Docket 58-0125-1401 – IPDES Rules

Response to Comments on Draft 2.0
March 6, 2015 comment deadline

EPA

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.

DEQ corrected this oversight by adding the language from 40 CFR 122.5 to 100.02

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.

DEQ has added the following language to sections 101.02.a and 101.03 for clarification, "…federal NPDES permits (except for permits over which EPA retains authority)…"DEQ has also added language addressing enforcement of NPDES permits that have not yet expired the administration of which has been transferred to DEQ.

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.

DEQ does not have any objections to the proposed changes. This change is reflected in Draft 2.1.

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.

DEQ does not have any objections to the proposed changes. This change is reflected in Draft 2.1.

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.

These provisions come from 40 CFR 122.21(f). Missing provisions [40 CFR 122.21(c)(2) and 122.21(q)]have been incorporated under IDAPA 105.18. According to the electronic version of 40 CFR 122.21, accessed and current as of March 5, 2015, and the print version revised as of July 1, 2013 there does not appear to be a 40 CFR 122.21(c)(3).

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.

DEQ does not have any objections to the proposed changes. This change is reflected in Draft 2.1.

7. 105.11 (p.15) and 105.12 (p.19). This section refers to POTWs "and other dischargers designated by the Department." The EPA requests clarification on what constitutes "other dischargers."

DEQ extracted the phrase "and other dischargers designated by the" Director from 40 CFR 122.21(j)'s first sentence and incorporated it into the title of this Subsection. DEQ anticipates using this Section of Idaho's rules to address privately owned treatment works treating domestic sewage, or activities such as the Dixie Drain phosphorus reduction project. Since this phrase appears in the Federal Register, what was EPA's intended use?

8. 107.02 (p.29). This whole section seems duplicative of the draft permit section. The EPA requests clarification or corrections to this section.

Section 107 in its entirety is designed to describe the decision making process that DEQ will follow when determining whether to deny an application or prepare a draft permit. Subsection 107.02 highlights the decision process and refers to the other sections, specifically 108 and 109, that describe what a draft permit must contain and the public process it must go through.

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.

DEQ does not have any objections to the proposed changes. This change is reflected in Draft 2.1.

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.

It is DEQ’s understanding that 40 CFR 122.3(h) was vacated by the Court in National Cotton Council of America v. EPA, 553 F3d 927 (6th Cir. 2009). Because this provision was vacated, it no longer exists in the CFR.

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)

DEQ added language that had been inadvertently dropped regarding the definition of water transfer.

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)

DEQ does not have any objections to the proposed changes. This change is reflected in Draft 2.1.

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.”

DEQ does not have any objections to the proposed changes. This change is reflected in Draft 2.1.

14. 105.15.a.iv. Missing “the number of events in the past year”

This language is found at 105.16.d.vi

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.”

The information cited here as missing is from 122.21(j)(9) and (j)(10) referring to application requirements for new and existing POTWs. Therefore, this information is actually found in IDAPA 105.12.c.ix and 105.12.i. This information has also been added to Subsection 106.16.h.

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."

DEQ requests clarification on the purpose of the language identified here.

17. 103.07 There may be a typo in 103.07: "From" should be "To" Also, 40 CFR §122.4

This has been fixed. The "From" should have been "For".

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.

This oversight has been corrected.

19. 106.01 Does not include 40 CFR §122.21(e) exception for general permits.

DEQ disagrees with EPA's exception for completeness of General Permit applications (i.e. notice of intent). DEQ has text that will appear in IDAPA 58.01.25, Section 130, Administration of General Permits, Subsection 02.b.i(2), that states: "Submittal of a complete and timely notice of intent to be covered in accordance with general permit requirements fulfills the requirements for permit applications." Application and NOI completeness are critical for operation of the State's permitting process. General permit NOIs must be complete and submitted in a timely manner in order for the permittee to obtain coverage.

20. 105.04 Missing explanatory parenthetical in 40 CFR §122.22(b)(2)

The missing parenthetical states "a duly authorized representative may thus be either a named individual or any individual occupying a named position." DEQ believes that this is handled in the current draft language by choosing to use the phrase "an individual or a position" in Subsection 105.04.b.

21. 101.01.a 40 CFR §§122.46(d), (e) seem to be unaddressed.

