

# **Idaho Pollutant Discharge Elimination System Discussion Paper #2**

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IPDES Permitting Process



**State of Idaho  
Department of Environmental Quality**

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## Introduction

The following discussion paper presents the Idaho Department of Environmental Quality's (DEQ) first iteration of the draft rules for the Idaho Pollutant Discharge Elimination System (IPDES) permitting program. DEQ is attempting to create a set of rules that are well organized, so that the regulated community and DEQ can easily find pertinent requirements that have a direct correlation to the Clean Water Act (CWA; 33 USC §1342) and the associated Code of Federal Regulations (CFR). The IPDES draft rules have been organized so that the permitting process flow corresponds to the sections and subsections of the rules as much as possible. Where the CFRs reference multiple sections, the IPDES draft rules have combined these CFR requirements and present them in one section in the draft rules.

Draft rules addressing the IPDES permit application process, application requirements, and public notice and comment are presented in this discussion paper. Not all subsections within these draft rules are addressed in this paper because many repeat the text found in the CFR. The CFR text has been copied into these draft rules to provide a convenient location and format for all related requirements stipulated throughout the CFR. This consolidation will help the regulated community and DEQ generate and process applications, permits, and fact sheets more efficiently.

The following draft rule sections are presented in this paper:

- Section 100: Effect of a Permit—Purpose
- Section 101: Duration
- Section 102: Obligation to Obtain an IPDES Permit
- Section 103: Permit Prohibitions
- Section 104: Preapplication Process
- Section 105: Application for an IPDES Permit
- Section 106: Permit Application Review
- Section 107: Tentative Decision to Issue a Draft Permit or Deny the Application
- Section 108: Draft Permit and Fact Sheet
- Section 109: Public Notification and Comment

## Permit Application Process

• The procedures associated with applying for an IPDES permit includes the following:

- Section 100: Effect of a Permit—Purpose
- Section 101: Duration
- Section 102: Obligation to Obtain an IPDES Permit
- Section 103: Permit Prohibitions
- Section 104: Preapplication Process
- Section 106: Permit Application Review
- Section 107: Tentative Decision to Issue a Draft Permit or Deny the Application
- Section 108: Draft Permit and Fact Sheet

## **Section 100: Effects of a Permit—Purpose**

Subsection 100.01 of these draft rules reiterates the CFR statement that the permit holder is not conveyed any property right or any other exclusive privilege. The first sentence also conveys that the permit will not authorize the discharger to cause any harm (impact another's beneficial use) or authorize the discharger to not comply with any state or local law or regulation. The second concept in this first sentence conveys the intent of 40 CFR 122.5(c). The second sentence is recommended text addressing Idaho water users concerns about dischargers dumping effluent into their canals without receiving authorization from the irrigation district.

The permit holder is authorized, in subsection 100.02, to discharge pollutants to the surface waters of the state, and as long as that discharge complies with the limitations and conditions specified in the permit, the authorized discharge will not be a violation of the Clean Water Act (CWA). Subsection 100.02 notifies the potential applicant that these permitted activities may be modified, revoked and reissued, or terminated for cause.

## **Section 101: Duration**

This section addresses the period over which the permit is in effect. The CFR limits the effective term of a permit to a maximum of 5 years (40 CFR 122.46(a)). DEQ proposes to place into rule the ability to issue the permit for a shorter period of time (40 CFR 122.46(c) and 122.6). This proposal provides the opportunity for the facility and DEQ to synchronize the facilities' permitting schedules for those facilities that have both reuse and IPDES permits. Synchronizing the schedules will yield benefits for the regulated community and DEQ because much of the data and information is the same for each permit type.

Subsection 101.01.b reiterates the CFR prohibition to modify a permit just to extend its duration (40 CFR 122.46(b)). The restriction on permit term extensions put forth in subsection 101.01.b prohibits term modification of an existing permit under Section 201, Modification of IPDES Permits, past the 5-year maximum duration. Permit continuation is addressed in subsection 101.02.

Subsection 101.02, Continuation of Expiring Permits, addresses the criteria necessary for an existing permit to remain effective and enforceable past its expiration date. The criteria listed in subsections 101.02.a and b reflect those listed in the CFR (40 CFR 122.6, referenced from 40 CFR 122.46). As long as the permittee submits a permit renewal application on time and the permit is determined to be complete, if DEQ cannot issue a new permit before the existing permit expires, the existing permit remains in effect. On time Submittal of the complete permit renewal application secures the permittee's authorization to continue discharging pollutants to waters of the state.

