

Idaho's Pollutant Discharge Elimination System (IPDES)

IPDES Rules Draft 3.1 and
Response to Comments

April 17, 2015



IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY



IPDES RULES 3.0 – COMMENTS RECEIVED

- Environmental Protection Agency (EPA)
- Idaho Conservation League (ICL)
- Clearwater Paper Corporation
- City of Post Falls
- Association of Idaho Cities
- Idaho Mining Association



SUMMARY OF 3.0 COMMENTS

❖ Definitions

PROPOSED DEFINITIONS FOR IDAPA 58.01.02.25

CONTENTS

Proposed Definitions for IDAPA 58.01.02.25	1
New	1
From 58.01.02 Water Quality Standards	2
From 58.01.16 Wastewater Rules	4
From 40 CFR 122	8
From 40CFR 403.3.....	16

NEW

Idaho Pollutant Discharge Elimination System (IPDES). Point source permitting program established pursuant to Section 402 of the federal Clean Water Act.

Notice of Deficiency. A Notice of Deficiency shall convey to a permit applicant or permittee, missing items that are required to complete an application, compliance action, or other data, action, document required by the permit, IPDES rules, or the Clean Water Act.

Notice of Intent to Deny. A Notice of Intent (NOI) to deny shall convey to a permit applicant or permittee, the Department's intent to not issue or renew an IPDES permit that the applicant sought.

Notice of Intent to Obtain IPDES Coverage under a General Permit. An applicant seeking discharge coverage under a general IPDES permit shall submit a Notice Of Intent to obtain coverage for surface water discharges under any of the following general permit classifications:

- a. Construction General Permit (CGP);
- a. Multi-Sector General Permit (MSGP);
- b. Municipal Separate Storm Sewer System (MS4);
- c. Concentrated Animal Feeding Operation (CAFO);
- d. Concentrated Aquatic Animal Production (CAAP) facility;
- e. Vessel General Permit (VGP); or
- f. Pesticide General Permit (PGP).

Notice of Intent to Terminate. A Notice of Intent to terminate shall:

- a. Convey to a permittee, the Department's intent to revoke an existing IPDES permit for cause or
- b. Convey to the Department, a permittee's intent to terminate coverage for an activity under an Individual or General Permit. A construction general permit holder is



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- ❖ Definitions
- ❖ Grammatical, Citations, Consistency with CFR
 - Water Quality Trading (Section 302.20)
- ❖ Disposal Into Injection Wells (Section 303.09.d and e)

d. Disposal of ~~municipal or industrial waste streams~~ discharge into injection wells is regulated by ~~shall obtain approval or a permit from the:~~

i. ~~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.~~ or

ii. ~~Health District having jurisdiction, in compliance with the Individual/Subsurface Sewage Disposal Rules, IDAPA 58.01.03, for a Class V injection well.~~

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



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 - Minor Modifications (Section 201.03.i)

i. Make a change in a permit provision that will result in neither allowing an actual or potential increase in the discharge of a pollutant or pollutants into the environment nor result in a reduction in monitoring of a permit's compliance with applicable statutes and regulations.



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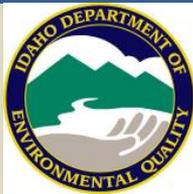
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- ❖ Permit Continuations/Extensions (Section 300.02)

02. Duty to Reapply [40 CFR 122.41(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. If the permittee complies with the application requirements of Section 105 for an individual permit, or the notice of intent requirements of Section 130 for a general permit, and a permit is not issued prior to the permit's expiration date, the permit shall remain in force as stipulated in Subsection 101.02 and 101.03.



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- ❖ Intake Credits for WQBELs and Groundwater (Section 303.07.a & c)



INTAKE CREDITS (303.07.A & c)

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

a. The following definitions apply to the consideration of intake credits in determining reasonable potential and establishing technology based and water quality based effluent limits for IPDES permits.

i. An "intake pollutant" is the amount of a pollutant that is present in public waters (including groundwater as provided in (d) of this subsection 303.07.a.iv) at the time water is removed from the same body of water by the discharger or other facility supplying the discharger with intake water.

ii. An intake pollutant must be from the "same body of water" as the discharge in order to be eligible for an intake credit. An intake pollutant is considered to be from the "same body of water" as the discharge if the Department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. This finding will be established if:

