

# Idaho's Pollutant Discharge Elimination System (IPDES)

Incorporate Pertinent NPDES Rules by Reference

-Or-

Reprint Pertinent NPDES Rules

January 23, 2015



IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY



# PROPOSAL PREFACE

## DEQ Proposes:

1. To Incorporate by Reference (IBR) selected federal regulations required by 40 CFR §123.25 for authorization of a state program
2. To IBR additional federal regulations necessary for IPDES program implementation
3. Reprint, modify, or rewrite other NPDES federal regulations where flexibility, need, and ability exists



## BACKGROUND

- IPDES program authority
  - DEQ's permitting provisions must be consistent with federal regulations (40 CFR §123) but not more stringent or broader in scope than the Clean Water Act and federal regulations (HB 406)



## TWO KEY DECISIONS NEEDED

1. Identify provisions in federal regulations that DEQ can/should modify or rewrite for the IPDES program
2. For federal regulations not to be modified or rewritten, determine how to include provisions in IPDES program rules (IDAPA 58.01.25)



# REWRITE OR MODIFY PROVISIONS

1. Is there flexibility to modify or rewrite a federal provision and still gain program authority?
2. Does DEQ have expertise to craft a new rule?
3. What are costs/benefits of modifying or rewriting a rule?
4. What are time and resource constraints for submitting IPDES program application to EPA?
  - Application Deadline of September 2016



# ADOPTING FEDERAL REQUIREMENTS

- Potential approaches for creating Idaho-specific rules:
  1. Incorporate By Reference (IBR), NPDES rules from the CFR
  2. Re-print NPDES rules
  3. Hybrid Approach



# IMPLICATIONS

- Effects on IPDES users (DEQ, IPDES permittees, Idaho taxpayers, etc.)
  - Federal and Legislative Compliance
  - Cost
  - Accuracy
  - Convenience
  - Workload



# INCORPORATE BY REFERENCE (IBR)

- Incorporate pertinent NPDES rules, by reference, into IPDES program rules
  - A. Consistent with federal regulations (40 CFR) but not more stringent or broader in scope (HB 406)
  - B. More efficient (time, cost, and labor)
    - Don't copy and reprint rules already in CFR
  - C. More accurate
    - Less potential for transcription errors
  - D. Less convenient for users
    - Need to cross-reference IPDES rules with CFR



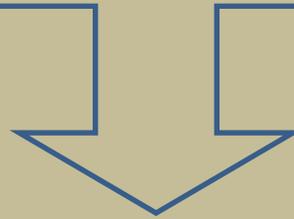
# REPRINT PERTINENT RULES

- Reprint pertinent NPDES rules directly into IPDES program rules
  - A. Consistent with federal regulations (40 CFR) but not more stringent or broader in scope (HB 406)
  - B. Less efficient (time, cost, and labor)
    - Copy and reprint rules already in CFR
    - Cost to Idaho ~ \$58,600/year (~ 1,172 pages of CFR)
  - C. Less accurate
    - More potential for transcription errors
  - D. More convenient for users
    - No need to cross-reference IPDES rules with CFR



# HYBRID APPROACH (RECOMMENDED)

- IBR, NPDES rules into IPDES program rules
- Reprint, modify, or rewrite NPDES rules into IPDES program rules



- Consistent with federal regulations and legislative direction
- Maximize efficiency and accuracy (time, cost, labor)
- Tailor the IPDES program specifically to Idaho



# DISCUSSION PAPER #1: APPENDIX A

- DEQ proposes to IBR the following regulations:
  - Those required by 40 CFR §123.25 for authorization of a state program (810 pages)
  - Those not required by 40 CFR §123.25, but are necessary for program implementation (362 pages)



# APPENDIX A: RULES FOR INCORPORATION BY THE NPDES PROGRAM (SLIDE 1 OF 3)

| Req'd by 123.25 | # of pages | Section Proposed for Incorporation  |
|-----------------|------------|---|
| 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);                                       |



# APPENDIX A: RULES FOR INCORPORATION BY THE IPDES PROGRAM (SLIDE 2 OF 3)

| Req'd by 123.25 | # of pages | Section Proposed for Incorporation   |
|-----------------|------------|--|
|                 | 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);        |
|                 | 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); |



# APPENDIX A: RULES FOR INCORPORATION BY THE IPDES PROGRAM (SLIDE 3 OF 3)

| Req'd by 123.25 | # of pages | Section Proposed for Incorporation  |
|-----------------|------------|---|
| 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**



# PROPOSAL SUMMARY

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# ¡THANK YOU!

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