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58.01.25 – RULES REGULATING THE IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM
DRAFT 3.0 PERMIT RENEWAL, MODIFICATION, TERMINATION, VARIANCES, MONITORING AND REPORTING, COMPLIANCE SCHEDULES, AND PERMIT PROVISIONS
DRAFT SUBMITTED FOR REVIEW AT MARCH 20, 2015 NEGOTIATED RULEMAKING MEETING

Contents

200. RENEWAL OF IPDES PERMITS

40 CFR 122.44(l)

01. Interim Effluent Limits [40 CFR 122.44(l)(1)]. Except as provided in Subsection 200.02 when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was based:

a. Have materially and substantially changed since the time the permit was issued and

b. Would constitute cause for permit modification or revocation and reissuance under Subsection 201.02.

02. Final Effluent Limits [40 CFR 122.44(l)(2)–(l)(2)(i)(E)]. In the case of effluent limitations established by the Department on the basis of the Clean Water Act section 402(a)(1)(B), a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under Clean Water Act section 304(b) after the original issuance of a permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit, except a permit may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if:

a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance, which justify the application of a less stringent effluent limitation;

b. Information is available:

i. Which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

ii. Which the Department determines indicates that technical mistakes or mistaken interpretations of law were made in issuing the permit under the Clean Water Act section 402(a)(1)(b);

c. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

d. The permittee has received a permit modification under the Clean Water Act section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a); or

e. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

03. Effluent Limits and Water Quality Standards [40 CFR 122.44(l)(2)(ii)]. In no event may a permit with respect to which Subsection 200.02 applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into State waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under the Clean Water Act section 303 or IDAPA 58.01.02.

201. MODIFICATION, OR REVOCATION AND REISSUANCE OF IPDES PERMITS

40 CFR 124.5(a) – (c); 122.62(a) – (b); and 122.63(a) – (h)

01. Procedures to Modify, or Revoke and Reissue Permits [40 CFR 124.5(a), (c)(3), and Introduction of 122.62].

a. Permits may be modified, or revoked and reissued either at the request of any interested person (including the permittee) or upon the Department's initiative. However, permits may only be modified, or revoked and reissued for the reasons specified in Subsection 201.02. All requests shall be in writing and shall contain facts or reasons supporting the request.

b. If the Department tentatively decides to modify or revoke and reissue a permit, the Department shall prepare a draft permit under Section 108, incorporating the proposed changes.

i. The Department may request additional information and, in the case of a modified permit, may require the submission of an updated application. If the tentative decision is to revoke and reissue a permit, the Department shall require the submission of a new application.

ii. In a permit modification under this Section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit.

iii. When a permit is revoked and reissued under this Section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

iv. "Minor modifications," as defined in Subsection 201.03, do not require the development of a draft permit, fact sheet, nor must minor modifications be subjected to public notification and comment.

02. Causes to Modify, or Revoke and Reissue Permits [40 CFR 122.62(a)–(b)(2)]. When the Department receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit under Sections 300 or 303, receives a request for modification or revocation and reissuance under Subsection 201.01, or conducts a review of the permit file) the Department may determine whether or not one or more of the causes listed in Subsections 201.02.c and 201.02.d, for modification or revocation and reissuance or both exist.

a. If cause exists, the Department may modify or revoke and reissue the permit accordingly, subject to the limitations of Subsection 201.01.bb, and may request a new or updated application, if necessary.

b. If cause does not exist under this Section, the Department shall not modify or revoke and reissue the permit.

c. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.

i. There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice), which occurred after permit issuance, and which justify the application of permit conditions that are different or absent in the existing permit.

ii. The Department has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance:

(1) For IPDES general permits (Section 130) this cause includes any information indicating that cumulative effects on the environment are unacceptable; and

(2) For new source or new discharger IPDES permits (Section 105), this cause shall include any significant information derived from effluent testing required under Subsection 105.09.c or 105.17.c after issuance of the permit.

iii. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

(1) For promulgation of amended standards or regulations, when:

(a) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations under 40 CFR part 133;

(b) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a State action with regard to a water quality standard on which the permit condition was based; and

(c) A permittee requests modification in accordance with Subsection 0 or 203.01 within ninety (90) days after Federal Register notice of the action on which the request is based; and

(2) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA or Idaho promulgated regulations or effluent limitation guidelines, if the remand and stay concerns that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with Subsection 0 within ninety (90) days of judicial remand.

iv. The Department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an IPDES compliance schedule be modified to extend beyond an applicable Clean Water Act statutory deadline.

v. When the permittee has filed a request for a variance under Clean Water Act section 301(c), 301(g), 301(h), 301(i), 301(k), or 316(a) or for "fundamentally different factors" within the time specified in Section 310.

vi. When required to incorporate an applicable Clean Water Act 307(a) toxic effluent standard or prohibition, under Section 301.

vii. When required by the "reopener" conditions in a permit, which are established in the permit under Subsection 301.04 or 40 CFR 403.18(e) (Pretreatment Standards).

viii. Upon request of a permittee who qualifies for effluent limitations on a net basis, or when a discharger is no longer eligible for net limitations, as provided in Subsection 302.07.

ix. As necessary under 40 CFR 403.8(e) (Pretreatment Program Requirements: Development and Implementation by POTW).

x. Upon failure of an approved State to notify, as required by the Clean Water Act section 402(b)(3), another State whose waters may be affected by a discharge from the approved State.

xi. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c).

xii. To establish a "notification level" as provided in Subsection 301.08.

