

<p><b>Docket Number:</b> <u>58-0125-1401</u>  <b>Effective Date:</b> <u>2016 Sine die</u>  <b>Rules Title:</b> <u>Rules Regulating the Idaho Pollutant Discharge Elimination System</u>  <b>Agency Contact and Phone:</b> <u>Mary Anne Nelson, 373-0291</u></p>	<p style="text-align: center;"><b>Public Notice</b></p> <p><b>Hearings:</b> [ ]Yes [X ] No  <b>Locations and Dates:</b> N/A  <b>Written Comment Deadline:</b> 10/2/15</p>
<p><b>Descriptive Summary of Rule as Initially proposed:</b> This rulemaking has been initiated to implement Idaho Code § 39-175C, which directed DEQ to seek approval of a National Pollutant Discharge Elimination System (NPDES) program. These rules will be promulgated under a new DEQ rule chapter, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program," IDAPA 58.01.25.</p> <p>In order to gain approval of the program, DEQ must have rules in place that meet the requirements of the Clean Water Act and federal regulations. These rules will establish procedures for submitting permit applications, writing and issuing IPDES permits, filing appeals, fee structures, developing general permits, and other required components of an NPDES program. DEQ negotiated certain elements of the IPDES program including the permit application process, the appeals process, the fee structure, and compliance enforcement with IPDES permits. With respect to required NPDES program components, federal regulations have been incorporated by reference into the proposed rules.</p> <p>Incorporating the federal regulations by reference benefits the agency and simplifies the overall rule chapter by incorporating those sections of the federal regulations that must be adhered to in the course of developing an IPDES program. This reduces the overall costs of the rule and will allow the agency to adhere to the legally mandated deadline of submitting a complete application to EPA by September of 2016. The alternative to incorporating the federal regulations by reference is to restate the federal regulations in the new IPDES rules. This approach allows for the regulated public to have the entire rule set in one location rather than having to search out 40 CFR chapters. The downside is additional rulemaking pages and the associated annual rule administrative costs.</p> <p>Summary of Federal Regulations Incorporated by Reference is attached.</p>	<p><b>Negotiated Rule Making:</b> [ X ] Yes [ ] No  The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220 and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the November 2014 Idaho Administrative Bulletin, Vol. 14-11, and a preliminary draft rule was made available for public review. Eight meetings were held between December 2014 and July 2015. Members of the public participated in this negotiated rulemaking process by attending the meetings and by submitting written comments. A record of the negotiated rule drafts, written comments, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary is available at <a href="http://www.deq.idaho.gov/58-0125-1401">www.deq.idaho.gov/58-0125-1401</a>.</p> <p><b>Costs to the Agency:</b> IPDES program costs to the agency were estimated at \$2.5 million dollars in HB 406 Statement of Purpose and Fiscal Note that passed in the 2014 legislative session. Subsequent review and analysis of the overall programmatic resource needs has estimated the IPDES budget, when fully functional, to be \$3.0 million dollars. For state fiscal year 2015, the IPDES program budget was \$300,000. The fiscal note identified that the IPDES program will be funded by a combination of state, federal and fee based funding. Funding for fiscal year 2015 came from state general funds, and additional general funds will need to be requested in the upcoming fiscal years until the authority to collect fees and the actual collection of fees from the regulated community begins to fund the remaining portion of the IPDES program. The negotiated rulemaking addressed the IPDES fee structure and identified those sources of funding which will ultimately support the program.</p> <p><b>Costs to the Regulated Community:</b> Currently the portion of the program funded by IPDES fees collected from the regulated community is roughly 50% of the final estimated IPDES program budget. The negotiated rulemaking addressed the fee structure and identified the final responsibility for the program that will be funded by the regulated community.  As DEQ implements the IPDES program and collects fees based on the proposed fee schedule, it is expected that adjustments to the fee schedule will be necessary and will be done through the negotiated rulemaking process.</p>

**Fee Summary:** Pursuant to Section 39-175C(2), Idaho Code, the Board of Environmental Quality is authorized to proceed with negotiated rulemaking and all other actions that may eventually be necessary to obtain approval of a state NPDES program by the United States Environmental Protection Agency including rules authorizing the collection of reasonable fees for processing and implementing an NPDES permit program. Such fees shall not be assessed or collected until the state obtains an approved NPDES program consistent with the requirements of Section 39-175C, Idaho Code. Section 110 of the rule imposes an annual fee which must be paid for each year beginning one year after the effective date of the IPDES program for the affected category of discharger.

DEQ recommends that the Board adopt the rule, as presented in the final proposal, as a pending rule with the final effective date coinciding with the adjournment *sine die* of the Second Regular Session of the Sixty-third Idaho Legislature. The rule is subject to review by the Legislature before becoming final and effective.

**Relevant Statutes:** Idaho Code § 39-175C

**Idaho Code § 39-107D Statement:** This rule is not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

**Fiscal Impact Statement:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.

Temporary Rule       Necessary to protect public health, safety or welfare  
 Compliance with deadlines in amendments to governing law or federal programs  
 Conferring a benefit

Docket Number: 58-0125-1401

**See attached Response to Comments.**

Section	Section Title	Summary of Rule Changes Based on Public Comment
000.	LEGAL AUTHORITY	These sections have not been changed.
001.	TITLE AND SCOPE	
002. 003.	CONFIDENTIALITY OF RECORDS INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS	
003.	INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS	
004.	ADMINISTRATIVE PROVISIONS	
005.	WRITTEN INTERPRETATIONS	
006.	OFFICE HOURS	
010.	DEFINITIONS	This section has been changed.
050.	COMPUTATION OF TIME	This section has not been changed.
090.	SIGNATURE REQUIREMENTS	This section has been changed.
100.	EFFECT OF A PERMIT	This section has not been changed.

101.	<b>DURATION</b>	These sections have been changed.
102.	<b>OBLIGATION TO OBTAIN AN IPDES PERMIT</b>	
103.	<b>PERMIT PROHIBITIONS</b>	
104.	<b>PRE-APPLICATION PROCESS</b>	
105.	<b>APPLICATION FOR AN INDIVIUDAL IPDES PERMIT</b>	
106.	<b>INDIVIDUAL PERMIT APPLICATION REVIEW</b>	
107.	<b>DECISION PROCESS</b>	
108.	<b>DRAFT PERMIT AND FACT SHEET</b>	
109.	<b>PUBLIC NOTIFICATION AND COMMENT</b>	
110.	<b>FEE SCHEDULE FOR IPDES PERMITTED FACILITIES</b>	
120.	<b>NEW SOURCES AND NEW DISCHARGES</b>	
130.	<b>GENERAL PERMITS</b>	These sections have been changed.
200.	<b>RENEWAL OF IPDES PERMITS</b>	
201.	<b>MODIFICATION, OR REVOCATION AND REISSUANCE OF IPDES PERMITS</b>	These sections have not been changed.
202.	<b>TRANSFER OF IPDES PERMITS</b>	
203.	<b>TERMINATION OF IPDES PERMITS</b>	
204.	<b>APPEALS PROCESS</b>	This section has been changed.
205.	<b>CONTESTED PERMIT CONDITIONS</b>	These sections have not been changed.
206.	<b>STAYS OF CONTESTED PERMIT CONDITIONS</b>	

<b>300.</b>	<b>CONDITIONS APPLICABLE TO ALL PERMITS</b>	These sections have been changed.
<b>301</b>	<b>PERMIT CONDITIONS FOR SPECIFIC CATEGORIES</b>	
<b>302.</b>	<b>ESTABLISHING PERMIT PROVISIONS</b>	
<b>303.</b>	<b>CALCULATING PERMIT PROVISIONS</b>	
<b>304.</b>	<b>MONITORING AND REPORTING REQUIREMENTS</b>	This section has not been changed.
<b>305.</b>	<b>COMPLIANCE SCHEDULES</b>	This section has been changed.
<b>310.</b>	<b>VARIANCES</b>	This section has not been changed.
<b>370.</b>	<b>PRETREATMENT STANDARDS</b>	This section has been changed.
<b>380.</b>	<b>SEWAGE SLUDGE</b>	These sections have not been changed.
<b>400.</b>	<b>COMPLIANCE EVALUTATION</b>	
<b>500.</b>	<b>ENFORCEMENT</b>	
<b>600.</b>	<b>ADMINISTRATIVE RECORDS AND DATA MANAGEMENT</b>	

## Response to Comments

### Docket 58-0125-1401 – IPDES Proposed Rules

October 2, 2015 comment deadline

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#### Idaho Department of Environmental Quality (DEQ):

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**In addition to the following responses to comments received on the proposed IPDES rules, DEQ has made the following changes to further improve the clarity, accuracy, usefulness, of the rules:**

1. *The rules now require the submission of latitude and longitude to the nearest second (when latitude and longitude are required by the rules). The rules (and CFR) were previously inconsistent and required latitude and longitude nearest second or the nearest fifteen (15) seconds, depending on the specific application.*
2. *Subsection 105.06.c has replaced the reference to “North American Industry Code System (NAICS)” with “Standard Industrial Classification (SIC),” which mirrors 40 CFR 122.21(f)(3).*
3. *Subsection 105.15.f was changed to require, “The name of each receiving water ~~according to the National Hydrography Dataset.~~” Requiring the name, latitude, and longitude coordinates will be sufficient for DEQ to accurately determine location of each discharge to a receiving water.*
4. *Subsection 105.16.a.viii was removed because it was a duplicative requirement of Section 090 (Signature Requirements).*
5. *Employer Identification Number (EIN) was added to Subsections 105.06.d, 105.11.c.ii, 105.17.b.ii, 105.18.a.i, and 130.05.b.iv(1) because DEQ will need this information to accurately process permit applications and NOIs from owners and operators applying for permit coverage for multiple facilities or activities.*
6. *References to statutory deadlines which have passed and are no longer applicable have been removed (e.g. Subsection 305.01.a).*
7. *Grammatical, formatting, abbreviation, acronym, reference, and CFR corrections have been made throughout the rules.*

#### Idaho Association of Commerce and Industry (IACI):

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

*The definition of “Notices of Intent to Obtain Coverage Under an IPDES General Permit” has been changed to “...a. Storm Water Construction General Permit (CGP); b. Multi-Sector General Permit (MSGP) for Industrial Storm Water Requirements;...”*

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

*Because all of 40 CFR 122.26(b) has been incorporated by reference into the IPDES rules, the definition of storm water discharge associated with industrial activity in 40 CFR 122.26(b)(14) has also been incorporated by reference.*

- c. 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.