Subsection 101.03 has been added to reflect requirements of Idaho's Administrative Procedures Act (62-5754) addressing a permittee's opportunity to appeal a permit denial.

## Section 102: Obligation to Obtain an IPDES Permit

Section 102 addresses the party who must have a permit, and the various discharges that are excluded from obtaining an IPDES permit. Subsection 102.01.a. identifies the parties who must apply for a permit, while subsections 102.01.a.i. through iii identify the exceptions. Industrial discharges to a publicly owned treatment works (POTW) are addressed in subsection 105.13.

For current permit holders, a renewal application deadline is presented in subsection 102.01.b. (40 CFR 122.21(c) and (d)). The deadline ensures applicants that if they comply by this date, and the application is subsequently deemed complete, they are ensured permit continuation if DEQ cannot issue a new permit before the expiration date of the current permit. The permit continuation secures the permittee's authorization to discharge pollutants to waters of the state without facing an unauthorized pollutant discharge violation of these draft rules and a CWA violation.

The CFR (40 CFR 122.21(d)(2)(i)) allows delays in application submittal to the permitting agency. DEQ is proposing to restrict this application delay request to those applicants who seek and obtain permission for a delay before entering into the 180-day preexpiration period. Receipt of approval for a delayed application submittal safeguards the permittee's ability to have the permit continue in effect, and allows DEQ to adjust task assignments among the permit-writing staff. Additionally, the approval receipt documents that DEQ waived the application submittal deadline specified in subsection 102.01.b.i and secures assurance from DEQ that a notice of violation will not be issued. DEQ proposes to generate guidance for the regulated community and DEQ staff that will specify what operation and reporting conditions a permittee must exhibit to qualify for approval of application submittal delay. Some of the conditions may include the following:

1. Facility is in compliance with all monitoring and reporting requirements.
2. Past inspections have shown that the facility is properly operated and maintained.
3. Facility may request the delay due to fiscal or personnel shortfalls.

Subsection 102.01.b.ii. (40 CFR 122.21(a)(d)(i)) clarifies that a facility's submitted application will always be accepted and reviewed. Once the application is received, DEQ will determine the type of review conducted. If an existing permit holder submits a complete renewal application before the 180-day preexpiration deadline, the permit holder is in compliance with all renewal requirements and will receive a permit continuation if DEQ cannot issue a new permit before the current permit expires. If an existing permit holder submits a complete renewal application less than 180 days before permit expiration, the facility is in violation of missing the submittal deadline and is at risk of not having the new permit before the current permit expires. If an existing permit holder submits a complete permit application after the permit expiration date, the facility (1) may face administrative enforcement if it discharged after the permit expired, and (2) the complete permit application will be considered an application for a new source or new discharge. A new discharge application may face more stringent discharge limits.

Subsection 102.02, Exclusions from Permit (40 CFR 122.3), lists the activities excluded from obtaining an IPDES permit. Subsections 102.02.a and b repeat the CFR exclusions, with the exception that seafood processing facilities, facilities secured to the ocean bed, contiguous zone, or waters of the United States used for mineral or oil exploration or development have been

removed. A proposed change to the CFR text exists in one of the exemptions to the exclusion, namely, when the vessel is “secured to the bed of the waters of the state” is proposed to replace “secured to the bed of the ocean.”

DEQ proposes in subsection 102.02.c requiring indirect dischargers that discharge wastewater into a POTW obtain a will-serve letter from the POTW. The discharger is required by Idaho’s “Wastewater Rules” (IDAPA 58.01.16.400.02) to obtain a will-serve letter before submitting plans and specifications (P&S) to DEQ for review. This will-serve letter acknowledges that the POTW has the hydraulic capacity and the POTW’s pretreatment program has approved the industrial waste load discharge when the indirect discharger is a qualifying industrial discharger. This will-serve letter will be supplied to DEQ if the discharger is required to obtain P&S review from DEQ, otherwise the discharger is not obligated to provide the will-serve letter to DEQ.

### **Section 103: Permit Prohibitions**

In section 103, DEQ proposes to copy the language from 40 CFR 122.4. with the exception that 40 CFR 122.4(h), in its entirety, is removed. 40 CFR 122.4(h) addresses discharges to the territorial sea, the waters of the contiguous zone, or the ocean. This section is repeated in the draft rule for the convenience of the regulated community and DEQ.

