



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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C.L. "Butch" Otter, Governor
John H. Tippetts, Director

August 1, 2017

Dan Opalski, Director
Office of Water and Watersheds
U.S. EPA Region 10
1200 6th Ave., Ste. 900
Seattle, WA 98101

Re: Idaho DEQ's submission of revisions to the IPDES Program Application

Dear Mr. Opalski:

On August 31, 2016, Idaho Department of Environmental Quality (IDEQ) submitted an application for delegated authority for the National Pollutant Discharge Elimination System (NPDES) program. On September 30, 2016, IDEQ received a letter from the U.S. Environmental Protection Agency (EPA) stating that the submitted application was found to be complete. In that letter EPA provided comments on issues that needed to be addressed prior to program approval. IDEQ and EPA have continued to work collaboratively over that last 11 months to ensure that these and other issues EPA has identified are being addressed.

On March 10, 2017, EPA provided via electronic mail comments on Idaho's IPDES Program submission requesting that Idaho Department of Environmental Quality (IDEQ) provide an individual response to each item on an Excel worksheet provided with the letter. IDEQ transmitted via electronic mail that same Excel worksheet with the individual responses as requested on May 1, 2017 along with revised versions of the IPDES Program Description and Memorandum of Agreement. IDEQ also submitted to EPA a letter discussing the various changes already made in response to EPA comments along with the IPDES Enforcement Procedures Manual on June 30, 2017.

On July 24, 2017, EPA transmitted via electronic mail comments on the IPDES Enforcement Procedures Manual. Upon review of IDEQ's response to comments and revised materials, EPA, on July 25, 2017, provided IDEQ with comments stating whether the issue was resolved in EPA's opinion. IDEQ held a conference call with EPA Region 10 Staff as well as staff from the Office of Criminal Enforcement on July 27, 2017 to discuss the remaining issues. Based on EPA's written and verbal comments for those issues that needed further work, IDEQ has identified the following major categories: authority to regulate poultry CAFOs, criteria for minor modifications to IPDES permits, criminal investigations, prosecution of criminal violations, meeting enforcement deadlines.

IDEQ is proposing the following resolutions to the outstanding issues:

1. IDEQ will draft potential legislative language to ensure that IDEQ has the appropriate authorities for poultry CAFOs and will present this proposal to the 2018 Idaho Legislature;
2. IDEQ has included in the currently proposed administrative rule (published in the Idaho Administrative Bulletin August 2, 2017) removal of the criteria for minor modification that states *"Make a change in a permit provision that will result in neither allowing an actual or potential increase in the discharge of a pollutant or pollutants into the environment nor result in a reduction in monitoring of a permit's compliance with applicable statutes and regulations."*; and
3. Revise the IPDES Program Description and IPDES Enforcement Procedures Manual to address criminal investigations, prosecution of criminal violations, and meeting enforcement deadlines.

IDEQ is submitting for EPA's review, and for publishing for public comment, the revised IPDES Program Application materials to include:

- a revised IPDES Program Description,
- revised Attorney General's Statement,
- revised Memorandum of Agreement, and
- updated versions of the rules and statutes regarding the IPDES program.

IDEQ will also include draft proposals for legislative changes to Title 39 Chapter 1 Idaho Code (Idaho Environmental Protection and Health Act) and Title 25 Chapter 40 Idaho Code (Poultry Environmental Act). As an attachment to this letter, IDEQ is providing EPA with responses to written comments received on March 10, July 24, and July 25, 2017.

If you would like to discuss this matter further, please contact Mary Anne Nelson, IPDES Program Manager, at (208) 373-0291 or via email at mary.anne.nelson@deq.idaho.gov.

Sincerely,



Barry N. Burnell
Water Quality Division Administrator
Idaho Department of Environmental Quality

BNB:MN:lf

Enclosure

- c: Mr. Michael Lidgard, Region 10 NPDES Permits Unit Manager, Environmental Protection Agency
Mr. Ed Kowalski, Director, Region 10 Office of Compliance and Enforcement, Environmental Protection Agency
Ms. Courtney Weber, Assistant Regional Counsel, Region 10 Office of Regional Counsel
Ms. Cynthia Giles, Assistant Administrator, Office of Enforcement and Compliance Assurance
Mr. John Tippetts, Director, DEQ
Ms. Lisa Carlson, Section Chief, Idaho Attorney General's Office