*Subsection 130.01.b mirrors the language in 40 CFR 122.28(a)(2). It is also possible that storm water point source general permits may be associated with non-industrial activities.*

## 2. **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.

*Subsection 102.04.e mirrors 40 CFR 122.3(e,) which does not specifically identify forest roads or other roads. However, the definition of “Silvicultural Point Source” in Section 010 (Definitions) mirrors 40 CFR 122.27(b) and specifically lists non-point source silvicultural activities, “...such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a Clean Water Act section 404 permit.” DEQ has also incorporated 40 CFR 122.27 by reference, (See Subsection 003.02.f) which includes the reference to natural runoff from forest roads.*

## 3. **Appeals Process and Administrative Record**

- a. 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. [See IACI's letter to DEQ on July 24, 2015]

*Federal regulations that provide for a right to appeal EPA permit decisions to the Environmental Appeals Board do not allow an opportunity for augmentation of the administrative record. DEQ is offering a right to augment the record not allowed under the currently applicable federal administrative appeal procedure. The augmentation provisions included in the rule are essentially identical to the provisions for augmentation in the Idaho Administrative Procedures Act (APA), Section 67-5276, Idaho Code and the provisions for augmentation for judicial review under the Clean Water Act section 509(c).*

*Therefore, the Department does not agree that additional opportunities for augmentation should be included in the rule because:*

- (1) DEQ added to Section 109.02.h as an opportunity for the applicant to add additional information to the record to respond to issues and comments raised during the public comment period;*
- (2) DEQ has already included a right to further augment the record that is not available under the current federal NPDES administrative appeal provisions;*
- (3) the augmentation provisions mirror the right to augment the record allowed under the Idaho APA and the Clean Water Act judicial appeal provisions;*
- (4) DEQ is concerned that additional exceptions may defeat the intent of the rule, supported by the negotiated rulemaking committee, to restrict the appeal to a record review; and*
- (5) It would be impossible to capture in this rule, the court created exceptions to a record review noted by IACI.*

*As IACI notes, the federal courts do allow in limited circumstances the administrative record to be supplemented during judicial review of an agency action. Given the explicit language in section 509 of the Clean Water Act (which is similar to the record supplement language DEQ uses) it is unclear whether the exceptions noted by IACI are applicable to judicial appeals of NPDES permits governed by section 509. Even if the courts apply these exceptions to NPDES permit appeals, the courts have provided explanation and further limits on the application of these exceptions that appear to be dependent upon the particular type of challenge asserted and that are not captured by or necessarily consistent with the description provided by IACI. See, e.g., *Klamath-Siskiyou Wildlands Center v. USFS*, 2006 WL 1991414 (E.D.WA 2006)(test to supplement the record different in NEPA cases); *Sierra Club v. McLerran*, 2012 WL 5449681 (W.D.WA 2012)(Test to supplement the record different in APA failure to act cases); *National Mining Association v. Jackson*, 856 F.Supp2d 150 (D.C. District 2012).*

*It would be very difficult if not impossible to capture in this rule the full extent of the courts' various interpretations and applications of the circumstances under which a record may be supplemented on judicial review.*

- b. 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.

*Thank you for your support. DEQ has drafted changes to the Environmental Protection and Health Act to ensure that the appeal process is consistent with the controlling statutes. The proposed changes are attached. The rule will not be effective until after the legislative session, at which time the needed statutory changes will have been acted on by the legislature. Therefore, the appeal process in the rule will only be effective if and when the legislature authorizes the process.*

#### Idaho Mining Association (IMA):

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**1. Definitions. Section 010**

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

*Please see response to IACI comment #1a.*

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

*The definition has been changed to, "Any industry category listed in ~~the NRDC settlement agreement (Natural Resources Defense Council et al. v. Train, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in a~~Appendix A of 40 CFR Part 122."*

- c. 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.

*The definition in 40 CFR 122.2 is confusing. The definition provided in the IPDES rules is intended to clarify, but not broaden the application of the concept.*

- d. 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."

*The definition for WQBEL in the IPDES rules comes from the 2010 EPA Permit Writers' Manual and was recommended by EPA as a definition that is consistent with NPDES program requirements. Moreover, the use of mixing or dilution to determine the need for or level of a WQBEL is something DEQ determines on a case-by-case basis—there are circumstances under which mixing may not be allowed. See WQS, IDAPA 58.01.02.060. Therefore, defining WQBEL as a limit determined necessary after mixing is not accurate or appropriate.*

- e. 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.

*Please see response to IACI comment #1b.*

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

*During the negotiated rulemaking process, DEQ received comments suggesting that Section 100 (Effect of a Permit) provide that an IPDES permit does not excuse a person from complying with other applicable laws. DEQ also does not agree that compliance with an IPDES permit should shield a person from compliance with all other applicable laws. Subsection 100.01 addresses these issues by stating, “The issuance of, or coverage under, an IPDES permit does not...authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations...does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity, and does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits.”*

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.

*This language has been removed from the IPDES rules.*

4. **Obligation to Obtain an IPDES Permit. Section 1032.04, 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.

*Subsection 102.05 (formerly 102.04) has been changed to, “...The Department will not require persons to obtain IPDES permits for facilities or activities that are not required to have obtain NPDES permits from EPA under the Clean Water Act and federal Clean Water Act regulations...”*

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.”

*Subsection 103.02 has been changed to, “When the Department has received written objection pursuant to 40 CFR 123.44 from the EPA Regional Administrator to issuance of the permit, and the Department has not addressed the objections to the satisfaction of the EPA*

~~Regional Administrator~~ *and until the objections are resolved according to the process 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.

*Subsections 105.07.a and 105.07.08.a have been removed from the IPDES rules. The original intent of these subsections is already addressed by Subsection 301.02, which mirrors 40 CFR 122.42(b). This subsection of the rules states that it is the POTW’s responsibility to notify the Department and provide information regarding the quality and quantity of effluent introduced into the POTW and any anticipated impacts to the quantity or quality of effluent to be discharged from the POTW.*

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.

*Subsection 109.01.j has been removed from the IPDES rules. However, the following additions have been made to Subsections 107.03 and 107.04 to clarify that fact sheets will be revised as appropriate to correspond with permit changes. DEQ intends to revise fact sheets along with permits so that they contain accurate and corresponding information. EPA does not currently revise fact sheets as such, but DEQ believes this will benefit IPDES users and will not require much additional resources because fact sheet revisions will be based on changes already being made to permits.*

- *Subsection 107.03, “After the close of the public comment period on a draft permit, the Department will make appropriate changes in response to comments, and generate a proposed permit and fact sheet,” and*
- *Subsection 107.04, “After the close of the public comment period on a draft permit, and after receipt of comments on the proposed permit, if any, from EPA, the Department shall issue a final permit decision and fact sheet.”*

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.

*Please see the response to IACI comment #1c.*

9. **Section 130.06.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.

*Subsection 130.06.b mirrors the language in 40 CFR 124.52(c), including the reference to section 308 of the Clean Water Act, which identifies other information DEQ may require the applicant to submit prior to making a case-by-case determination. In addition, Subsection 130.06.b has been changed to, "...other information regarding the discharge ~~under~~ described in the Clean Water Act section 308."*

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.

*Subsection 200.02 has been modified and Subsection 200.03 has been added to address anti-backsliding effluent limit conditions and exceptions identified in Clean Water Act sections 402(o) and 303(d)(4).*

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.

*Please see the response to IACI comment #3a.*

12. 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.

*Thank you for your support. Please see response to IACI comment #3b.*

#### Idaho Rivers United (IRU):

1. These rules must meet the requirements of the Clean Water Act and other federal regulations regarding water quality and resource protection.

*The IPDES rules have been developed to ensure they are consistent with the Clean Water Act and federal regulations, but are not "...more stringent or broader in scope than the clean water act and regulations adopted..." as specified in Section 39-175B, Idaho Code.*

2. **Section 500 Enforcement** – In order to protect Idaho’s rivers and waterways, to encourage compliance with IDPES permits and ensure Idaho not become the place where it’s cheap to pollute, Idaho should adopt rules that provide for IPDES penalties equal to or more stringent than those allowed under federal rules. The Idaho rule limits penalties from some violations at less than one third of the federal limit.

Penalties need to be very stiff in order to encourage full compliance with permit limits 24/7/365. Once pollution enters a waterway the damage is done. The fish and insects that live in the river can’t evacuate. Rivers can’t be razed and rebuilt. Hazmat teams arriving hours after a spill are powerless to capture the pollution. It’s impossible to clean up an e coli exceedance or a discharge of sediment.

Most violations are preventable with proper operations and maintenance and with the right attitude. Idaho should impose stiff penalties on IPDES violators to make it clear that, in Idaho, water pollution will not be tolerated.

*The enforcement authorities that states must have to operate an EPA-approved NPDES program are set forth in 40 CFR 123.27, including the minimum penalty authorities. DEQ’s enforcement authorities as set forth in Sections 39-108(5)(a)(ii) and 39-117(3), Idaho Code, meet the minimum requirements of 40 CFR 123.27. In addition, DEQ will be proposing legislation to ensure it can utilize the enforcement authorities it has under the Environmental Protection and Health Act in the IPDES program.*

## U.S. Environmental Protection Agency (EPA):

### **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.
  - a. The first of these centered around the state’s apparent failure to include an equivalent regulation to 40 CFR 123.35, and...

*A new Subsection 102.04 has been added to the IPDES rules to address the designation of small MS4s as identified in 40 CFR 123.35. Other relevant information 40 CFR 123.35 is already captured under 40 CFR 122.26, 122.30, and 122.32 through 122.37, which are incorporated by reference into the IPDES rules.*

- b. ...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.

*DEQ acknowledges that the referenced definitions are included in sections of the CFR that have been incorporated by reference; however, DEQ is including them in the IPDES rules for the convenience and benefit of the users.*

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" sludge is included in equivalent places to the federal regulations.

*Subsection 105.11.d.ii(5) has been changed to, "Sewage sludge..." and DEQ has checked the remaining IPDES rules to ensure "sewage sludge" 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.

*As requested by EPA, DEQ has included the term "technology-based" into the definition of "Upset" in Section 010 (Definitions) and in Subsection 300.14.a (Upset Terms and Conditions), which now mirror the language in 40 CFR 122.41(n).*

4. EPA's fourteenth and fifteenth comments in its July 24, 2015 letter appear to have not been addressed.
  - a. IDAPA 58.01.25.105.12(c) applies to POTW's and "other designated dischargers," while the comparable federal regulations at 40 C.F.R. 122.21(j)(5) only applies to POTWs.

*The term "other designated dischargers" has been removed from Subsection 105.12, to be consistent with 40 CFR 122.21(j)(5). However, Subsection 105.11 continues to include "...POTWs and Other Dischargers Designated by the Department." During the rulemaking process, the Department received comments that this term is necessary to adequately address other discharges that may not fall into a specifically-identified category within the rules. Additionally, this term may allow the Department to permit privately owned domestic sewage treatment works similarly to POTWs. The wastewater characterization and effluent quality being generated and discharged by these privately owned domestic sewage treatment works is similar to those of POTWs, therefore, meriting the same regulatory approach.*

- b. 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."

*The following has been added Subsection 106.01, "...An application is complete when an application form and any supplemental information are completed and submitted to the Department's satisfaction..."*

## **Comments on the Draft Rule**

11. 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 equivalent 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.

*DEQ has the tools, expertise, and ability to pinpoint the waterbody assessment unit identification and other necessary locational features by simply requiring applicants to provide latitudes and longitudes. DEQ believes the additional information is neither necessary nor helpful for IPDES permitting, compliance, inspection, or enforcement purposes.*

12. 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.

*Subsection 090.01 has been changed to, “All IPDES permit applications and notices of intent must be signed by a certifying official as follows.” Subsection 105.11.i previously supported similar language, which has now been removed.*

13. 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.

*DEQ intends to use the Equivalent Dwelling Units (EDUs), developed using census data, only as a method to develop fee schedules for publicly and privately owned treatment works. Further, Subsection 105.11.c.iv largely mirrors 40 CFR 122.21(j)(1)(iv), which does not specifically identify the use of census data. Alternatively, the CFR references census data in specific sections pertaining to storm water (e.g. 40 CFR 122.26 and 122.32 – 37), which DEQ has incorporated by reference.*

14. 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 applications 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.

