



IDAHO MINING ASSOCIATION

P.O. Box 1660 • Boise, ID 83701
208.342.0031 • ima@idahominig.org

October 2, 2015

Paula Wilson
Department of Environmental Quality
1410 North Hilton
Boise, ID 83706-1255

Sent via email to Paula.Wilson@deq.idaho.gov

Dear Paula:

The Idaho Mining Association has over 60 members and represents companies engaged in mineral exploration, development, processing and reclamation throughout the state of Idaho. Many of our members are currently subject to EPA-issued individual NPDES Permits and general NPDES storm water permits. Our members will therefore be directly impacted when IDEQ obtains authorization to implement the IPDES program in Idaho.

The Idaho Mining Association appreciates IDEQ's efforts in putting together the comprehensive IPDES proposed rule. The proposed rule generally follows the Idaho Legislature's conditions for pursuing the Clean Water Act permitting program. Those conditions include assuring Idaho's program is no more stringent than minimum federal requirements while allowing IDEQ to exercise as much flexibility as possible in implementing the program. Our specific comments are below.

1. Definitions. Section 010

60. The references to "CGP" and "MSGP" for general permit notices should clarify these are "storm water" permits.

69. Primary Industry Category. Strike reference to the Settlement Agreement as it is no longer necessary.

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70. Privately Owned Treatment Works. Revise the definition to be consistent with 40 CFR 122.2. IDEQ's definition unnecessarily broadens the application of this concept.

107. Water Quality-Based Effluent Limitation (WQBEL). Revise to read: "An effluent limitation determined necessary to achieve applicable water quality criteria (e.g. aquatic life, human health, wildlife, translation of narrative criteria) for a specific point source after mixing to a specific receiving water."

Although IDEQ has incorporated by reference the EPA rules governing storm water discharges from certain industrial activities at 40 CFR 122.26, we think it would add clarity to specifically define (by reference if appropriate) the term "storm water discharge associated with industrial activity" as it is used throughout the proposed rule.

2. Effect of Permit. Section 100.02, Compliance. We recommend this section be expanded to provide permit shield protection for other applicable state laws.

3. Permit Duration. Section 101.02,b. The proposed rule stipulates permits which are administratively continued will be "high priority for completion." We do not believe IDEQ should dictate priority of its resources in the proposed rule with such specificity and request this be deleted.

4. Obligation to Obtain an IPDES Permit. Section 103.04, Exclusions. We recommend a catch-all exclusion be added which stipulates "and any other activities not required to obtain a NPDES Permit under the Clean Water Act." Such a provision assures IDEQ's implementation of the IPDES permit program will not go beyond the minimum requirements of federal law.

5. Permit Prohibitions. Section 103.02, EPA Objection. We believe any EPA objections to a permit must be lawfully supported and consistent with federal law. Therefore we recommend revising the section as follows: "When the Department has received written objection from the EPA Regional Administrator to issuance of the permit pursuant to 40 CFR 123.44 and until the objections are resolved pursuant to the procedures identified in the Memorandum of Agreement between EPA and the Department."

6. Application for Individual IPDES Permit. Section 105.07, and 08, discharges to POTWs. These two sections stipulate a requirement for industrial facilities to file an IPDES permit application for discharges to a POTW that does not have "an established and effective pretreatment program." It is unclear how an industrial

facility would know the status of a POTW pretreatment program. Moreover, we question whether a formal IPDES permit application would need to be filed for such an indirect discharge. Is this mandated by federal rules? If so, it should only apply to significant industrial users.

7. Public Notice and Comment. Section 109.j. This requires the adoption of a revised Fact Sheet for a Final Permit after public comment on a draft permit and Fact sheet. This does not seem necessary and will cause delays and more resources. Also, we do not believe EPA currently follows this practice. We recommend deleting this section.

8. General Permit. Section 130,01.b. Storm water discharges. For clarity this section should make clear general permits for storm water discharges should be confined to those storm water discharges associated with industrial activity pursuant to EPA rules. *See also* comment No. 1 above.

9. 06.b. Case By Case Determinations. This section cites "Section 308 of the Clean Water Act." We do not believe reference to Section 308 in the Clean Water Act is appropriate or necessary in the section and recommend it be deleted.

10. Renewal of IPDES Permit. We believe IDEQ should specifically reference in this section the water quality-based anti-backsliding exceptions referenced in Section 303(d)(4) of the Clean Water Act.

11. Appeal Process. Section 204.07, Augmenting the Administrative Record. We were disappointed IDEQ did not agree to include the limited exceptions to augmenting the administrative record advocated by the Idaho Association of Commerce and Industry. These exceptions to record review are well-recognized under federal law and are currently available to our members should they need to appeal (or defend an appeal) of an EPA issued NPDES Permit.

Finally, the appeals process revisions proposed in this rulemaking will likely require changes to the Environmental Protection and Health Act and the Administrative Procedure Act. Proposed changes that are inconsistent with current statutes need to be removed from this rulemaking while we seek legislative approval of statutory changes. This may then require the promulgation of a temporary rule. The IPDES program is important to our member, and we are willing to work with the Department to assist in this process.

Thanks for consideration of these comments.

Sincerely,

A handwritten signature in blue ink that reads "Jack Lyman". The signature is written in a cursive style with a large, prominent "J" and "L".

Jack Lyman
Executive Vice President