit with toxic pollutants
- (c) Requires revision of permits with toxic pollutant limits following any proceeding which revises the toxic standard regardless of the duration specified on the permit
- (d) Requires compliance with monitoring, sampling, recording and reporting conditions required for the discharge. Sets forth sampling and reporting requirements for the owner or operator of the facility with toxics in the discharge.
- (e) Authorizes Director to require a more stringent effluent limit if necessary.
- (f) For facilities which discharge to a surface water and to a POTW, the limit of the sum both discharges shall be set to the less restrictive standard unless such a limit allows the discharge to the surface water to be greater than the toxic standards established.
- (g) Restricts contestation of validity of the national standards established for toxics.

129.6 Adjustment of effluent standard for presence of toxic pollutant in the intake water.

- (a) Provides for the ability to work with intake credits
- (b) Directs permit limits for toxics to be established based on the amount present after any treatment.
- (c) Requires additional monitoring for toxics in a manner and location to be determined by the Director.

129.7 Requirement and procedure for establishing a more stringent effluent limitation.

- (a) Creates criteria for establishing exceptional cases where more stringent effluent limitations for toxics may be necessary
- (b) Requires EPA administrative review of permits with more stringent limits.

129.8 Compliance date.

129.9-129.99 [Reserved]

129.100 to 129.105 Provisions specific to Aldrin/dieldrin;. DDT, DDD and DDE; Endrin; Toxaphene; Benzidine; and Polychlorinated biphenyls (PCBs).

**40 CFR Part 129 Subpart A pertains to the regulation of specifically identified toxic pollutants and is required by §123.25. DEQ proposes incorporating this section of the CFR to address effluent limits and standards for these specific toxic pollutants.**

## **U. 40 CFR 133 (Secondary Treatment Regulation);**

133.100 Purpose.

133.101 Definitions.

133.102 Secondary treatment. Provides minimum levels for BOD, SS, and pH

133.103 Special considerations.

- (a) Combined Sewers. Provides for a case by case determination of whether an attainable percent removal for pollutants is possible during wet weather conditions.
- (b) Industrial wastes. Provides for less stringent limits under specific conditions identified in the CWA.
- (c) Waste stabilization ponds. Authorizes Director to adjust minimum levels of effluent quality for suspended solids under special circumstances
- (d) Less concentrated influent wastewater for separate sewers. Authorizes the Director to substitute for the percent removal requirements of this subchapter under special circumstances.
- (e) Less concentrated influent for combined sewers during dry weather. Authorizes the Director to substitute for the percent removal requirements under special circumstances.

133.104 Sampling and test procedures.

- (a) Refers to sampling and test procedures identified in 40 CFR 136.

(b) Allows for substituting chemical oxygen demand or total organic carbon for BOD.

133.105 Treatment equivalent to secondary treatment. Sets forth minimum effluent levels for facilities eligible for treatment equivalent to secondary treatment in terms of BOD, SS, and pH.

**40 CFR 133 provides details on the level of effluent quality necessary through secondary or equivalent treatment and is required by §123.25. DEQ proposes incorporating this section of the CFR to address the minimum level of effluent quality attainable by secondary treatment for biological oxygen demand (BOD), suspended solids (SS), and pH.**

## **V. 40 CFR 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants);**

136.1 Applicability.

136.2 Definitions.

136.3 Identification of test procedures.

136.4 Application for and approval of alternate test procedures for nationwide use.

136.5 Approval of alternate test procedures for limited use.

136.6 Method modifications and analytical requirements.

136.7 Quality assurance and quality control.

Appendix A to Part 136—Methods for Organic Chemical Analysis of Municipal and Industrial Wastewater

Appendix B to Part 136—Definition and Procedure for the Determination of the Method Detection Limit—Revision 1.11

Appendix C to Part 136—Determination of Metals and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry Method 200.7

Appendix D to Part 136—Precision and Recovery Statements for Methods for Measuring Metals

**40 CFR 136 pertains to guidelines for establishing testing procedures for the analysis of pollutants and is directly referenced in 40 CFR 133.104 (proposed for incorporation). DEQ proposes incorporating this section of the CFR to identify acceptable testing methodologies for various types of pollutants discharged into surface waters. 40 CFR establishes standard methods and method detection limits for a wide range of pollutants and is used in various**

water quality programs to determine acceptable method detection limits and appropriate methods for determining concentrations of pollutants in water and wastewater.

## **W. Subchapter N (40 CFR 400 through 471);**

The remaining items in this appendix summarize the sections of Subchapter N (40 CFR 400 through 471). This subchapter in the CFR prescribes effluent limitation guidelines for existing sources, standards of performance for new sources, and pretreatment standards for new and existing sources. These are the technology based effluent limits used in the development of an NPDES permit, and this subchapter is required by §123.25. DEQ proposes incorporating this entire subchapter by reference.

## **X. 40 CFR 401 (General Provisions);**

401.10 Scope and purpose.

401.11 General definitions.

401.12 Law authorizing establishment of effluent limitations guidelines for existing sources, standards of performance for new sources and pretreatment standards of new and existing sources.