1. The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water; and

2. There is a direct hydrological connection between the intake and discharge points.

iii. The Department may also consider other site-specific factors relevant to the transport and fate of the pollutant to make the finding in a particular case that a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

iv. An intake pollutant from groundwater may be considered to be from the "same body of water" if the Department determines that the pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

b. Consideration of intake pollutants for technology based effluent limitations

i. 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:

(1) The applicable effluent limitations and standards contained in 40 CFR ~~subchapter N~~Part 401 through Part 471, specifically provide that they shall be applied on a net basis; or

(2) 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.

ii. 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. Consideration of intake pollutants for water quality based effluent limitations.

i. The Department will evaluate if there is reasonable potential for the discharge of an identified intake pollutant to cause or contribute to an exceedance of a narrative or numeric water quality criterion. If the Department determines that an intake pollutant in the discharge does not have the reasonable potential to cause or contribute to an exceedance of an applicable water quality standard, the Department is not required to may include a water quality-based effluent limit for the identified intake pollutant in the facility's permit.

ii. If a reasonable potential exists, then water quality-based effluent limits may be established that reflect a credit for intake pollutants where a discharger demonstrates that the following conditions are met:

1. The facility removes the intake water containing the pollutant from the same body of water into which the discharge is made;

2. The ambient background concentration of the pollutant does not meet the most stringent applicable water quality criterion for that pollutant;

3. The facility does not alter the identified intake pollutant chemically or physically in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutants had not been removed from the body of water;

4. The timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the identified intake pollutant had not been removed from the body of water;

5. For the purpose of determining reasonable potential, the facility does not contribute any additional mass of the identified intake pollutant to its wastewater; and

6. For the purpose of determining water quality-based effluent limits, the facility does not increase the identified intake pollutant concentration at the point of discharge as compared to the pollutant concentration in the intake water. A discharger may add mass of the pollutant to its waste stream if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water.

iii. Where a facility discharges intake pollutants from multiple sources that originate from the receiving water body and from other water bodies, the Department may derive an effluent limit reflecting the flow-weighted amount of each source of the pollutant provided that conditions in 303.07.c.ii of this subsection are met and adequate monitoring to determine compliance can be established and is included in the permit.

iv. The permit will specify how compliance with mass and concentration-based limitations for the intake water pollutant will be assessed. This may be done by basing the effluent limitation on background concentration data. Alternatively, the Department may determine compliance by monitoring the pollutant concentrations in the intake water and in the effluent. This monitoring may be supplemented by monitoring internal waste streams or by a Department evaluation of the use of best management practices.

v. Permit limits must be consistent with the assumptions and requirement of waste load allocations or other provisions in a TMDL that has been approved by the EPA.



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 - Upsets, Compliance Schedules, and Variances for WQBELs



WQBELS –UPSETS, SCHEDULES, VARIANCES

- Section 300.14.a

14. 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 defined in Section 010.XX, as an affirmative defense. A permittee seeking to establish the occurrence of an upset has the burden of proof.

- Section 305.01.f

f. Permits may incorporate compliance schedules which allow a discharger to phase in, over time, compliance with water quality-based effluent limitations when new limitations are in the permit for the first time, under IDAPA 58.01.02.400.03.

- Section 310.03.b.iv

b. The Department may grant (subject to EPA objection under Subsection 108.01.b):

iv. Variances from water quality standards under IDAPA 58.01.02.260.



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- ❖ Statewide and Watershed Variances (Human Health Criteria)
- ❖ Temperature Provisions Consistent with CWA 316(a)



TEMPERATURE PROVISIONS – CWA 316(A)

- Incorporated by Reference (Section 003)
 - Criteria for Determining alternative Effluent Limitations Under Section 316(a) of the Clean Water Act (40 CFR 125.70 – 125.73)



TEMPERATURE PROVISIONS – CWA 316(A)

- Section 310.05

05. **Special Procedures for Decisions on Thermal Variances [40 CFR 124.66].**

a. The only issues connected with issuance of a particular permit on which the Department will make a final decision before the final permit is issued, are whether alternative effluent limitations would be justified under the Clean Water Act section 316(a) and whether cooling water intake structures will use the best available technology under section 316(b).

i. Permit applicants who wish an early decision on these issues should make a request to the Department, furnished with supporting reasons at the time their permit applications are filed.

