

User's Guide to Permitting and Compliance (Working Outline)

Volume 1: Introduction to Water Quality Permitting

- ✓ Contents applicable to all permits
- Complete guidance by September 1, 2016

1 Introduction—Overview of the Idaho Pollutant Discharge Elimination System Program

- ✓ Scope, purpose, and objectives
- ✓ Web-based access to information
- ✓ Legislative and regulatory citations
- ✓ Hyperlinks

2 Clean Water Act History and IPDES Program

- ✓ Affordability, US Environmental Protection Agency (EPA) 2011 Integrated Planning (~~moved to Section 3~~)
- ✓ History of water pollution control in the U.S.
- ✓ Evolution of the NPDES program
- ✓ IPDES program development

3 Permit Description by Type and Sector

- ✓ Differentiate between general permits (GPs), individual permits (IPs), and sectors
 - ✓ Describe why there are different types of permits
 - ✓ Listing of what permitting options are available
 - ✓ Define each sector
 - ✓ Examples of facilities/projects that pertain to different permits
 - ✓ Major and minor facility designation
 - ✓ Affordability and integrated planning guidance
- ✓ Fee Schedules
 - ✓ Explanation of how fees pertain to each sector (e.g., municipal separate storm sewer systems [MS4s], publicly owned treatment works [POTWs] and equivalent dwelling units [EDUs])
 - ✓ Fee assessment and payment
 - ✓ Delinquent fees

4 Individual Permit Application Process

- ✓ Procedures applicable to all individual permits
 - ✓ Application content for individual permits
 - ✓ Permit process flowchart
 - ✓ General permitting process for all individual permit types (general description of process, with sector-specific details in Volume 2)
 - ✓ Preapplication meeting
 - ✓ Information applicants should bring to meeting, etc.
 - ✓ Identify all of the application requirements for a complete application
 - ✓ Help applicant select appropriate permit type (e.g. GP or IP) and sector
 - ✓ Help applicant identify other non-IPDES permit options (e.g. underground injection, reuse)
 - ✗ ~~Affordability~~ (moved to Section 3)
 - ✓ Reference 1995 interim guidance
 - ✓ States have ability to develop own guidance
- ✓ Applying for and obtaining a permit
 - ✓ Submit application
 - ✓ What constitutes a complete application?
 - ✓ Who must submit an application
 - ✓ Owner and operator information
 - ✓ Facility/activity location description
 - ✓ Outfall description
 - ✓ Description of receiving waters
 - ✓ Compliance with permit prohibitions
 - ✓ What testing/analysis is required before applying for a permit?
 - ✓ Procedure for new vs. renewal (e.g. no renewal form for MS4s, letter for ground water remediation) (Volume 2)
 - ✓ Timeline for submittal
 - ✓ Potential > 180-day requirement
 - ✓ Online application versus hard copy submittal
 - ✓ Application completeness
 - ✓ Prioritizing completeness determinations
 - ✓ Technical (Permitting) assistance

5 Individual Permit Development Process

- ✓ Development of Draft Permit Conditions and Fact Sheet Applicable to All Individual Permits
 - ✓ Cover page
 - ✓ Facility/permittee
 - ✓ Receiving water body
 - ✓ Outfall locations
 - ✓ Effective date, reapplication date, issuance date, expiration date
 - ✓ Signatures
 - ✓ Schedule of submissions
 - ✓ Applicability