xiii. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a loan under IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans. In no case shall the compliance schedule be modified to extend beyond an applicable Clean Water Act statutory deadline for compliance.

xiv. For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in 40 CFR 122.34(b) when:

(1) The permit does not include such measure(s) based upon the determination that another entity was responsible for implementation of the requirement(s), and

(2) The other entity fails to implement measure(s) that satisfy the requirement(s).

xv. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

xvi. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under the Clean Water Act section 402(a)(1) and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

xvii. The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit when a CAFO obtains coverage under a general permit in accordance with 40 CFR 122.23(h) and Section 130 is not a cause for modification pursuant to the requirements of this Section.

xviii. When required by a permit condition to incorporate a land application or sludge disposal plan for beneficial reuse of sewage sludge, to revise an existing land application or sludge disposal plan, or to add a land application or sludge disposal plan as required by IDAPA 58.01.16, Wastewater Rules, Section 650, Sludge Usage.

d. The following are causes to modify or, alternatively, revoke and reissue a permit:

i. Cause exists for termination under Subsection 203.04, and the Department determines that modification or revocation and reissuance is appropriate;

ii. The Department has received notification, as required in the permit, of a proposed transfer of the permit; or

iii. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (Subsection 202.02) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

03. Minor Modifications of Permits 40 [CFR 122.63(a)–(h)]. Upon the consent of the permittee, the Department may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this Subsection, without following the procedures of Sections108, 109, and 201. Any permit modification not processed as a minor modification under this Subsection must be made for cause and must meet the requirements of Section 108 and Section 109. Minor modifications may:

a. Correct typographical errors;

b. Require more frequent monitoring or reporting by the permittee;

c. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

d. Allow for a change in ownership or operational control of a facility where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Department;

e. Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under Subsection 105.16;

f. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits;

g. Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR 403.11 or a modification that has been approved in accordance with the procedures in 40 CFR 403.18 as enforceable conditions of the POTW's permits; or

h. Incorporate changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements of 40 CFR 122.42(e)(6).

202. TRANSFER OF IPDES PERMITS

40 CFR 122.61(a) – (b)

01. Transfers by Modification [40 CFR 122.61(a)]. Except as provided in Subsection 202.02, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued under Subsection 201.02, or a minor modification made under Subsection 201.03, to identify the new permittee and incorporate such other requirements as may be necessary under the Clean Water Act.

02. Automatic Transfers [40 CFR 122.61(b)–(b)(3)]. As an alternative to transfers by modification, any IPDES permit may be automatically transferred to a new permittee if:

a. The current permittee notifies the Department at least 30 days in advance of the proposed transfer date;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee; and

c. The Department does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. A modification under this Subsection may also be a minor modification under Subsection 201.03. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Subsection 202.02.b.

203. TERMINATION OF IPDES PERMITS

40 CFR 124.5(d); 122.64(a) – (b)

01. Request to Terminate or Termination Initiated by the Department [40 CFR 124.5(a)]. Permits may be terminated either at the request of any interested person (including the permittee) or upon the Department's own initiative. However, permits may only be terminated for the reasons specified in Subsection 04. All requests for termination shall be in writing and shall contain facts or reasons supporting the request.

02. Tentative Permit Termination [40 CFR 124.5(d)]. Except as provided in Subsection 203.03, if the Department tentatively decides to terminate a permit the Department shall notify the permittee in writing about the pending termination. The termination shall be effective 30 days after the letter is sent, unless the permittee objects within that time. If the permittee objects to the termination the Department shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under Section 108 and following procedures specified in Subsection 107.01, Application Denial.

03. Expedited Process for Terminated or Eliminated Discharge [40 CFR 122.64(b)]. If the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW (but not by land application or disposal into a well), the Department may terminate the permit by notice to the permittee.

a. Termination by notice shall be effective 30 days after notice is sent (expedited permit termination), unless the permittee objects within that time.

b. If the permittee objects during that period, the Department shall follow procedures for termination in this Section.

c. Expedited permit termination procedures are not available to permittees that are subject to pending State and/or Federal enforcement actions including citizen suits brought under State or Federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending State or Federal enforcement actions including citizen suits brought under State or Federal law.

04. Cause to Terminate Permits [40 CFR 122.64(a)(1)–(a)(4)]. The following are causes for terminating a permit during its term, or for denying a permit renewal application:

a. Noncompliance by the permittee with any condition of the permit;

b. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

c. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

d. A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

300. APPLICABLE PERMIT CONDITIONS

40 CFR 122.41(a) – (n)

01. Conditions Applicable to All Permits [40 CFR 122.41(a)–(j)(4)]. The following conditions apply to all IPDES permits. Additional conditions applicable to IPDES permits are in Section 305. All conditions applicable to IPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation must be given in the permit.

a. The permittee must comply with all conditions of this permit.

i. Any permit noncompliance constitutes a violation of Idaho law, the Clean Water Act and is grounds for enforcement action; permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

ii. The permittee shall comply with effluent standards or prohibitions established under the Clean Water Act section 307(a) for toxic pollutants and with standards for sewage sludge use or disposal established under the Clean Water Act section 405(d) and IDAPA 58.01.16.650, within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

iii. The permit must include penalty provisions pursuant to Subsection 500.02.

b. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

c. In an enforcement action, a permittee may not assert as a defense that compliance with the conditions of the permit would have made it necessary for the permittee to halt or reduce the permitted activity.

d. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

e. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.

i. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures.

