

DECISION ANALYSIS REPORT

National Pollutant Discharge Elimination System Program Review

January 26, 2001

I. Introduction

The Idaho Department of Environmental Quality (DEQ) and stakeholders are involved in a dialog to determine whether or not to seek state National Pollutant Discharge Elimination System (NPDES) primacy in Idaho. This is being accomplished through a focused multi-phased evaluation as described below. This evaluation was prompted as a result of a growing interest from affected groups throughout the state for DEQ to take primacy of the program. As a result of this interest, DEQ formed a Steering Committee to evaluate (with interested parties) whether or not DEQ should take charge of the NPDES permit program. A recommendation on whether or not to proceed with the next phases of the process is summarized below. The next phases will be to develop the capacity of DEQ to run the program, outline funding strategies, draft rules, and prepare legislation necessary for a final decision on program primacy in December of 2002.

The NPDES program is the wastewater discharge permitting program conceived as part of the sweeping 1972 amendments to the federal Water Pollution Control Act (Clean Water Act). The national goal as stated in the Clean Water Act (CWA) is the elimination of discharges of pollutants into navigable waters by 1985.

The purpose of the NPDES program is to protect human health and the environment. It remains the centerpiece of the nation's water pollution control efforts. The CWA requires that all "point sources" discharging "pollutants" into waters of the United States must obtain a NPDES permit. NPDES permits contain limits on what can be discharged and other provisions to ensure that the discharge does not harm water quality or the public's health. Permits are issued by the Environmental Protection Agency (EPA), or in the case of an EPA-approved state-run program, by a state environmental agency. There are 44 states/territories administering the program.

The term "point sources" includes discrete conveyances such as pipes, ditches, channels, tunnels, and containers. It also includes vessels or other floating craft from which pollutants are or may be discharged. By law, the term "point source" also includes concentrated animal feeding operations (CAFOs). Also, by law, agricultural storm water discharges and return flows from irrigated agriculture are not "point sources." Although individual households do not need permits, facilities must obtain permits if their discharges go directly into surface waters.

The term "pollutant" includes any type of industrial, municipal, and agricultural waste discharged into waters of the United States. Some examples include, but are not limited to, dredged soil, incinerator residue, sewage, garbage, oil and grease, pesticides, metals, munitions, chemical waste, solid waste, biological materials, radioactive materials, heat, discarded equipment, rock, and sand. By law, a pollutant does not include sewage or discharges incidental to the normal operation of an armed forces vessel, or water, gas, or other material injected into an oil and gas production well.

The term "waters of the United States" is defined broadly in the CWA. "Waters of the United States" include navigable waters, tributaries to navigable waters, interstate waters, and the oceans out to 200 miles. These waters also include intrastate waters which are used by interstate travelers for recreation or other purposes, as a source of fish or shell fish sold in interstate commerce, or for industrial purposes by industries engaged in interstate commerce. (See EPA's NPDES Permitting Program Web site: www.epa.gov/owmitnet/npdes.htm.)

The EPA currently retains "primacy" for the NPDES program in Idaho. This means that the EPA is responsible for permitting and enforcing all NPDES permits in the state. DEQ is responsible for the water quality certification of all permits (to certify that they meet Idaho water quality standards), and for conducting a number of inspections per year for EPA, as negotiated. DEQ conducted approximately 50 NPDES inspections in 2000. There are over 350 permitted entities in Idaho, including municipal, industrial and other types of facilities. (See Table E-1, Appendix E.) Additional information describing the NPDES permit program as well as permit status and backlog projections for permits is located in Appendix E.

