

Idaho Pollutant Discharge Elimination System

Rule Update



**State of Idaho
Department of Environmental Quality**

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1. Introduction

1.1 Purpose and Scope

This discussion paper presents the Idaho Department of Environmental Quality's (DEQ) justification and recommendations for changing parts of IDAPA 58.01.25 to comply with recent changes to the Code of Federal Regulations regarding the National Pollutant Discharge Elimination System (NPDES) Program.

1.2 Background

As Idaho seeks to gain delegated authority for the NPDES Program, it is necessary to ensure that Idaho's rules comply with federal requirements for regulating dischargers under the Idaho Pollutant Discharge Elimination System (IPDES) Program. With help from the stakeholders, DEQ drafted in 2015 and adopted a new chapter of rules (IDAPA 58.01.25) regarding the IPDES Program. As DEQ moves forward with the application and approval from EPA, updates to this rule chapter are required to remain consistent with 40 CFR §122 through §503. Several rules have been finalized since DEQ adopted IDAPA 58.01.25 including EPA electronic reporting rule ([FR 64064](#)), and the small MS4 general permit remand rule ([FR 89320](#)).

DEQ is also seeking to make clarifying changes to some portions of the rule and to update sections based on comments provided by EPA regarding approval of the IPDES Program application.

2 Proposed Changes

2.1 eReporting

EPA's eReporting Rule became final in October 2015. This rule provided updates to 40 CFR §§122, 123, 403, and 503. The eReporting Rule is codified at 40 CFR §127 which DEQ is proposing to incorporate by reference.

DEQ is proposing to add section 58.01.25.090.06. This section requires that any person providing the electronic signature on documents submitted shall meet basic requirements outlined in 40 CFR 127. Specifically this will require that the signatory official be set up on DEQ's electronic system with a verified ID, unique log-in, password, and challenge questions that ensure the person submitting the information is truly the signatory official for the facility.

IDAPA 58.01.25 sections 130.02, 201.03.j, 203.01.b, 300.12.d.i, 300.12.e, 300.12.f.ii.5, 300.12.g, 300.13.a.iii, 301.03, 304.01.c, 304.02.a were updated with language regarding the requirements to submit certain information in those sections electronically by a certain date. This is the date identified in the eReporting Rule. However, DEQ will provide dischargers with the opportunity and ability to submit electronically before that date.

DEQ is proposing to update IDAPA 302 to remain consistent with changes at 40 CFR §122.43(a) under the eReporting Rule.

2.2 Small MS4

EPA's MS4 General Permit Remand Rule became final in January 2017. This rule provided updates to 40 CFR §§122.28, 122.33, 122.34, and 122.35. DEQ previously incorporated 40 CFR §122.33 through §122.35 by reference at IDAPA 58.01.25.003.

Changes made to 40 CFR 122.28 by EPA's action are reflected in the changes proposed at 58.01.25.130.01.d. The purpose of these changes is to reflect the two approaches to permitting for small MS4s that the state has available under 40 CFR §122.28. The two approaches regarding small MS4 general permitting include:

1. A comprehensive general permit where DEQ would include all required permit terms and conditions in the general permit. This is a prescriptive process that would apply to any and all MS4s seeking coverage under this type of general permit. For this type of general permit, the permitting authority issues a small MS4 general permit that includes the full set of requirements necessary to meet the MS4 permit standard of "reducing pollutant discharges from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the CWA." Under the Comprehensive General Permit, all requirements are contained within the general permit, and no additional requirements are established after permit issuance.

2. A two-step approach where DEQ would draft a general permit that provides the general requirements for a small MS4 to seek coverage. Upon submittal of the NOI by the small MS4, DEQ would establish additional permit terms and conditions specific to that MS4 and incorporate those into the general permit. It is in this second step where DEQ satisfies the obligation to review the NOI for adequacy, determine what additional requirements are needed for the MS4 to meet the regulations, and provide public notice and comment opportunity.

DEQ is proposing to add this language to 58.01.25.130.01.d to ensure that the regulated community understands that there are two approaches available, what steps DEQ will be taking when issuing a general permit for small MS4s, and what opportunities are available for public review and comment.

2.3 Sufficiently Sensitive

EPA's Sufficiently Sensitive Methods Rule became final in August 2014. This rule provided updates to 40 CFR §§122.21, 122.44, and 136.1. DEQ previously incorporated language from 40 CFR §122.21 under IDAPA 58.01.25.106.02, however did not include the note found at 40 CFR §122.44. This was an oversight at the time and DEQ is proposing to update 58.01.25.304.01.g to reflect the current language at 40 CFR §122.44.

2.4 EPA Comments

In the course of reviewing DEQ's IPDES Program application, EPA provided comments on rule language that they believe should be updated to provide more consistency with federal regulations. Specifically, the definition of sludge is different from 40 CFR §122.2 in that §122.2 states, "...treatment of municipal wastewater or domestic sewage" but this section states, "...treatment of wastewater." DEQ is proposing to update the definition of sludge to reflect 40 CFR §122.2

Also EPA commented that it would be helpful if additional detail was provided on how DEQ would ensure that public comments received orally during a public meeting would be entered in the administrative record. DEQ is proposing to update IDAPA 58.01.25.109.02.b to show that if a public meeting is held for the purposes of receiving comments, the department will either hire a court reporter or make an audio recording to ensure comments are accurately transcribed.

2.5 Clarification

DEQ is proposing to update the definition of equivalent dwelling unit at IDAPA 58.01.25.010.35 for the sake of clarity. To ensure that the regulated community and others understand how DEQ will be assessing and invoicing fees, DEQ is proposing to add the language found at 58.01.25.010.35 "For the purposes of assessing fees associated with this rule...." Since there are different methods and definitions for EDU, DEQ believes this added language provides the reader with a better understanding of what an EDU is, and how DEQ will be calculating it for the purposes of fee assessment.

Under the eReporting Rule (40 CFR §127) and subsequent changes to 40 CFR §122.21(j)(iv), population served is a required element that municipalities must submit. The original rule was unclear that population served was a required element. DEQ is proposing that this language at 58.01.25.105.11.c.iv and 58.01.25.105.17.b.v be updated to require population and EDU.

DEQ is proposing changes to 58.01.25.110.02.a regarding calculation of fees based on EDUs. DEQ believes these changes add clarity for the regulated community and others regarding who will be charged fees under the municipal rate (public and privately owned treatment works), how those fees will be calculated, and information that the discharger may provide to DEQ to ensure an accurate fee assessment.

2.6 General Housekeeping

DEQ is proposing the following general housekeeping changes:

- 58.01.25.002 Confidentiality of Records – updates to correct Idaho Code title and chapter.
- 58.01.25.003.02 Incorporation by reference
 - Changes to dates of rules incorporated by reference to ensure DEQ is referring to the most recent federal regulations incorporated by reference.
 - Addition of IBR for 40 CFR §127 (eReporting)
 - Addition of 40 CFR §403.10 regarding the state as pretreatment control authority (strike 58.01.25.370.05.b)

- 58.01.25.010 Definitions – language referring to terms not expressly defined in 58.01.25
- 58.01.25.010.060 Removal of reference to vessel permitting. DEQ is not pursuing delegated permitting authority for vessels.
- 58.01.25.105.11.d.iv(4) change clearances to authorizations
- 58.01.25.203.01.a is a non-substantive change including formatting.