*Equivalent language to 40 CFR 122.21(k)(6) is present in Subsection 105.16.a.vi. Equivalent language to 40 CFR 122.21(k)(7) is present in Subsection 105.16.a.vii.*

15. 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 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.

*Subsection 107.01 .a has been changed to, “A notice of intent to deny the permit application shall be issued; A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit...”*

16. IDAPA 58.01.25.201.03(i). Refer to EPA’s comments 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.

*During the negotiated rulemaking process, DEQ received comments that the inclusion of Section 201.03.i was necessary to address other potential minor modifications not specifically identified in the IPDES rules. Subsection 201.03.i was adapted directly from Alaska’s Pollutant Discharge Elimination System (APDES) rules (18 AAC 83.145(a)(6)) and recently approved by EPA Region 10. The proposed IPDES rules for dealing with permit modifications in Subsection 201.03 (Minor Modifications of Permits) are minor in nature. As illustrated in section 6.4.1, paragraph 15, of the 2008 APDES program description, this provision requires that any modification the Department may approve as minor is, in fact, minor in nature. Under Subsection 201.03.i, the permit writer may only process a minor modification if the proposed change will have no potential for additional deleterious impact on the environment or will not reduce the ability to confirm a permittee’s compliance with applicable requirements. If the proposed change could not meet these regulatory requirements, or fit into one of the other categories listed in Subsection 201.03, the proposed change cannot be processed as a minor modification and must be processed in accordance with the draft permit and public notice requirements set forth in Subsections 201.01 (Procedures to Modify, or Revoke and Reissue Permits), 201.02 (Causes to Modify, or Revoke and Reissue Permits), 108 (Draft Permit and Fact Sheet), and 109 (Public Notification and Comment).*

*Below is an example list of potential permit provisions that could be changed under Subsection 201.03.i.:*

- *Approving the use of a more sensitive analytical methodology for discharge monitoring;*
- *Changing a date (but not less frequent) when an emergency response and public notification plan must be developed and written;*

- *Changing dates (but not less frequent) when DMRs, QAPPs, and O&M Plans must be submitted;*
- *Changing units (e.g. ug/l to ng/l) to address more sensitive methods being applied from Part 136;*
- *Changing from grab samples to composite samples or continuous monitoring;*
- *Adding information required as a record of monitoring information;*
- *Requiring an Operation and Maintenance Plan or QAPP in a permit where it was not included as a special condition;*
- *Requiring the submission of electronic data rather than allowing it as a possible option;*  
*or*
- *Changes to Signatory Requirements to align with the eReporting Rule.*

17. 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.

*The references to “privately-owned treatment works” have been removed from Subsection 301.02.*

18. IDAPA 58.01.25.303.07. Intake credits are allowable for technology based effluents 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 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.

*Subsection 303.07 has been modified to more-closely mirror Oregon’s NPDES permit provision (OAR 340-045-0105) regarding intake credits.*

19. 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>

*Subsection 106.02, Sufficiently Sensitive Methods, has been added to the IPDES rules, which mirrors 40 CFR 122.21(e)(3).*

- 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>.

*DEQ is working to ensure that the IPDES rules and implementation are consistent with all applicable federal regulations, including the Electronic Reporting Rule. Description of how the IPDES program will adhere to these requirements will be further addressed in the IPDES program description and subsequent guidance.*

- 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 and the IPDES regulations.

*DEQ will continue to review changes to water quality standards and other federal regulations to ensure there will be no overlap or conflict with the IPDES rules.*

- d. Other NPDES proposed regulatory revision that may be finalized prior to DEQ's program authorization.

*DEQ will continue to work with EPA to ensure that the IPDES program is consistent with other NPDES regulatory revisions that may be finalized prior to and after DEQ's program authorization.*

#### Idaho Water Users Association (IWUA):

1. **Rule 03. Incorporation by Reference.** Proposed Rule 3.02.aa incorporates the term "waters of the U.S." as defined in the Code of Federal Regulations. Of course, "waters of the U.S." is a federal agency interpretation of the term "navigable waters" as defined in the federal Clean Water Act ("the term 'navigable waters' means the waters of the United States. . ."). The federal agency interpretation is necessarily limited by the statutory definition. Accordingly, the rule should incorporate the term "navigable waters" as defined in the federal Clean Water Act, or otherwise refer to the federal Clean Water Act, not just the Code of Federal Regulations.

*In order to obtain approval of the program, DEQ must have the authority to issue permits covering the same discharges permitted under the federal NPDES program. The federal program limits are defined by the terms waters of the United States, as defined in 40 CFR 122.2. This does not mean, however, that Idaho agrees with EPA's recent changes to the definition of Waters of the United States and, in fact, Idaho is one of the States that have challenged the new*

regulation. Ultimately, the appropriate definition of Waters of the United States will be determined by the courts.

- 2. Rule 100.01. Rights.** IWUA supports the language contained in Proposed Rule 100.01 and appreciates the Department's recognition of the authorities and protections referenced in this rule. In addition, IWUA supports language requiring that such approvals 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. Department approval of a permit does not grant or serve in place of any other required permission. This should be made clear.

*Subsection 100.01 clearly identifies that, "...The issuance of, or coverage under, an IPDES permit does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity, and does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits."*

*However, to more fully address IWUA's concerns, DEQ will add a component to all application forms (probably a checkbox), in which applicants must acknowledge that they fully understand the implications of IDAPA 58.01.25.100.01 and they accept responsibility for ensuring that all other necessary approvals, authorizations, or permits have been obtained. This verification will be on the application forms in proximity to where applicants are required to identify the receiving water and will be an official part of the application forms that must be signed by certifying officials under penalty of law, in accordance with Section 090 (Signature Requirements).*

- 3. Rule 102.04. 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". Proposed Rule 102.04 provides: "The Department will not require IPDES permits for facilities or activities not required to have permits under the Clean Water Act and federal Clean Water Act regulations." IWUA is concerned that the exclusion provided for in the Proposed Rule may not be as broad as that provided for in Idaho Code. An EPA interpretation that a permit is not required may or may not be contained in a federal regulation, at least initially. In such cases, EPA is still not requiring a permit. Under the Idaho statute, if EPA doesn't require a discharge permit, the Department cannot require one. The Proposed Rule should be modified to include clarifying language. One possibility would be to add a new subsection 102.04.i to the list of exclusions as follows: "Any activity or source that is not required to obtain an NPDES permit by the United States environmental protection agency".

*Please see the response to IMA comment #4.*

- 4. Rule 105. Application for an Individual IPDES Permit.** The IPDES permit application should identify: any water conveyance facilities (e.g., canals, ditches, drains, pipes, etc), not owned or operated by the applicant, that the applicant proposes to utilize as part of the proposed discharge; the owner and operator of such facilities; whether the owner and operator of the facilities have been notified; and whether the necessary

approvals, authorizations or permits have been obtained from the owner and operator to utilize the facilities.

*Please see response to IWUA comment #1. Also, the IPDES rules require that applicants for individual permits and coverage under general permits identify the receiving water for their discharge.*

5. **Rule 109.02.** Public Comment. Proposed Rule 109.02.d authorizes the Department to include conditions in the permit that the federal fisheries agencies believe are "necessary to avoid substantial impairment of fish, shellfish, or wildlife resources", if the Department determines such conditions are "necessary to comply with the provisions of the Clean Water Act". IWUA is unaware of any provision in the Clean Water Act or federal regulations requiring such "substantial impairment" conditions to be included in a point source discharge permit. If such a provision exists, it should be identified in the rule. If not, this provision should be eliminated from the rule as being more stringent or broader in scope than the Clean Water Act.

*IPDES permits must ensure compliance with Idaho Water Quality Standards (WQS). WQS include aquatic life and wildlife habitat beneficial uses (IDAPA 58.01.02.100) and numeric and narrative criteria to protect the uses. The narrative criteria are set to avoid an impairment of designated uses (IDAPA 58.01.02.200) and the WQS prohibit discharges that will injure designated or existing uses (IDAPA 58.01.02.080.01.b). A permit that results in substantial impairment of fish, shellfish or wildlife resources may be determined by DEQ to result in impairment of the aquatic life or wildlife habitat uses protected under state WQS. Under these circumstances, conditions would have to be included in the permit to avoid a violation of WQS (IPDES draft rules Section 103.04). Further, IPDES draft rules Section 109.02.d is adapted from 40 CFR 124.59(b), which is required for NPDES program authorization under 40 CFR 123.25.*

6. **Rule 110.02. Fee Schedule.** IWUA supports the proposed fee schedule for "Other General Permits", including any pesticide general permit.

*Thank you for your support.*

7. **Rule 130.06. Case-by-Case Requirements for Individual Permits.** Proposed Rule 130.06 authorizes the Department to require anyone who has been covered by a general permit to now obtain an individual permit. This decision can be made by the Department without any prior notice or opportunity to be heard. Recognizing the hardship that could be caused in this narrow category of cases, the Proposed Rule should be revised to provide notice and an opportunity to be heard before a decision is made by the Department. The Proposed Rule appropriately provides an opportunity to appeal the Department's decision as provided in Proposed Rule 204 (Appeals Process). However, this is no replacement for the right to be heard by the Department in the first instance, before the decision is made, in this specific, narrow category of cases.

*The rule does require that DEQ notify the person, in writing, that an application for an individual permit is required. DEQ has added in section 204.27.c the right for a person to*

*appeal DEQ's determination to terminate, revoke or deny coverage under a general permit and to require application for an individual permit.*

# **Idaho Pollutant Discharge Elimination System (IPDES)**

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Summary of Federal Regulations Incorporated  
by Reference



**State of Idaho  
Department of Environmental Quality**

**October 2015**



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# Summary of Federal Regulations Incorporated by Reference

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## 1 Introduction

In order to gain approval for the Idaho Pollutant Discharge Elimination System (IPDES) program, DEQ must put in place provisions that are as stringent as those required by federal law and federal regulations. The Idaho legislature has also mandated that state rules to implement the IPDES program not be more stringent or broader in scope than the Clean Water Act (CWA) and code of federal regulations (CFR). Two of the key decisions needed for developing the IPDES program are: (1) identifying those provisions required by the federal regulations that DEQ can and should modify or rewrite to reflect an Idaho specific program, and (2) for those required provisions that DEQ determines should not be modified or rewritten, determining how to best reflect those provisions in Idaho program rules (IDAPA 58.01.25).

The decision regarding whether to modify or rewrite the provisions in federal regulations depends upon: (1) whether there is enough flexibility in the federal requirement to allow DEQ to modify or rewrite the federal provision and still be as stringent as necessary to gain program approval, (2) whether DEQ has the expertise to craft a new requirement, (3) the benefits to be gained by modifying or rewriting the federal requirement, and (4) whether, given the Idaho statutory deadline for submitting the IPDES program to EPA for approval and the resources available to DEQ, it makes sense to modify or rewrite the federal requirements.

The implications of this decision will directly affect the workload, cost, effectiveness, and convenience for DEQ, IPDES permittees, and the citizens of Idaho (hereafter, referred to as “users”). There is no perfect solution, but DEQ’s recommended hybrid option, should result in the overall greatest program benefits.

DEQ submitted to its negotiated rulemaking committee a list and summary of federal regulations proposed for incorporation by reference. This list was negotiated with the committee and the following summary of the incorporated regulations is compiled for the DEQ Board and the Idaho Legislature.

### Examples from Other States

Alaska is the most recent state to obtain National Pollutant Discharge Elimination System (NPDES) primacy in 2008. Alaska has one of the most comprehensive lists of rules incorporated by reference, in addition to adopting state-specific rules.