II. Recommendations from Steering Committee on NPDES State Primacy

All Steering Committee members, except the Aquaculture Subcommittee, recommended that DEQ proceed to Phase 3 of the NPDES evaluation process. This phase consists of interaction with the legislature and securing resources to continue the process. Phase 4 includes preparing a detailed package of draft statutes, regulations, and guidance necessary for DEQ to assume primacy of the NPDES program. This package will include adequate detail for interested parties to contrast the advantages and disadvantages on a permit by permit basis so stakeholders can determine whether or not to seek final delegation of primacy for the program. An added benefit to this process is that many of the regulations and guidance documents will assist the state in better defining the existing 401 certification program for NPDES permits (whereby the state certifies that projects meet Idaho water quality standards.) Because of this, the Steering Committee may recommend adopting some of the regulations or guidance to clarify the 401 certification process prior to making the final primacy determination.

Some common concerns were expressed in the recommendations of the groups and will need to be addressed in the final package. They are as follows:

- A. DEQ must demonstrate technical and administrative capacity to operate the program.
- B. The program must be able to function with a minimum of federal interference from EPA, the US Fish and Wildlife Service, and the National Marine Fisheries Service.
- C. The method of funding the program is very important. Any fee structure must be equitable and take into account cost of permit issuance and the benefits to the permit holder.
- D. There is strong desire to continue a Steering Committee.

The individual letters or e-mails received from participants are included in Appendix A.

Advantages, Disadvantages and Uncertainties of State Primacy Developed by the Steering Committee

A. Advantages

1. Based on congressional intent, the NPDES permit program is one of the primary methods of implementing the CWA. To not have state primacy leaves a major piece of implementing the CWA in the hands of the federal government. If the state does not have primacy, the state only has an advisory role on many important decisions regarding water quality in Idaho.
2. Generally, programs implemented closer to the regulated community provide better service. The state has a better appreciation of issues surrounding point and nonpoint source discharges and understanding of local social and economic impacts.
3. The state would be responsible for the development and implementation of what the program becomes in Idaho, including development of a strategic plan for protecting water quality in the state based on a watershed approach that integrates both point and nonpoint sources. Currently, EPA is responsible for point sources and the state of Idaho deals with nonpoint sources of pollution.
4. The state can better utilize flexibility and discretion to develop legislation, rules, policy, and guidance to implement the CWA.
5. If the state has primacy for the program, it will further develop its capacity and expertise to deal with complex, current and emerging issues. This will benefit all water programs in the state.
6. Permit holders would not get caught between two agencies in the permitting process. One agency would be responsible for decisions on what provisions go into a permit.
7. The state will be able to implement a compliance-assistance philosophy that includes enforcement when necessary.
8. Challenges to the program will be in state court in Idaho, not in federal court in Seattle.
9. The state will be able to create a data management system that works for the state and the stakeholders.
10. The program is more likely to be adequately staffed. Permit backlogs will be reduced and better quality permits will be issued.
11. Inspections and permitting will be consistent.

B. Disadvantages

1. Significant portions of the cost will be shifted to the state and/or permittees.
2. From an environmental perspective, there is concern that there will be less federal oversight, that local governments and industry may have a significant influence on issues at the state level leading to less restrictive requirements or backsliding, and that state courts will be less favorable to environmental challenges.
3. DEQ must develop the capacity to run the program in a short time.
4. The risk of future program growth and cost increases based on new regulations or modification of existing regulations.

C. Uncertainties

1. Consultation with the services on Endangered Species Act (ESA) issues is uncertain at this point. If consultation is done on a permit by permit basis under a state program, the steering committee is opposed to delegation.
2. There is uncertainty as to DEQ's discretion and flexibility with EPA overseeing the state NPDES program.
3. The funding mix is yet to be defined.

III. Scope of NPDES Program Evaluation for Idaho

The scope of this evaluation is to determine whether or not to proceed with the assumption of NPDES primacy in Idaho. This will be accomplished through a focused multi-phased evaluation as listed below in the section entitled "Schedule for the State of Idaho's NPDES Program Evaluation."