- ✓ Permit area/processes
- ✓ Discharges authorized
- ✓ Facility/process information
- ✓ Receiving water and effluent characterization
 - ✓ Designated beneficial uses
 - ✓ Receiving water body support status
 - ✓ Mixing zones
 - ✓ Antidegradation analysis
 - ✓ Receiving water body monitoring
 - ✓ Surface water monitoring locations and access agreements (~~upstream vs. downstream~~ receiving water and effluent)
 - ✓ Monitoring location specified in permit by DEQ
 - ✓ Permittee must secure access agreements; lack of access agreements does not relieve permittee of obligation to monitor
 - ✓ Evaluation (identify applicable standards) of downstream water quality
 - ✓ Identify pollutants of concern, receiving water quality, beneficial uses, TMDLs
- ✓ Effluent limits and monitoring requirements
 - ✓ RPE's, annual local limits assessments (e.g., 12 municipalities w/pretreatment)...keep general, but details to be included in other/subsequent guidance (~~perhaps appendix, worksheet, etc.~~) (Effluent Limit Guidance)
 - ✓ Limits per outfall/area
 - ✓ Effluent monitoring
- ✓ Special Permit conditions
 - ✓ Compliance schedules and interim effluent limits
 - ✓ Operation and maintenance plan
 - ✓ Quality assurance project plan (QAPP)
 - ~~✓ Design~~
 - ~~✓ Chain of custody~~
 - ✓ EPA guidance (EPA/QA/R-5; EPA-QA/G-5)
- ✓ ~~Control of undesirable pollutants and industrial users~~ (sector specific – to Volume 2)
 - ✓ Pretreatment
 - ✓ Emergency response plans and public notification
- ✓ Intake credits (general)
- ✓ Variances and waivers (specifics in Section 8 and Volume 2)
 - ~~✓ Terms and conditions in permits~~(specifics in Section 8 and Volume 2)
 - ~~✓ Affordability~~(specifics in Section 8 and Volume 2)
- ✓ General monitoring and reporting requirements (e.g., schedules and frequency)
 - ✓ Monitoring/reporting requirements
 - ✓ Representative sampling
 - ✓ Reporting of monitoring results
 - ✓ Report at least annually (e.g., monthly, quarterly, or annual)
 - ✓ Must report all data collected using approved methods (even if more frequent than required)
 - ✓ NetDMR or other
 - ✓ Reporting deadlines

- ✓ Noncompliance reporting
 - ✓ 24-hour noncompliance reporting (e.g., upset, bypass, overflow)
 - ✓ 5-day noncompliance reporting
 - ✓ Other noncompliance reporting
 - ✓ Public notification
 - ✓ Reporting DMRs, annual reports, compliance schedules, etc.
 - ✓ ~~Notice of new introduction of toxic pollutants~~ (sector specific – Volume 2)
- ✓ Minimum levels (ML) and method detection limits (MDL), reporting levels
 - ✓ What to do when reporting limit is higher than the calculated permit limit?
 - ✓ ~~Draft TV permits with 14 parameters that don't have calibration curves~~ (Effluent Limit Guidance)
- ✓ ~~Quality assurance for particular samples...policies related to quality assurance protocols (Tom), QA/QC, cross contamination, etc. (e.g., Phthalates)~~ (part of the QAPP – not to be described in User's Guide)
- ✓ Monitoring nonregulated constituents (required monitoring for pollutants without effluent limits; monitoring chemical characteristics of receiving water—e.g., hardness). For example, calculations for BLM. (Effluent Limit Guidance and possibly Volume 2)
- ✓ Specify all data requirements in the permit (e.g., accelerated monitoring)
 - ✓ Monitoring procedures (e.g., 40 CFR 136)
 - ✓ Record contents and retention
- ✓ Compliance responsibilities (of permittees). Standards consistent with federal regulations, but maintain flexibility (specific language will be in the permit templates). (generally addressed)
 - ✓ Duty to Comply
 - ✓ Penalties for violations of permit conditions (e.g., civil, administrative, and criminal)
 - ✓ Need to halt or reduce activity not a defense
 - ✓ Duty to mitigate
 - ✓ Proper operation and maintenance – some discretion on how the states implement and use specific language. Current EPA language is prescriptive and can lead to problems (e.g. not having to run all equipment when still able to meet limits).
 - ✓ Bypass of treatment facilities
 - ✓ Upset conditions (discretion in regards to implementing provisions)
 - ✓ Toxic pollutants
 - ✓ Planned changes
 - ✓ Anticipated noncompliance
 - ✓ Reopener
- ✓ General provisions (generally addressed)
 - ✓ Permit actions
 - ✓ Duty to reapply
 - ✓ Duty to provide information
 - ✓ Other information
 - ✓ Signatory requirements
 - ✓ Availability of reports
 - ✓ Inspection and entry
 - ✓ Property rights