ii. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

f. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

g. This permit does not convey any property rights of any sort, or any exclusive privilege.

h. The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Department upon request, copies of records required to be kept by this permit.

i. The permittee shall provide the Department's inspectors, or authorized representatives, including authorized contractors acting as representatives of the Department, upon presentation of credentials and other documents as may be required by law, access to:

i. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

ii. Any records that must be kept under the conditions of this permit and, at reasonable times, to copy such records;

iii. Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

iv. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

j. A permittee must comply with the following monitoring and recordkeeping conditions:

i. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

ii. The permittee shall retain records:

(1) Of all monitoring information, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time; and

(2) The permittee's sewage sludge use and disposal activities shall be retained for a period of at least five years or longer as required by 40 CFR part 503.

iii. Records of monitoring information shall include:

(1) All calibration and maintenance records;

(2) All original strip chart recordings for continuous monitoring instrumentation or other forms of data approved by the Department;

(3) Copies of all reports required by this permit;

(4) Records of all data used to complete the application for this permit;

(5) The date, exact place, and time of sampling or measurements;

(6) The name of any individual(s) who performed the sampling or measurements;

(7) The date(s) any analyses were performed;

(8) The name of any individual(s) who performed the analyses;

(9) The analytical techniques or methods used; and

(10) The results of the analysis; and

iv. Monitoring must be conducted according to test procedures approved under 40 CFR 136 unless other test procedures have been specified in the permit.

v. The permit must include penalty provisions pursuant to Subsection 500.03.

02. Signatory Requirements [40 CFR 122.41(k)(1)-(2)]. All applications, reports, or information submitted to the Department shall be signed and certified in accordance with Subsection 105.04 and must include penalty provisions pursuant to Subsection 500.04.

03. Reporting Requirements [40 CFR 122.41(l)(1)–(l)(8)].

a. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

i. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as defined in Section 120 (New Sources);

ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Subsection 305.01.a; or

iii. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites:

(1) Not reported during the permit application process or

(2) Not reported pursuant to an approved land application or sludge disposal plan.

b. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

c. This permit is not transferable to any person except after notice to the Department. The Department may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under Section 202.

d. Monitoring results shall be reported at the intervals specified elsewhere in the permit.

i. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms (which may be electronic) provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices.

ii. If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136, or another method required for an industry-specific waste stream specified in the permit or under 40 CFR Subchapters N or O, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department.

iii. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Department in the permit.

e. A permittee must submit reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit no later than 14 days following each schedule date of each requirement.

f. The permittee shall report any noncompliance which may endanger health or the environment, as follows:

i. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances;

ii. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of:

(1) The noncompliance and its cause;

(2) The period of noncompliance, including exact dates and times;

(3) If the noncompliance has not been corrected, the anticipated time it is expected to continue; and

(4) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance;

iii. The following shall be included as information which must be reported within 24 hours:

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(2) Any upset which exceeds any effluent limitation in the permit; and

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours; and

iv. The Department may waive the written report on a case-by-case basis for reports under Subsection 300.03.f.iii if the oral report has been received within 24 hours.

g. The permittee shall report all instances of noncompliance not reported under Subsections 300.03.d, e, and f., at the time monitoring reports are submitted. The reports of noncompliance shall contain the information listed in Subsection 300.03.f.

h. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or correct information.

04. Bypass Terms and Conditions [40 CFR 122.41(m)(2)(i)–(m)(4)(i)(C)].

a. Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:

i. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

iii. The permittee submitted a notice of a bypass to the Department as follows:

(1) If the permittee knows in advance of the need for a bypass, it shall submit prior notice to the Department, if possible at least ten days before the date of the bypass. The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed Subsection 300.04.a.

(2) The permittee shall submit notice of an unanticipated bypass as required in Subsection 300.03.f (24-hour notice).

b. Bypasses not exceeding limitations, are allowed to occur, and are not subject to Section 300.04.a, if:

i. The bypass does not cause effluent limitations to be exceeded, and

ii. Only if it also is for essential maintenance to assure efficient operation.

05. Upset Terms and Conditions [40 CFR 122.41(n)(2)–(n)(4)]

a. In any enforcement action for noncompliance with technology-based permit effluent limitations, a permittee may claim upset as an affirmative defense. A permittee seeking to establish the occurrence of an upset has the burden of proof.

b. Any determination made in administrative review of a claim that noncompliance was caused by upset, before an action for noncompliance is commenced, is not final administrative action subject to judicial review.

c. The following conditions are necessary for a permittee to demonstrate that an upset occurred. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

i. An upset occurred and that the permittee can identify the cause(s) of the upset;

ii. The permitted facility was at the time being properly operated;

iii. The permittee submitted 24-hour notice of the upset as required Subsection 300.03.f.iii(2); and

iv. The permittee complied with any remedial measures required under Subsection 300.01.d.

06. Penalties and Fines [40 CFR 122.41(a)(2)–(a)(3), 122.41(j)(5), and 122.41(k)(2)]. Permits must include penalty and fine requirements pursuant to Subsections 500.01 – 03.

301. ESTABLISHING PERMIT PROVISIONS

40 CFR 122.43(a) – (c); 122.44(a) – (g), (k), (m) – (s)

An IPDES permit must include conditions meeting the following requirements, when applicable, in addition to other sections of IDAPA 58.01.25.

