



**UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY  
REGION 10**

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OFFICE OF  
WATER AND  
WATERSHEDS

October 2, 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: U.S Environmental Protection Agency Comments on IDAPA 58.01.25 – Rule Regulating the Idaho Pollutant Discharge Elimination System (IPDES) Program

Dear Ms. Wilson:

The U.S Environmental Protection Agency (EPA) appreciates the Idaho Department of Environmental Quality's (DEQ) extensive work to develop the above-mentioned rules through the negotiated rule making process. The EPA believes that process has led to robust and comprehensive draft rules that will form a strong foundation for DEQ's IPDES program. EPA focused our review to changes from the previous draft version dated July 10, 2015 and comments that EPA provided on that version, dated July 24, 2015, that we believe may not have been fully addressed.

**Unresolved Comments on the Preliminary Draft Rule Dated July 24, 2015**

1. EPA's first two comments in its July 24, 2015 letter appear to be unaddressed in the most recent set of revised regulations. The first of these centered around the state's apparent failure to include an equivalent regulation to 40 CFR 123.35, and the second focused on the state's inclusion of definitions for "animal feeding operation", "concentrated animal feeding operation," "aquaculture project" and "concentrated aquatic animal production facility" even though the state had also incorporated the federal definitions by reference.
2. EPA's fourth comment in its July 24, 2015 letter seems to have been addressed in major part; the revised regulations have added "sewage" in front of "sludge." However, there is at least one place where this addition has not been made: 58.01.25.105.11.d. ii (5). EPA recommends checking elsewhere in the regulations to make sure that "sewage" is included in equivalent places to the federal regulations.
3. EPA's fifth comment in its July 24, 2015 letter seems to have been unaddressed. The definition of "upset" appears to have remained the same as the earlier version in the previous set of draft regulations.
4. EPA's fourteenth and fifteenth comments in its July 24, 2015 letter appear to have not been addressed. IDAPA 58.01.25.105.12(c) applies to POTWs and "other designated dischargers," while the comparable federal regulations at 40 C.F.R. 122.21(j)(5) only applies to POTWs. IDAPA 58.01.25.106.04(a) is not consistent with the federal requirement at 40 CFR 122.21(e) that provides that "an application is complete when the Director receives an

application form and any supplemental information which are completed to his or her satisfaction.”

### **Comments on the Draft Rule**

1. IDAPA 58.01.25.105.11.e ii does not appear to include a provision equivalent to 40 CFR 122.21(j)(3)(ii)(B), which requires that the name of the watershed/river/stream system and the 14-digit U.S. Soil Conservation Service watershed code be provided, if that information is known. This section of the state regulations also fails to include an equivalent to 40 CFR 122.21(j)(3)(ii)(C), which requires that the name of the State Management/River Basin and US Geological Survey 8-digit hydrologic cataloging unit code be provided, if that information is known.
2. The state regulations do not seem to include a requirement equivalent to 40 CFR 122.21(j)(10) that all applications must be signed by a certifying official.
3. The definition of equivalent dwelling unit as an alternative way of determining the population of a municipal entity may not be an appropriate substitute for the use of Census data. See e.g., IDAPA 58.01.25.105.11c.iv.
4. IDAPA 58.01.25.105.16b.iii does not appear to have an equivalent provision to 40 CFR 122.21(k)(6), which requires that applicants report the existence of any technical evaluation concerning wastewater treatment along with the name and location of known similar plants. An equivalent to 40 CFR 122.21(k)(7) also seems to be missing; this provision allows for the provision of any optional information that the permittee wishes to have considered.
5. IDAPA 58.01.25.107.01.a. This provision does not include the language in 40 CFR 124.6 which specifies that a notice of intent to deny a permit application is a draft permit that follows the same procedures as any other draft permit. While EPA understands that DEQ has incorporated the draft permit process to a notice of intent to deny a permit application, for clarity, EPA recommends that the regulation include a sentence similar to the language in 40 CFR 124.6 which specifically states that a notice of intent to deny a permit application is a draft permit.
6. IDAPA 58.01.25.201.03(i). Refer to EPA’s comment in the July 2015 comment letter. In EPA’s understanding of the provision, DEQ could change an effluent limit without considering such changes a major modification to the permit if (a) the change will not result in an actual/potential increase in the discharge of pollutant(s) and (b) the change will not result in a reduction in monitoring of a permit’s compliance with statute/regulations. EPA is concerned about due process issues in that a third party may not agree with DEQ’s conclusion that there will not be a change in the discharge of pollutants. In the response to comments document, DEQ responded to EPA’s previous comment indicating this provision is in the APDES regulations, which were approved as part of the program authorization and therefore should be acceptable for the IPDES regulations. EPA understands that the APDES regulations have this provision; however, it is unclear how/why the provision exists in the APDES regulations. EPA remains concerned that the IPDES regulations expand the scope of what is considered a minor modification and believes that the IPDES regulations should comport with the narrow scope of modifications that are considered minor.