- ✓ Transfers
- ✓ State laws
- ✓ ~~Definitions~~ (Glossary)
- ✓ Permittee and public participation (reference “Public Participation” guidance)
 - ✓ Working with permittee on development and review of permit and fact sheet
 - ✓ Coordination and preview of data, effluent limits, monitoring, and reporting requirements (prior to pre-draft evaluation)
 - ✓ Predraft permit review and notice (reference “Public Participation” guidance)
 - ✓ Applicant – 10 days for omissions and errors
 - ✓ Public – early notice that draft permit/fact sheet will be released
 - ✓ Public comment (reference “Public Participation” guidance)
 - ✓ Public comment period
 - ✓ Public meetings
 - ✓ EPA review (much will be in memorandum of agreement [MOA]) reference MOA;
 - ✓ Comments to permit from downstream states (e.g., OR, WA, UT), international (e.g., Canada), tribes
 - ✓ ~~ESA~~ issues Other federal and state agency review (e.g., public comment; MOA between services and EPA) (reference rules; add to Section 5.3)
 - ✓ State Historic Preservation Office (SHPO) issues (public comment)
- ✓ Proposed permit
 - ✓ Applicant response to comment
 - ✓ EPA review
 - ✓ Substantial changes to draft permit
- ✓ Issue final permit
 - ✓ Applicant notification
 - ✓ Public notification
- ✓ ~~Appeals~~ (section 11)

6 General Permit Development Process

- ✓ General permit development process (e.g., insert headings from Section 5)
 - ✓ Figure presenting GP development process (similar to figure for IPs)
- ✓ Discuss differences in general permits (e.g. some may have consistent limits, other may have unique limits, etc.).
 - ✓ GPs where there are TMDL requirements (could be waterbody specific)
 - ✓ Pollutants of concern or type of activity
 - ✓ Notification to public/permittees of pending GP creation (e.g., issued via electronic formats and/or hard copy)
 - ✓ Pre-draft notification
- ✓ Develop draft permit and fact sheet
 - ✓ Cover page
 - ✓ Schedule of submissions
 - ✓ Permit Coverage (discharge authorization)
 - ✓ Development of effluent limitations
 - ✓ Technology-based effluent limitations and standards

- ✓ Determine applicable water quality standards
- ✓ Effluent and receiving water characterization
- ✓ Identify pollutants of concern
- ✓ Identify critical conditions of the discharge and receiving water
- ✓ Identify mixing zone applicability
- ✓ Determine need for water quality-based effluent limitations
- ✓ Calculating water quality-based effluent limitations
- ✓ Intake credits (sector specific in Volume 2)
- ✓ Effluent limitations for thermal discharges (sector specific in Volume 2)
- ✓ Determining final effluent limitations and anti-backsliding
- ✓ Monitoring and reporting requirements
- ✓ Special conditions
 - ✓ Additional monitoring and special studies
 - ✓ Best management practices
 - ✓ Compliance schedules
- ✓ Conditions applicable to all permits
- ✓ Permit coverage denial
- ✓ Permittee and public participation on the draft permit
 - ✓ Working with permittees (stakeholders) on development of permit and fact sheet
 - ✓ Formalized, open public process to develop permit
- ✓ DEQ coordinate with EPA regarding permits, including national permits. Complete determination (NOI)? Complete Application NOI?
- ✓ Upon reissuance, consider conditions, and incorporating into new permit (current permittees still have to submit an NOI prior to the GP expiration).
 - ~~EPA high priority to review state's general permits, evaluate consistency between national and state permit (this is an EPA action)~~
- ✓ Proposed permit
- ✓ Issue final permit
 - ✓ How the state deals with reissuing a general permit (to itself)?
- ✓ Notice of intent (NOI) submittal process and content for general permits
 - ✓ Public notification of NOIs (generally addressed – sector-specific Aquaculture vs. CGP vs. GWGRP, etc. in Volume 2)
 - ✓ Public opportunity to review and comment on some NOIs (e.g. GWGRP).
 - ✓ State cannot issue new NOIs for administratively continued GPs, would have to issue individual permits
 - ✓ How to address SWPPs etc.
- ✓ Permittee and public participation
 - ✓ Public comment period
 - ✓ Stakeholder involvement prior to the release of a draft permit.
 - ✓ Public meeting (e.g., forum—online or in person) and response to comment
 - ✓ EPA review
 - ✓ Refer to what is in the MOA (the review time may be different that for IPs)
 - ✓ ~~ESA issues~~ Other federal and state agency review (e.g. public comment; MOA between services and EPA)
 - ✓ SHPO issues (public comment)

