



Idaho Association of
Commerce & Industry
The Voice of Business in Idaho®

July 24, 2015

Ms. Paula Wilson
Idaho Department of Environmental Quality
1410 North Hilton
Boise, ID 83706

RE: IPDES Program, Docket No. 58-0125-1401

Dear Ms. Wilson:

The Idaho Association of Commerce & Industry (IACI) has reviewed the material presented at the July 10 IPDES rulemaking meeting and has comments on two aspects of the rule being drafted by the Department of Environmental Quality (Department).

IACI appreciates the Department considering and incorporating a number of the comments we provided in our earlier comment letter on the administrative appeals process of the IPDES program. We do ask the Department to reconsider the IACI comments on criteria for augmenting the administrative record. IACI's earlier suggested conditions for supplementing the administrative record are well-established judicially created exceptions to record review under the federal Administrative Procedures Act (APA). *[IACI's prior comment letter is attached.]* They are relatively narrow exceptions. NPDES Permits often involved complex and technical evaluations which often require additional explanation to an appointed hearing officer who may or may not understand all of the technical nuances. Until a Permit is appealed and the contested issues are crystalized, it is difficult for a permittee to predict and explain all technical and legal issues that may be raised in an appeal. Often a judge (or a hearing officer) benefits from providing additional explanatory materials. That is the reason for the federal APA record review exceptions, and that is why IACI recommended these changes in Section 204.07 of the proposed rule. IACI does not object to also leaving the Department's current exceptions in Section 204.07.

Also, in Section 204.01(a) in the appeals process, we suggest deleting the word "includes" as it suggests other parties may also appeal a permit. Finally, we believe that a party should have some type of standing to prosecute an appeal in addition to attending a public hearing or submitting a comment letter. We request that the Department consider revising the language in Section 204.01(a) accordingly.

During the July 10 meeting, the Department put forth specific language for the regulation of non-municipal sludge. Since regulation of non-municipal sludge is not regulated by the current NPDES Permit program, we request that the Department confine the proposed IPDES Rule to

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only municipal sludge. Therefore IACI requests that the Department withdraw all references to non-municipal sludge in the proposed rule, including Section 380.05.

We appreciate the opportunity to provide comments on the IPDES regulation.

Sincerely,



Alex LaBeau
President

attachment

cc: Alan Prouty, Chair
IACI Environment Committee



Idaho Association of
Commerce & Industry
The Voice of Business in Idaho®

June 26, 2015

Ms. Paula Wilson
Idaho Department of Environmental Quality
1410 North Hilton
Boise, ID 83706

Re: IPDES Program: Docket No. 58-0125-1401 – Draft No.6.0, Appeal Process

Dear Ms. Wilson:

The Idaho Department of Environmental Quality (Department), as a part of the rulemaking with establishing the Idaho Pollutant Discharge Elimination System (IPDES), has requested comments on two topics: (a) the type of appeal process, and (b) the hearing authority for the appeals. The Idaho Association of Commerce & Industry (IACI) is an advocate of Idaho establishing its own water point-source discharge program and has been participating in the rulemaking meetings. IACI has the following comments on these two topics.

Important concepts that IACI believes needs to be incorporated into the administrative appeal rule include:

- The appeal process should be based on a record review. We believe this process needs to give the applicant the opportunity to provide information in response to new issues or topics that are raised during the public comment period.
- The appeal should be heard by a hearing officer selected by the DEQ Director from a list of qualified hearing officers approved by the DEQ Board. An appeal of the hearing officer's decision should go to Idaho State District Court.

IACI recommends the following language for Section 204.

01. Petition for Review of a Permit Decision.

a. Any person who is aggrieved by the final permit decision may file a petition for review as provided in this section. A person aggrieved includes the permit holder or applicant, and any person or entity who filed comments or who participated in the public hearing on the draft permit or any person ~~or entity with legal standing to challenge the final permit decision.~~

b. [no change]

c. In addition to meeting the requirements in Subsection 204.06, a petition for review must:

- ~~Identify the permit condition or other specific aspect of the permit decision that is being challenged.~~ Be confined to the issues raised during the public

comment process or to changes made to the permit by the Department after the close of the public comment period;

ii. ~~Set forth the legal and factual basis for the petitioner's contentions~~ Identify the permit condition or other specific aspect of the permit decision that is being challenged;

iii. Set forth the relief sought;

iv. Set forth the basis for asserting that the petitioner is an aggrieved person.....
(leave this section as written by DEQ)

05. Petition to Intervene. Any person who participated in the public comment process and who has a direct and substantial interest in the outcome of the Petition for Review may file a Petition to Intervene.

07. Augmenting the Administrative Record. Consideration of the Petition for Review by the Hearing Authority.....The Hearing Authority may allow the record to be augmented if the requesting party shows that the additional information is material, is relevant to the issues raised in the appeal and that: (leave this section as written by DEQ)

a. ~~There were good reasons for failure to present information during the permitting proceeding; or~~ The Department relied on records outside the Administrative Record in making its decision; or

b. ~~There were alleged irregularities in the permitting proceeding and the party wishes to introduce evidence of the alleged irregularities.~~ The augmentation is needed to explain technical terms or complex subject matter; or

c. ~~A statement regarding whether the party desires an opportunity for oral argument.~~ The augmentation is necessary to determine whether the Department considered all relevant factors; or

d. The permit applicant needs to address a new issue raised during the public comment period or to a change made in the permit by the Department after the public comment period closes.

e. There were alleged irregularities in the permitting proceeding or alleged showing of bad faith by the Department, and the party wishes to introduce evidence of the alleged irregularities or bad faith. (This section "e" is new but replaces DEQ's section "b" with additional language.)

We appreciate the opportunity to provide input on these important matters.

Sincerely,

Alex S. LaBeau
President

cc: Alan Prouty, Chair, IACI Environment Committee