Arizona is the second-most recent state to obtain NPDES primacy in 2002 and 2004. Arizona has a comprehensive list of rules incorporated by reference, in addition to adopting state-specific rules.

Montana obtained NPDES primacy in stages from 1974-1983 and has primarily written state-specific NPDES rules, but also references CFRs throughout.

Oregon obtained NPDES primacy in stages from 1973-1982 and has primarily written state-specific NPDES rules, but also references CFRs throughout.

Utah obtained NPDES primacy in 1987 and 1996. Utah has a comprehensive list of rules incorporated by reference, in addition to adopting state-specific rules.

Washington obtained NPDES primacy in stages from 1973-1989 and has primarily re-written its NPDES rules, but also references CFRs.

## 2 NPDES rules incorporated by reference into Alaska, Arizona, and Utah state administrative codes.

Alaska	Arizona	Utah	CFRs Incorporated by Reference
	✓		40 CFR 122.7 (Confidentiality Information)
	✓		40 CFR 122.21, except 40 CFR 122.21(a) through (e) and (l) (Application for a Permit)
		✓	40 CFR 122.21(i) (...Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities)
	✓		40 CFR 122.22 (Signatories to Permit Applications and Reports)
✓		✓	40 C.F.R. 122.23 (Concentrated Animal Feeding Operations)
		✓	40 CFR 122.23(a)
		✓	40 CFR 122.23(b)(3)
		✓	40 CFR 122.23(b)(5)
		✓	40 CFR 122.23(b)(7)
		✓	40 CFR 122.23(b)(8)
		✓	40 CFR 122.23(c)
		✓	40 CFR 122.23(d)(2)
		✓	40 CFR 122.23(e)
		✓	40 CFR 122.23(h)
✓			40 C.F.R. 122.25 (Aquaculture Projects)
✓			40 C.F.R. 122.26 (Storm Water Discharges)

Alaska	Arizona	Utah	CFRs Incorporated by Reference
	✓		40 CFR 122.26, except 40 CFR 122.26(c)(2), and 40 CFR 122.26(e)(2)
		✓	40 CFR 122.28(b)(2) (General Permits)
✓	✓		40 C.F.R. 122.29(d) (Effect of Compliance with New Source Performance Standards)
✓			40 C.F.R. 122.30 - 40 C.F.R. 122.37 (Requirements and Guidance for Small Municipal Separate Storm Sewer Systems)
		✓	40 CFR 122.30
	✓	✓	40 CFR 122.32
	✓	✓	40 CFR 122.33
	✓	✓	40 CFR 122.34
	✓	✓	40 CFR 122.35
		✓	40 CFR 122.36
	✓		40 CFR 122.41, except 40 CFR 122.41(a)(2) and (a)(3) (Conditions Applicable to all Permits)
	✓		40 CFR 122.42 (Additional Conditions Applicable to Specified Categories of NPDES Permits)
✓		✓	40 C.F.R. 122.42(e) (Additional Conditions Applicable to NPDES Permits for Concentrated Animal Feeding Operations)
	✓		40 CFR 122.43 (Establishing Permit Conditions)
	✓		40 CFR 122.44 (Establishing Limitations, Standards, and other Permit Conditions)
	✓		40 CFR 122.45 (Calculating NPDES Permit Conditions)
	✓		40 CFR 122.47 (Schedule of Compliance)
	✓		40 CFR 122.48 (Requirements for Recording and Reporting of Monitoring Results)
	✓		40 CFR 122.50 (Disposal of Pollutants into Wells, into Publicly Owned Treatment Works or by Land Application)
	✓		40 CFR 122.62(a) and (b) (Modification or Revocation and Reissuance of Permits)
		✓	40 CFR 122.62(a)
		✓	40 CFR 122.63(h) (Minor Modifications of Permits)
✓			Appendix A to 40 C.F.R. Part 122 (NPDES Primary Industry Categories)
✓			Appendix C to 40 C.F.R. Part 122 (Criteria for Determining a Concentrated Aquatic Animal Production Facility)
✓			Appendix D to 40 C.F.R. Part 122 (NPDES Permit Application Testing Requirements)

Alaska	Arizona	Utah	CFRs Incorporated by Reference
✓			Appendix J to 40 C.F.R. Part 122 (NPDES Permit Testing Requirements for Publicly Owned Treatment Works)
	✓		40 CFR 124.8, except 40 CFR 124.8(b)(3); (Fact Sheet)
	✓		40 CFR 124.56 (Fact Sheets)
	✓		40 CFR 125, subparts A, B, D, H, and I (Criteria and Standards for the National Pollutant Discharge Elimination System)
✓			Subpart A (40 C.F.R. 125.1 - 40 C.F.R. 125.3; Criteria and Standards for Imposing Technology-Based Treatment Requirements)
✓			Subpart B (40 C.F.R. 125.10 - 40 C.F.R. 125.11; Criteria for Issuance of Permits to Aquaculture Projects)
✓			Subpart D (40 C.F.R. 125.30 - 40 C.F.R. 125.32; Criteria and Standards for Determining Fundamentally Different Factors)
✓			Subpart G (40 C.F.R. 125.56 - 40 C.F.R. 125.68; Criteria for Modifying Secondary Treatment Requirements)
✓			Subpart H (40 C.F.R. 125.70 - 40 C.F.R. 125.73; Criteria for Determining Alternative Effluent Limitations)
✓			Subpart I (40 C.F.R. 125.80 - 40 C.F.R. 125.89; Requirements Applicable to Cooling Water Intake Structures for New Facilities)
✓			Subpart J (40 C.F.R. 125.90 - 40 C.F.R. 125.99; Requirements Applicable to Cooling Water Intake Structures for Phase II Existing Facilities)
	✓		40 CFR 129 (Toxic Pollutant Effluent Standards)
✓			40 C.F.R. Part 129, Subpart A (40 C.F.R. 129.1 - 40 C.F.R. 129.105; Toxic Pollutant Effluent Standards and Prohibitions)
✓	✓	✓	40 C.F.R. Part 133 (Secondary Treatment Regulation)
✓	✓	✓	40 C.F.R. Part 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants)
✓			Provisions of Subchapter N (40 C.F.R. Part 400 - 40 C.F.R. Part 471; Effluent Standards)...
✓	✓		40 C.F.R. Part 401 (General Provisions)
	✓		40 CFR 403 and Appendices A, D, E, and G (General pretreatment regulations for existing and new sources of pollution)
✓			40 C.F.R. 403.1 - 40 C.F.R. 403.18 (General Pretreatment Regulations for Existing and New Sources of Pollution) and Appendices D, E, and G
		✓	40 CFR 403.6 (National Pretreatment Standards and Categorical Standards)
		✓	40 CFR 403.7 (Removal Credits)
		✓	40 CFR 403.13, effective as of May 16, 2008, (Variances from Categorical Pretreatment Standards for Fundamentally Different Factors)
		✓	40 CFR Parts 405 through 411
		✓	40 CFR Part 412 (Concentrated Animal Feeding Operations)
		✓	40 CFR Parts 413 through 471

Alaska	Arizona	Utah	CFRs Incorporated by Reference
✓	✓		40 C.F.R. Part 405 - 40 C.F.R. Part 471, containing industry sector effluent limitations and guidelines
		✓	40 CFR 503 (Standards for the Use or Disposal of Sewage Sludge)
	✓		40 CFR 503, Subpart C (Standards for the Use or Disposal of Sewage Sludge)

\*Some of the CFRs incorporated by reference include additional state-specific substitutions (e.g. substitute "UPDES" for all federal regulation references to "NPDES").

### 3 NPDES Rules for incorporation

DEQ proposes incorporating by reference specific regulations found in Title 40 of the Code of Federal Regulations (40 CFR). Idaho DEQ has identified several of the sections identified as required elements for an NPDES program in 40 CFR §123.25 as being appropriate for crafting state specific language, but in the interest of time and cost savings, proposes that the sections shown in the following table be incorporated by reference. Sections identified as being required for authorization of a state program by §123.25 are identified in the table. A brief summary of each regulation is provided after the table as well as a rationale for incorporating the regulation by reference.

<b>Req'd by 123.25</b>	<b># of pages</b>	<b>Section Proposed for Incorporation</b>
Y	8	40 CFR 122.21(r) (Application Requirements for Facilities with Cooling Water Intake Structures)
Y	4	40 CFR 122.23 (Concentrated Animal Feeding Operations);
Y	1	40 CFR 122.24 (Concentrate Aquatic Animal Production Facilities);
Y	1	40 CFR 122.25 (Aquaculture Projects);
Y	21	40 CFR 122.26(a) – (b) and 40 CFR 122.26(e) – (g) (Storm Water Discharges);
Y	1	40 CFR 122.27 (Silvicultural activities);
	2	40 CFR 122.29(d) (Effect of Compliance with New Source Performance Standards);
Y	9	40 CFR 122.30 and 40 CFR 122.32 – 40 CFR 122.37 (Requirements and Guidance for Small Municipal Separate Storm Sewer Systems);
Y	6	40 CFR 122.42(e)(Additional Conditions Applicable to NPDES Permits for Concentrated Animal Feeding Operations);
	1	Appendix A to 40 CFR 122. (NPDES Primary Industry Categories);
	1	Appendix C to 40 CFR 122. (Criteria for Determining a Concentrated Aquatic Animal Production Facility);
	4	Appendix D to 40 CFR 122. (NPDES Permit Application Testing Requirements);
	1	Appendix J to 40 CFR 122. (NPDES Permit Testing Requirements for Publicly Owned Treatment Works).
Y	4	Subpart A (40 CFR 125.1 – 40 CFR 125.3 Criteria and Standards for Imposing Technology-Based Treatment Requirements);
Y	1	Subpart B (40 CFR 125.10 – 40 CFR 125.11 Criteria for Issuance of Permits to Aquaculture Projects);

<b>Req'd by 123.25</b>	<b># of pages</b>	<b>Section Proposed for Incorporation</b>
Y	2	Subpart D (40 CFR 125.30 – 40 CFR 125.32 Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A) and 301(b)(2)(A) and (E) of the Clean Water Act);
Y	2	Subpart H (40 CFR 125.70 - 40 CFR 125.73 Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Clean Water Act);
Y	12	Subpart I (40 CFR 125.80 - 40 CFR 125.89 Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Clean Water Act);
Y	18	Subpart J (40 CFR 125.90 - 40 CFR 125.99 Requirements Applicable to Cooling Water Intake Structures for Phase II Existing Facilities Under Section 316(b) of the Clean Water Act);
Y	11	40 CFR Part 129 Subpart A (40 CFR 129.1 - 40 CFR 129.105 Toxic Pollutant Effluent Standards and Prohibitions);
Y	4	40 CFR 133 (Secondary Treatment Regulation);
	333	40 CFR 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants, Including Appendices A, B, C, and D);
Y	5	40 CFR 401 (General Provisions);
Y	48	40 CFR 403.1 – 403.3; 403.5 – 40 CFR 403.9; and 403.11 – 40 CFR 403.18 (General Pretreatment Regulations for Existing and New Sources of Pollution) including Appendices D, E, and G;
Y	661	40 CFR 405 - 40 CFR 471 (Effluent Limitations and Guidelines)
Y	58	40 CFR 503.2 – 40 CFR 503.48 (Sewage Sludge, including Appendices A and B)
	1	The term “Waters of the United States or waters of the U.S.,” as defined in 40 CFR 122.2, revised as of August 28, 2015 by 80 Federal Register 37054-37127 (June 29, 2015), unless said revision is stayed, overturned or invalidated by a court of law or withdrawn by EPA, in which case the Department incorporates by reference the term “Waters of the United States or waters of the U.S.” as defined in 40 CFR 122.2, revised as of July 1, 2015.

