

From: [Norm Semanko](#)
To: [Paula Wilson](#)
Subject: Docket No. 58-0125-1401 - Comments on Complete Draft IPDES Rules - Version 2 (July 10, 2015)
Date: Thursday, July 23, 2015 10:15:30 PM

Dear Paula,

These comments are submitted on behalf of the Idaho Water Users Association (IWUA) regarding the Complete Draft IPDES Rules - Version 2 (Docket No. 58-0125-1401), dated July 10, 2015. IWUA appreciates the many changes that have already been made to the Draft IPDES Rules, but believes additional changes are still needed. Reference is made below to the specific provisions of the Complete Draft IPDES Rules - Version 2.

Rule 0. Legal Authority. IWUA supports the changes made to draft Rule 0 and the other draft rules that previously contained the phrase "waters of the state" or similar terminology. As explained in IWUA's June 26, 2015 comments on Combined Drafts 1 through 4 and Definitions (June 5, 2015), the definition of "waters of the state" is too broad to be applied to the NPDES program.

Rule 10.73. Receiving Waters. In addition to the changes that have already been made to this definition, it should make clear that receiving waters are: "Those waters of the United States to which there is a discharge of pollutants". Waters that are not "waters of the United States" are not jurisdictional under the Clean Water Act and should not be included in the definition of "receiving waters" to which pollutants are discharged pursuant to the NPDES permit program.

Rule 100.01. Rights. IWUA continues to support the language contained in draft Rule 100.01 and appreciates the Department's recognition of the authorities and protections referenced in this rule. In addition, consideration should be given to expressly requiring that these "necessary approvals, authorizations, or permits" be obtained and submitted to the Department before any permit to discharge is processed or issued. It should not be a condition that is left to be complied with only after discharges have already been commenced. Accordingly, IWUA suggests that this requirement be included in the completeness criteria of Rule 106.01, as described below.

Rule 101.01. Permit Term. The draft rule provides that a permit may be issued for a period of less than 5 years. It is unclear why the Department would issue a Pesticide General Permit (PGP) for less than 5 years. Given the regulatory burden involved with a shorter duration general permit, IWUA suggests that the PGP be issued for a period of 5 years and that this be clearly expressed in the rule.

Rule 102.02. Exclusions from Permit. Idaho Code Section 39-175B provides a statutory exclusion for "activities and sources not required to have permits by the United States environmental protection agency". This exclusion should be included in

the rule.

Rule 106.01. Completeness Criteria. Any "necessary approvals, authorizations, or permits" recognized under Rule 100.01 should be required as part of a complete permit application under Rule 106.01, prior to processing or issuance of a permit.

Rule 109.02. Public Comment. IWUA appreciates the Department eliminating the requirement that permit conditions be considered to "comply with the provisions of applicable federal laws". However, the draft rule still contemplates that such conditions may be necessary to comply with provisions of the Clean Water Act. The rule should set forth what specific legal authority, if any, exists for the Department to consider and incorporate conditions that the federal fisheries agencies believe are "necessary to avoid substantial impairment of fish, shellfish, or wildlife resources". In particular, the rule should cite the specific Clean Water Act provision or section of the Code of Federal Regulations which requires the Department to protect against such "substantial impairment" as part of the NPDES permit program. If no such authority exists, this rule should be eliminated.

Rule 110.02. Fee Schedule. IWUA supports the proposed fee schedule for "other general permits", including the Pesticide General Permit.

Rule 130.05. Administration. Draft Rule 130.05.c provides: "The Department may terminate, revoke, or deny coverage under a general permit, and require the discharger or applicant to apply for and obtain an individual IPDES permit. Any interested person may petition the Department to take action under this subsection." The Department should provide notice and an opportunity for the affected discharger or applicant to be heard before such a determination is made. As currently drafted, notice is provided under Rule 130.06 only after the decision to require an individual permit has already been made. This basic lack of due process should be corrected.

Rule 204.01. Petition for Review of a Permit Decision. The process for review set forth in this rule should also be extended to the Department's decision to terminate or revoke coverage under a general permit and require an individual permit. Alternatively, some other review mechanism should be provided. In all cases, an opportunity for judicial review of such a decision must be provided.

IWUA appreciates the opportunity to provide these comments and looks forward to continuing to work with the Department and other interested parties toward the completion of this important rulemaking.

Respectfully submitted,

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