01. Incorporation [40 CFR 122.43(c)]. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

02. Applicable Requirements [40 CFR 122.43(a)–(b)]. The Department shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the Clean Water Act and these rules.

a. Applicable requirements include all statutory or regulatory requirements which take effect prior to final administrative disposition of the permit.

b. Applicable requirements also include any requirement which takes effect prior to the modification, or revocation and reissuance of a permit under Section 201.

c. New or reissued permits, and to the extent allowed under Section 201, modified, or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in Sections 200, 301, 302 and 303.

03. Technology-based Effluent Limitations and Standards [40 CFR 122.44(a)(1)–(a)(2)(v)].

a. Technology-based effluent limitations and standards shall be based on:

i. Effluent limitations and standards promulgated under the Clean Water Act section 301;

ii. New source performance standards promulgated under the Clean Water Act section 306;

iii. Effluent limitations determined on a case-by-case basis under the Clean Water Act section 402(a)(1); or

iv. A combination of the three, in accordance with 40 CFR 125.3.

b. For new sources or new dischargers, these technology based limitations and standards are subject to the provisions of 40 CFR 122.29(d).

c. The Department may authorize a discharger, subject to technology-based effluent limitations guidelines and standards in an IPDES permit, to forego sampling of a pollutant found at 40 CFR part 401 – 471, if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

i. This waiver is good only for the term of the permit and is not available during the term of the first NPDES or IPDES permit issued to a discharger.

ii. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term, that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

iii. Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet.

iv. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

04. Other Effluent Limitations and Standards [40 CFR 122.44(b)(1)–(b)(3)].

a. If any applicable toxic effluent limitations and standards under the Clean Water Act sections 301, 302, 303, 307, 318 and 405 or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under the Clean Water Act section 307(a) for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Department shall initiate proceedings under Section 201 to modify or revoke and reissue the permit to conform to the more stringent toxic effluent standard or prohibition.

b. Conditions relating to the disposal under the Clean Water Act section 405(d) and IDAPA 58.01.16.650 unless those standards have been included in a permit issued under the appropriate provisions of:

i. Subtitle C of the Solid Waste Disposal Act;

ii. Part C of Safe Drinking Water Act;

iii. The Clean Air Act; or

iv. State permit programs approved by the EPA Administrator.

c. When there are no applicable standards for sewage sludge use, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge.

d. If any applicable standard for sewage sludge use or disposal is promulgated under the Clean Water Act section 405(d) and IDAPA 58.01.16.650, and that standard is more stringent than any limitation on the pollutant or practice in the permit, the Department may initiate proceedings under these regulations to modify or revoke and reissue the permit, in compliance with Section 201, to conform to the standard for sewage sludge use or disposal.

e. When requirements are applicable to cooling water intake structures under the Clean Water Act section 316(b), in accordance with part 125, subparts I, J, and N.

05. Reopener Clause [40 CFR 122.44(c)]. For any permit issued to a treatment works treating domestic sewage (including "sludge-only facilities"), the Department shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under the Clean Water Act section 405(d).

a. The Department may promptly modify or revoke and reissue any permit containing the reopener clause required by this Subsection if:

i. The standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or

ii. Controls a pollutant or practice not limited in the permit.

06. Water Quality Standards and Requirements [40 CFR 122.44(d)–(d)(8)]. Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under the Clean Water Act sections 301, 304, 306, 307, 318 and 405 shall be included in a permit if they are necessary to:

a. Achieve water quality standards established in IDAPA 58.01.02, including narrative criteria for water quality;

i. Effluent limitations in a permit must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Department determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including narrative criteria for water quality.

ii. When the Department determines whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a water quality standard, the Department shall use procedures which account for:

(1) Existing controls on point and nonpoint sources of pollution;

(2) The variability of the pollutant or pollutant parameter in the effluent;

(3) The sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity); and where appropriate,

(4) The dilution of the effluent in the receiving water;

iii. When the Department determines, using the procedures in Subsection 301.06.a.ii, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

iv. When the Department determines, using the procedures in Subsection 301.06.a.ii, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity.

v. Except as provided in this Subsection, when the Department determines, using the procedures in Subsection 301.06.a.ii, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the Department demonstrates in the fact sheet of the IPDES permit, using the procedures in Subsection 301.06.a.ii, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative State water quality standards.

vi. When the State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard, the Department must establish effluent limits using one or more of the following options:

(1) Establish effluent limits using a calculated numeric water quality target or concentration value for the pollutant which the Department demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a target or concentration value may be derived:

(a) Using a proposed criterion, or an explicit policy or regulation interpreting its narrative water quality criterion, and

(b) Supplemented with other relevant information which may include EPA's Water Quality Standards Handbook, as revised August 1994, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents;

(2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under the Clean Water Act section 304(a), supplemented where necessary by other relevant information; or

(3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(b) The required fact sheet sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(d) The permit contains a reopener clause allowing the Department to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

vii. When developing water quality-based effluent limits under this Subsection, the Department shall ensure that:

(1) The level of water quality to be achieved by limits on point sources established under this Subsection is derived from, and complies with all applicable water quality standards; and

(2) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7, as revised July 1, 2013.

b. Attain or maintain a specified water quality through water quality related effluent limits established under the Clean Water Act section 302;

c. Conform to applicable water quality requirements under the Clean Water Act section 401(a)(2) when the discharge affects a State other than the certifying State;

d. Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under Federal or State law or regulations in accordance with the Clean Water Act section 301(b)(1)(C);

e. Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under the Clean Water Act section 208(b); or

f. Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under 40 CFR 125.30 – 125.32.

