

# **Idaho Pollutant Discharge Elimination System Discussion Paper #4**

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IPDES New Sources and New Dischargers, General Permits, Pretreatment Standards, Sewage Sludge, Enforcement, and Data Management and Reporting



**State of Idaho  
Department of Environmental Quality**

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## Introduction

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

This discussion paper presents draft rules addressing IPDES new sources and new dischargers, general permits, pretreatment standards, sewage sludge, enforcement, and data management and reporting. The CFR text has been mostly copied and reformatted into these draft rules to provide a convenient location and format for all related requirements stipulated throughout the CFR. This consolidation will help the regulated community and DEQ understand the permitting process.

The draft rule sections are presented in this paper:

- Section 120: New Sources and New Dischargers
- Section 130: General Permits
- Section 370: Pretreatment Standards
- Section 380: Sewage Sludge
- Section 500: Enforcement
- Section 600: Data Management and Reporting

Specifically, following sections are intended to

1. Provide a brief overview of the proposed contents and location of the IPDES rules, which originate from the CFR.
2. Illustrate when the proposed IPDES rules materially differ from the CFR.

## Section 120: New Sources and New Dischargers

**Changes from CFR:** Section 120, New Sources and New Dischargers (40 CFR 122.29), is not specifically required to appear in rule or regulation under 40 CFR 123.25. DEQ is including this section for the benefit of the state, the regulated community, and EPA to understand the criteria for new sources and new dischargers, and to recognize that the IPDES program meets primacy requirements.

Subsection 120.01, Criteria for New Source Determination (40 CFR 122.29(b)(1)), states that unless provided otherwise in a new source performance standard, a new source is defined in Section 010, Definitions, and must meet the following criteria: (1) it is constructed at a site at which no other source is located; or (2) it totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or (3) its processes are substantially independent of an existing source at the same site.

**Changes from CFR:** DEQ proposes not to include 40 CFR 122.29(a), which identifies the definitions of *new source*, *new discharger*, and *site* as being defined in 40 CFR 122.2. Additionally, 40 CFR 122.29(a) defines *source*, *existing source*, and *facilities or equipment*; DEQ plans to subsequently address these terms in IPDES rules Section 010, Definitions.

Subsection 120.02, New Source Versus New Discharger (40 CFR 122.29(b)(2)), identifies a source meeting the requirements is a new source only if a new source performance standard is independently applicable to it. Otherwise, the source is a new discharger, as described in Section 010, Definitions.

Subsection 120.03, Modification Versus New Source/Discharger (40 CFR 122.29(b)(3)), provides that construction on a site at which an existing source is located, results in a modification, rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation but rather alters, replaces, or adds to an existing process or to production equipment.

Subsection 120.04, New Source Construction (40 CFR 122.29(b)(4)), specifies construction of a new source has commenced if the owner or operator has begun, or caused to begin any placement, assembly, or installation of facilities or equipment, or significant site preparation work including clearing a site and excavation or removal of existing buildings, structures, or facilities necessary for the placement, assembly, or installation of new source facilities or equipment. This requirement also includes entering into a binding contractual obligation for the purchase of facilities or equipment intended for use in its operation.

**Changes from CFR:** DEQ proposes not to include 40 CFR 122.29(b)(4) – (c) because this section is not required by 40 CFR 123.25, and because 40 CFR 122.29(c) pertains to requirements for environmental review and environmental impact statements under U.S. Environmental Protection Agency (EPA)-issued permits, which are not applicable to the IPDES program.

**Changes from CFR:** DEQ has already proposed to incorporate by reference, 40 CFR 122.29(d) into Subsection 003.04, Incorporation by Reference.

## Section 130: General Permits

Subsection 130.01, Coverage (40 CFR 122.28(a)), states that general permits may be composed to address one or more categories or subcategories of sources (discharger, sludge use, disposal practice, or facilities) within specified existing geographic or political boundaries. Examples are provided for geographic or political boundaries (areas) and the various activities or dischargers (sources).

Subsection 130.02, Administration (40 CFR 122.28(b)–(b)(3)(i)(4) and (b)(3)(iii)–(b)(3)(v)), addresses how general permits will be issued, modified, revoked and reissued, or terminated. This subsection also states an applicant seeking coverage under a general permit needs to submit a *complete and timely* notice of intent (NOI) to obtain coverage of an activity or discharge. The general permit may include a waiting period, specify a date, or require the applicant to wait for the notification of inclusion from DEQ. DEQ may require a discharger, currently authorized under a general permit, to obtain an individual permit for reasons specified, and a discharger

authorized under a general permit may request to be covered under an individual permit after submitting an appropriate application with supporting justification. Conversely, a source currently authorized under an individual permit may request the individual permit be terminated and coverage under the general permit be granted.