***Approx. 1,219 pages recommended for incorporation by reference***

## **4 Summary of, and rationale for, regulations proposed for incorporation by reference.**

The purpose of this section is to provide a summary of the individual sections being proposed for incorporation and a short rationale for why the section should be incorporated. This is not an exact rendering of the language in the CFR therefore parties interested in the specific language may find it beneficial to refer to the exact CFR reference.

### **A. 40 CFR 122.21(r) (Application Requirements for Facilities with Cooling Water Intake Structures)**

- (1) Defines new and existing facilities with cooling water intake structures and identifies the information the facility is required to submit.
- (2) Identifies what source water physical data is required for submittal on the application.
- (3) Identifies the data required for submittal that describes the cooling water intake structure.
- (4) Delineates the data required to conduct the source water baseline biological characterization.
- (5) Identifies the data required for each cooling water intake structure used or intended opt be used including narrative descriptions and design and engineering calculations.
- (6) Requires the facility to identify the specific method of compliance with impingement mortality standards and defines the parameters of an impingement mortality study.
- (7) Requires submittal of any previously conducted studies regarding entrainment performance.
- (8) Requires submittal of a description of the operational status of each generating, production or process unit that uses cooling water.
- (9) Requires that an entrainment characterization study be conducted for facilities withdrawing greater than 125 million gallons per day actual intake flow and provides parameters for conducting that study.
- (10) Requires that a comprehensive technical feasibility and cost evaluation study be conducted for facilities withdrawing greater than 125 million gallons per day actual intake flow and provides parameters for conducting the study.
- (11) Requires a benefits valuation study for facilities withdrawing greater than 125 million gallons per day actual intake flow and provides the parameters for conducting the study.
- (12) Requires non-water quality environmental and other impacts study for facilities withdrawing greater than 125 million gallons per day actual intake flow and provide the parameters for conducting the study.
- (13) Requires external peer review for any studies required in 122.21(r) 10 through (12).
- (14) Requires that the applicant identify the chosen compliance method for a new unit.

**40 CFR 122.21(r) pertains to the application for an NPDES permit from a facility with a cooling water intake structure and is required by §123.25. At this time, it is believed that this particular section of federal regulations may affect 1 facility in Idaho. Due to the extensive requirements detailed in this section and the very limited number of facilities affected, the agency proposed incorporating this section by reference and working closely with that facility when the time for their permit renewal came. It was felt that this would provide the best benefit to cost for the agency and the regulated community.**

## **B. 40 CFR 122.23 (Concentrated Animal Feeding Operations);**

- (a) Defines CAFOs as point sources subject to NPDES permitting requirements. Includes all animals and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of type. For example, this would include poultry raised secondary to the main production at a dairy facility.
- (b) Defines CAFO, Large CAFO, Medium CAFO, Small CAFO, production area.
- (c) Defines how an AFO may be designated as a CAFO.
- (d) NPDES permit authorization covers information to submit with permit application or notice of intent,
- (e) Land application discharges subject to NPDES requirements permit requirements,
- (f) When a permit is required
- (g) Reserved
- (h) Procedures for CAFOs seeking coverage under a general permit.

**40 CFR 122.23 pertains to CAFO operations and is required by §123.25. DEQ proposes this section for incorporation to cover CAFO operations under general and individual permits. At this time DEQ does not have the time or resources to devote to fully re-writing this section of the CFR making it specific to the needs of the citizens of Idaho while maintaining consistency with the overall intent of the federal regulation. Incorporating this section by reference will allow DEQ to proceed with the application for delegated authority for the NPDES program while providing stability for those users affected by CAFO regulations.**

## **C. 40 CFR 122.24 (Concentrated Aquatic Animal Production Facilities)**

- (a) Permit requirement. Identifies CAAP facilities as point sources subject to NPDES permits
- (b) Definition. Defines CAAPs as hatchery, fish farm, or other facility meeting the criteria in appendix C of 40 CFR 122.
- (c) Case-by-case designation of concentrated aquatic animal production facilities. Outlines situations where the Director may designate a facility as a CAAP and requires an on-site inspection of the facility prior to designation as a CAAP.

**40 CFR 122.24 pertains to CAAP operations and is required by §123.25. DEQ proposes this section for incorporation to cover CAAP operations under general and individual permits. At this time DEQ does not have the time or resources to devote to fully re-writing this section of the CFR making it specific to the needs of the citizens of Idaho while maintaining consistency with the overall intent of the federal regulation. Incorporating this section by reference will allow DEQ to proceed with the application for delegated authority for the NPDES program while providing stability for those users affected by CAAP regulations.**

## **D. 40 CFR 122.25 (Aquaculture Projects);**

- (a) Requires permit
- (b) Defines aquaculture project and designated project area

**40 CFR 122.25 pertains to concentrated aquatic animal production facilities and is required by §123.25. DEQ proposes to incorporate this section of the CFR to comply with the requirements of the federal program.**

### **E. 40 CFR 122.26(a) – (b) and 40 CFR 122.26(e) – (g) (Storm Water Discharges);**

- (a) Defines those needing a permit
- (b) Defines co-permittee, illicit discharge, incorporated place, large municipal separate storm sewer system, major municipal separate storm sewer outfall, major outfall, medium municipal separate storm sewer system, municipal separate storm sewer, outfall, overburden, runoff coefficient, significant materials, storm water, storm water discharge associated with industrial activity, storm water discharge associated with small construction activity, small municipal separate storm sewer system, Small MS4, municipal separate storm sewer system, and uncontrolled sanitary landfill
- (c) Application requirements for industrial storm water and small construction storm water – this section is included in the IPDES rules.
- (d) Application requirements for large and medium municipal separate storm sewer discharges – this section is included in the IPDES rules.
- (e) Application deadlines for various types of dischargers
- (f) Petitions
- (g) Conditional exclusion for “no exposure” of industrial activities and materials to storm water.
  - (1) Qualification
  - (2) Industrial materials and activities not requiring storm resistant shelter
  - (3) Limitations
- (h) Certification

**40 CFR 122.26 pertains to storm water discharges and is required by §123.25. DEQ proposes incorporating this section of the CFR to cover discharges of storm water. At this time DEQ does not have the time or resources to devote to fully re-writing this section of the CFR making it specific to the needs of the citizens of Idaho while maintaining consistency with the overall intent of the federal regulation. Incorporating this section by reference will allow DEQ to proceed with the application for delegated authority for the NPDES program while providing stability for those users affected by storm water regulations.**

### **F. 40 CFR 122.27 (Silvicultural activities)**

- (a) Requires permit for silvicultural point sources
- (b) Defines silvicultural point source
  - (1) Includes discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities operated in connection with silvicultural activities and from which pollutants are discharged in waters of the US. Does not include non-point source activities such as nursery operations, site prep, reforestation and subsequent cultural treatment, thinning prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance with natural runoff.
  - (2) Defines rock crushing and gravel washing facilities

- (3) Defines log sorting and log storage facilities

**40 CFR 122.27 pertains to discharges from silvicultural activities and is required by §123.25. DEQ proposes incorporating this section of the CFR to cover discharges from these activities. At this time DEQ does not have the time or resources to devote to fully re-writing this section of the CFR making it specific to the needs of the citizens of Idaho while maintaining consistency with the overall intent of the federal regulation. Incorporating this section by reference will allow DEQ to proceed with the application for delegated authority for the NPDES program while providing stability for those users affected by these regulations.**

#### **G. 40 CFR 122.29(d)(Effect of Compliance with New Source Performance Standards;**

- (d) Effect of compliance with new source performance standards
  - (1) New discharger or new source meeting applicable new source performance standards before commencing discharge may not be subject to any more stringent new source performance standards or tech based standards for the soonest ending of the following periods.
    - (i) 10 years from data of completed construction
    - (ii) 10 years from data source begins to discharge
    - (iii) period of depreciation or amortization of the facility
  - (2) Protection of previous stringency clause does not apply to
    - (i) water quality based effluent limits for a discharge
    - (ii) additional permit conditions in accordance with 125.3
  - (3) What happens when a permit expires after the protection period expires
  - (4) Owner/operator of a new source or discharger commencing after 8/13/1979 shall have in operating condition all pollution control equipment to meet permit requirements
  - (5) After the effective date of new source performance standards, it shall be unlawful to operate the source in violation of applicable standards.

**40 CFR 122.29(d) is specifically referenced in Subpart A 40 CFR 125.3 which is a required component under §123.25. Therefore this section is proposed for incorporation to maintain consistency with Subpart A.**

#### **H. 40 CFR 122.30 and 40 CFR 122.32 – 40 CFR 122.37 (Requirements and Guidance for Small Municipal Separate Storm Sewer Systems);**

- (a) 122.30 – The objectives of the storm water regulations for small MS4s
- (b) 122.31 – Role of Tribes under the NPDES storm water program – this section is not included in the IPDES rules
- (c) 122.32 – Regulation of small MS4s under the NPDES storm water program
- (d) 122.33 – How and when to apply for an NPDES permit as a small MS4 operator
- (e) 122.34 – What NPDES permits require of small MS4s
  - (1) Storm water management program
  - (2) Minimum control measures
    - (i) public education and outreach
    - (ii) public involvement/participation

- (iii) Illicit discharge detection and elimination
- (iv) Construction site storm water runoff control
- (v) Post construction storm water management in new development and redevelopment
- (vi) Pollution prevention/good house-keeping for municipal operations.
- (3) Conditions requiring a qualifying local program
- (4) Information required in permit application
- (5) Applying more stringent effluent limitations in the case of a TMDL or equivalent analysis
- (6) Other permit conditions
- (7) Evaluation and assessment of compliance including recordkeeping and reporting
- (f) 122.35 – Responsibility of MS4 to implement minimum control measures with other entities
- (g) 122.36 – What happens if small MS4 does not comply with permit requirements

**40 CFR 122.30- 40 CFR 122.37 pertains to small municipal separate storm sewer systems and is required by §123.25. DEQ proposes incorporating this section of the CFR to cover discharges from these sources. At this time DEQ does not have the time or resources to devote to fully re-writing this section of the CFR making it specific to the needs of the citizens of Idaho while maintaining consistency with the overall intent of the federal regulation. Incorporating this section by reference will allow DEQ to proceed with the application for delegated authority for the NPDES program while providing stability for those users affected by these regulations.**

#### **I. 40 CFR 122.42(e) (Additional Conditions Applicable to NPDES Permits for Concentrated Animal Feeding Operations);**

- (e) any permit issued to a CAFO must include these requirements:
  - (1) Requirement to implement a nutrient management plan (NMP) – lists 9 requirements
  - (2) Recordkeeping requirements – 5 years maintenance for records, have NMP on hand
  - (3) Requirements relating to transfer of manure or process wastewater to other persons
  - (4) Annual reporting requirements for CAFOs – lists 8 components for annual report
  - (5) Terms of the nutrient management plan
  - (6) What to do to changes a NMP

**40 CFR 122.42(e) pertains to concentrated animal feeding operations and is required by §123.25. DEQ proposes incorporating this section of the CFR to cover discharges from these sources. At this time DEQ does not have the time or resources to devote to fully re-writing this section of the CFR making it specific to the needs of the citizens of Idaho while maintaining consistency with the overall intent of the federal regulation. Incorporating this section by reference will allow DEQ to proceed with the application for delegated authority for the NPDES program while providing stability for those users affected by these regulations.**

**J. Appendix A to 40 CFR 122. (NPDES Primary Industry Categories); This list of 34 Primary Industries (PI) includes at least 10 PIs that current Idaho industries fall within. If Idaho does not IBR Appendix A of 40 CFR 122, the industries will still be**

subject to the federal requirements, but the IPDES permit writers will not have jurisdiction to include the required Compliance Schedules (CS) and Effluent Limits (EL) required by Appendix A of 40 CFR 122 for these 34 PIs. This shortfall will prohibit the IPDES Program from issuing a permit that the EPA will find acceptable, increasing the probability that EPA will take over the draft permit and issue it under their jurisdiction.

