

Negotiated Rule Draft No. 4.0
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**58.01.25 – RULES REGULATING THE IDAHO POLLUTANT
DISCHARGE ELIMINATION SYSTEM PROGRAM
DRAFT 4.0 NEW SOURCES AND DISCHARGERS, GENERAL PERMITS,
COMPLIANCE, INSPECTION, ENFORCMENT, DATA MANAGEMENT
AND REPORTING**

DRAFT SUBMITTED FOR REVIEW AT APRIL 17, 2015 NEGOTIATED RULEMAKING MEETING

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111 – 119 RESERVED

120. NEW SOURCES AND NEW DISCHARGERS

40 CFR 122.29(b); 40 CFR 122.29(a) to go in the Definitions section.

01. Criteria for New Source Determination. [40 CFR 122.29(b)(1)] Except as otherwise provided in an applicable new source performance standard, a source is a “new source” if it meets the definition in Section 010.XX, and

- a.** Is constructed at a site at which no other source is located; or
- b.** Totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- c.** Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the Department shall consider such factors as:
 - i.** The extent to which the new facility is integrated with the existing plant, and
 - ii.** The extent to which the new facility is engaged in the same general type of activity as the existing source.

02. New Source vs. New Discharger. [40 CFR 122.29(b)(2)] A source meeting the requirements of Subsection 120.01 is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a “new discharger,” pursuant to Section 010.XX.

03. Modification vs. New Source/Discharger. [40 CFR 122.29(b)(3)] Construction on a site at which an existing source is located, results in a modification subject to Subsection 201.02, rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of Subsection 120.01, but otherwise alters, replaces, or adds to existing process or production equipment.

04. New Source Construction. [40 CFR 122.29(b)(4)] Construction of a new source has commenced if the owner or operator has:

- a.** Begun, or caused to begin as part of a continuous on-site construction program:
 - i.** Any placement, assembly, or installation of facilities or equipment; or
 - ii.** Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
- b.** Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Items which do not constitute contractual obligations under this section include:
 - i.** Options to purchase or contracts which can be terminated or modified without substantial loss;
 - ii.** Contracts for feasibility engineering; and
 - iii.** Design studies.

121 - 129 RESERVED

130. GENERAL PERMITS

40 CFR 122.28(a) – (b)(3)(i)(4), (b)(3)(iii) – (b)(3)(v); 40 CFR 124.52(b) – (c)

01. Coverage. [40 CFR 122.28(a)] The Department may issue a general permit in accordance with the following:

a. Within a geographic area, the general permit shall be written to cover one or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under Subsection 130.01.b.ii or 130.01.b.iii , except those covered by individual permits within a geographic area. The area should correspond to existing geographic or political boundaries such as:

- i. Designated planning areas under the Clean Water Act sections 208 and 303;
- ii. Sewer districts or sewer authorities;
- iii. City, county, or State political boundaries;
- iv. State highway systems;
- v. Standard metropolitan statistical areas as defined by state or federal agencies;
- vi. Urbanized areas as designated by the U.S. Census Bureau; or
- vii. Any other appropriate division or combination of boundaries;

b. The general permit may be written to regulate one or more categories or subcategories of discharges or sludge use or disposal practices or facilities, within the area described in Subsection 130.01.a, where the sources within a covered subcategory of discharges are either:

i. Storm water point sources; or

ii. One or more categories or subcategories of point sources other than storm water point sources or “treatment works treating domestic sewage”, if the point sources or “treatment works treating domestic sewage” within each category or subcategory all:

- (1) Involve the same or substantially similar types of operations;
- (2) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
- (3) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;
- (4) Require the same or similar monitoring; and
- (5) In the opinion of the Department, are more appropriately controlled under a general permit than under individual permits;

c. Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed pursuant to Section 301, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations; and

d. Other requirements:

- i. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit, and
- ii. The general permit may exclude specified sources or areas from coverage.