This oversight has been corrected.

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."

This oversight has been corrected.

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?

DEQ replaced the text, "sufficient" with "significant" to be consistent with 40 CFR 124.129(a) and Section 109.01.h.

Idaho Conservation League:

1. 101.02 Continuation of Expiring Permits - It is unclear what the duration of an administratively extended permit is. We recommend that permit extensions last for one year, and that multiple extensions can be granted — but under no circumstances can a permit be extended for more than a total of 5 years.

DEQ understands the concern expressed that permits have been administratively continued for many years under the current system. While it is understandable that these permits should not be allowed to remain on an administrative continuance indefinitely, it is unfair to discontinue the permit and penalize the discharger if the agency is unable due to time, resources, or experience to draft and issue a renewed permit for the discharger. DEQ will make every effort to address administratively continued permits in as timely a manner as possible.

2. 101.02.a - It is unclear if the application needs to be determined to be complete prior to 180 days before expiration in order to be eligible for an extension.

DEQ struck the portion of language from 101.02.a referring to application completeness. The 180 days before permit expiration will include the time the agency needs to make a permit completeness determination as well as draft the permit. DEQ reserves the opportunity to work with permittees, providing compliance assistance and flexibility throughout the permitting process. DEQ will address application completeness on a case-by-case basis.

3. 102.01.b.i - Please elaborate on what factors the Director will take into consideration when determining if a permit application can be submitted, and an extension granted, within less than 180 days of the expiration of the current permit.

DEQ anticipates providing this information to the regulated community and DEQ's Regional Offices in guidance. DEQ expects to assess the current permittee's compliance status, the facility's operating efficacy, in addition to other, yet to be determined criteria, such as volume of discharge, constituent concentration in discharge, and environmental carrying capacity.

4. 102.02.a.ii - It is unclear if this exclusion would exempt sewage discharge from a tour boat operator from regulation.

The CWA, section 502 (6), excludes from the definition of "pollutant" any sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces within the meaning of section 312 of the CWA. In addition, section 402(r) of the CWA provides that no NPDES permit is required for any discharge that is incidental to the normal operation of a vessel, if the discharge is from a recreational vessel. Section 312 and Coast Guard regulations

under 33 CFR 159 regulates marine sanitation devices that must be designed to prevent the discharge of untreated or inadequately treated sewage. In addition, section 312 also mandates requirements for discharges other than sewage from recreational vessels. .

5. 102.02.e - It is unclear how non-point agricultural discharges relate to the point sources excluded from IPDES permit requirements. Can you please explain what this subsection means? Also, could you please provide some definition or context for the term 'silvicultural point sources"?

DEQ is providing the text of the exclusion found in 40 CFR 122.3(e). DEQ has incorporated by reference the definition of silvicultural point sources as outlined in 40 CFR 122.27

6. 102.02.h - Could you please provide some definition or context for the term 'water transfer"?

DEQ added language from the CFR detailing what a water transfer is. This language is part of the CFR and was inadvertently dropped from Draft 2.0.

7. 103.04 - The term "Secretary of the United States Army Corps of Engineers" is used. Searching the internet for this leads me to conclude that this is no longer a recognized position at the Corps of Engineers.

Use of the term Secretary of the United States Army Corps of Engineers was incorrect. The actual terminology in the CFR refers to the Secretary of the US Army as the deciding authority although in practice this authority is delegated to the Chief of Engineers of the Army Corps of Engineers. This has been corrected in Draft 2.0

8. 103.07.a.ii - As discussed at the last rule making meeting, the Friends of Pinto Creek decision makes it clear that new discharges are not allowed into 303d waters unless the agency has subjected existing discharges to compliance schedules to bring the waterbody into compliance with WQS. If compliance schedules with point sources are not sufficient to ensure the attainment of WQS within a waterbody, then the agency must develop compliance schedules for non-point sources.

   Please provide some guidance as to how the DEQ believes that the State will be bound by the Pinto Creek decision and how the DEQ will implement this provision. Further, does DEQ interpret TMDL implementation plans and WA's as compliance schedules pursuant to this subsection?

