



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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OFFICE OF  
WATER AND  
WATERSHEDS

February 5, 2015

Paula Wilson, Administrative Rules Coordinator  
Idaho Department of Environmental Quality  
1410 N. Hilton  
Boise, ID 83706

(sent by email to: [paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov))

Re: Comments on Documents Presented at the January 23, 2015 Rulemaking Meeting

Dear Ms. Wilson:

The U.S Environmental Protection Agency (EPA) submits the following comments on draft rule language and documents presented during the January 23, 2015 Negotiated Rulemaking Meeting for the Idaho Pollutant Discharge Elimination System (IPDES) Program.

#### **IPDES Program Analysis**

The EPA suggests the Idaho Department of Environmental Quality (DEQ) re-evaluate the model to incorporate the permittees covered under the EPA's general stormwater permits, the Construction General Permit (CGP) and the Multi-Sector General Permit (MSGP). CGP and MSGP permittee data are currently not in the EPA's Integrated Compliance Information System (ICIS) database. Rather, ICIS only contains storm water data for those facilities that were inspected. Information about the number of current active CGP and MSGP permittees is available at the following webpages:

- CGP at <http://ofmpub.epa.gov/CGPSearch/faces/CGPPublicSearch.jspx>
- MSGP at <http://cfpub.epa.gov/npdes/stormwater/noi/noisearch.cfm>

The EPA queried these databases to capture active sites and estimate the number of permittees covered. This search revealed permittees covered under the CGP are 1,200, the MSGP are 280 and 165 permittees have Certification for No Exposure. The estimated total number of stormwater discharges regulated under the CGP and MSGP are 1,645 versus DEQ's model estimate of 301 permittees.<sup>1</sup>

Increasing the number of permittees regulated under the general stormwater permits increases the FTE estimate under the compliance and enforcement modules and, to a lesser degree, the permitting module. The EPA identified the following activities that would require additional FTEs based on the assumptions used for DEQ's IPDES Program Analysis.

1. Page 12, Table 7, Authorization for coverages under General permits.
2. Page 15, Table 9 continued, Routine Compliance Inspection, General permittees, Stormwater.
3. Page 16, Table 9 cont., Assistance activities, which is 10% of the total of all facilities.
4. Page 16, Table 9 cont., Complaint Investigation, General permittees, Stormwater.

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<sup>1</sup> IPDES Program Analysis, IDEQ, January 23, 2015, <<http://www.deq.idaho.gov/media/1118649/58-0125-1401-ipdes-program-analysis-presentation-012315.pdf>> (January 6, 2015)

5. Page 16, Table 9 cont., Non-permitted facilities. The default value in the model assumed complaint investigations for non-permitted would be three times the number of permitted facilities. In EPA experience, applying this multiplier to general permits overestimates the number of non-permittee facility complaint investigations.
6. Page 17, Table 9 cont., Violation Response, Initial Response, General permittees, Stormwater.
7. Page 17, Table 9 cont., Violation Response, Follow-up Response, General permittees, Stormwater.
8. Page 17, Table 9 cont., Violation Response, Administrative Orders and Penalty, General permittees, Stormwater.
9. Page 18, Table 9 cont., both Civil/Criminal Referral and Post-Referral follow-up for stormwater.

The EPA suggests the following changes to better align with the EPA's current experience and practices for NPDES permitting, inspections, compliance, and enforcement in Idaho.

1. Page 14, Table 8, Minor Facilities DMRs are submitted monthly not quarterly as assumed in the report.
2. Page 17, Table 9 cont., Violation Response, Administrative Orders and Penalty, General permittees, Stormwater. The EPA reviewed records of formal enforcement actions, such as administrative order and penalties, and found that the model underestimates the percentage of facilities affected as compare to EPA's experience in Idaho. The EPA's R10 experience in Idaho shows 50% of minors and 20% of general permittees with follow up response result in administrative orders and/or penalties.
3. Page 11, the document states the EPA currently employs 13 to 14 permit writing staff; however, staff work on permitting activities in R10 states (Alaska, Washington, and Oregon) in addition to their work on Idaho permits. This summary neglects to include staff dedicated to NPDES inspections, compliance and enforcement. The EPA estimates 8 to 9 FTE work on inspections, compliance, and enforcement in Idaho alone. Overall, the EPA believes that comparison to R10 staffing levels is difficult for a variety of reasons including R10 utilizing the EPA headquarters and contractor assistance for some activities, and unquantified contributions by subject experts throughout the EPA.