07. Technology-based Controls for Toxic Pollutants [40 CFR 122.44(e)(1)–(e)(2)(ii)].

a. In determining whether to include limitations on toxic pollutants in a permit under this Section, the Department will establish limits in accordance with Subsection 301.03, 301.04, and 301.06 and in a notification under Section 305, or other relevant information. The fact sheet must explain the development of limitations included in the permit.

b. An IPDES permit must include limitations to control all toxic pollutants which the Department determines (based on information reported in a permit application under Subsection 105.07.e, Subsection 305.01.a, or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c).

c. The requirement that the limitations control the pollutants meeting the criteria of Subsection 301.07.b will be satisfied by:

i. Limitations on those toxic pollutants; or

ii. Limitations on other pollutants which, in the judgment of the Department, will provide treatment of the pollutants under Subsection 301.07.b to the levels required by 40 CFR 125.3(c).

08. Notification Level [40 CFR 122.44(f)]. An IPDES permit must include a condition requiring a "notification level" which exceeds the notification level of Subsection 305.01.a, upon a petition from the permittee or on the Department's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c).

09. Twenty-four Hour Reporting [40 CFR 122.44(g)]. A permit shall list pollutants for which the permittee is required to report violations of maximum daily discharge limitations within 24 hours under Subsection 300.03.f.iii(3). This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

10. Permit Durations [40 CFR 122.44(h)]. Permits must include permit durations pursuant to Subsection 101.01.

11. Monitoring Requirements [40 CFR 122.44(i)]. Permits must include monitoring requirements pursuant to Subsection 303.01.

12. Pretreatment Program for POTWs [40 CFR 122.44(j)]. A POTW permit must include pretreatment program conditions requiring the permittee to:

a. Identify, in terms of character and volume of pollutants, any Significant Industrial Users discharging into the POTW subject to Pretreatment Standards under the Clean Water Act section 307(b) and 40 CFR part 403;

b. Submit a local program when required by and in accordance with 40 CFR part 403, to assure compliance with pretreatment standards to the extent applicable under the Clean Water Act section 307(b):

i. The local program shall be incorporated into the permit as described in 40 CFR part 403, and

ii. The program must require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR part 403;

c. Provide written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1), following permit issuance or reissuance; and

d. POTWs which are "sludge-only facilities," are required to develop a pretreatment program under 40 CFR part 403, when the Department determines that a pretreatment program is necessary to assure compliance with the Clean Water Act section 405(d).

13. Best Management Practices [40 CFR 122.44(k)–(k)(4)]. An IPDES permit must include best management practices (BMPs) to control or abate the discharge of pollutants when:

a. Authorized under the Clean Water Act section 304(e) for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

b. Authorized under section the Clean Water Act 402(p) for the control of storm water discharges;

c. Numeric effluent limitations are infeasible; or

d. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Clean Water Act.

14. Reissued Permits. When a permit is renewed or reissued, it must be must include provisions pursuant to Section 200.

15. Privately-owned Treatment Works [40 CFR 122.44(m)]. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this Section.

a. Alternatively, the Department may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user.

b. The Department's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

16. Grants [40 CFR 122.44(n)]. An IPDES permit must include any conditions imposed in grants made by the EPA Administrator to POTWs under the Clean Water Act sections 201 and 204, which are reasonably necessary for the achievement of effluent limitations under the Clean Water Act section 301.

17. Sewage Sludge [40 CFR 122.44(o)]. Requirements under the Clean Water Act section 405 governing the disposal of sewage sludge from POTWs or any other treatment works treating domestic sewage for any use for which regulations have been established, in accordance with any applicable regulations.

18. Navigation [40 CFR 122.44(q)]. An IPDES permit must include any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with Subsection 109.02.

19. Qualifying State, Tribal, or Local Programs [40 CFR 122.44(s)(1)–(s)(2)].

a. For storm water discharges associated with small construction activity identified in 40 CFR 122.26(b)(15), the Department may include permit conditions that incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. Where a qualifying State, Tribal, or local program does not include one or more of the elements in this Subsection, then the Department must include those elements as conditions in the permit.

b. A qualifying State, Tribal, or local erosion and sediment control program is one that includes:

i. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

ii. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

iii. Requirements for construction site operators to develop and implement a storm water pollution prevention plan, which must include:

(1) Site descriptions,

(2) Descriptions of appropriate control measures,

(3) Copies of approved State, Tribal or local requirements,

(4) Maintenance procedures,

(5) Inspection procedures, and

(6) Identification of non-storm water discharges; and

iv. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

c. For storm water discharges from a construction activity identified in 40 CFR 122.26(b)(14)(x), the Department may include permit conditions that incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. A qualifying State, Tribal or local erosion and sediment control program is one that includes the elements listed in Subsections 301.19.a and b and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgment of the permit writer.

20. Water Quality Pollutant Trading [No CFR – Idaho Specific]. The Department may include provisions in IPDES permits that allow for compliance with water quality based permit limits to be achieved through pollutant trading.

302. CALCULATING PERMIT PROVISIONS

40 CFR 122.45(a) – (h)

01. Outfalls and Discharge Points [40 CFR 122.45(a)]. All permit effluent limitations, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under Subsection 301.13, Best Management Practices, and Subsection 302.08, Internal Waste Streams.

02. Production-based Limitations [40 CFR 122.45(b)(1)–(b)(2(ii)(B)(3)].

a. In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow.

b. Except in the case of POTWs or as provided in Subsection 302.02.b.ii(1), calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based upon a reasonable measure of actual production of the facility.

i. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

ii. The Department may establish alternatives to reasonable measures of actual production.