02. Administration. [40 CFR 122.28(b) – (b)(3)(i)(4) and (b)(3)(iii) – (b)(3)(v)]

a. General permits may be issued, modified, revoked and reissued, or terminated in accordance with Section 106, 107, 108, 109, 201, 203, or 310.

b. Authorization to discharge, or authorization to engage in sludge use and disposal practices shall follow these procedures:

i. Except as provided in Subsections 130.02.b.xi and 130.02.b.xii, a discharger shall submit, in accordance with general permit requirements, a complete and timely notice of intent which will fulfill the requirements for permit applications;

ii. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge (or in the case of sludge disposal permit, to engage in a sludge use or disposal practice) under the terms of the general permit unless:

(a) The general permit, in accordance with Subsections 130.02.b.xi, contains a provision that a notice of intent is not required, or

(b) The Department notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with Subsections 130.02.b.xii;

iii. All notices of intent shall be signed as required in Subsection 105.04;

iv. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum:

(1) The legal name and address of the owner or operator,

(2) The facility name and address,

(3) Type of facility or discharges, and

(4) The receiving stream(s);

v. Coverage under a general permit may be terminated or revoked in accordance with Subsection 130.02.c;

vi. Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information specified in Subsection 105.10.a and 40 C.F.R. 122.21(i)(1), including a topographic map;

vii. A CAFO owner or operator may be authorized to discharge under a general permit only in accordance with the process described in 40 C.F.R. 122.23(h);

viii. General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on Federal lands where an operator cannot be identified may contain alternative notice of intent requirements;

ix. General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit;

x. General permits shall specify whether a discharger (or treatment works treating domestic sewage), who has submitted a complete and timely notice of intent to be covered in accordance with the general permit and is eligible for coverage under the permit, is authorized to discharge (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice) in accordance with the permit either:

(1) Upon receipt of the notice of intent by the Department,

(2) After a waiting period specified in the general permit,

- (3) On a date specified in the general permit, or
- (4) Upon receipt of notification of inclusion by the Department;

xi. Discharges other than discharges from POTWs, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Department, be authorized to discharge under a general permit without submitting a notice of intent where the Department finds that a notice of intent requirement would be inappropriate. The Department shall provide in the public notice of the general permit the reasons for not requiring a notice of intent. In making such a finding, the Department shall consider:

- (1) The type of discharge;
- (2) The expected nature of the discharge;
- (3) The potential for toxic and conventional pollutants in the discharges;
- (4) The expected volume of the discharges;
- (5) Other means of identifying discharges covered by the permit; and
- (6) The estimated number of discharges to be covered by the permit; and

xii. The Department may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit as specified in Subsection 130.02.d.

c. The Department may require any discharger authorized by a general permit to apply for and obtain an individual IPDES permit. Any interested person may petition the Department to take action under this Subsection. Cases where an individual IPDES permit may be required include the following:

- i. The discharger or “treatment works treating domestic sewage” is not in compliance with the conditions of the general permit;
- ii. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;
- iii. Effluent limitation guidelines are promulgated for point sources covered by the general permit;
- iv. A Water Quality Management plan containing requirements applicable to such point sources is approved;
- v. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
- vi. Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general IPDES permit; or
- vii. The discharge(s) is a significant contributor of pollutants. In making this determination, the Department may consider the following factors:
 - (1) The location of the discharge with respect to waters of the State;
 - (2) The size of the discharge;
 - (3) The quantity and nature of the pollutants discharged to waters of the State; and

(4) Other relevant factors.

d. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit.

i. The owner or operator shall submit an application under Section 105, with reasons supporting the request, to the Department no later than 90 days after the publication of the general permit.

ii. The Department shall process the request under Section 107.

iii. The Department shall grant a request by issuing an individual permit if the reasons cited by the owner or operator are adequate to support the request.

e. When an individual IPDES permit is issued to an owner or operator otherwise subject to a general IPDES permit, the applicability of the general permit to the individual IPDES permittee is automatically terminated on the effective date of the individual permit.

