



**UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY
REGION 10**

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
WATER AND
WATERSHEDS

April 3, 2015

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

(emailed to: paula.wilson@deq.idaho.gov)

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

Dear Ms. Wilson:

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

- Permit Conditions
- Compliance Schedules
- Modifications
- Revocations, Termination and Transfer

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

1. Section 300.01.j.iv, which seems to be the parallel section to §122.41(j)(4), does not cross-reference 40 CFR Subchapters N (Effluent Guidelines and Standards) or O (Sewage Sludge). Additionally, the state section uses the phrase “other test procedure have been specified in the permit” instead of “unless another method is required under 40 CFR subchapters N or O.”
2. Section 300.03 a.iii.(2) refers to “an approved sludge plan” instead of “an approved land application plan,” mentioned in §122.41(1)(1)(iii). EPA is concerned that confusion may arise from references to “sludge plan” in federal regulations and “land application plan” in state regulations. Explain if additional clarification will be provide in the regulation.
3. Section 300.03.c. does not include the qualifying phrase, “in some cases modification or revocation and reissuance is mandatory” from section §122.41(1)(3). It is not necessary that Idaho have the language here so long as the proposed regulations have the equivalent of 40 CFR §122.61 elsewhere in the regulation.
4. Section 300.03.f. does not include references to the state provisions that are equivalent to §122.41(g) (Property rights) and 122.44(g)(Twenty-four hour reporting), which are respectively cited in §122.41(1)(6)(A) and §122.41(1)(6)(C), respectively.

5. Section 300.04 does not define “bypass,” so there is no equivalent provision to §122.41(m)(1)(i) and (ii). DEQ said they intend to define bypass in the definitions section. However, EPA recommends that the definition be included with the bypass provision language or at a minimum cross reference to definition section.
6. Section 300.05 does not define “upset,” so there is no equivalent provision to 122.41(n)(1) and does not include an equivalent section to 122.41(n)(4)(Burden of proof). DEQ said they intend to define upset in the definitions section. However, EPA recommends that the definition be included with the provision language or at a minimum cross reference to definition section.
7. Section 301.02 does not include the §122.43(a) references to §122.46, §122.47(a), or §122.48.
8. Section 301.03.iii. does not specify that any grant of a monitoring waiver must be included in a statement of basis (if there is one)—the federal equivalent section at §122.44(a)(2)(iv) includes this.
9. Section 301.04.a. does not include a reference to §122.41(a) or a state equivalent provision, the federal equivalent section at §122.44(b)(1) includes this reference.
10. Section 301.04.b. refers to “the disposal under the Clean Water Act” rather than “sewage sludge use or disposal under the Clean Water Act” mentioned in §122.44(b)(2).
11. Section 301.04.c. refers to “sewage sludge use” and omits “or disposal” mentioned in §122.44(b)(2).
12. Section 301.06.a.vi(1) refers to water quality “target or concentration value” rather than “criterion” mentioned in §122.44(d)(1)(vi)(A). Please explain the reason for this change.
13. Section 304.01.e. omits the §122.47(a)(4) requirement that, “the permittee shall notify the Director in writing of its compliance or non-compliance with the interim or final requirements, or submit progress reports if paragraph (a)(3)(ii) is applicable.”

Thank you for the opportunity to comment on the draft rule language. The EPA will reserve further review of and comments upon the complete rule during the public comment period. Please contact me at (206) 553-1755 or by email at lidgard.michael@epa.gov if you have any questions about this letter or related matters, or you may contact Karen Burgess, of my staff, at (206) 553-1644 or burgess.karen@epa.gov.

Sincerely,

|\s\

Michael J. Lidgard, Manager
NPDES Permits Unit

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