



October 2, 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 proposed rules implementing the Idaho Pollutant Discharge Elimination System Program (IPDES). The publication of proposed rules is a significant milestone for the State of Idaho towards having primacy for the issuance of water pollutant discharge permits. IACI has provided comments throughout the rulemaking process and has the following comments on the proposed rule.

Storm water Discharges

Section 010 – Definitions: The references to "CGP" and "MSGP" for general permit notices should clarify that these are “storm water” permits.

Section 010 – Definitions: add a definition for storm water discharge associated with industrial activity (reference 40 CFR 122.26.(b)(14).

Section 130 – General Permits: Language in 01.b.i. should be modified to make it clear that the storm water point source general permits are those associated with industrial activities pursuant to EPA rules.

Silviculture

Section 102 – Obligation to Obtain Permit: Language in 04.e. should include the words “forest roads”:

Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, forest roads, and forest lands.....

40 CFR 122.27 recognizes that natural runoff from forest roads does not require a point source permit.

Appeals Process and Administrative Record

Section 204 – Appeals Process: IACI has previously submitted comments on the appeals process including augmenting the administrative record (07). As pointed out in earlier comments, there are a number of very specific reasons that the rules should allow supplementation of the administrative record including: (a) explanation of technical terms and issues; (b) whether all relevant factors were considered by the Department; and (c) to address new issues raised during the public comment period, or changes to the permit were made by the Department. We do ask the Department to reconsider the IACI comments on criteria for augmenting the administrative record. *[IACI's prior comment letter is attached.]*

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 rule changes 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 membership, and we are willing to work with the Department to assist in this process.

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

Sincerely,



Alex LaBeau
President

attachment

cc: Alan Prouty, Chair
IACI Environment Committee



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