#### **K. Appendix C to 40 CFR 122. (Criteria for Determining a Concentrated Aquatic Animal Production Facility);**

- (a) Defines concentrated aquatic animal production facility as a hatchery, fish farm or other facility in the following categories:
- (b) Cold water fish or other cold water aquatic animals in ponds raceways or other similar structures which discharge at least 30 days per year but not including:
  - (1) less than 9,090 harvest weight kilograms of aquatic animals per year, and
  - (2) feed less than 2,272 kg of food during the calendar month of maximum feeding
- (c) Warm water fish or other warm water aquatic animals in ponds, raceways, or other similar structures discharging at least 30 days per year excluding:
  - (1) Closed ponds which discharge only during periods of excess runoff, or
  - (2) Facilities producing less than 45,454 harvest weight kg of aquatic animals per year.

**40 CFR 122.24 is required by §123.25. 40 CFR 122.24(b), Definition, references Appendix C as containing the criteria defining what constitutes a Concentrated Aquatic Animal Production (CAAP) facility. Appendix C categorizes both warm and cold water CAAP facilities using facility attributes such as days of discharge annually, pounds of feed consumed, and harvest weight of CAAP facility yield. These facility attributes need to be IBR so that IPDES Permit writers have adequately defined jurisdiction to issue CAAP permits that comply with EPA's expectations.**

#### **L. Appendix D to 40 CFR 122. (NPDES Permit Application Testing Requirements);**

The tables in Appendix D of 40 CFR 122 identify the chemical testing required of the PIs listed in Appendix A of 40 CFR 122. IBR of Appendix D would provide the IPDES Permit writers the authority to include these testing requirements in the draft permits thereby forestalling EPA's rejection of a facility's draft permit.

#### **M. Appendix J to 40 CFR 122. (NPDES Permit Testing Requirements for Publicly Owned Treatment Works);**

**40 CFR 122.21(j) is required by §123.25. 40 CFR 122.21(j)(4)(ii) requires that all POTW "applicants must sample and analyze for the pollutants listed in appendix J, Table 1A of this part." Additionally, 40 CFR 122.21(j)(4)(iv) identifies POTWs that have (A) a design flow rate equal to or greater than 1.0 MGD; (B) a pretreatment programs; or (C) as required by the Director, must also sample and analyze for those chemicals listed in Appendix J, Table 2.**

## **N. Subpart A (40 CFR 125.1 – 40 CFR 125.3 Criteria and Standards for Imposing Technology-Based Treatment Requirements);**

125.1 Purpose and scope

125.2 Definitions

125.3 Technology based effluent limits

(a) General – Technology based treatment requirements represent minimum level of control that must be imposed in a permit

(1) For POTWs, effluent limitations based upon

(i) Secondary treatment – from date of permit issuance and

(ii) The best practicable waste treatment technology – not later than July 1 1983

(2) For other dischargers except as provided in 122.29(d), effluent limitations requiring (provides exceptions within each subheading)

(i) The best practicable control technology currently available (BPT)

(ii) For conventional pollutants, the best conventional pollutant control technology (BCT)

(iii) For all toxic referred to in Committee Print No. 95-30 House Committee on Public Works and Transportation, the best available technology economically achievable (BAT)

(iv) For all toxic pollutants not listed in Committee Print No. 95-30, effluent limits based on BAT

(v) for all pollutants that are not toxics nor conventionals, effluent limits base on BAT

(b) Statutory variances and extensions

(1) The following variance from tech based treatment are authorized and may be applied for

(i) POTWs, a section 301(h) marine discharge variance from secondary treatment

(ii) for dischargers other than POTWs

(A) section 301(c) water quality related variance from BAT

(B) section 301(g) economic variance from BAT

(C) section 316(a) thermal variance from BPT, BCT and BAT

(2) The following extension of deadlines for compliance the tech based requirements are authorized and may be applied for

(i) for POTWs, section 301(i) extension of the secondary treatment deadline

(ii) for dischargers other than POTWs

(A) section 301(i) extension of BPT deadline

(B) section 301(k) extension of the BAT deadline

(c) Methods of imposing technology based treatment requirements in permits

(1) Application of EPA promulgated effluent limits.

(2) Case by case basis under section 402(a)(1), to the extent that EPA promulgated effluent limits are inapplicable

(3) Limits may be expressed, in terms of toxicity provided that its shown limits reflect the appropriate requirements

(d) Provides items that case by case limits must consider

(1) For BPT – 6 items

(2) For BCT – 7 items

(3) For BAT – 6 items

- (e) Tech based treatment applied prior to or at point of discharge
- (f) Tech based treatment cannot be satisfied through the use of “non-treatment” techniques such as flow augmentation and instream mechanical aerators. These techniques may be considered as a method of achieving water quality standards on a case by case basis when:
  - (1) The tech based treatment applicable to the discharge are not sufficient to achieve the standards
  - (2) Discharger agrees to waive any opportunity to request a variance under section 301(c), (g), or (h) of the act.
  - (3) Discharger demonstrates that such a technique is the preferred environmental and economic method to achieve standards after consideration of alternatives such as advances waste treatment etc.
- (g) Tech based effluent limits shall be established for solids sludges, filter backwash and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants
- (h) Provides terms when the Director may set permit limits more or less stringent than BCT for conventionals and non-conventionals

**Subpart A pertains to technology based effluent limits (TBELs) and is required by §123.25. DEQ proposes incorporating this section of the CFR to address the minimum levels of control that must be imposed in a permit. At this time DEQ does not have the expertise or resources to devote to fully re-writing this section of the CFR making it specific to the needs of the citizens of Idaho while maintaining consistency with the overall intent of the federal regulation. Incorporating this section by reference will allow DEQ to proceed with the application for delegated authority for the NPDES program while providing stability for those users affected by these regulations.**

## **O. Subpart B (40 CFR 125.10 – 40 CFR 125.11 Criteria for Issuance of Permits to Aquaculture Projects);**

### 125.10 Purpose and Scope

- (a) Establish guidelines under 318 and 402 of the CWA for approval of any discharge associated with an aquaculture project;
- (b) Authorize controlled discharges otherwise unlawful under CWA to determine feasibility of using pollutants to grow aquatic organisms for beneficial harvest and use;
- (c) Permits issued under this subpart are NPDES permits subject to applicable requirements. Permit shall include such conditions deemed necessary to comply with parts 122, 123, and 124. Tech based limits need not be applied to discharges into the approved project except with respect to toxics.

### 125.11 Criteria

- (a) No NPDES permit shall be issued to an aquaculture project unless:
  - (1) The Director determines that the project:
    - (i) is intended by the operator to produce a crop which has significant direct or indirect commercial value (or is intended to be operated for research) and

- (ii) does not occupy a designated project area which is larger than can be economically operated for the crop under cultivation or than is necessary for research purposes
- (2) The applicant demonstrates that using the pollutant discharges will increase harvest over what would naturally occur in the area;
- (3) The applicant demonstrates, to the satisfaction of the Director, that if the species cultivated in the project is not indigenous to the immediate geographic area, there will be minimal adverse effects on flora and fauna indigenous to the area and the total commercial value of the introduced species is at least equal to the displaced or affected flora and fauna;
- (4) The Director determines that the crop will not have significant potential for human health hazards
- (5) The Director determines that migration of pollutants from the project area will not cause or contribute to a violation of water quality standards or a violation of the applicable standards and limits applicable to the supplier of the pollutant that would govern if the project were itself a point source. The approval of the project shall not result in the enlargement of a pre-existing mixing zone.
- (b) No permit shall be issued for any aquaculture project in conflict with a plan or amendment to a plan approved under section 208(b) of the CWA.
- (c) No permit shall be issued for any project located in the territorial sea, waters of the contiguous zone, or the oceans...
- (d) Designated project areas shall not include a portion of a body of water large enough to expose a substantial portion of the indigenous biota to the conditions within the designated project area.
- (e) Any modifications caused by the construction or creation of a reef, barrier or containment structure shall not unduly alter the tidal regimen of an estuary or interfere with migrations of unconfined aquatic species.
- (f) Any pollutants not required by or beneficial to the aquaculture crop shall not exceed applicable standards and limitations when entering the designated project area.

**Subpart B pertains to issuing permits to aquaculture projects and is required by §123.25. DEQ proposes incorporating this section of the CFR to address the approval of a discharge associated with an aquaculture project. At this time DEQ does not have the time or resources to devote to fully re-writing this section of the CFR making it specific to the needs of the citizens of Idaho while maintaining consistency with the overall intent of the federal regulation. Incorporating this section by reference will allow DEQ to proceed with the application for delegated authority for the NPDES program while providing stability for those users affected by these regulations.**

**P. Subpart D (40 CFR 125.30 – 40 CFR 125.32 Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A) and 301(b)(2)(A) and (E) of the Clean Water Act);**

125.30 Purpose and Scope

- (a) Establishes criteria and standards used in determining where effluent limits alternative to those required by promulgated EPA guidelines should be imposed on a discharger due to factors relating to the discharger's facilities, equipment, processes or other factors that are

fundamentally different from the factors considered by EPA in developing national limits.

- (b) National limits take into account information regarding factors listed in 304(b) and 304(g) of the CWA. However, data that could affect the national limits as applied to a particular discharge may not have been available or considered during development. This means that it may be necessary on a case by case basis to adjust national limits. This will only be done if data specific to the discharge indicates it presents fundamentally different factors than were used in developing national limits

#### 125.31 Criteria

- (a) A request for effluent limits under this subpart shall be approved only if:
  - (1) There is an applicable national limit applied in the permit which specifically controls the pollutant that alternative limits or standards are being requested for;
  - (2) Factors relating to the discharge are fundamentally different from those considered by EPA; and
  - (3) The request is made in accordance with the procedural requirements of part 124.
- (b) A request for effluent limits less stringent than national limits shall be approved only if:
  - (1) The alternative limit or standards is no less stringent than justified by the fundamental difference; and
  - (2) The alternative limit or standard will ensure compliance with 208(e) and 301(b)(1)(C) of the CWA; and
  - (3) Compliance with national limits would result in:
    - (i) a removal cost wholly out of proportion to the removal cost considered during development of the national limits; or
    - (ii) a non-water quality environmental impact fundamentally more adverse than the impact considered during development of the national limit
- (c) A request for alternate limits more stringent than required by national limits shall be approved only if:
  - (1) The alternate limit or standard requested is no more stringent than justified by the fundamental difference; and
  - (2) Compliance with the alternate limit or standard would not result in:
    - (i) a removal cost wholly out of proportion to the removal cost considered during development of the national limits; or
    - (ii) a non-water quality environmental impact fundamentally more adverse than the impact considered during development of the national limit
- (d) Factors which may be considered fundamentally different are:
  - (1) The nature or quality of pollutants in the raw waste load of the applicant's process wastewater;
  - (2) The volume of the discharger's process wastewater and effluent discharged;
  - (3) Non-water quality environmental impact of control and treatment of the discharger's raw waste load;
  - (4) Energy requirements of the application of control and treatment technology;
  - (5) Age, size, land availability and configuration as they relate to equipment of facilities; processes employed; process changes; and engineering aspects of the application of control tech;
  - (6) Cost of compliance with required control technology;

- (e) A variance request or portion of such a request under this section shall not be granted on any of the following grounds
  - (1) The infeasibility of installing the required waste treatment equipment within the time the Act allows.
  - (2) The assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factor(s) listed in paragraph (d) of this section;
  - (3) The discharger's ability to pay for the required waste treatment; or
  - (4) The impact of a discharge on local receiving water quality
- (f) Nothing in this section shall be construed to impair the right of any State or locality under section 510 of the CWA to impose more stringent limits than required by Federal Law.