Section 103.07.a.ii applies when the owner or operator of a new source or new discharge proposes to discharge into an impaired water body for which the state has performed a pollutant load allocation for the pollutant discharged. Under these circumstances, the owner or operator of the new source or new discharge must demonstrate that existing discharges are subject to compliance schedules designed to bring the impaired segment into compliance with WQS. The court in Pinto Creek decision does not provide any explanation for what constitutes a compliance schedule, other than to note that compliance schedules are needed for point sources even if unpermitted. At this time, DEQ has not determined what documents may meet the requirement for a compliance schedule.

9. 103.07.b - This provision provides that the Director may waive the need for an applicant to submit certain information if the Director believes that the Department already has sufficient information to evaluate the applicant's request. We believe that public needs to able to review the information used by the Director to evaluate an applicant's request and that the applicant should be obligated to submit this information to the Department so that the application record contains all of the information necessary to review the application and the Department's decision.

DEQ anticipates providing this waiver only in instances where the applicant has already submitted the information in a report, or data set required by a permit compliance activity. In these instances DEQ would already have the information and requiring the applicant to resubmit this information would be redundant. Section 103.07.c requires that basis for DEQ's decision with respect to a new source or new discharge must be included in the fact sheet for the permit. Moreover, the information for the agency's decision should be available to the public through a public records request. Therefore, the public will be able to review the information used and the basis for DEQ's decision with respect to new sources and new discharges.

10. 105.03 - This subsection notes that when seeking coverage under an IPDES General Permit, the applicant needs to submit an NOI rather than an application. Section 130 is referenced with regard to the submittal of the NOI. We note that Section 130 is not yet available for review. We ask that as DEQ drafts Section 130, DEQ ensures that the NOI's for General Permits contain sufficient detail that the public is able to evaluate the implication of such a discharge on the receiving water.

DEQ has drafted section 130 and it will be available for review at the March 20th meeting in Draft 3.0.

11. 105.05 - regarding application forms: Would DEQ consider developing new application forms? Some of the 'current' versions of the EPA applications referenced in the draft rule were developed many years ago and upon review seem outdated.

DEQ is considering the development of new application forms. Additionally, DEQ would like to pursue a solely electronic process of application submittal and data management. This will be dealt with in the upcoming months as the agency prepares all of the materials needed for a complete delegated authority application.

12. Also, as raised in the last rulemaking meeting, it appears that this section may not include the necessary provisions for Phase 1 and 2 MS4, CGP, MSGP and pre-treatment applications.

Sections in 105 Application Requirements have been added to deal with applications for individual MS4, Construction GP, and Multi-Sector GPs.

13. 105.07.a.vi.(1) - This subsection provides that the Department can waive the requirement that an applicant list all of the toxic pollutants in a discharge if compiling such a list is "unduly burdensome." Can you elaborate how DEQ would interpret "unduly burdensome."

Defining and utilizing the provisions of 105.07.a.vi will be covered during the guidance development for IPDES permit writers.

14. 105.07.n - In the last rulemaking meeting, the DEQ stated that in instances where applicants cited the 'small business exemption' regarding the collection and submittal of certain data, the DEQ would be obligated to collect this data at Department expense since this data would still be required to review a permit application and develop an IPDES permit. Can DEQ please confirm this position?

40 CFR 122.41(g)((8), identifies that entities meeting the "small business exemption" criteria are exempt from submittal of certain data. DEQ will approach, on a case-by-case basis, each situation that meets these criteria, in order to determine the appropriate course of action.

15. 105.07.n.ii - In the last rulemaking meeting, the DEQ stated that it had decided to alter the original CWA language to reflect the annual sales amount in 2014 dollars. Could DEQ please provide the justification for this deviation from EPA's original text?

    We believe that the DEQ would be better served by leaving the dollar amount in the original amount. Inflating the amount to 2014 dollars will likely mean that a grater number of applicants will seek to qualify for the exemption. And, as a result, the DEQ will encounter a greater number of instances where it will be forced to spend its resources collecting needed data.

DEQ believes the CFR phrase, "…in 1980 dollars…," was intended to facilitate adjusting this monetary value based on inflation, as calculated using the Consumer Price Index (CPI). If the CFR's intent was not to allow for an inflation adjustment, the language would have stated a specific monetary value without a specific timeframe. Further, providing a more-recently adjusted monetary value in the IPDES rules, will help IPDES users more easily recognize if they may be eligible for an exemption, without having to back-calculate the monetary value of their gross total annual sales to 1980 values. DEQ is checking with EPA staff on this.