401.13 Test procedures for measurement.

401.14 Cooling water intake structures.

401.15 Toxic pollutants.

401.16 Conventional pollutants.

401.17 pH Effluent limitations under continuous monitoring.

## **Y. 40 CFR 403.1 - 40 CFR 403.18 (General Pretreatment Regulations for Existing and New Sources of Pollution) including Appendices D, E, and G;**

403.1 Purpose and applicability.

403.2 Objectives of general pretreatment regulations.

403.3 Definitions.

- 403.4 State or local law.
- 403.5 National pretreatment standards: Prohibited discharges.
- 403.6 National pretreatment standards: Categorical standards.
- 403.7 Removal credits.
- 403.8 Pretreatment Program Requirements: Development and Implementation by POTW.
- 403.9 POTW pretreatment programs and/or authorization to revise pretreatment standards: Submission for approval.
- 403.10 Development and submission of NPDES State pretreatment programs.
- 403.11 Approval procedures for POTW pretreatment programs and POTW granting of removal credits.
- 403.12 Reporting requirements for POTW's and industrial users.
- 403.13 Variances from categorical pretreatment standards for fundamentally different factors.
- 403.14 Confidentiality.
- 403.15 Net/Gross calculation.
- 403.16 Upset provision.
- 403.17 Bypass.
- 403.18 Modification of POTW pretreatment programs.

Appendix D to Part 403—Selected Industrial Subcategories Considered Dilute for Purposes of the Combined Wastestream Formula

Appendix E to Part 403—Sampling Procedures

Appendix F to Part 403 [Reserved]

Appendix G to Part 403—Pollutants Eligible for a Removal Credit

## **Z. 40 CFR 405 - 40 CFR 471 containing industry sector effluent limitations and guidelines**

| <b>Section</b> | <b>Title</b> |
|----------------|--------------|
|----------------|--------------|

| <b>Section</b>           | <b>Title</b>  |
|--------------------------|---|
| <b>405.10 to 405.127</b> | DAIRY PRODUCTS PROCESSING POINT SOURCE CATEGORY                             |
| <b>406.10 to 406.107</b> | GRAIN MILLS POINT SOURCE CATEGORY   |
| <b>407.10 to 407.87</b>  | CANNED AND PRESERVED FRUITS AND VEGETABLES PROCESSING POINT SOURCE CATEGORY |
| <b>408.10 to 408.337</b> | CANNED AND PRESERVED SEAFOOD PROCESSING POINT SOURCE CATEGORY               |
| <b>409.10 to 409.87</b>  | SUGAR PROCESSING POINT SOURCE CATEGORY                                      |
| <b>410.00 to 410.97</b>  | TEXTILE MILLS POINT SOURCE CATEGORY   |
| <b>411.10 to 411.37</b>  | CEMENT MANUFACTURING POINT SOURCE CATEGORY                                  |
| <b>412.1 to 412.47</b>   | CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO) POINT SOURCE CATEGORY         |
| <b>413.01 to 413.84</b>  | ELECTROPLATING POINT SOURCE CATEGORY  |
| <b>414.10 to 414.111</b> | ORGANIC CHEMICALS, PLASTICS, AND SYNTHETIC FIBERS                           |
| <b>415.01 to 415.677</b> | INORGANIC CHEMICALS MANUFACTURING POINT SOURCE CATEGORY                     |
| <b>416</b>               | [RESERVED]  |
| <b>417.10 to 417.196</b> | SOAP AND DETERGENT MANUFACTURING POINT SOURCE CATEGORY                      |
| <b>418.10 to 418.77</b>  | FERTILIZER MANUFACTURING POINT SOURCE CATEGORY                              |
| <b>419.10 to 419.57</b>  | PETROLEUM REFINING POINT SOURCE CATEGORY                                    |
| <b>420.01 to 420.137</b> | IRON AND STEEL MANUFACTURING POINT SOURCE CATEGORY                          |
| <b>421.1 to 421.337</b>  | NONFERROUS METALS MANUFACTURING POINT SOURCE CATEGORY                       |
| <b>422.10 to 422.67</b>  | PHOSPHATE MANUFACTURING POINT SOURCE CATEGORY                               |
| <b>423.10 to 423.17</b>  | STEAM ELECTRIC POWER GENERATING POINT SOURCE CATEGORY                       |
| <b>424.10 to 424.77</b>  | FERROALLOY MANUFACTURING POINT SOURCE CATEGORY                              |
| <b>425.01 to 425.96</b>  | LEATHER TANNING AND FINISHING POINT SOURCE CATEGORY                         |

