



**UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY
REGION 10**

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OFFICE OF
WATER AND
WATERSHEDS

March 6, 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)

Re: Comments on Documents Presented at the February 20, 2015 Rulemaking Meeting

Dear Ms. Wilson:

The U.S Environmental Protection Agency (EPA) submits the following comments on the draft rule language presented during the February 20, 2015 Negotiated Rulemaking Meeting for the Idaho Pollutant Discharge Elimination System (IPDES) Program. The negotiated rulemaking meeting covered draft rule language for the following:

- IPDES application requirements
- Permitting process
- Public notice
- Public comment

The EPA reviewed the draft rule language as compared to federal NPDES regulations that are applicable to state NPDES programs under 40 CFR §123.25. Our comments primarily address areas where the draft rules may be less stringent than or differs from federal regulations.

1. 100.02 (p.1). Language is missing that appears to make the regulation less stringent than the comparable federal regulation. 40 CFR §122.5(a) states, "Except for any toxic...and standards for sewage sludge use or disposal under 405(d) of the CWA..." In the IPDES version, the reference to standards for sewage sludge use or disposal has been omitted. It is the EPA's understanding that the Idaho Department of Environmental Quality (DEQ) is not taking on the biosolids program, which may be why this reference was omitted; however, DEQ should retain reference to the sewage sludge standards because a facility still needs to comply with section 405(d) of the CWA.
2. 101.02 (p.1). This section states "the conditions of an expired permit, whether a federal NPDES permit or a state-issued IPDES permit..." The EPA is concerned that references to federal permits in this section may cause confusion or misunderstanding. The EPA understands that this language would apply to the period until DEQ gains full IPDES program authority when there will be overlap between a federal NPDES permit and a state-issued IPDES permit. However, the EPA remains the permitting authority for federal and tribal NPDES permits. The wording of this section could be interpreted to include the

permits that the EPA retains authority over. As such, the regulation should not refer to those federal permits and further clarification within this section is needed.

3. 102.01.b (p.1). This section states “*Any person who discharges from a permitted facility with a currently effective permit...*” The EPA recommends this section be changed to “*All permittees with a currently effective permit...*” (emphasis added). The EPA is concerned that the person who discharges from a permitted facility may not be the actual permittee, e.g., in cases where the permit was not appropriately transferred. The provision as written may conflict with the transfer section of the federal regulations.
4. 105.03.b (p.4). The EPA recommends that DEQ change this section to state, “Facilities described under 40 §CFR 122.26(b)(14)(x) or (b)(15)(i)....” The EPA assumes the language means a facility, which discharges storm water.
5. 105.06 (p.6). The EPA requests clarification about whether these provisions come from 40 CFR §122.21(c)(3) and §122.21(q). If so, it appears these provisions are missing some of the requirements of the federal regulations. The EPA requests explanation for the missing requirements.
6. 105.07(p) (p.12). This section defines “storm water event.” First, the term “storm water event” is not used in this section. The EPA requests clarification if DEQ meant “storm event.” Second, this “definition” comes from a portion of 40 CFR §122.21(g)(7) which deals with stormwater discharge effluent characterization. That section states, “all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event....” The regulation does not define “storm event.” It merely provides specificity of when a sample needs to be taken. In addition, the DEQ definition does not accurately reflect the federal regulation, which has the 72-hour requirement. EPA recommends that DEQ delete the “storm water event” definition and re-write the regulation to reflect the language in the federal regulation.
7. 105.11 (p.15) and 105.12 (p.19). This section refers to POTWs “and other discharges designated by the Department.” The EPA requests clarification on what constitutes “other dischargers.”
8. 107.02 (p.29). This whole section seems duplicative of the draft permit section. The EPA requests clarification or corrections to this section.
9. 108.01(b) (p.30). This section states “All general and individual” The EPA recommends deleting the word “All.” Not all permits will come to the EPA for review. The MOA will indicate which ones come to the EPA.

The EPA notes the following section where language in the draft IPDES rule differs from federal regulations and requests clarification about these differences.

10. 102.02.a-h. This section appears to missing 40 CFR §122.3(h) language regarding FIFRA.

11. 102.02.h. Missing the definition of water transfer that is found in the CFR (unless DEQ defines water transfer somewhere else in their regulations)
12. 105.09. Need to state that the nutrient management plan (NMP) must at a minimum satisfy the requirements at 40 CFR §122.42(e)
13. 105.14. For this whole section, it is unclear whether DEQ's use of "hazardous or corrective action wastes" is equivalent to the CFR's "RCRA, CERCLA, or RCRA corrective action waste."
14. 105.15.a.iv. Missing "the number of events in the past year"
15. 105.15.a.vi. Missing "All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractor responsible for any operational or maintenance aspects of the facility; and all applications must be signed by a certifying official in compliance with 122.22."
16. 102.02 §(c) on the introduction of pollutants into POTWs does not include, "Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the United States are eliminated."
17. 103.07 There may be a typo in 103.07: "From" should be "To" Also, 40 CFR §122.4
18. 105.05 105.05.a.i.(1): requires the use of Form 2A for non-POTWs; 40 CFR §122.21(a)(2)(B) requires that Form 2A be used by POTWs.
19. 106.01 Does not include 40 CFR §122.21(e) exception for general permits.
20. 105.04 Missing explanatory parenthetical in 40 CFR §122.22(b)(2)
21. 101.01a 40 CFR §§122.46(d), (e) seem to be unaddressed.
22. 109.01.d Does not include 40 CFR §124.10(c) (ii) parenthetical, "including EPA when the draft permit is prepared by the State."
23. 109.02b. State regulations set the threshold for holding a public "meeting" as having "sufficient" public interest. The corresponding federal regulation sets the threshold as "significant" public interest. Is this the same thing?

The EPA generally notes inconsistencies with use of the following terms and suggests DEQ review and clarify use of these terms:

- (1) Issued vs. effective
- (2) Hearing vs. meeting
- (3) Waters of the United States vs. waters of the State (especially since waters of the State includes groundwater)
- (4) IPDES vs. NPDES
- (5) Term vs. duration (although these terms can be used interchangeably)
- (6) USC vs. CWA vs. CFR vs. IDAPA

Thank you for the opportunity to comment on the draft rule language. The EPA will reserve further review of and comments upon the complete rule during the public comment period. 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,

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Michael J. Lidgard, Manager
NPDES Permits Unit

Cc: Mary Anne Nelson, IPDES Program Manager
(sent by email to: *mary.anne.nelson@deq.idaho.gov*)