**Changes from CFR:** DEQ proposes not to include 40 CFR 122.28(b)(3)(ii) or (c) because these sections pertain to EPA-issued permits or offshore oil and gas facilities, which are not applicable to Idaho.

**Changes from CFR:** DEQ proposes not to include a reference to *special procedures for issuance* in 40 CFR 122.28(b) because this references 40 CFR 124.44, “EPA Review of and Objections to State Permits.” Regulation 40 CFR 123.44 addresses EPA’s review and comment process of proposed IPDES permits. Whereas, IPDES rules Subsection 130.02 addresses DEQ administration of general permits that have already received EPA review and have been issued.

Subsection 130.03, Case-by-Case Requirements for Individual Permits (40 CFR 124.52(b) – (c)), identifies that when DEQ determines an individual permit is required, the it will notify the discharger in writing of that decision and the reasons for it, and send an application form with the notice. The discharger must apply for an individual permit under within 60 days of notice, unless DEQ grants permission for a later date. Before a case-by-case determination that an individual permit is required for a storm water discharge, DEQ may require the discharger to submit a permit application or other information regarding the discharge under the Clean Water Act section 308. DEQ will notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit within 180 days of notice, unless DEQ grants permission for a later date.

**Changes from CFR:** Section 130.03, Case-by-Case Requirements for Individual Permits (40 CFR 124.52(b) – (c)), is not specifically required to appear in rule or regulation under 40 CFR 123.25. DEQ is including this section for the benefit of the state, the regulated community, and EPA to understand DEQ’s process and determination from general to individual permits, and to recognize that the IPDES program meets primacy requirements.

**Changes from CFR:** DEQ proposes not to include 40 CFR 124.52(a) because this section is not required by 40 CFR 123.25, and it references sections of the CFR which DEQ has already included in the draft IPDES rules, either directly or through incorporation by reference.

## Section 370: Pretreatment Standards

Subsection 370.01, Purpose and Applicability (40 CFR 403.1(b)), applies the rules pertaining to pretreatment standards toward: (1) pollutants from non-domestic sources covered by pretreatment standards which are indirectly discharged into or introduced into publicly owned treatment works (POTWs); (2) POTWs which receive wastewater from sources subject to National Pretreatment Standards;; and (3) any new or existing source subject to Pretreatment Standards.

Subsection 370.02, Objectives and General Pretreatment Regulations (40 CFR 403.2), identifies three objectives of pretreatment standards as: (1) preventing the introduction of pollutants into POTWs which will interfere with the operation of a POTW; (2) preventing the introduction of

pollutants into POTWs which will pass through or incompatible with such works; and (3) improving opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

Subsection 370.03, Definitions (portions of 40 CFR 403.3), defines authorization terms used throughout 40 CFR 403 to differentiate the roles and actions of DEQ, EPA, and permittees. This will help IPDES users more-easily recognize responsible parties and processes identified in the 40 CFR 403 regulations that DEQ has incorporated by reference.

Subsection 370.4, Exceptions to Incorporation by Reference (Idaho specific), identifies specific subsections of 40 CFR 403, which DEQ proposes not to incorporate by reference into IPDES rules.

**Changes from CFR:** DEQ has proposed to incorporate 40 CFR 403 by reference. However, DEQ proposes not to incorporate the following subsections by reference, because they are not appropriate for inclusion IPDES program rules: 40 CFR 403.4 (State or Local Law), 403.10 (Development and Submission of NPDES State Pretreatment Programs), 403.19 (Provisions of Specific Applicability to the Owatonna Waste Water Treatment Facility), and 403.20 (Pretreatment Program Reinvention Pilot Projects Under Project XL).

## Section 380: Sewage Sludge

Subsection 380.01, Purpose (40 CFR 503.1(a)), establishes standards for sewage sludge, including general requires, application to the land, surface disposal, or fired in an incinerator, and pathogen and alternative vector attraction reduction requirements. This subsection also references the frequency of monitoring and recordkeeping requirements. Finally, this subsection references reporting requirements for Class I sludge management facilities, POTWs with design flow greater than one million gallons per day, and that serve at least 10,000 people.

Subsection 380.02, Applicability (40 CFR 503.1(b)), applies to: (1) any person who prepares sewage sludge, applies sewage sludge to the land, or fires sewage sludge in a sewage sludge incinerator and to the owner/operator of a surface disposal site; (2) sewage sludge applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator; (3) the exit gas from a sewage sludge incinerator stack; and (3) land where sewage sludge is applied, to a surface disposal site, and to a sewage sludge incinerator.

Subsection 380.03, Definitions (portions of 40 CFR 503.9), defines authorization terms used throughout 40 CFR 503 to differentiate the roles and actions of DEQ, EPA, and permittees. This will help IPDES users more-easily recognize responsible parties and processes identified in the 40 CFR 503 regulations that DEQ has incorporated by reference.