The EPA recognizes the above changes may result in FTE increases necessary to meet the compliance and enforcement needs of the program. The ability to evaluate compliance and enforce NPDES permits is critical to a program's success.

### **Draft Negotiated Rule - Draft No. 1 – Confidentiality of Information**

Part 01. Confidentiality Claim, references Section 9-337 of the Idaho Code, which is a compilation of definitions.<sup>2</sup> The proposed language uses the term "submitter" which is not included among the definitions in Idaho Code § 9-337. The EPA suggests a definition for or clarification with regard to the term "submitter" and whom may make claims of confidentiality. NPDES regulation 40 CFR 122.22 details signatory requirements and is applicable to state programs. The regulations identify persons of authority who must sign NPDES permit-related documentation such as applications and discharge monitoring reports. DEQ should consider whether the "submitter" of confidential information must be a duly authorized representative for the permittee.

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<sup>2</sup> Idaho Statutes, Title 9, Chapter 3 Public Writings. <<http://legislature.idaho.gov/idstat/Title9/T9CH3SECT9-337.htm>> (January 4, 2015)

Part 20. Trade Secret Claims, references Section 9-342A of the Idaho Code, but at this time, this Section does not reference the Clean Water Act (CWA). The EPA understands the statute will be amended to incorporate CWA and NPDES requirements. This Section implies that claims of confidentiality apply only to “trade secrets” whereas the NPDES regulations at 40 CFR 122.7 do not specifically limit “confidential business information” to “trade secrets”. The EPA recommends removing “as a trade secret” from the proposed rule language.

Section 9-342(A)(7) states, “*the court may award reasonable costs and attorney's fees to the if it finds the claim of confidentiality or the decision of the director of the department of environmental quality to provide records was frivolously pursued.*” 40 CFR 123.30 requires that a State “*provide an opportunity for judicial review in State Court of the final approval or denial of permits ... that is sufficient to provide for, encourage, and assist public participation in the permitting process.*” It is possible that this section of the Idaho Code may infringe upon a person’s ability to comment upon a permit, etc.

Part 30. Denial, comports with the requirements of 40 CFR 122.7(b) and (c) which are applicable to state programs. Subpart c. captures some information that cannot be deemed as confidential, but does not fully capture the requirements of 40 CFR 122.21. The EPA suggests that subsection c. refer to 40 CFR 122.21, which is applicable to state programs, or regulations DEQ develops pertaining to application requirements.

Subsection d. references 40 CFR 2.302 for the definition of effluent data. The EPA suggests DEQ consider incorporation of the regulation by reprinting the relatively short definition in the IPDES rule to eliminate the need to cross-reference to the federal regulation.

**Discussion Paper #1: Incorporate Pertinent NPDES Rules by Reference or Reprint Pertinent NPDES Rules - IPDES Discussion Paper #1**

The EPA understands the discussion paper does not include all federal regulations applicable to state programs, but rather, only includes those regulations DEQ intends to incorporate by reference into the IPDES regulations. The EPA supports DEQ’s approach to incorporate by reference to the degree possible for the reasons DEQ cited including cost-effectiveness and ensuring regulations meet federal regulatory requirements.

Thank you for the opportunity to comment on the documents. Please contact me at (206) 553-1755 or by email at lidgard.michael@epa.gov if you have any questions about this letter or related matters, or you may contact Karen Burgess, of my staff, at (206) 553-1644 or burgess.karen@epa.gov.

Sincerely,



Michael J. Lidgard, Manager  
NPDES Permits Unit

Cc: Mary Anne Nelson, IPDES Program Manager  
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