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May 1, 2015

VIA EMAIL: paula.wilson@deq.idaho.gov

Paula Wilson, Administrative Rules Coordinator

Idaho Department of Environmental Quality

1410 North Hilton

Boise, ID 83706

Re: Docket No. 58-0125-1401: Rules Regulating the Idaho Pollutant Discharge Elimination System Program (IPDES) - Negotiated Rule Draft No. 4.0: General Permits (April 10, 2015)

Dear Ms. Wilson:

These comments are submitted on behalf of the Idaho Water Users Association (IWUA), regarding the above-referenced Negotiated Rule Draft No. 4.0, posted on the Idaho Department of Environmental Quality (Department) website on April 10, 2015. Reference is made below to the specific provisions of Draft No. 4.0, focusing specifically on the general permit provisions of proposed Rule 130.

Rule 130. General Permits.

Subsection 130.01.b.ii(5) provides that general permits may be issued if the point sources: "In the opinion of the Department, are more appropriately controlled under a general permit than under individual permits". Under what criteria is such a determination made?

Subsection 130.02.a provides that: "General permits may be issued, modified, revoked and reissued, or terminated in accordance with Section 106, 107, 108, 109, 201, 203, or 310.". There are several problems with this subsection.

First, this language seems inconsistent with Subsection 130.02.b.v (discussed below) which provides that coverage may be terminated or revoked under Subsection 130.02.c, without reference to the sections mentioned in Subsection 130.02.a.

Of particular concern is the applicability of Section 109 to general permits. IWUA provided detailed comments on proposed Section 109 in its February 17, 2015 comments on Negotiated Rule Draft No. 2.0. As spelled out in detail in those comments, which are incorporated in full by reference here, the Endangered Species Act consultation provisions in proposed Section 109 run counter to state law and are inconsistent with the State Legislature's direction to the Department regarding the State's pursuit of primacy from EPA. Changing the word "consult" to "confer" in Subsection 109.02.e, as proposed in Draft No. 2.1, does little to address this concern. Section 109 is still a major concern to IWUA, as is application of the section to general permits pursuant to Subsection 130.02.a.

Also requiring clarification is the fact that many of the provisions of Sections 106 through 109 refer to applications. How can these provisions apply to general permits, which require a notice of intent (or, in some cases, not even a notice of intent), rather than an application? At a minimum, there needs to be clarity between the process for seeking coverage under individual permits (applications) and general permits (notices of intent).

Subsection 130.02.b.v states that: "Coverage under a general permit may be terminated or revoked in accordance with Subsection 130.02.c.". However, Subsection 130.02.e is the subsection that actually provides that: "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 permitted is automatically terminated on the effective date of the individual permit."

Subsection 130.02.c provides that: "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." While an illustrative, non-exclusive list of examples is provided, and there is a process for parties to petition for the issuance of individual permits, there are no criteria in this subsection upon which the Department may make such a determination, nor is there any provision to notify the discharger of the petition or to allow the discharger to respond. This leaves the Department with largely unfettered discretion to require costly and burdensome individual permits, at the request of any petitioner, without due process being afforded to the discharger.

Additionally, consideration should be given to placing the burden on the petitioner to demonstrate that the existing general permit coverage is insufficient. Even if that burden is met, consideration should be given to revising the general permit, rather than requiring individual permits.

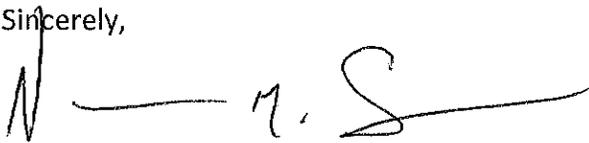
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Also, if EPA has not required individual permits for such general permit activities, DEQ should not do so, particularly when the individual permits would be more stringent than the general permit, which would seem to be prohibited by the stringency provisions of Idaho law.

Subsection 130.03.a requires that written notification be given when the Department decides to require an individual permit. The permit holder is then given 60 days to apply for a permit. Consideration should be given to notifying the discharger in writing before the Department makes a decision, along with an opportunity for the discharger to be heard. The rule does not seem to provide for such due process.

IWUA appreciates the opportunity to submit these comments and looks forward to continuing to work with the Department and other parties to improve the draft rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Norman M. Semanko". The signature is fluid and cursive, with a large initial "N" and a long horizontal stroke.

Norman M. Semanko
Executive Director & General Counsel

NMS:kje