### **Section 104: Preapplication Process**

In section 104, DEQ proposes holding a preapplication meeting with the owner, operator, or consultant. A preapplication meeting is consistent with other wastewater activities that DEQ oversees, such as reuse permitting and water and wastewater infrastructure plan and specification reviews. This section requests potential permit applicants contact DEQ to discuss all wastewater disposal options available to their proposed facility or activity, or modifications of their facility, before submitting an IPDES permit application. If the decision is made to pursue an IPDES permit, the application requirements, content, and permitting schedule can be discussed, and guidance provided.

### **Section 106: Permit Application Review**

The draft rules in this section fundamentally repeat the requirements specified in 40 CFR 122.21(e), with the following exception.

Subsection 106.01.a requires that the fees associated with obtaining the permit must be paid before DEQ determines the application is complete. This deviates from EPA’s program by requiring a fee but complies with Idaho’s 2014 House Bill 406 (page 6, lines 39–45), which authorizes DEQ to establish a fee structure.

Performing a thorough completeness determination may require multiple iterations through the application and corresponding with the applicant periodically. Figure 1 provides a flowchart of the anticipated steps that will comprise a completeness determination.

## Permit Application Completeness Determination

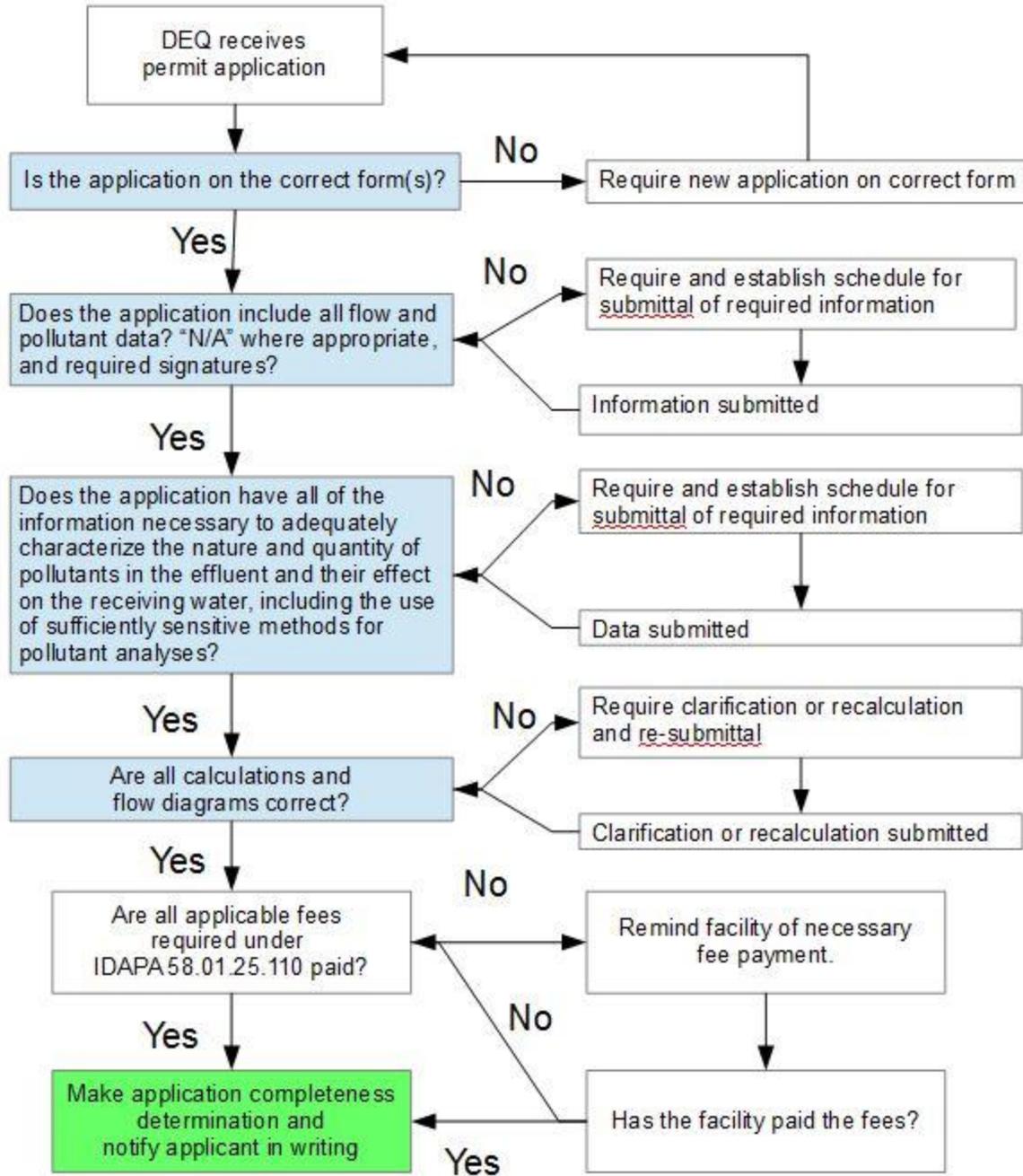


Figure 1. Steps to determine permit application completeness.

### Section 107: Decision Process

This section addresses the permitting process after the applicant has submitted a complete application, as determined by DEQ. The application assessment may result in one of two outcomes: (1) DEQ may tentatively decide to issue a draft permit and associated fact sheet, or (2)

DEQ may decide to issue a notice of intent (NOI) to deny a permit. The process parallels that established in the CFR (40 CFR 124.6). An NOI to deny is considered a form of draft permit, requiring the same procedural steps to execute the NOI to deny as is required of the draft permit. Figure 2 helps clarify this process.