**Subpart D pertains to evaluation of factors to be considered when determining if a facility should be assigned effluent limits different from EPA effluent guidelines and is required by §123.25. DEQ proposes incorporating this section of the CFR to identify those factors that may be fundamentally different from factors used to determine national guidelines and allow the agency to implement different and more facility specific effluent limits. At this time DEQ does not have the time or resources to devote to fully re-writing this section of the CFR making it specific to the needs of the citizens of Idaho while maintaining consistency with the overall intent of the federal regulation. Incorporating this section by reference will allow DEQ to proceed with the application for delegated authority for the NPDES program while providing stability for those users affected by these regulations.**

#### **Q. Subpart H (40 CFR 125.70 - 40 CFR 125.73 Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Clean Water Act);**

125.70 Purpose and Scope

125.71 Definitions

125.72 Early screening of applications for section 316(a) variances

125.73 Criteria and standards for the determination of alternative effluent limits under section 316(a)

**Subpart H pertains to determining thermal effluent limits different from EPA effluent guidelines and is required by §123.25. DEQ proposes incorporating this section of the CFR to address the criteria and standards necessary for determining thermal discharge effluent limits different from national guidelines. At this time DEQ does not have the time or resources to devote to fully re-writing this section of the CFR making it specific to the needs of the citizens of Idaho while maintaining consistency with the overall intent of the federal regulation. Incorporating this section by reference will allow DEQ to proceed with the application for delegated authority for the NPDES program while providing stability for those users affected by these regulations.**

**R. Subpart I (40 CFR 125.80 - 40 CFR 125.89 Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Clean Water Act);**

125.80 Purpose and scope

125.81 Who is subject to this subpart

125.82 When must I comply with this subpart

125.83 What special definitions apply to this subpart

125.84 As an owner or operator of a new facility, what must I do to comply with this subpart

125.85 May alternative requirements be authorized

125.86 As an owner or operator of a new facility, what must I collect and submit when I apply for my new or reissued NPDES permit

125.87 As an owner or operator of a new facility, must I keep records and report

125.89 As the Director, what must I do to comply with the requirements of this subpart

**Subpart I pertains to requirements for new cooling water intake structures and is required by §123.25. DEQ proposes incorporating this section of the CFR to address effluent limits and establish best available technology standards for these types of facilities. At this time DEQ does not have the time or resources to devote to fully re-writing this section of the CFR making it specific to the needs of the citizens of Idaho while maintaining consistency with the overall intent of the federal regulation. Incorporating this section by reference will allow DEQ to proceed with the application for delegated authority for the NPDES program while providing stability for those users affected by these regulations.**

**S. Subpart J (40 CFR 125.90 - 40 CFR 125.99 Requirements Applicable to Cooling Water Intake Structures for Phase II Existing Facilities Under Section 316(b) of the Clean Water Act);**

125.90 Purpose of this subpart.

125.91 Applicability.

125.92 Special definitions.

125.93 [Reserved]

125.94 As an owner or operator of an existing facility, what must I do to comply with this subpart?

125.95 Permit application and supporting information requirements.

125.96 Monitoring requirements.

125.97 Other permit reporting and recordkeeping requirements.

125.98 Director requirements.

125.99 [Reserved]

**Subpart J is similar to the previous subpart (I) and is required by §123.25. Subpart J addresses existing cooling water intake structures. As with Subpart I, DEQ proposes incorporating this section of the CFR by reference.**

**T. 40 CFR Part 129 Subpart A (40 CFR 129.1 - 40 CFR 129.105 Toxic Pollutant Effluent Standards and Prohibitions);**

129.1 Scope and purpose.

129.2 Definitions.

129.3 Abbreviations.

129.4 Toxic pollutants. Defines the provisions of this subpart as being specific to Aldrin/Dieldrin, DDR, Endrin, Toxaphene, Benzidine, and polychlorinated biphenyls (PCBs).

129.5 Compliance.

- (a) Sets forth conditions where an owner or operator with a discharge subject to these provision must notify the Director
- (b) Requires the permitting authority to proceed using 40 CFR 124 or 125 (whichever is applicable) upon receiving application for permit or modification of a permit with toxic pollutants
- (c) Requires revision of permits with toxic pollutant limits following any proceeding which revises the toxic standard regardless of the duration specified on the permit
- (d) Requires compliance with monitoring, sampling, recording and reporting conditions required for the discharge. Sets forth sampling and reporting requirements for the owner or operator of the facility with toxics in the discharge.
- (e) Authorizes Director to require a more stringent effluent limit if necessary.
- (f) For facilities which discharge to a surface water and to a POTW, the limit of the sum both discharges shall be set to the less restrictive standard unless such a limit allows the discharge to the surface water to be greater than the toxic standards established.
- (g) Restricts contestation of validity of the national standards established for toxics.

129.6 Adjustment of effluent standard for presence of toxic pollutant in the intake water.

- (a) Provides for the ability to work with intake credits
- (b) Directs permit limits for toxics to be established based on the amount present after any treatment.
- (c) Requires additional monitoring for toxics in a manner and location to be determined by the Director.

129.7 Requirement and procedure for establishing a more stringent effluent limitation.

- (a) Creates criteria for establishing exceptional cases where more stringent effluent limitations for toxics may be necessary
- (b) Requires EPA administrative review of permits with more stringent limits.

129.8 Compliance date.

129.9-129.99 [Reserved]

129.100 to 129.105 Provisions specific to Aldrin/dieldrin;. DDT, DDD and DDE; Endrin; Toxaphene; Benzidine; and Polychlorinated biphenyls (PCBs).

**40 CFR Part 129 Subpart A pertains to the regulation of specifically identified toxic pollutants and is required by §123.25. DEQ proposes incorporating this section of the CFR to address effluent limits and standards for these specific toxic pollutants. At this time DEQ does not have the time or resources to devote to fully re-writing this section of the CFR making it specific to the needs of the citizens of Idaho while maintaining consistency with the overall intent of the federal regulation. Incorporating this section by reference will allow DEQ to proceed with the application for delegated authority for the NPDES program while providing stability for those users affected by these regulations.**

## **U. 40 CFR 133 (Secondary Treatment Regulation);**

133.100 Purpose.

133.101 Definitions.

133.102 Secondary treatment. Provides minimum levels for BOD, SS, and pH

133.103 Special considerations.

- (a) Combined Sewers. Provides for a case by case determination of whether an attainable percent removal for pollutants is possible during wet weather conditions.
- (b) Industrial wastes. Provides for less stringent limits under specific conditions identified in the CWA.
- (c) Waste stabilization ponds. Authorizes Director to adjust minimum levels of effluent quality for suspended solids under special circumstances
- (d) Less concentrated influent wastewater for separate sewers. Authorizes the Director to substitute for the percent removal requirements of this subchapter under special circumstances.
- (e) Less concentrated influent for combined sewers during dry weather. Authorizes the Director to substitute for the percent removal requirements under special circumstances.

133.104 Sampling and test procedures.

(a) Refers to sampling and test procedures identified in 40 CFR 136.

(b) Allows for substituting chemical oxygen demand or total organic carbon for BOD.

133.105 Treatment equivalent to secondary treatment. Sets forth minimum effluent levels for facilities eligible for treatment equivalent to secondary treatment in terms of BOD, SS, and pH.

**40 CFR 133 provides details on the level of effluent quality necessary through secondary or equivalent treatment and is required by §123.25. DEQ proposes incorporating this section of the CFR to address the minimum level of effluent quality attainable by secondary treatment for biological oxygen demand (BOD), suspended solids (SS), and pH. At this time DEQ does not have the time or resources to devote to fully re-writing this section of the CFR making it specific to the needs of the citizens of Idaho while maintaining consistency with the overall intent of the federal regulation. Incorporating this section by reference will allow DEQ to proceed with the application for delegated authority for the NPDES program while providing stability for those users affected by these regulations.**

## **V. 40 CFR 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants, Including Appendices A, B, C, and D);**

136.1 Applicability.

136.2 Definitions.

136.3 Identification of test procedures.

136.4 Application for and approval of alternate test procedures for nationwide use.

136.5 Approval of alternate test procedures for limited use.

136.6 Method modifications and analytical requirements.

136.7 Quality assurance and quality control.

Appendix A to Part 136—Methods for Organic Chemical Analysis of Municipal and Industrial Wastewater

Appendix B to Part 136—Definition and Procedure for the Determination of the Method Detection Limit—Revision 1.11

Appendix C to Part 136—Determination of Metals and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry Method 200.7

Appendix D to Part 136—Precision and Recovery Statements for Methods for Measuring Metals

**40 CFR 136 pertains to guidelines for establishing testing procedures for the analysis of pollutants and is directly referenced in 40 CFR 133.104 (proposed for incorporation). DEQ proposes incorporating this section of the CFR to identify acceptable testing methodologies for various types of pollutants discharged into surface waters. 40 CFR establishes standard methods and method detection limits for a wide range of pollutants and is used in various water quality programs to determine acceptable method detection limits and appropriate methods for determining concentrations of pollutants in water and wastewater. At this time DEQ does not have the time or resources to devote to fully re-writing this section of the CFR making it specific to the needs of the citizens of Idaho while maintaining consistency with the overall intent of the federal regulation. Incorporating this section by reference will allow DEQ to proceed with the application for delegated authority for the NPDES program while providing stability for those users affected by these regulations.**

### **W. Subchapter N (40 CFR 400 through 471);**

The following items summarize the sections of Subchapter N (40 CFR 400 through 471). This subchapter in the CFR prescribes effluent limitation guidelines for existing sources, standards of performance for new sources, and pretreatment standards for new and existing sources. These are the technology based effluent limits used in the development of an NPDES permit, and this subchapter is required by §123.25. DEQ proposes incorporating this entire subchapter by reference. At this time DEQ does not have the time, expertise, or resources to devote to fully re-writing this section of the CFR making it specific to the needs of the citizens of Idaho while maintaining consistency with the overall intent of the federal regulation. Incorporating this section by reference will allow DEQ to proceed with the application for delegated authority for the NPDES program while providing stability for those users affected by these regulations.

#### **i) 40 CFR 401 (General Provisions);**

401.10 Scope and purpose.

401.11 General definitions.

401.12 Law authorizing establishment of effluent limitations guidelines for existing sources, standards of performance for new sources and pretreatment standards of new and existing sources.

401.13 Test procedures for measurement.

401.14 Cooling water intake structures.

401.15 Toxic pollutants.

401.16 Conventional pollutants.

401.17 pH Effluent limitations under continuous monitoring.