(1) The Department may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(2) For the automotive manufacturing industry only, the Department shall establish an alternate condition under 302.02.b.ii(1), if the applicant satisfactorily demonstrates to the Department, at the time the application is submitted, that:

(a) Its actual production, as indicated in Subsection 302.02.b, is substantially below maximum production capability, and

(b) There is a reasonable potential for an increase above actual production during the duration of the permit.

iii. If the Department establishes permit conditions under Subsection 302.02.b.ii(1):

(1) The permit shall require the permittee to notify the Department at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit.

(a) The notice shall:

1. Specify the anticipated level, and the period during which the permittee expects to operate at the alternate level; and

2. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase;

(b) New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice and,

(c) If during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice;

(2) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Department under Subsection 302.02.b.iii(1), in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice; and

(3) The permittee shall submit, with the Discharge Monitoring Report, the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

03. Metals [40 CFR 122.45(c)–(c)(3)]. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of "total recoverable metal" as defined in 40 CFR part 136, unless:

a. An applicable effluent standard or limitation has been promulgated under the Clean Water Act and specifies the limitation for the metal in the dissolved or valent or total form;

b. In establishing permit limitations on a case-by-case basis under 40 CFR 125.3, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the Clean Water Act; or

c. All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

04. Continuous Discharges [40 CFR 122.45(d)–(d)(2)]. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall, unless impracticable, be stated as:

a. Maximum daily and average monthly discharge limitations for all dischargers other than POTWs; or

b. Average weekly and average monthly discharge limitations for POTWs.

05. Noncontinous Discharges [40 CFR 122.45(e)–(e)(4)]. Discharges which are not continuous, as defined in Section 010, shall be particularly described and limited, considering the following factors, as appropriate:

a. Frequency (for example, a batch discharge shall not occur more than once every 3 weeks);

b. Total mass (for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge);

c. Maximum rate of discharge of pollutants during the discharge (for example, not to exceed 2 kilograms of zinc per minute); and

d. Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/L zinc or more than 250 grams (1⁄4 kilogram) of zinc in any discharge).

06. Mass Limitations [40 CFR 122.45(f)–(f)(2)].

a. All pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:

i. pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

ii. When applicable standards and limitations are expressed in terms of other units of measurement; or

iii. If in establishing permit limitations on a case-by-case basis under 40 CFR 125.3, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of total suspended solids (TSS) from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

b. Pollutants limited in terms of mass, may also be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

07. Pollutants Credits for Intake Water [40 CFR 122.45(g)–(g)(5)].

a. Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

i. The applicable effluent limitations and standards contained in 40 CFR subchapter N, specifically provide that they shall be applied on a net basis; or

ii. The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

b. Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

c. Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

d. Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Department may waive this requirement if the Department finds that no environmental degradation will result.

e. This Section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

08. Internal Waste Streams [40 CFR 122.45(h)–(h)(2)].

a. When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by Section 303 shall also be applied to the internal waste streams.

b. Limits on internal waste streams will be imposed only when the fact sheet sets forth the exceptional circumstances which make such limitations necessary, such as:

i. When the final discharge point is inaccessible (for example, under 10 meters of water);

ii. The wastes at the point of discharge are so diluted as to make monitoring impracticable; or

iii. The interferences among pollutants at the point of discharge would make detection or analysis impracticable.

09. Disposal of Pollutants into Wells, into POTWs, or by Land Application [40 CFR 122.45(i), and 40 CFR 122.50].

a. When part of a discharger's process wastewater is not being discharged into waters of the State because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the State, applicable effluent standards and limitations for the discharge in an IPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

i. If none of the waste from a particular process is discharged into waters of the State, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards; or

ii. In all cases other than those described in Subsection 302.09.a.i, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the State, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under part 125, subpart D, to make them more or less stringent if discharges to wells, POTWs, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method may be algebraically expressed as:

P=(E x N)/T; where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the State, and T is the total wastewater flow.

b. Subsection 302.09.a does not apply to the extent that promulgated effluent limitations guidelines:

i. Control concentrations of pollutants discharged but not mass; or

ii. Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

c. Subsection 302.09.a does not alter a discharger's obligation to meet any more stringent requirements established under Sections 300, 301, and 305.

d. Disposal of municipal or industrial waste streams into injection wells shall obtain approval or a permit from the Idaho Department of Water Resources, in compliance with the Rules and Minimum Standards for Construction and Use of Injection Wells, IDAPA 37.03.03, for a Class I injection well.

e. Disposal of municipal or industrial waste streams onto the surface of the land shall obtain a Reuse Permit from the Department, in compliance with the Recycled Water Rules, IDAPA 58.01.17.

303. MONITORING AND REPORTING REQUIREMENTS

40 CFR 122.48(a) – (c); 122.44(i)

01. Monitoring Requirements [40 CFR 122.48(a)–(c), (i)–(i)(1)(iv)]. A permit must include the following requirements for monitoring:

a. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

b. The type, intervals, and frequency of monitoring sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

c. Provisions for reporting the results of monitoring, including frequency, appropriate for the regulated activity based on the impact of that activity;

d. The mass (or other measurement specified in the permit) for each pollutant limited in the permit;

e. The volume of effluent discharged from each outfall;

f. Other measurements as appropriate including:

i. Pollutants in internal waste streams under Subsection 302.08;

ii. Pollutants in intake water for net limitations under Subsection 302.07;

iii. Frequency, rate of discharge, etc., for non-continuous discharges under Subsection 302.05;

iv. Pollutants subject to notification requirements under Subsection 305.01; and

v. Pollutants in sewage sludge or other monitoring as specified in 40 CFR part 503; or as determined to be necessary on a case-by-case basis pursuant to the Clean Water Act section 405(d)(4) and IDAPA 58.01.16.650;

g. According to test procedures (i.e., methods) approved under 40 CFR part 136 for the analysis of pollutants or pollutant parameters, or another method is required under 40 CFR subchapter N or O; and

h. In the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR part 136, or methods are not otherwise required under 40 CFR subchapter N or O, monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters.