7. IDAPA 58.01.25.301.02. This regulation is comparable to 40 CFR 122.42(b). The federal regulation only applies to POTWs. DEQ has expanded the regulation to include privately owned treatment works. In response to EPA's previous comments, DEQ stated that this was done because there are situations where a privately owned treatment works for a subdivision, for example, later becomes a publicly owned treatment works. If this were the case, as a new POTW, the formally privately operated system would be subject to the rule. Given this, EPA does not understand the need for or applicability of this rule to privately owned treatment works.
8. IDAPA 58.01.25.303.07. Intake credits are allowable for technology based effluent limits, but applying intake credits for water quality based analysis is inconsistent with CWA 301(b)(1)(C). However, EPA has allowed intake credits for water quality based analyses in very limited circumstances consistent with the Great Lakes Initiative (GLI) at Appendix F to Part 132—Great Lakes Water Quality Initiative Implementation Procedures. The EPA would like to work with DEQ to understand how your proposed regulatory language is consistent with the GLI and recommend that DEQ look at Oregon's NPDES permit provision (OAR 340-045-0105) since EPA worked closely with Oregon on this language. In the end, DEQ may need to develop more detailed implementation guidance to accompany the intake credit provision.
9. DEQ must ensure the IPDES rules incorporate new and revised federal regulations between now and the time of IPDES program authorization including:
  - a. The Sufficiently Sensitive Methods Rule finalized by EPA in June 2014, which added 40 CFR 122.21(e) (possible fit under 106), 40 CFR 122.21(g)(13) (possible fit under 304), 40 CFR 122.41(j)(1), and Part 136.1 (incorporated by reference under 003). <<https://www.federalregister.gov/articles/2014/08/19/2014-19265/national-pollutant-discharge-elimination-system-npdes-use-of-sufficiently-sensitive-test-methods-for>>
  - b. The Electronic Reporting Rule finalized by EPA in September 2015. <<http://www2.epa.gov/compliance/final-national-pollutant-discharge-elimination-system-npdes-electronic-reporting-rule>>
  - c. On August 5, 2015, the EPA Administrator signed a final rule updating six key areas of the federal water quality standards regulation which helps implement the Clean Water Act. The final rule was published in the Federal Register on August 21, 2015 (80 FR 51019). <[http://water.epa.gov/lawsregs/lawsguidance/wqs\\_index.cfm](http://water.epa.gov/lawsregs/lawsguidance/wqs_index.cfm)>. EPA recommends that DEQ review the new water quality standards revisions to ensure that there will not be any overlap or conflict between these new regulatory revisions and the IPDES regulations.
  - d. Other NPDES proposed regulatory revisions that may be finalized prior to DEQ's program authorization.

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,

A handwritten signature in blue ink, appearing to read "Michael J. Lidgard". The signature is fluid and cursive, with a large loop at the end.

Michael J. Lidgard, Manager  
NPDES Permits Unit

cc: Mary Anne Nelson, IPDES Program Manager (*sent to: mary.anne.nelson@deq.idaho.gov*)