



**UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY
REGION 10**

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

OFFICE OF
WATER AND
WATERSHEDS

April 30, 2015

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

(sent by email to: paula.wilson@deq.idaho.gov)

Re: Comments on Documents Presented at the April 17, 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 above-mentioned negotiated rulemaking meeting for the Idaho Pollutant Discharge Elimination System (IPDES) Program. The negotiated rulemaking meeting covered draft rule language for the following:

- New Sources and New Dischargers
- General Permits
- Pretreatment Standards
- Sewage Sludge
- Enforcement
- Data Management and Reporting
- Definitions

The EPA reviewed the draft rule language as compared to federal National Pollutant Discharge Elimination System (NPDES) regulations that are applicable to state NPDES programs under 40 CFR §123.25.

Comments on rule language

1. Page 3, 130.01.c – delete the word “and” at the end of that section.
2. Page 6, 130.03 – The citation to 40 CFR §124.52(b) and (c) is incorrect. First, IDEQ is not required to take on this section of the regulations. While the language in the IPDES regulation mirrors the language in 40 CFR §124.52(b) and (c), that regulation governs the situation where EPA is designating a discharge as a point source discharge that requires a NPDES permit. The language may not be appropriate for a situation where the Idaho Department of Environmental Quality (DEQ) is moving a facility from a general permit to an individual permit. Instead, the EPA recommends that DEQ look at 40 CFR §122.28(b)(3)(ii). That section is applicable to a situation where EPA, as the permitting authority, is moving a facility from a general permit to an individual permit and may be more appropriate for what DEQ wants to accomplish through this regulation.

3. Page 7, 370 – The State needs to have the procedures in place described in 40 CFR §403.10(f)(2) and the legal authority to implement them. The state would also need to ensure that any existing state authorities do not exclude or inhibit its abilities to conduct the activities of 40 CFR §403.8(f)(2), which is needed in the absence of an approved publicly owned treatment work (POTW), 40 CFR §403.10(f)(1) and (2). It is difficult for the EPA to review the Pretreatment regulations without having the entire program in hand to review. As such, the EPA is providing notice that it may have additional comments on the Pretreatment program at a later date.
4. Page 8, 380 – Similar to the Pretreatment comment, above, it is difficult for the EPA to review the Sewage Sludge regulations without having the entire program in hand to review. As such, the EPA is providing notice that it may have additional comments on the Sewage Sludge program at a later date.
5. Regarding, the state's question, "Does the State need to be able to enforce a city ordinance or a city pretreatment permit?" At this point, the EPA believes the DEQ must have the authority to enforce city ordinances with an NPDES permit and offers the followed bases:
 - 40 CFR §403.5(c) requires local limits. In the case of POTWs required to develop pretreatment programs, the POTW has to have the authority to enforce the specific prohibitions through local limits. In the case of POTWs not required to develop pretreatment programs, the POTWs must develop local limits if the introduction by the users causes pass through and interference and limits are necessary to comply with the POTWs NPDES permit or sludge uses.
 - EPA's 1986 State Program Guidance [the first sentence in the pretreatment legal authority section at p. 3-24 to 25] states, "States seeking pretreatment program approval must have authority to impose pretreatment standards on all industrial users of publicly owned treatment works (POTWs). Pretreatment standards include the general and specific prohibited discharges listed in 40 CFR §403.5, local limits developed by POTWs, and federally promulgated categorical pretreatment standards found in 40 CFR Subchapter N."
 - 40 CFR §403.5(d) states, "Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with paragraph (c), such limits shall be deemed Pretreatment Standards for the purpose of section 307(d) of the Act."
 - CWA Section 309(a)(3) requires the Administrator to bring an enforcement order or civil action upon finding that a person is in violation of CWA Section 307. CWA Section 309(c)(1)(A) imposes criminal penalties for violations of "any requirement imposed in a pretreatment program approved under section [402(b)(8)]."
 - CWA Section 402(b)(9) requires, as a condition of NPDES program approval, that states "insure that any industrial user of any publicly owned treatment works will comply with section [307]."
 - 40 CFR §403.10(f)(1)(iv) requires state programs to have the authority to seek penalties "for noncompliance with Pretreatment Standards by Industrial Users as set forth in sec. 403.8(f)(1)(vi)."

- 40 CFR §403.8(f)(1)(vi)(B) requires authority to seek remedies "for noncompliance with any Pretreatment Standard and Requirement."

Comments on Proposed Definitions for IDAPA 58.01.02.25

General Comments:

Some of these definitions do not appear appropriate or necessary for the NPDES program, e.g., Dynamic Model, Man-Made Waterways, Project Plans, Release, Equivalent Dwelling Unit, Facility Plan, Facility and Design Standards, Material Modification, Responsible Persons in Charge, etc. DEQ may want to consider deleting them.