#### **ii) 40 CFR 403.1 – 403.3; 403.5 – 40 CFR 403.9; and 403.11 – 40 CFR 403.18 (General Pretreatment Regulations for Existing and New Sources of Pollution including Appendices D, E, and G);**

403.1 Purpose and applicability.

403.2 Objectives of general pretreatment regulations.

403.3 Definitions.

403.4 State or local law – this informational section is not incorporated by reference into the IPDES rules

- 403.5 National pretreatment standards: Prohibited discharges.
- 403.6 National pretreatment standards: Categorical standards.
- 403.7 Removal credits.
- 403.8 Pretreatment Program Requirements: Development and Implementation by POTW.
- 403.9 POTW pretreatment programs and/or authorization to revise pretreatment standards: Submission for approval.
- 403.10 Development and submission of NPDES state pretreatment programs - these state requirements are identified in the IPDES rules subsection 370.03 and will be further addressed in the attorney general's statement, the program description, memorandum of agreement, and guidance.
- 403.11 Approval procedures for POTW pretreatment programs and POTW granting of removal credits.
- 403.12 Reporting requirements for POTW's and industrial users.
- 403.13 Variances from categorical pretreatment standards for fundamentally different factors.
- 403.14 Confidentiality.
- 403.15 Net/Gross calculation.
- 403.16 Upset provision.
- 403.17 Bypass.
- 403.18 Modification of POTW pretreatment programs.
- Appendix D to Part 403—Selected Industrial Subcategories Considered Dilute for Purposes of the Combined Wastestream Formula
- Appendix E to Part 403—Sampling Procedures
- Appendix F to Part 403 [Reserved]
- Appendix G to Part 403—Pollutants Eligible for a Removal Credit

**iii) 40 CFR 405 - 40 CFR 471 containing industry sector effluent limitations and guidelines**

<b>Section</b>	<b>Title</b>
<b>405.10 to 405.127</b>	DAIRY PRODUCTS PROCESSING POINT SOURCE CATEGORY
<b>406.10 to 406.107</b>	GRAIN MILLS POINT SOURCE CATEGORY
<b>407.10 to 407.87</b>	CANNED AND PRESERVED FRUITS AND VEGETABLES PROCESSING POINT SOURCE CATEGORY
<b>408.10 to 408.337</b>	CANNED AND PRESERVED SEAFOOD PROCESSING POINT SOURCE CATEGORY
<b>409.10 to 409.87</b>	SUGAR PROCESSING POINT SOURCE CATEGORY
<b>410.00 to 410.97</b>	TEXTILE MILLS POINT SOURCE CATEGORY
<b>411.10 to 411.37</b>	CEMENT MANUFACTURING POINT SOURCE CATEGORY
<b>412.1 to 412.47</b>	CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO) POINT SOURCE CATEGORY
<b>413.01 to 413.84</b>	ELECTROPLATING POINT SOURCE CATEGORY

<b>Section</b>	<b>Title</b>
<b>414.10 to 414.111</b>	ORGANIC CHEMICALS, PLASTICS, AND SYNTHETIC FIBERS
<b>415.01 to 415.677</b>	INORGANIC CHEMICALS MANUFACTURING POINT SOURCE CATEGORY
<b>416</b>	[RESERVED]
<b>417.10 to 417.196</b>	SOAP AND DETERGENT MANUFACTURING POINT SOURCE CATEGORY
<b>418.10 to 418.77</b>	FERTILIZER MANUFACTURING POINT SOURCE CATEGORY
<b>419.10 to 419.57</b>	PETROLEUM REFINING POINT SOURCE CATEGORY
<b>420.01 to 420.137</b>	IRON AND STEEL MANUFACTURING POINT SOURCE CATEGORY
<b>421.1 to 421.337</b>	NONFERROUS METALS MANUFACTURING POINT SOURCE CATEGORY
<b>422.10 to 422.67</b>	PHOSPHATE MANUFACTURING POINT SOURCE CATEGORY
<b>423.10 to 423.17</b>	STEAM ELECTRIC POWER GENERATING POINT SOURCE CATEGORY
<b>424.10 to 424.77</b>	FERROALLOY MANUFACTURING POINT SOURCE CATEGORY
<b>425.01 to 425.96</b>	LEATHER TANNING AND FINISHING POINT SOURCE CATEGORY
<b>426.10 to 426.137</b>	GLASS MANUFACTURING POINT SOURCE CATEGORY
<b>427.10 to 427.116</b>	ASBESTOS MANUFACTURING POINT SOURCE CATEGORY
<b>428.10 to 428.116</b>	RUBBER MANUFACTURING POINT SOURCE CATEGORY
<b>429.10 to 429.176</b>	TIMBER PRODUCTS PROCESSING POINT SOURCE CATEGORY
<b>430.00 to 430.127</b>	THE PULP, PAPER, AND PAPERBOARD POINT SOURCE CATEGORY
<b>431</b>	[RESERVED]
<b>432.1 to 432.127</b>	MEAT AND POULTRY PRODUCTS POINT SOURCE CATEGORY
<b>433.10 to 433.17</b>	METAL FINISHING POINT SOURCE CATEGORY
<b>434.10 to 434.85</b>	COAL MINING POINT SOURCE CATEGORY BPT, BAT, BCT LIMITATIONS AND NEW SOURCE PERFORMANCE STANDARDS

<b>Section</b>	<b>Title</b>
<b>435.10 to 435.70</b>	OIL AND GAS EXTRACTION POINT SOURCE CATEGORY
<b>436.20 to 436.382</b>	MINERAL MINING AND PROCESSING POINT SOURCE CATEGORY
<b>437.1 to 437.47</b>	THE CENTRALIZED WASTE TREATMENT POINT SOURCE CATEGORY
<b>438.1 to 438.15</b>	METAL PRODUCTS AND MACHINERY POINT SOURCE CATEGORY
<b>439.0 to 439.52</b>	PHARMACEUTICAL MANUFACTURING POINT SOURCE CATEGORY
<b>440.10 to 440.148</b>	ORE MINING AND DRESSING POINT SOURCE CATEGORY
<b>442.1 to 442.44</b>	TRANSPORTATION EQUIPMENT CLEANING POINT SOURCE CATEGORY
<b>443.10 to 443.46</b>	EFFLUENT LIMITATIONS GUIDELINES FOR EXISTING SOURCES AND STANDARDS OF PERFORMANCE AND PRETREATMENT STANDARDS FOR NEW SOURCES FOR THE PAVING AND ROOFING MATERIALS (TARS AND ASPHALT) POINT SOURCE CATEGORY
<b>444.10 to 444.18</b>	WASTE COMBUSTORS POINT SOURCE CATEGORY
<b>445.1 to 445.24</b>	LANDFILLS POINT SOURCE CATEGORY
<b>446.10 to 446.16</b>	PAINT FORMULATING POINT SOURCE CATEGORY
<b>447.10 to 447.16</b>	INK FORMULATING POINT SOURCE CATEGORY
<b>449.1 to 449.20</b>	AIRPORT DEICING POINT SOURCE CATEGORY
<b>450.10 to 450.24</b>	CONSTRUCTION AND DEVELOPMENT POINT SOURCE CATEGORY
<b>451.1 to 451.24</b>	CONCENTRATED AQUATIC ANIMAL PRODUCTION POINT SOURCE CATEGORY
<b>454.10 to 454.62</b>	GUM AND WOOD CHEMICALS MANUFACTURING POINT SOURCE CATEGORY
<b>455.10 to 455.67</b>	PESTICIDE CHEMICALS
<b>457.10 to 457.32</b>	EXPLOSIVES MANUFACTURING POINT SOURCE CATEGORY
<b>458.10 to 458.46</b>	CARBON BLACK MANUFACTURING POINT SOURCE CATEGORY
<b>459.10 to 459.12</b>	PHOTOGRAPHIC POINT SOURCE CATEGORY

<b>Section</b>	<b>Title</b>
<b>460.10 to 460.12</b>	HOSPITAL POINT SOURCE CATEGORY
<b>461.1 to 461.75</b>	BATTERY MANUFACTURING POINT SOURCE CATEGORY
<b>463.1 to 463.37</b>	PLASTICS MOLDING AND FORMING POINT SOURCE CATEGORY
<b>464.01 to 464.47</b>	METAL MOLDING AND CASTING POINT SOURCE CATEGORY
<b>465.01 to 465.46</b>	COIL COATING POINT SOURCE CATEGORY
<b>466.01 to 466.45</b>	PORCELAIN ENAMELING POINT SOURCE CATEGORY
<b>467.01 to 467.67</b>	ALUMINUM FORMING POINT SOURCE CATEGORY
<b>468.01 to 468.20</b>	COPPER FORMING POINT SOURCE CATEGORY
<b>469.10 to 469.43</b>	ELECTRICAL AND ELECTRONIC COMPONENTS POINT SOURCE CATEGORY
<b>471.01 to 471.106</b>	NONFERROUS METALS FORMING AND METAL POWDERS POINT SOURCE CATEGORY

**X. 40 CFR 503.2 - 40 CFR 503.48 regarding the regulation of the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works.**

As part of the NPDES authorizing legislation, it was determined that DEQ would seek authorization for the sewage sludge (or biosolids) component of the program as well. In order to gain authorization for this component, the agency must have in place regulations that are no less stringent than the federal requirements. Due to time constraints in place to have the complete application submitted by September 1, 2016, the negotiated rulemaking committee agreed that incorporating the section 503 of the code of federal regulations which pertains to the sewage sludge program was the best plan of action. The following sections outline the components of 40 CFR 503.

**i) Subpart A—General Provisions**

- §503.1 Purpose and applicability.
- §503.2 Compliance period.
- §503.3 Permits and direct enforceability.
- §503.4 Relationship to other regulations.
- §503.5 Additional or more stringent requirements.
- §503.6 Exclusions.
- §503.7 Requirement for a person who prepares sewage sludge.
- §503.8 Sampling and analysis.

§503.9 General definitions.

**ii) Subpart B—Land Application**

§503.10 Applicability.

§503.11 Special definitions.

§503.12 General requirements.

§503.13 Pollutant limits.

§503.14 Management practices.

§503.15 Operational standards—pathogens and vector attraction reduction.

§503.16 Frequency of monitoring.

§503.17 Recordkeeping.

§503.18 Reporting.

**iii) Subpart C—Surface Disposal**

§503.20 Applicability.

§503.21 Special definitions.

§503.22 General requirements.

§503.23 Pollutant limits (other than domestic septage).

§503.24 Management practices.

§503.25 Operational standards—pathogens and vector attraction reduction.

§503.26 Frequency of monitoring.

§503.27 Recordkeeping.

§503.28 Reporting.

**iv) Subpart D—Pathogens and Vector Attraction Reduction**

§503.30 Scope.

§503.31 Special definitions.

§503.32 Pathogens.

§503.33 Vector attraction reduction.

**v) Subpart E—Incineration**

§503.40 Applicability.

§503.41 Special definitions.

§503.42 General requirements.

§503.43 Pollutant limits.

§503.44 Operational standard—total hydrocarbons.

§503.45 Management practices.

§503.46 Frequency of monitoring.

§503.47 Recordkeeping.

§503.48 Reporting.

**vi) Appendix A to Part 503—Procedure To Determine the Annual Whole Sludge Application Rate for a Sewage Sludge**

**vii) Appendix B to Part 503—Pathogen Treatment Processes**