02. Reporting Monitoring Results [40 CFR 122.44(i)(2)–(i)(5)].

a. Except as provided in Subsections 303.02.d and 303.02.e, the Department will establish requirements to report monitoring results on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

b. For sewage sludge use or disposal practices, the Department will establish requirements to monitor and report results on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in 40 CFR part 503 and Idaho's Wastewater Rules, IDAPA 58.01.16, Section 650, Sludge Usage (where applicable), but in no case less than once a year.

c. The Department will establish requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

d. The Department will establish requirements to report monitoring results for storm water discharges associated with industrial activity, other than those addressed in Subsection 303.02.c, on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require the discharger to:

i. Conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity;

ii. Evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

iii. Maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance;

iv. Sign the report and certification in accordance with Subsection 105.04; and

v. Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification that the facility is in compliance with the permit, or alternative requirements, once every three years by an Idaho licensed professional engineer.

e. A permit that does not require monitoring results reports at least annually must require the permittee to report, at least annually, all instances of noncompliance not reported under Subsection 300.03.

304. COMPLIANCE SCHEDULES

40 CFR 122.47(a) – (c)

01. General [40 CFR 122.47(a)–(a)(4)]. An IPDES permit may, when appropriate, specify a schedule of compliance leading to compliance with the Clean Water Act and IDAPA 58.01.25.

a. Any schedules of compliance under this Section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the Clean Water Act.

b. The first IPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction, but less than three years before commencement of the relevant discharge.

c. For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

d. If a permit establishes a schedule of compliance under this Section that exceeds 1 year from the date of permit issuance, the schedule must set out interim requirements and dates for achievement of the interim requirements. If the schedule includes interim requirements:

i. The time between interim dates shall not exceed 1 year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six months.; or

ii. If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

e. If Subsection 304.01.d.ii is applicable, a permittee must submit progress or compliance reports on interim and final requirements in any compliance schedule of a permit no later than 14 days following the scheduled date of each requirement.

02. Alternative Schedules of Compliance [40 CFR 122.47(b)]. An IPDES permit applicant or permittee may cease conducting regulated activities (by terminating direct discharge for IPDES sources) rather than continuing to operate and meet permit requirements as follows:

a. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

i. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

ii. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

b. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline.

c. If the permittee is undecided whether to cease conducting regulated activities, the Department may issue or modify a permit to contain two schedules as follows:

i. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities:

ii. One schedule shall lead to timely compliance with applicable requirements, no later than the statutory deadline;

iii. The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements no later than the statutory deadline.

iv. Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under Subsection 304.02.c.i, it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

d. The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Department, such as a resolution of the board of directors of a corporation.

305. PERMIT CONDITIONS FOR SPECIFIC CATEGORIES

40 CFR 122.42(a) – (e)

The following conditions, in addition to those set forth in Section 300, apply to all IPDES permits within the categories specified below:

01. Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers [40 CFR 122.42(a)–(a)(2)(iv)]. In addition to the reporting requirements under Section 303, all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Department as soon as they know or have reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

i. One hundred micrograms per liter (100 µg/L);

ii. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;

iii. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Subsection 105.07; or

iv. The level established by the Department in accordance with Subsection 301.08; and

b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

i. Five hundred micrograms per liter (500 µg/L);

ii. One milligram per liter (1 mg/L) for antimony;

iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Subsection 105.08.e;

iv. The level established by the Department in accordance with Subsection 105.08.

02. Publicly and Privately Owned Treatment Works [40 CFR 122.42(b)–(b)(3)(ii)]. All POTWs and privately owned treatment works must provide adequate notice to the Department of the following:

a. Any new introduction of pollutants into the POTW or privately owned treatment works from an indirect discharger which would be subject to the Clean Water Act section 301 or 306 if it were directly discharging those pollutants; and

b. Any substantial change in the volume or character of pollutants being introduced into that POTW or privately owned treatment works by a source introducing pollutants into the POTW or privately owned treatment works at the time of issuance of the permit. For purposes of this paragraph, adequate notice shall include information on:

i. The quality and quantity of effluent introduced into the POTW or privately owned treatment works, and

ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW or privately owned treatment works.

03. Municipal Separate Storm Sewer Systems [40 CFR 122.42(c)–(c)(7)]. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Department under 40 CFR 122.26(a)(1)(v), must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:

a. The status of implementing the components of the storm water management program that are established as permit conditions;

b. Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with 40 CFR 122.26(d)(2)(iii);

c. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under 40 CFR 122.26(d)(2)(iv) and (d)(2)(v);

d. A summary of data, including monitoring data, that is accumulated throughout the reporting year;

e. Annual expenditures and budget for year following each annual report;

f. A summary describing the number and nature of enforcement actions, inspections, and public education programs; and

g. Identification of water quality improvements or degradation.