16. 105.08.d - This subsection provides that the Department may waive certain requirements related to testing and reporting. Could DEQ please discuss what sort of information DEQ would require when deciding to waive these requirements?

DEQ would assess the facility's or activity's processes, and each processes ability to consistently provide effluent whose quality exceeds the discharge limits. An example would be monitoring and reporting for Total Suspended Solids (TSS) may not be necessary when the treatment works utilizes membrane filtration immediately prior to disinfection and discharge. The facility may not be required to monitor and report on TSS, but they most likely will retain monitoring capability in order to efficiently operate and maintain the process. This section provides the flexibility to craft permits that do not impose overly burdensome requirements when they are not necessary and would impose unnecessary expenses on the regulated community.

17. 105.10 - regarding CAAP facilities As was discussed at the last rulemaking session, the list of information required in the CAAP application for a discharge permit is clearly insufficient to develop an IPDES permit. DEQ stated that it believe that it would have the authority to

require additional information be included in the application. Could the DEQ please cite the section of this draft rule that provides the Department this authority?

An additional subsection was inserted, Subsection 105.06, that provides for the Department requesting additional information prior to determining application completeness.

18. 105.11 - It appears that the DEQ has added text to include "other dischargers designated by the Department' to this subsection heading. Is it DEQ's intent that these other 'designated' discharges will be codified in a developed list or is this section meant to serve as a catchall and the Department will, in the future, as needed, determine on the fly that an discharger falls under this subsection?

DEQ has not yet determined what discharges may be designated under this provision. DEQ may use this "designated discharger" to address privately owned treatment works treating domestic sewage from subdivisions. DEQ has inserted Subsection 105.18 that addresses permit application requirements for Treatment Works Treating Domestic Sewage (TWTDS) that will fulfill this requirement.

19. 105.16 - This section is limited to "new manufacturing, commercial, mining or silviculture" discharges. We suggest that DEQ add the term "and other" to this list. As was discussed during the last rulemaking session, it is possible that a discharger might immerge that does not fall neatly into the one of the listed categories (new manufacturing, commercial, mining or silviculture). We raised the issue of whether the Dixie Project – which is a pollution cleanup facility – would fall into any of these listed categories. It would be good to have a catchall to ensure that the Department was able to regulate other sorts of discharges.

DEQ has added the term "other," in order to address other potential dischargers for which this rule would be applicable. In addition, DEQ has added section 105.06, that is applicable to all dischargers, that allows DEQ to require the submittal of any information necessary to ensure compliance with section 103, Permit Prohibitions.

20. 108 - regarding draft permits As was discussed at the last rulemaking session, it would be helpful if the DEQ would discuss when or how the Department would go about issuing a supplemental draft permit in the event that such a supplemental document was necessary.

DEQ does not foresee generating an undefined "supplemental draft permit". DEQ anticipates generating and distributing a draft permit for comment, and possibly multiple revisions of the draft permit in certain instances. Any supplemental documentation associated with the permit shall appear in the fact sheet.

21. 108.02 - At the last rulemaking session, the DEQ stated that all draft IPDES permits would be issued with supporting documentation. Could the DEQ please confirm this statement?

As described in Section 108.02 on fact sheets, documentation supporting the draft permit limits and calculations associated with the draft permit are included in the fact sheet. In addition, for all permits, the information supporting the decision must be included in the public notice

required by section 109. It is unclear if this comment is requesting more information than is included in the fact sheet or asking for clarification on what is being included with the fact sheet.

22. 108.02.iii - Would a permit that seeks to incorporate a mixing zone be captured under this subsection?

Yes, if the permit utilizes a mixing zone then the assessment of and justification for the mixing zone will be documented in the fact sheet.

23. 109 - regarding public notice and comment As was discussed at the last rulemaking session, the DEQ needs to ensure that the Department is calculating the length of comment and appeal periods in a manner that is consistent with the CWA. Does a public comment period start on the day it is announced or the following full day? Are comments do a midnight? Since Idaho encompasses two time zones, which time zone is used to compute timeliness?

DEQ added Section 050 to address the computation of time.

