



**UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY
REGION 10**

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OFFICE OF
WATER AND
WATERSHEDS

May 28, 2015

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

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

Re: EPA Comments on Documents Presented at the May 15, 2015 IPDES 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:

- IPDES Discussion Paper No. 5
- Draft IPDES Fee Structure

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 Part 123.

Comments Discussion Paper No. 5

The EPA appreciates adjustments made to the Idaho Department of Environmental Quality's (DEQ's) earlier work on the State Water Quality Management Resource Model to account for the estimated permit universe. The IPDES Program Analysis, dated January 2015, presented at the January 23 rulemaking meeting, used incorrect permittee numbers for some permit categories as noted in the EPA's February 5 comment letter.

As described in Discussion Paper No. 5 - Fee Schedules, changes to the model assumptions resulted in an overall increase in the estimated FTEs from 26 to 28.2. However, the EPA is concerned that resources have shifted from permitting to compliance, inspection and enforcement (CIE) with the permitting FTE allocation adjusted from 11 down to 7 and the CIE FTE allocation adjusted from 8 up to 14.6. Based on the EPA's permitting experience in Idaho, 7 FTE would be inadequate to support NPDES permitting.

Comments on Draft Fee Rule

The fee rule does not provide for inflationary adjustments. The EPA recommends incorporation of provisions that would allow DEQ to institute increases based on an inflation metric to ensure permit fees keep pace with the cost of administering the program.

The EPA requests that a revenue estimate be provided based on the permit universe using the proposed fee schedule. It is important to demonstrate the proposed fee schedule will result in the sufficient revenue to support that program along with obligations requested from state general funds. 40 CFR §123.22 details the requirements of the Program Description, which must address staff, cost and resources dedicated to administering the Federally required portion of the program.

100.05.a. – This provision does not address changes to the fee due date as a result of holidays. The EPA suggests incorporating that fees are due on October 1 or the following business day if October 1 is a weekend or state holiday. For example, 100.b.ii addresses installment due dates shifting because of “legal holidays.” The EPA suggests using the term “state holiday” versus “legal holiday” because it is more specific and relates directly to DEQ’s work schedule.

100.07 – This provision addresses the delinquency of payment that would authorize DEQ to suspend technical services, if payment is 90 days past due, and consider the permittee in non-compliance, if payment is 180 days past due. DEQ should ensure that they have the authority to terminate permits or permit coverage in cases of serious delinquency. It would be appropriate to clarify this authority in this portion of the rule or cross-reference with provisions that provide this authority.

Comment regarding Upset Definition

The EPA remains concerned about the upset definition in DEQ’s regulations. It is the EPA’s understanding that DEQ intends on defining upset such that an affirmative defense can be made for violations of water quality based effluent limitations. The federal definition does not provide for the use of the upset defense for violations of water quality based effluent limitations. As such, the EPA is concerned that DEQ’s definition is less stringent than the comparable federal regulation. If there were a violation of a water quality based effluent limitation as a result of an upset, the permitting authority would have the ability to exercise its enforcement discretion in determining whether to take an action for the violation(s).

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 to: mary.anne.nelson@deq.idaho.gov)