- ✓ Appeals of General Permits—~~rationale for the process (e.g. is the state process mirroring the federal process?)~~ (section 11)
 - ✓ How is an “affected person” defined? (section 11)

7 Permit Modification, Revocation, Reissuance, Termination, and Transfer

- ✓ Modification of permits
 - ✓ What is a modification
 - ✓ Applicability to general permits
 - ✓ Reasons for Permit Modification
 - ✓ Change in design flow
 - ✓ Change in discharge
 - ✓ Treatment process changes
 - ✓ Compliance schedule changes
 - ✓ Other
 - ✓ Major vs. minor
 - ✓ When is a modification allowed?
 - ✓ WQ trading?
 - ✓ Reopener clause
 - ✓ Administratively continued permits eligible?
 - ✓ Process
 - ✓ Who applies for modification
 - ✓ DEQ
 - ✓ Permittee
 - ✓ When to apply for a modification
 - ✓ Timeline
 - ✓ Public comment process
 - ✓ Effective date of modification
 - ~~Temporary Inactivation/reactivation of permits~~ (e.g., aquaculture cover in Volume 2)
 - ~~What is ‘temporary’?~~
- ✓ Revoke & reissue permits
 - ✓ When does a revocation & reissuance (R&R) occur
 - ✓ Why R&R a permit
 - ✓ What happens in the interim
 - ✓ Enforcement precipitating R&R
 - ✓ How does this apply to a GP?
 - ✓ Process
 - ✓ Public comment period
 - ✓ Compliance schedule
 - ✓ Does the facility reapply, apply?
 - ✓ Fee?
 - ✓ Recommended DEQ investigate how to recover time & materials for R&Rs (application fee for permit revocation and reissuance – at this time, DEQ does not have authority to assess fees for modification, transfer, or termination)

- ✓ Permit transfer
 - ✓ Process
 - ✓ How to initiate a permit transfer
 - ✓ When can it be done/ when is it necessary
 - ✓ Criteria
 - ✓ Owner changing contracted operators
 - ✓ Owner/operator transfer to contract operator
 - ✓ Operator to operator [owner/operator to owner/operator]
 - ✓ Obligations of permittee & DEQ
 - ✓ Public comment process
 - ✓ Associated fee?
- ✓ Termination of permits (guidance needs to be detailed)
 - ✓ When & why a permit termination
 - ✓ What are the routes to Termination (details)
 - ✓ Permittee initiated/requested (coverage no longer needed)
 - ✓ Project completed
 - ✓ Alternate wastewater discharge method (reuse, subsurface)
 - ✓ Agency initiated
 - ✓ Violations
 - ✓ Issue alternate permit
 - ✓ What is the permit termination timeline
 - ✓ Process
 - ✓ Step-by-step
 - ✓ Communications
 - ✓ Consequences of permit termination
 - ✓ On future permits
 - ✓ Time constraint on reapplication for a permit
 - ✓ TMDL WLA re-assigned (where does it go)
 - ✓ Antidegradation
 - ✓ Impact on fees

8 Variances

- ✓ What are Variances and Waivers?
 - ✓ Waiver – relaxation in monitoring and/or reporting
 - ✓ Define conditions necessary to qualify for variance or waiver
 - ~~What is the difference between a permit modification and variance?~~ (no direct contrast, but defined in Sections 7 and 8)
- ✓ Types/Description of Variances
 - ✓ Variance Types
 - ✓ WQS 131.10 G (1-6)
 - ✓ EPA Economic Guidance
 - ✓ 301 – Economic
 - ✓ 301G
 - ✓ Thermal 316(A)
 - ✓ Waiver Types (generally acknowledged; specifics in Volume 2)