04. Storm Water Dischargers [40 CFR 122.42(d)]. The initial permits for discharges composed entirely of storm water issued pursuant to 40 CFR 122.26(e)(7), shall require compliance with the conditions of the permit as expeditiously as practicable, but in no event later than three years after the date of issuance of the permit.

05. Concentrated Animal Feeding Operations (CAFOs) [122.42(e)]. Any applicable permit must include provisions pursuant to 40 CFR 122.42(e).

310. VARIANCES

40 CFR 124.62(a) – (f); 122.21(m) – (n)

01. Permit Variances [40 CFR 124.62(a)–(f)].

a. The Department may grant or deny requests for the following variances (subject to EPA objection under Subsection 108.01.b):

i. Extensions under the Clean Water Act section 301(i) based on delay in completion of a POTW;

ii. After consultation with the EPA Regional Administrator, extensions under the Clean Water Act section 301(k) based on the use of innovative technology; or

iii. Variances under the Clean Water Act section 316(a) for thermal pollution.

b. The Department may deny, or

i. Forward to the EPA Regional Administrator with a written concurrence, or

ii. Submit to EPA without recommendation, a completed request for:

(1) A variance based on the economic capability of the applicant under the Clean Water Act section 301(c); or

(2) A variance based on water quality related effluent limitations under the Clean Water Act section 302(b)(2).

c. When the Department forwards a request for a variance to the EPA, the EPA regional administrator may:

i. Deny,

ii. Forward without recommendation, or

iii. Forward with a recommendation for approval to the EPA Director for Water Enforcement and Permits.

d. The EPA Office Director for Water Enforcement and Permits may approve or deny any variance request submitted under Subsection 310.01.c.

i. If the Office Director approves the variance, the Department may prepare a draft permit incorporating the variance; and

ii. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision under Section 204.

e. The Department may deny or forward to the EPA Administrator (or his delegate), with a written concurrence, a completed request for:

i. A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based; or

ii. A variance based upon certain water quality factors under the Clean Water Act section 301(g).

f. The EPA Administrator (or his delegate) may grant or deny a request for a variance listed Subsection 310.01.e that is forwarded by the Department.

i. If the EPA Administrator (or his delegate) approves the variance, the Department may prepare a draft permit incorporating the variance.

ii. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision under Section 204.

02. Variance Requests by non-POTWs [40 CFR 122.21(m)–(m)(6)].

a. A discharger which is not a POTW may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions, within the times specified in this Subsection.

i. A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be filed as follows:

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period under Section 109; or

(2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

ii. The request shall explain how the requirements of the applicable regulatory and/or statutory criteria have been met.

b. An applicant may request a variance for non-conventional pollutants under this Section for the following:

i. A variance from the BAT requirements for Clean Water Act section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to the Clean Water Act section 301(c) because of the economic capability of the owner or operator; or

ii. A variance pursuant to the Clean Water Act section 301(g) (provided however that a variance may only be requested for ammonia; chlorine; color; iron; total phenols (4AAP), when determined by the EPA Administrator to be a pollutant covered by the Clean Water Act section 301(b)(2)(F); and any other pollutant which the EPA Administrator lists under the Clean Water Act section 301(g)(4).

c. The request for variance as outlined in Subsection 310.02.b must be made as follows:

i. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(1) Submitting an initial request to the Department stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a Clean Water Act section 301(c) or section 301(g) modification or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977; and

(2) Submitting a completed request no later than the close of the public comment period under Section 109 and the applicable requirements of 40 CFR Part 125 have been met. Notwithstanding this provision, the

complete application for a request under the Clean Water Act section 301(g) shall be filed 180 days before the Department must make a decision (unless the Department establishes a shorter or longer period).

ii. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with Subsection 310.02.c.i(2) and need not be preceded by an initial request under Subsection 310.02.c.i(1).

d. A modification under the Clean Water Act section 302(b)(2) of requirements under the Clean Water Act section 302(a) for achieving water quality related effluent limitations may be requested no later than the close of the public comment period under Section 109 on the permit from which the modification is sought.

e. A variance under the Clean Water Act section 316(a) for the thermal component of any discharge must be filed with a timely application for a permit under this Section, except that:

i. If thermal effluent limitations are established under the Clean Water Act section 402(a)(1); or

ii. Are based on water quality standards;

iii. The request for a variance may be filed by the close of the public comment period under Section 109.

03. Variance Requests by POTWs [40 CFR 122.21(n)–(n)(3)].

A discharger which is a POTW may request a variance from water quality based effluent. A modification under the Clean Water Act section 302(b)(2) of the requirements under the Clean Water Act section 302(a) for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period under Section 109 on the permit from which the modification is sought.

04. Expedited Variance Procedures and Time Extensions [40 CFR 122.21(o)–(o)(2)].

a. Notwithstanding the time requirements in Subsection 310.02 and 310.03, the Department may notify a permit applicant before a draft permit is issued under Section 108 that the draft permit will likely contain limitations which are eligible for variances.

i. In the notice, the Department may require the applicant, as a condition of consideration of any potential variance request, to submit a request explaining how the requirements of 40 CFR Part 125, applicable to the variance, have been met and may require its submission within a specified reasonable time after receipt of the notice.

ii. The Department may send the notice before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

b. A discharger who cannot file a timely complete request required under Subsection 310.02.c.i(2) or 310.02.c.ii of this Section may request an extension.

i. The extension may be granted or denied at the discretion of the Department.

ii. Extensions shall be no more than 6 months in duration.