ii. The Department will then decide whether or not to make an early decision. If it is granted, both the early decision on CWA section 316 (a) or (b) issues and the grant of the balance of the permit shall be:

(1) Considered permit issuance under these regulations, and

(2) Subject to the same requirements of public notice and comment and the same opportunity for an appeal.

b. If the Department, on review of the administrative record, determines that the information necessary to decide whether or not the CWA section 316(a) issue is not likely to be available in time for a decision on permit issuance, the Department may issue a permit for a term up to 5 years.

i. This permit shall require achievement of the effluent limitations initially proposed for the thermal component of the discharge, no later than the date otherwise required by law.

ii. However, the permit shall also afford the permittee an opportunity to file a demonstration under CWA section 316(a), after conducting such studies as are required under 40 CFR 125.70 through 125.73.

iii. A new discharger may not exceed the thermal effluent limitation which is initially proposed unless and until its CWA section 316(a) variance request is finally approved.

c. Any proceeding held under 310.05.a shall be:

i. Publicly noticed as required by Sections 107 and 109, and

ii. Conducted at a time allowing the permittee to take necessary measures to meet the final compliance date in the event its request for modification of thermal limits is denied.

d. Whenever the Department defers the decision under CWA section 316(a), any decision under section 316(b) may be deferred.



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 - Upsets, Compliance Schedules, and Variances for WQBELs
- ❖ Statewide and Watershed Variances (Human Health Criteria)
- ❖ Temperature Provisions Consistent with CWA 316(a)
 - Further Discussion with EPA:
 - ❖ CWA 303(d)(4) – Anti-backsliding (Section 200.01 & 02)
 - ❖ CWA 401(a)(2) – Impacts to Neighboring States (Section 302.06.c)
 - ❖ CWA 301(b)(1)(C) – Stringency Requirements (Section 302.06.d)



IPDES RULES 3.0

- 200. Renewal of IPDES Permits
- 201. Modification, or Revocation and Reissuance of IPDES Permits
- 202. Transfer of IPDES Permits
- 203. Termination of IPDES Permits
- 300. Applicable Permit Conditions
- 301. Establishing Permit Provisions
- 302. Calculating Permit Provisions
- 303. Monitoring and Reporting
- 304. Compliance Schedules
- 305. Permit Conditions for Specific Categories
- 310. Variances



GENERAL CHANGES TO IPDES RULES 3.1

- 200. Renewal of IPDES Permits
- 201. Modification, or Revocation and Reissuance of IPDES Permits
- 202. Transfer of IPDES Permits
- 203. Termination of IPDES Permits (Switched 03 and 04)
- 300. Applicable Permit Conditions
- 301. Establishing Permit Provisions
- 302. Calculating Permit Provisions
- 303. Monitoring and Reporting
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- 300. Applicable Permit Conditions (Renumbered)
- 301. Establishing Permit Provisions
- 302. Calculating Permit Provisions
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- 304. Compliance Schedules
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- 300. Applicable Permit Conditions (Renumbered)
- 305. Permit Conditions for Specific Categories
- 301. Establishing Permit Provisions
- 302. Calculating Permit Provisions
- 303. Monitoring and Reporting
- 304. Compliance Schedules
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- 300. Applicable Permit Conditions (Renumbered)
- ~~305~~ 301. Permit Conditions for Specific Categories
- ~~301~~ 302. Establishing Permit Provisions
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- ~~304~~ 305. Compliance Schedules
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- 203. Termination of IPDES Permits (Switched 03 and 04)
- 300. Applicable Permit Conditions (Renumbered)
- ~~305~~ 301. Permit Conditions for Specific Categories
- ~~301~~ 302. Establishing Permit Provisions
- ~~302~~ 303. Calculating Permit Provisions (New 07.a and 07.c)
- ~~303~~ 304. Monitoring and Reporting
- ~~304~~ 305. Compliance Schedules
- 310. Variances



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- ~~301~~ 302. Establishing Permit Provisions
- ~~302~~ 303. Calculating Permit Provisions (New 07.a and 07.c)
- ~~303~~ 304. Monitoring and Reporting
- ~~304~~ 305. Compliance Schedules
- 310. Variances (Modified 01 and 03; New 05)



QUESTIONS/COMMENTS/CONCERNS