- ✓ Other waivers (e.g., LEW, CNE, other CGP, etc)
- ✓ Intake Credits
 - ✓ Narrower than a variance
 - ✓ What pollutants qualify (or don't) for intake credits?
 - ✓ ~~Thermal intake credits?~~ Not allowed (for intake credits, temperature, pH, hardness are considered water quality characteristics that must be similar between the waters (IDAPA 58.01.25.303.01.a.i))
- ✓ What situations/pollutants are eligible
- ✓ Are variances site specific? (~~watershed, statewide, other options?~~) Pollutant and discharger specific
- ✓ Timeframe that applies to a variance
- ✓ List/define current variances in Idaho (none reported from EPA aside from LEWs and CNEs)
- ✓ Process to get a variance/waiver approved
 - ✓ What does the discharger need to provide (burden of proof)?
 - ✓ Are there fees associated with variances or waivers?
 - ✓ When should a variance/waiver be requested
 - ✓ What is the timeline for approval? (not specified in CFR, aside from shouldn't be a "significant delay")
- ✓ Terms and conditions of Variance in permits (specified in permit)
- ✓ Implementation of Variances/Waivers
- ✓ EPA/DEQ approval
 - ✓ Which variance types require whose approval?
 - ✓ WQS variance needs EPA approval
 - ~~What about WER?~~ (part of ELG from which facility is requesting variance)
 - ✓ If a variance is disapproved then what?
 - ✓ Appeal process
- ✓ Affordability (more specifics in Volume 2)
 - ✓ Interim Economic Guidance for Water Quality Standards (EPA 1995)
 - ✓ Link between variances, integrated planning, and affordability
 - ✓ Must have multiple CWA responsibilities (e.g. storm water and WWTP)
 - ~~Need to trip affordability in order to pursue integrated planning~~ (placed in Section 3.2.3.1, Affordability and Integrated Planning)

9 Compliance and Inspection

- Procedures applicable to all permits
- Compliance monitoring and reporting
 - Record keeping
 - Discharge monitoring reports (DMRs)
 - Annual reports (submit directly to DEQ – Not NetDMR)
 - Notification types (e.g., letter versus phone, formal and informal)

- Mechanism for correction of inaccurate exceedance data (e.g., in Enforcement and Compliance History Online [ECHO] and IPDES Compliance, Reporting, Inspection, and Permitting System [CRIPS]—*report error* type of button)
- Wider range of compliance monitoring activities – EPA 4/8/2016
 - Reference the 2014 NPDES Compliance Monitoring Strategy in a discussion of inspection frequency
- Inspection process
 - Offsite record review
 - Deficiencies
 - Postinspection correspondence (i.e., notification of compliance/noncompliance)
 - Corrective actions
 - Quality assurance project plan (QAPP)
 - Design
 - Chain of custody
- Sampling, flow measurements, lab accreditation/procedures, and QA sampling (DEQ and permittee), flow measurements, laboratory accreditation/procedures private and public (e.g., Idaho Bureau of Laboratories), and quality assurance
- Investigations and citizen complaints
- Multimedia inspections (where facility has multiple state-issued permits)
- BMP plan (since it is a common requirement of general permits) – EPA 4/8/2016