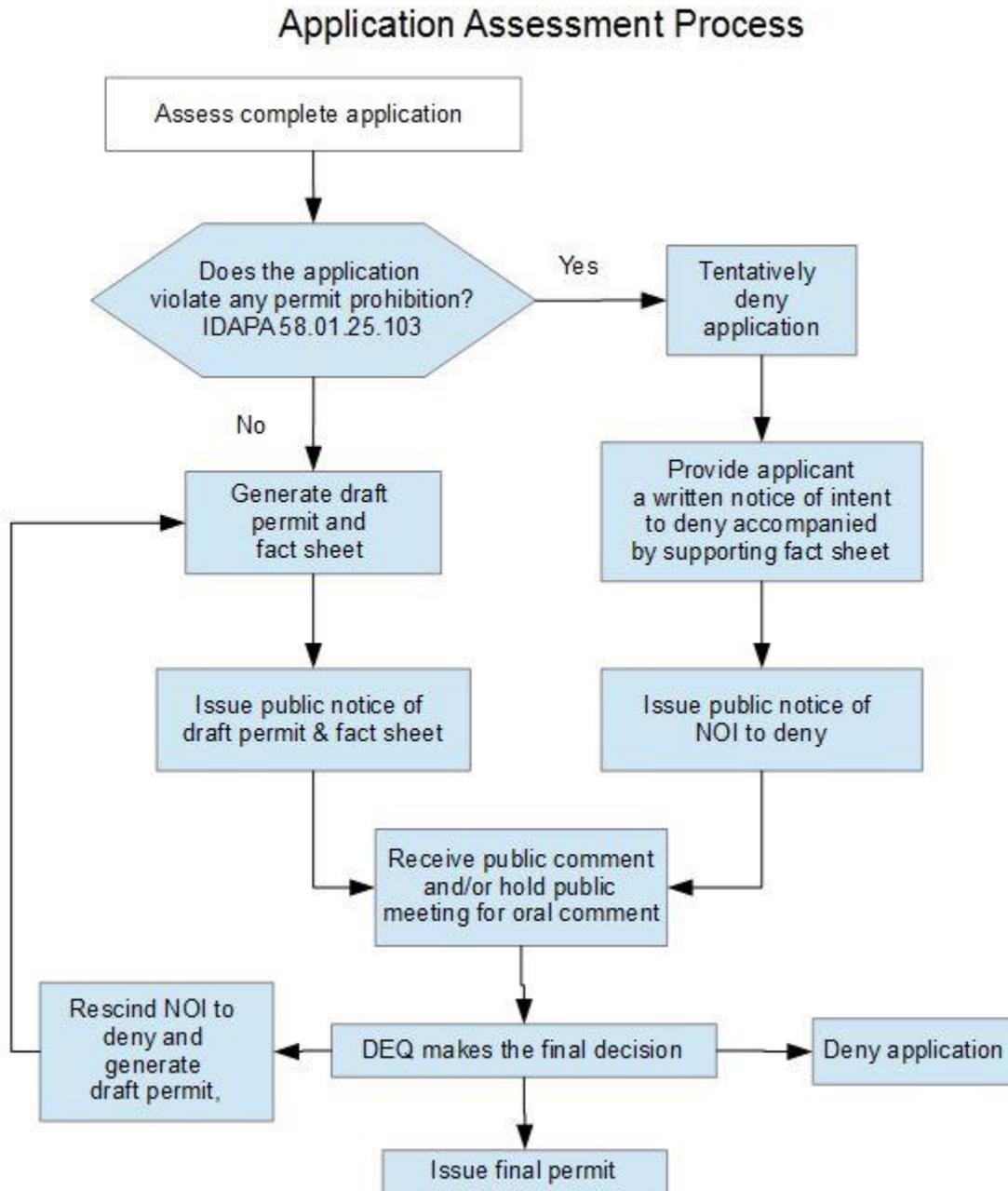
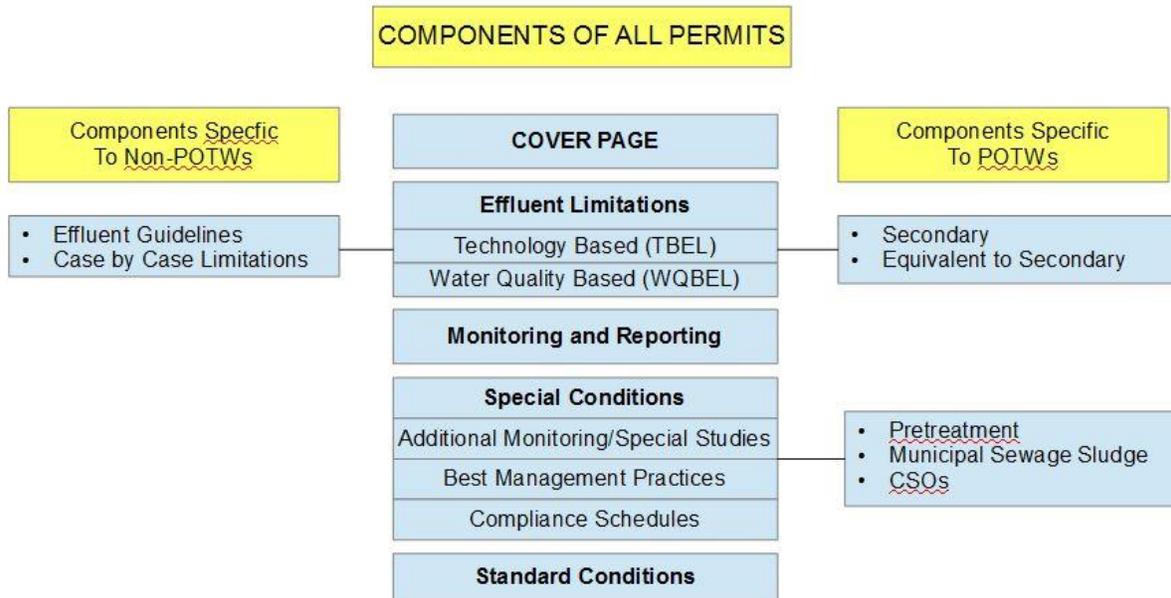


Figure 2. Parallel procedures; issue a permit or deny an application.

## Section 108: Draft Permit and Fact Sheet

This section establishes the minimum content for the draft permit and fact sheet. Subsection 108.01 addresses the content required in the draft permit (40 CFR 124.6(d)). Figure 3 shows the section of a permit.



**Figure 3. Sections required in a permit.**

Subsection 108.02 addresses the content required in a fact sheet. Fact sheets must briefly provide the principal facts and significant factual, legal, methodological, and policy questions considered in preparing the draft permit. In this draft rule, dispersed sections within the CFR (40 CFR 124.8, 124.56, and parts of 122.44) have been compiled and are presented to simplify the regulated communities’ and DEQ’s efforts when developing or reviewing fact sheets.

## Application Requirements

### Section 105: Application for an IPDES Permit

Section 105 addresses the forms, content, and signatory requirements of the permit application.