To avoid confusion, the EPA recommends, where similar terms are used as in EPA regulations that the definitions match or be consistent with 40 CFR §122.2 and/or the U.S. EPA NPDES Permit Writers' Manual.¹

Specific Comments:

Notice of Intent to Obtain NPDES Coverage under a General Permit. Instead of listing specific general permits, the EPA recommends that DEQ delete the list of general permits from the regulation. It is possible that DEQ will expand the universe of general permits based on similar characteristics, etc. In addition, the list of general permits does not include the Groundwater Remediation Facilities General Permit or the Small Suction Dredge General Permit.

Notice of Intent to Terminate. Add the following italicized section to the sentence: "A construction general permit holder is obligated to submit a Notice of Intent to terminate upon completion of construction activities *and final stabilization has been achieved.*"

Owner or operator. Change this definition to be consistent with 40 CFR §122.2: "... means the owner *or operator* of any 'facility or activity' subject to regulation under the NPDES program." DEQ's current draft definition excludes an entity that "operates" the facility or activity and is unacceptable as written.

Toxic pollutant. Last sentence, change "Toxic substances..." to "Toxic *pollutants*..."

Best management practices ("BMPs"). Change this definition to be consistent with 40 CFR §122.2: "...means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage." DEQ's current draft definition states that BMPs are developed/identified by the "designated agency;" however, under the NPDES regulations, BMPs may be developed/identified by the owner/operator or their representative, not a designated agency.

Compliance Schedule or Schedule of Compliance. Change this definition to be consistent with 40 CFR §122.2: "...means a schedule of remedial measures included in a "permit" [or enforcement order], including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the CWA and regulations."

¹ U.S EPA NPDES Permit Writers' Manual, http://www.epa.gov/npdes/pubs/pwm_2010.pdf

Discharge. Change this definition to be consistent with 40 CFR §122.2: “when used without qualification means the ‘discharge of a pollutant.’”

Technology-Based Effluent Limitation. Change this definition to be consistent with the U.S. EPA NPDES Permit Writers’ Manual Glossary of Terms: “A permit limit for a pollutant that is based on the capability of a treatment method to reduce the pollutant to a certain concentration.”

Wasteload Allocation (WLA). Change this definition to be consistent with the U.S. EPA NPDES Permit Writers’ Manual Glossary of Terms: “The proportion of a receiving water’s *total maximum daily load* that is allocated to one of its existing or future point sources of pollution.”

Water Quality-Based Effluent Limitation. Change this definition to be consistent with the U.S. EPA NPDES Permit Writers’ Manual Glossary of Terms: “A value determined by selecting the most stringent of the effluent limits calculated using all applicable water quality criteria (e.g., aquatic life, human health, and wildlife) for a specific point source to a specific receiving water for a given pollutant.

Effluent. Effluent can also be “untreated” under NPDES.

Mixing Zone. Change this definition to be consistent with the U.S. EPA NPDES Permit Writers’ Manual Glossary of Terms: “An area where an effluent discharge undergoes initial dilution and is extended to cover the secondary mixing in the ambient water body. A mixing zone is an allocated impact zone where water quality criteria can be exceeded as long as acutely toxic conditions are prevented.”

Primary Treatment. Change this definition to be consistent with the U.S. EPA NPDES Permit Writers’ Manual Glossary of Terms: “The practice of removing some portion of the suspended solids and organic matter in a wastewater through sedimentation. Common usage of this term also includes preliminary treatment to remove wastewater constituents that may cause maintenance or operational problems in the system (i.e., grit removal, screening for rags and debris, oil and grease removal, etc.”

Secondary Treatment. Change this definition to be consistent with the U.S. EPA NPDES Permit Writers’ Manual Glossary of Terms: “Technology-based requirements for direct discharging municipal sewage treatment facilities. Standard is based on a combination of physical and biological processes typical for the treatment of pollutants in municipal sewage. Standards are expressed as a minimum level of effluent quality in terms of: BOD₅, suspended solids (SS), and pH (except as provided for special considerations and treatment equivalent to secondary treatment).”

Person. Change this definition to be consistent with 40 CFR §122.2.: “...means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.”

Privately owned treatment works. Change this definition to be consistent with 40 CFR §122.2.: “...means any device or system which is (a) used to treat wastes from any facility whose operator is not the operator of the treatment works and (b) not a ‘POTW.’”

Septage. Change this definition to be consistent with 40 CFR §122.2.: "...means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained."

Upset. Change this definition to be consistent with required regulatory language at 40 CFR §122.41(n): "...means an exceptional incident in which there is unintentional and temporary non-compliance with *technology based* permit effluent limitations because of factors beyond the reasonable control of the permittee...."

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,



Michael J. Lidgard, Manager
NPDES Permits Unit

Cc: Mary-Anne Nelson, IPDES Program Manager, (sent by email to: mary.anne.nelson@deq.idaho.gov)