10 Enforcement (This will only be in Volume 1; applies to all)

- ✓ Types of enforcement actions (administrative, judicial)
 - ✓ Informal Responses (phone call/email, NONC, NOD, Notice of Intent to Enforce)
 - ✓ Notice of violation (NOV) w/ and w/o penalty
 - ✓ Conference
 - ~~Compliance Schedule Order~~
 - ✓ Consent order
 - ✓ DEQ's experience in other areas are the use of a CO or court for those with a history of noncompliance.
 - ✓ Criminal proceedings, state's misdemeanor vs EPA felony
 - ✓ What compliance issues are dealt with by the state versus EPA? What situations would the agency request EPA assistance on enforcement, if there are any?
 - ✓ ~~Unilateral order~~ (A temporary restraining order and preliminary injunction allow DEQ to seek immediate injunctive relief when there is an imminent and substantial danger to public health and the environment – Idaho Code § 39.108(8))
 - ~~Another tool in the toolbox, similar to a temporary restraining order to deal with an instance of where human health or the environment may be in jeopardy, CSO falls into this category but the agency has not used this tool in over decades. If a facility is in a pattern of non-compliance, DEQ wants to take a number of steps to rectify non-compliance/violations.~~
- ✓ Compliance agreement schedule
 - ✓ Delineate between formal and informal actions/options: what it means to take formal vs informal; what actions may EPA possibly take if the agency takes a formal or an informal action

- ✓ Criminal Policy
 - ✓ Conviction of Misdemeanor
 - ✓ Felony Charges
- ✓ Penalties
- ✓ Compliance assistance (e.g., construction GP and local communities/jurisdictions)
 - ✓ Where, when, why, and how they can request compliance assistance.
 - ✓ Information available to the public via PRR, i.e. if assistance is provided would be public record and able to be requested
 - ✓ Tracking assistance activities as well as inspections
- ✓ Supplemental environmental projects
 - ✓ When, how, what is appropriate
 - ✓ Restrictions that may apply
- ✓ Public participation
 - ✓ Citizen action (from “Public Participation” guidance)
- ✓ Conditions cause the various violations, triggers for enforcement actions/responses
- Appealable actions
 - Court actions
- ~~What are the types of inspections and are the facilities doing self-regulation? What can the facility anticipate regarding the inspection frequency and process?~~ (addressed in Section 9)
- ✓ Explain in more detail the types of actions taken
 - ✓ Identify where public notification opportunities may occur
 - ✓ Length of public notice (none on formal responses)
 - ✓ Provide more detail than the ERG currently does
- ✓ EPA participation in inspection and enforcement realm
 - ✓ Phased IPDES implementation.
 - ✓ EPA will work with DEQ and keep DEQ informed of planned actions. Acknowledge, close coordination with EPA and IPDES.
- ✓ Compliance vs. significant non-compliance
 - ✓ Good opportunity to bring up where the state thinks there's not a SNC and EPA data suggests there's a SNC. When might this happen? What will the agency do? Seems to be a reporting issue regarding the transfer of data from the state to EPA and what may happen when the data gets to EPA.

11 Appeal Process, Stays, and Contested Conditions

- ✓ Appeals
- ✓ Appeals of general permits
 - ✓ Rationale for the process (e.g. is the state process mirroring the federal process? Yes)
 - ✓ How is “affected person” defined? (person who filed comments on the draft permit—124.19(a)(2))
- ~~Citizen action (from “Public Participation” guidance)~~ (referenced in Section 10)
- ✓ When would a third party be able to appeal? (must be a person aggrieved)
 - ✓ Circumstances for a third party appeal?

- ✓ Circumstances for a third party to get standing?
- ✓ What happens after the appeals process?
 - ✓ Court/judicial review action? (judicial review)
 - ✓ Time frame after the appeal (Petition for Review)?
 - ✓ What happens to the conditions of the permit when the permit is appealed and/or moves through judicial review? (stayed and contested conditions)
- ✓ Stays and contested permit conditions during appeals
- ✓ Waivers or variances that DEQ concurred with but EPA choose not to approve, is there recourse for the applicant to appeal the disapproval of the variance/waiver? (This is an EPA process—40 CFR 124.64(b) indicates that appeals of variances are governed by the procedures in 124.19)
- ✓ Information and documentation related to the appeal
 - ✓ Brief discussion of administrative record augmentation

Glossary

Index

- By sector (e.g., crosswalk)

Appendices

- ✓ 2016 NPDES Permits in Idaho
- ✓ IPDES Permit Rating Work Sheet
- Outline of IPDES Individual Permit Development and Issuance Process
- Outline of IPDES General Permit Development and Issuance Process
- ✓ Endnotes: IDAPA and CFR References