24. Regarding public meetings, at the last rulemaking, it was discussed that the EPA has handled public meetings differently than the DEQ. For CWA purposes, public comments made at public meetings need to be captured and placed in the record as "public comments" on the permit.

DEQ will develop IPDES rules Section 600, Data Management and Reporting, to be discussed during the April 17 negotiated rulemaking meeting. Section 600 will codify requirements of an administrative record for an IPDES permit. DEQ anticipates that this section will require all comments received during the public comment period to become part of the administrative record for a permit.

25. Also, the Department should provide text in the rule that provides how the public can request (and receive) additional public meetings and how the public can request (and receive) an extension on a public comment period. Further, it is important the Department note that since the public can deliver 'comments' at a public meeting which might occur after the stated close of the public comment period, the Department will need to ensure that the public comment period is automatically extended to encompass the public hearing.

DEQ added a sub heading to subsection 109.02, specifically 109.02.g to address requests for extensions on public comment periods as well as modified language found at 109.02.b to address the format and timing for a written request for a public meeting should no public meeting have been scheduled.

TASCO TF

Concerning expiring permits, there appears to be no opportunity for continuation of existing NPDES permits if the permit application was submitted to the EPA as prime agency during this proposed transition period to IPDES. The same appears true for general permits as well.

DEQ believes that the added section 101.03 addresses the concerns described here. Additionally, the transfer of permits from EPA to DEQ is more accurately addressed in the Memorandum of Agreement between EPA and DEQ.

I also have a comment on section 105.17.c. This condition is not feasible for an existing facility with an existing cooling water intake structure. As written, the reference to 40 CFR 125,95(b)(1) supposes that information is submitted before cooling water intake occurs. The final sentence of the condition should be revised to say "…all applicable provisions of 40 CFR 125.95, incorporated by reference, to the Department as part of the application, except that the applicant's proposal for information collection must be submitted in compliance respectively with 40 CFR 125.95(b)(1) for new units or 40 CFR 125.95(a)(1) through (3) for existing units, incorporated by reference." As an alternative, you could strike the remaining language after "to the Department as part of the application" to have the same effect.

The section on cooling water intake structures has been significantly re-worked based on the comments received from EPA during the rulemaking meeting. DEQ proposes to incorporate by reference, 40 CFR 122.21(r) into IPDES rules Subsection 003.04.

Idaho Water Users Association, Inc.

1. Supporting 100 Effect of a Permit

2. Asks for clarification on why the Department would issue a general permit for less than 5 years. Also points out that general permits are not covered under the expiring permit provisions.

It is not likely that DEQ would issue a general permit for durations less than 5 years due to the time and expense necessary to develop general permits. Consequently, restricting general permit durations to be anything but 5 years is deemed unnecessary. DEQ has added Subsection 101.03 to address continuation of expiring general permits.

3. 102. Obligation to Obtain an IPDES Permit: requesting an exclusion for "activities and sources not required to have permits by the US EPA", as required by Idaho Code Section 39-175B.

Subsection 102.02, Exclusions from Permit, identifies the activities and sources not required to obtain IPDES permits. This subsection is consistent with the requirements of 40 CFR 122.23. Therefore, DEQ has excluded from permit requirements those activities or sources not required to have permits by EPA.

4. 109 Public Notification and Comment: Raised issues with language in this section referring to consulting with federal agencies (109.02.d and e). Requested removal of references to Endangered Species Act and anything resembling ESA consultation. Cited 39-175C as well as Supreme Court Case NAHB vs. Defenders of Wildlife.

DEQ has changed the text in IDAPA 58.01.25.109.02.e from "consult" to "confer". Additionally, DEQ is waiting for clarification from EPA's headquarters regarding subsections 109.02.d.

5. Requested clarification on questions regarding public processes for review, public notice, comment and decision making for general permits.

DEQ anticipates employing the same procedures for general permit review, public notification, comments and decision making as currently specified in Section 106 and 109.

City of Meridian

Requested changes to language under 100.01 Effect of a Permit. Would like to have the last sentence of 100.01 struck.

DEQ has provided this final sentence in Subsection 100.01 as a courtesy to the regulated community to inform them that while their discharge requires an IPDES permit, there may be other approvals or authorizations that are necessary that DEQ is not aware of or responsible for.