f. A source excluded from a general permit, solely because it already has an individual permit, may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

03. Case-by-Case Requirements for Individual Permits [40 CFR 124.52(b) – (c)].

a. Whenever the Department decides that an individual permit is required under this Section, except as provided in 130.03.b, the Department shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit under Section 105 within 60 days of notice, unless permission for a later date is granted by the Department.

b. Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this Section (see 40 CFR 122.26(a)(1)(v), (a)(9)(iii), and Section 105.21), the Department may require the discharger to submit a permit application or other information regarding the discharge under the Clean Water Act section 308.

i. In requiring such information, the Department shall notify the discharger in writing and shall send an application form with the notice.

ii. The discharger must apply for a permit within 180 days of notice, unless permission for a later date is granted by the Department.

131. RESERVED

132. STORMWATER POLLUTION PREVENTION PLANS (SWPPP)

133 – 189 RESERVED

Break in sequence (see Draft 2.1)

204. APPEALS

205 – 299 RESERVED

Break in sequence (see Draft 3.1)

313 – 369 RESERVED

370. PRETREATMENT STANDARDS

40 CFR 403.1(b), 403.2, and portions of 403.3

01. Purpose and Applicability. [40 CFR 403.1(b)] This Section and 40 CFR 403 apply to:

- a. Pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined below in Subsection 370.03 and 40 CFR 403.3;
- b. POTWs which receive wastewater from sources subject to National Pretreatment Standards; and
- c. Any new or existing source subject to Pretreatment Standards. National Pretreatment Standards do not apply to sources which discharge to a sewer which is not connected to a POTW Treatment Plant.

02. Objectives of General Pretreatment Regulations. [40 CFR 403.2] This Section and 40 CFR 403 fulfill three objectives:

- a. To prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge;
- b. To prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and
- c. To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

03. Definitions. [40 CFR 403.3] When used in the context of 40 CFR 403, unless the context in which a term is used clearly requires a different meaning, terms in the federal regulations that are incorporated by reference in this Section have the following meanings:

- a. The terms Administrator or Regional Administrator mean the EPA Region 10 Administrator;
- b. The term Approval Authority means the Department of Environmental Quality;
- c. The term Approved POTW Pretreatment Program or Program or POTW Pretreatment Program means a program administered by a POTW that meets the criteria established in 40 CFR 403.8 and 403.9, and which has been approved by the Department in accordance with 40 CFR 403.1;
- d. The term Control Authority means the POTW for a facility with a Department-approved pretreatment program and the Department for a POTW without a Department-approved pretreatment program;
- e. The term Director means the Department of Environmental Quality with an NPDES permit program approved pursuant to section 402(b) of the Clean Water Act;
- f. The terms National Pretreatment Standard, Pretreatment Standard, or Standard mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to 40 CFR 403.5; and
- g. The term Water Management Division Director means a Director of the Water Management Division within the Region 10 office of the Environmental Protection Agency or this person's delegated representative.

04. Exceptions to Incorporation by Reference. The following sections of 40 CFR 403 are excluded from the incorporation by reference in Section 003 of this chapter.

- a. 40 CFR 403.4 (State or Local Law).
- b. 40 CFR 403.10 (Development and Submission of NPDES State Pretreatment Programs).

- c. 40 CFR 403.19 (Provisions of Specific Applicability to the Owatonna Waste Water Treatment Facility).
- d. 40 CFR 403.20 (Pretreatment Program Reintervention Pilot Projects Under Project XL).