DEQ proposes electronic submittals as an acceptable alternative procedure in subsection 105.01 (40 CFR 122.21(a)(2)(ii)). DEQ is pursuing establishing an electronic reporting and submittal platform before EPA approval is obtained.

Subsection 105.02, Application Retention Schedule, reiterates the CFR requirement for application document retention (40 CFR 122.21(p)).

Subsection 105.03, Time to Apply, reiterates the CFR requirements specified in 40 CFR 122.21(c).

Subsection 105.04, Signature Requirements for Permit Applications and Reports, reiterates the requirements specified in 40 CFR 122.22.

Subsection 105.05, Permit Application Forms, identifies the various forms that the applicant must complete and submit in pursuit of an IPDES permit. Information required to submit a complete form may not be claimed confidential (40 CFR 122.7(c)).

Subsections 105.06–105.17 repeat the CFR requirements and are provided in the draft rules as a convenience to the regulated community and DEQ. The following subsections identify where Idaho proposes to deviate from the CFR.

The first deviation from the CFR occurs in subsection 105.07.d, Sampling and Data Collection. The subsection addresses required permit application information for existing manufacturing, commercial, mining, and silviculture dischargers. The proposed deviation will allow data collected from continuous monitoring instruments to be used for select effluent parameters in the application. The qualifying effluent parameters include pH, temperature, total residual chlorine, and flow. Data from continuous monitoring instruments that monitor these parameters should be allowed to be submitted in the application package as long as it is accompanied by documentation proving the instruments were properly functioning and calibrated. This continuous monitoring allowance also appears in subsections 105.08.c, and 105.11.g. ii.

Subsection 105.11.e.ii specifies a reduced set of data in the application when compared to the CFR requirement (40 CFR 122.21(j)(3)(ii)) for “Description of receiving waters.” The CFR requires all of the following to be submitted in the application: (1) name of the receiving water, (2) name of watershed/river/stream system and US Soil Conservation Services 14-digit watershed code, (3) name of the state management/river basin and US Geological Survey (USGS) 8-digit hydrologic cataloging unit code, and (4) critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable). The IPDES draft rules proposes reducing this set of submitted data to the (1) name of the receiving water, and (2) critical flow of each receiving stream and total hardness of the receiving stream at critical low flow. The reasoning behind reducing the applicant’s information submittal requirements stems from the applicant already identifying the discharge location’s latitude and longitude down to 15-second precision and identifying the common name of the receiving water. Idaho intends to have a fully functional electronic permit application system by the time EPA approves the IPDES Program. Additionally, DEQ has a functional ARC geographic information system that can supply this information once the latitude and longitude are known. This electronic system will reduce applicant efforts and increase application quality. DEQ believes that waiving the USGS and US Soil Conservation Services codes is justified because DEQ already has this information readily available.

## **Public Notice and Comment**

### **Section 109: Public Notification and Comment**

Section 109, Public Notification and Comment, is provided in the IPDES draft rules as a convenience to the regulated community and DEQ. This section compiles various CFR sections

(parts of 40 CFR 124.10, 124.11, 124.12(a), 124.17(a) and (c), 124.56(a), and 124.59), and places them in one convenient location. The content of this section is predominantly the same as the CFR except:

1. The term “hearing” has been replaced by “meeting” because hearing has a legal definition that does not convey what will actually occur in these public meetings, and
2. References to the federal statutes in subsections 109.01.d.i.(2)(a) through (e) are changed to reflect the appropriate state rules and departments. The changes address the responsible governmental agency or department that oversees the associated federally mandated program.

The referenced regulation changes are presented in Table 1.

**Table 1. Changes to CFR subsection 109.01.d.i.(2)(a) through (e).**

<b>Act</b>	<b>Federal Agency</b>	<b>State Agency</b>
Resource Conservation and Recovery Act	EPA; 42 USC 6921–6939e	DEQ; IDAPA 58.01.05. et seq.
Underground Injection Control	EPA; 42 USC 300f–300j-26	IDWR; IDAPA 37.03.03. et seq.
Clean Air Act	EPA; 42 USC 7401–7671q	DEQ; IDAPA 58.01.01. et seq.
National Pollutant Discharge Elimination System	EPA; 33 USC 1342	DEQ; IDAPA 58.01.25. et seq.

*Notes:* US Environmental Protection Agency (EPA); United States Code (USC); Idaho Department of Environmental Quality (DEQ); Idaho Department of Water Resources (IDWR)