| <b>Section</b>           | <b>Title</b>  |
|--------------------------|---|
| <b>426.10 to 426.137</b> | GLASS MANUFACTURING POINT SOURCE CATEGORY   |
| <b>427.10 to 427.116</b> | ASBESTOS MANUFACTURING POINT SOURCE CATEGORY  |
| <b>428.10 to 428.116</b> | RUBBER MANUFACTURING POINT SOURCE CATEGORY  |
| <b>429.10 to 429.176</b> | TIMBER PRODUCTS PROCESSING POINT SOURCE CATEGORY  |
| <b>430.00 to 430.127</b> | THE PULP, PAPER, AND PAPERBOARD POINT SOURCE CATEGORY   |
| <b>431</b>               | [RESERVED]  |
| <b>432.1 to 432.127</b>  | MEAT AND POULTRY PRODUCTS POINT SOURCE CATEGORY   |
| <b>433.10 to 433.17</b>  | METAL FINISHING POINT SOURCE CATEGORY   |
| <b>434.10 to 434.85</b>  | COAL MINING POINT SOURCE CATEGORY BPT, BAT, BCT<br>LIMITATIONS AND NEW SOURCE PERFORMANCE STANDARDS   |
| <b>435.10 to 435.70</b>  | OIL AND GAS EXTRACTION POINT SOURCE CATEGORY  |
| <b>436.20 to 436.382</b> | MINERAL MINING AND PROCESSING POINT SOURCE CATEGORY   |
| <b>437.1 to 437.47</b>   | THE CENTRALIZED WASTE TREATMENT POINT SOURCE<br>CATEGORY  |
| <b>438.1 to 438.15</b>   | METAL PRODUCTS AND MACHINERY POINT SOURCE CATEGORY  |
| <b>439.0 to 439.52</b>   | PHARMACEUTICAL MANUFACTURING POINT SOURCE CATEGORY  |
| <b>440.10 to 440.148</b> | ORE MINING AND DRESSING POINT SOURCE CATEGORY   |
| <b>442.1 to 442.44</b>   | TRANSPORTATION EQUIPMENT CLEANING POINT SOURCE<br>CATEGORY  |
| <b>443.10 to 443.46</b>  | EFFLUENT LIMITATIONS GUIDELINES FOR EXISTING SOURCES<br>AND STANDARDS OF PERFORMANCE AND PRETREATMENT<br>STANDARDS FOR NEW SOURCES FOR THE PAVING AND ROOFING<br>MATERIALS (TARS AND ASPHALT) POINT SOURCE CATEGORY |
| <b>444.10 to 444.18</b>  | WASTE COMBUSTORS POINT SOURCE CATEGORY  |
| <b>445.1 to 445.24</b>   | LANDFILLS POINT SOURCE CATEGORY   |
| <b>446.10 to 446.16</b>  | PAINT FORMULATING POINT SOURCE CATEGORY   |

| <b>Section</b>           | <b>Title</b>  |
|--------------------------|---|
| <b>447.10 to 447.16</b>  | INK FORMULATING POINT SOURCE CATEGORY                             |
| <b>449.1 to 449.20</b>   | AIRPORT DEICING POINT SOURCE CATEGORY                             |
| <b>450.10 to 450.24</b>  | CONSTRUCTION AND DEVELOPMENT POINT SOURCE CATEGORY                |
| <b>451.1 to 451.24</b>   | CONCENTRATED AQUATIC ANIMAL PRODUCTION POINT SOURCE CATEGORY      |
| <b>454.10 to 454.62</b>  | GUM AND WOOD CHEMICALS MANUFACTURING POINT SOURCE CATEGORY        |
| <b>455.10 to 455.67</b>  | PESTICIDE CHEMICALS   |
| <b>457.10 to 457.32</b>  | EXPLOSIVES MANUFACTURING POINT SOURCE CATEGORY                    |
| <b>458.10 to 458.46</b>  | CARBON BLACK MANUFACTURING POINT SOURCE CATEGORY                  |
| <b>459.10 to 459.12</b>  | PHOTOGRAPHIC POINT SOURCE CATEGORY                                |
| <b>460.10 to 460.12</b>  | HOSPITAL POINT SOURCE CATEGORY                                    |
| <b>461.1 to 461.75</b>   | BATTERY MANUFACTURING POINT SOURCE CATEGORY                       |
| <b>463.1 to 463.37</b>   | PLASTICS MOLDING AND FORMING POINT SOURCE CATEGORY                |
| <b>464.01 to 464.47</b>  | METAL MOLDING AND CASTING POINT SOURCE CATEGORY                   |
| <b>465.01 to 465.46</b>  | COIL COATING POINT SOURCE CATEGORY                                |
| <b>466.01 to 466.45</b>  | PORCELAIN ENAMELING POINT SOURCE CATEGORY                         |
| <b>467.01 to 467.67</b>  | ALUMINUM FORMING POINT SOURCE CATEGORY                            |
| <b>468.01 to 468.20</b>  | COPPER FORMING POINT SOURCE CATEGORY                              |
| <b>469.10 to 469.43</b>  | ELECTRICAL AND ELECTRONIC COMPONENTS POINT SOURCE CATEGORY        |
| <b>471.01 to 471.106</b> | NONFERROUS METALS FORMING AND METAL POWDERS POINT SOURCE CATEGORY |