371 – 379 RESERVED

380. SEWAGE SLUDGE

40 CFR 503.1(a), (b), and portions of 503.9

01. Purpose. [40 CFR 503.1(a)] The purpose of this Section and 40 CFR 503 is to:

a. Establish standards, which consist of general requirements, pollutant limits, management practices, and operational standards, for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works.

i. Include standards for sewage sludge applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator.

ii. Include pathogen and alternative vector attraction reduction requirements for sewage sludge applied to the land or placed on a surface disposal site;

b. Include the frequency of monitoring and recordkeeping requirements when sewage sludge is:

i. Applied to the land,

ii. Placed on a surface disposal site, or

iii. Fired in a sewage sludge incinerator; and

c. Include reporting requirements for:

i. Class I sludge management facilities,

ii. Publicly owned treatment works (POTWs) with a design flow rate equal to or greater than one million gallons per day, and

iii. POTWs that serve 10,000 people or more.

02. Applicability. [40 CFR 503.1(b)] This Section and 40 CFR 503 applies to:

a. 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;

b. Sewage sludge applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator;

c. The exit gas from a sewage sludge incinerator stack; or

d. Land where sewage sludge is applied, to a surface disposal site, and to a sewage sludge incinerator.

03. Definitions. [40 CFR 503.9] When used in the context of 40 CFR 503, unless the context in which a term is used clearly requires a different meaning, terms in the federal regulations that are incorporated by reference in this Section have the following meanings:

a. The terms Administrator or Regional Administrator mean the EPA Region 10 Administrator;

b. The terms Director or State Program Director mean the Department of Environmental Quality as the agency designated by the Governor as having the lead responsibility for managing or coordinating the approved IPDES program; and

c. The term permitting authority is the Department of Environmental Quality.

04. Exceptions to Incorporation by Reference. 40 CFR 503.1 (Purpose and Applicability) is excluded from the incorporation by reference found in Section 003 of this chapter.

381 – 499 RESERVED

500. ENFORCEMENT

40 CFR 122.41(a)(2) – (a)(3), (j)(5), (k)(2); 40 CFR 123.27

01. General Enforcement and Penalties [Idaho specific in place of 40 CFR 122.41(a)(2) – (a)(3)]
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.

02. Truth in Reporting. [Idaho specific in place of 40 CFR 122.41(j)(5)] 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.

03. False Statements. [Idaho specific in place of 40 CFR 122.41(k)(2)] 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.

04. Public Participation in Enforcement. [40 CFR 123.27(d) and (d)(2)(i) – (d)(2)(iii)] The Department shall provide for public participation in the State enforcement process by:

- a.** Investigating and providing written responses to citizen complaints;
- b.** Not opposing intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and
- c.** Publishing notice of and providing at least 30 days for public comment on any proposed settlement of a State enforcement action.

501 – 599 RESERVED

600. DATA MANAGEMENT AND REPORTING

40 CFR 124.18; 40 CFR 3.10;

01. Administrative Record. [40 CFR 124.18]

a. The Department shall base final permit decisions on the administrative record defined in this Section.

b. The administrative record for any final permit, including issuance, denial, transfer, modification, revocation and reissuance, or termination shall consist of the administrative record for the draft permit and fact sheet, as defined in section 108 and the following:

- i. All comments received during the public comment period provided under Section 109, Public Notification and Comment;
 - ii. The record of, and any written materials submitted as part of, any meeting(s) held under Section 109;
 - iii. The application or notice of intent to obtain coverage under a general permit, notice of intent to deny the application, or to terminate the permit, and any supporting data furnished by the applicant;
 - iv. The response to comments required by Subsections 109.02 and 03 and any new material placed in the record under that section; and
 - v. Any other correspondence and documents.
- c.** The final permit and fact sheet shall become part of the administrative record after the final permit is issued.
- d.** The additional documents identified under Subsection 600.01.b should be added to the record as soon as possible after their receipt or publication by the Department. The record shall be complete on the date the final permit is issued.
- e.** This Subsection applies to all IPDES permits when the draft permit was included in a public notice.
- f.** Material readily available from the Department or published materials which are generally available and which are included in the administrative record under this Subsection or Section 109, need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the fact sheet or in the response to comments.

601 – 699 RESERVED