Subsection 380.04, Exceptions to Incorporation by Reference (Idaho specific), identifies specific subsections of 40 CFR 503, which DEQ proposes not to incorporate by reference into IPDES rules.

**Changes from CFR:** DEQ proposes to incorporate 40 CFR 503 by reference. However, DEQ proposes not to incorporate 40 CFR 503.1 by reference, because it is represented in Subsection 380.01 and 380.02.

## Section 500: Enforcement

Subsection 500.01, General Enforcement and Penalties (Idaho specific in place of 40 CFR 122.41(a)(2)–(a)(3)), identifies that any person who violates any permit condition, filing or reporting requirement, duty to allow or carry out inspections, entry or monitoring requirements or any other provision in these rules shall be subject to administrative, civil or criminal enforcement and those remedies authorized in the Environmental Protection and Health Act, Idaho Code sections 39-101 et seq, including without limitation, civil and criminal penalties as provided in Idaho Code sections 39-108 and 39-117.

**Changes from CFR:** Subsection 500.01, General Enforcement and Penalties (Idaho specific in place of 40 CFR 122.41(a)(2)–(a)(3)), is not specifically required to appear in rule or regulation under 40 CFR 123.25. DEQ is including this section for the benefit of the state, the regulated community, and EPA to understand DEQ’s enforcement authority and the civil and criminal penalties, and to recognize that the IPDES program meets primacy requirements.

Subsection 500.02, Truth in Reporting (Idaho specific in place of 40 CFR 122.41(j)(5)), asserts it is a violation of these rules for any person to falsify, tamper with, or knowingly render inaccurate, any monitoring device or method required to be maintained under an IPDES permit. In addition to any other remedy available to the Department, such a violation is punishable by a fine as provided in Idaho Code section 39-117.

**Changes from CFR:** Subsection 500.02, Truth in Reporting (Idaho specific in place of 40 CFR 122.41(j)(5)) is required to appear in rule or regulation under 40 CFR 123.25. DEQ has changed the CFR language in the section in order to directly reference the applicable Idaho Code.

Subsection 500.03, False Statements (Idaho specific in place of 40 CFR 122.41(k)(2)), provides that it is a violation of these rules for any person to knowingly make any false statement, representation, or certification in any record or other document submitted or required to be maintained under an IPDES permit, including monitoring reports or reports of compliance or non-compliance. In addition to any other remedy available to the Department, such a violation is punishable by a fine as provided in Idaho Code section 39-117.

**Changes from CFR:** Subsection 500.03, False Statements (Idaho specific in place of 40 CFR 122.41(k)(2)) is required to appear in rule or regulation under 40 CFR 123.25. DEQ has changed the CFR language in the section in order to directly reference the applicable Idaho Code.

Subsection 500.04, Public Participation in Enforcement (40 CFR 123.27(d) and (d)(2)(i) – (d)(2)(iii)), establishes that DEQ shall provide for public participation in the State enforcement process by investigating and providing written responses to citizen complaints; not opposing intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and publishing notice of and providing at least 30 days for public comment on any proposed settlement of a State enforcement action.

**Changes from CFR:** Subsection 500.04, Public Participation in Enforcement (40 CFR 123.27(d) and (d)(2)(i) – (d)(2)(iii)), is not specifically required to appear in rule or regulation under 40 CFR 123.25. DEQ is including this section for the benefit of the state, the regulated

community, and EPA to understand DEQ's statutory authority and recognize that the IPDES program meets primacy requirements and is consistent with Idaho Code §39-108 and §39-117.

## **Section 600: Data Management and Reporting**

Subsection 600.01, Administrative Record (40 CFR 124.18), states that DEQ shall base final permit decisions on the administrative record, which consists of the draft permit and fact sheet along with other information listed in the subsection. The administrative record shall be completed on the date the final permit is issued, and it applies to all final IPDES permits when the draft permit was included in a public notice.

**Changes from CFR:** Subsection 600.01, Administrative Record (40 CFR 124.18), is not specifically required to appear in rule or regulation under 40 CFR 123.25. DEQ is including this subsection for the benefit of the state, the regulated community, and EPA to understand the administrative record requirements, and recognize that the IPDES program meets all primacy requirements.

**Changes from CFR:** Subsection 600.01.b.iii is Idaho-specific language included to address notices as part of the administrative record.

**Changes from CFR:** DEQ proposes not to include 40 CFR 124.18(b)(5) and parts of (d) because these sections pertain to EPA-issued permits, environmental impact statements, or Resource Conservation and Recovery Act, Underground Injection Control, and Prevention of Significant Deterioration permits, which are not applicable to the IPDES program.