Schedule for the State of Idaho's NPDES Program Evaluation

2000	2001	2002	2003
PHASE 1 Background Study (6/00-11/00)			
PHASE 2 Steering Committee Recommendation (7/00-12/00)	PHASE 3 Legislative Interaction and Resources for Phase 4 (1/01-4/01)		
	PHASE 4 Develop Implementation Package (4/01-12/02)		
		* Final "GO" "No GO" Decision (12/02)	
			PHASE 5 Present Rules/Statutes to 2003 Legislature (1/03-4/03)

Phase 1 (Completed)

Complete a background study that describes the NPDES program opportunity for Idaho. This study includes a description of EPA's existing program in Idaho, required and recommended primacy program components, and a description of similar state programs experience, including program costs and resources.

Phase 2 (Completed)

Assemble a steering committee including a cross section of affected associations, industries, and environmental groups. Through a series of focused meetings obtain input on the desired NPDES program composition. A recommendation to proceed to Phase 3 was received in December 2000.

Phase 3

Submit any necessary packages to the 2001 legislature; also, interaction with the legislature and securing funding to continue the process.

Phase 4

From April 2001 until July 2002, develop a detailed implementation package that includes the following for a final decision on program primacy in December 2002:

- ◆ Legislative package
- ◆ Draft rules and regulations for final review
- ◆ Guidance for the program
- ◆ A list of resource needs necessary for an Idaho program
- ◆ An explanation of how DEQ would implement the program as well as the mix of resources (e.g., all state employees, or state employees with some contracting)
- ◆ A staffing package that focuses on attracting and retaining key environmental professionals for the program (see Appendix C for details regarding staffing and resource needs)
- ◆ A list of lessons learned from other similar states that have taken primacy recently and factor this knowledge into Idaho's approach
- ◆ An explanation of how issues related to consultation on ESA issues with the services are resolved
- ◆ A list of funding strategies developed with stakeholder groups

Phase 5

Present rules and statutes for Idaho's new NPDES program to the 2003 legislature. Seek final EPA approval, complete capacity development for the program, and start the transition of the NPDES program to Idaho in April 2003, after legislative approval of the new NPDES rules.

Steering Committee

Scope

A Steering Committee and two subcommittees were formed in order to include a cross section of effected associations, industries, and environmental groups (see Appendix F for a list of steering committee participants).

Subcommittee Reports

The following reports were submitted:

Aquaculture Subcommittee Report

The Aquaculture subcommittee met several times to discuss the primacy issue and how to address the concerns of their industry. In the end the aquaculture industry was split on the question of whether to pursue primacy. A majority of the members polled by the Idaho Aquaculture Association did not favor delegation of the NPDES program. The concerns arose primarily in two areas.

The first issue is simply a lack of trust in DEQ. This is based on two experiences that many of the operators had in the development of the Mid-Snake TMDL allocations. In the mid-nineties the industry committed to a goal of reducing phosphorous in their effluent by 40% when developing the Nutrient Management Plan (NMP). When the NMP was scrapped, a 40% reduction was mandated in the TMDL developed by DEQ. The industry felt betrayed by DEQ when their good faith offer to attempt a 40% reduction was turned into a mandatory limit. Many small operators felt they were not given an adequate allocation in the TMDL to allow them to grow or that the allocation did not reflect improvements they had made in facilities prior to the allocation. The second experience resulting in a lack of trust occurred during the preparation of the current NPDES permit. The producers felt that DEQ and EPA blamed many of the unnecessary provisions contained in the permit on each other, therefore the producers were not able to determine which agency was requiring specific items.

The second issue for aquaculture is that a Blanket Permit currently exists. While they believe there is ample opportunity to streamline the current permit and remove many of the costly, unnecessary provisions in it, the industry's lack of trust in DEQ makes it impossible for them to ascertain whether or not any of those changes would be made. Without a reduction in the costs associated with the permit, the industry sees no advantage in paying an additional fee for DEQ to administer the permit. The smaller facilities are very concerned about the size of a fee compared to the revenue generated by the smaller facilities.

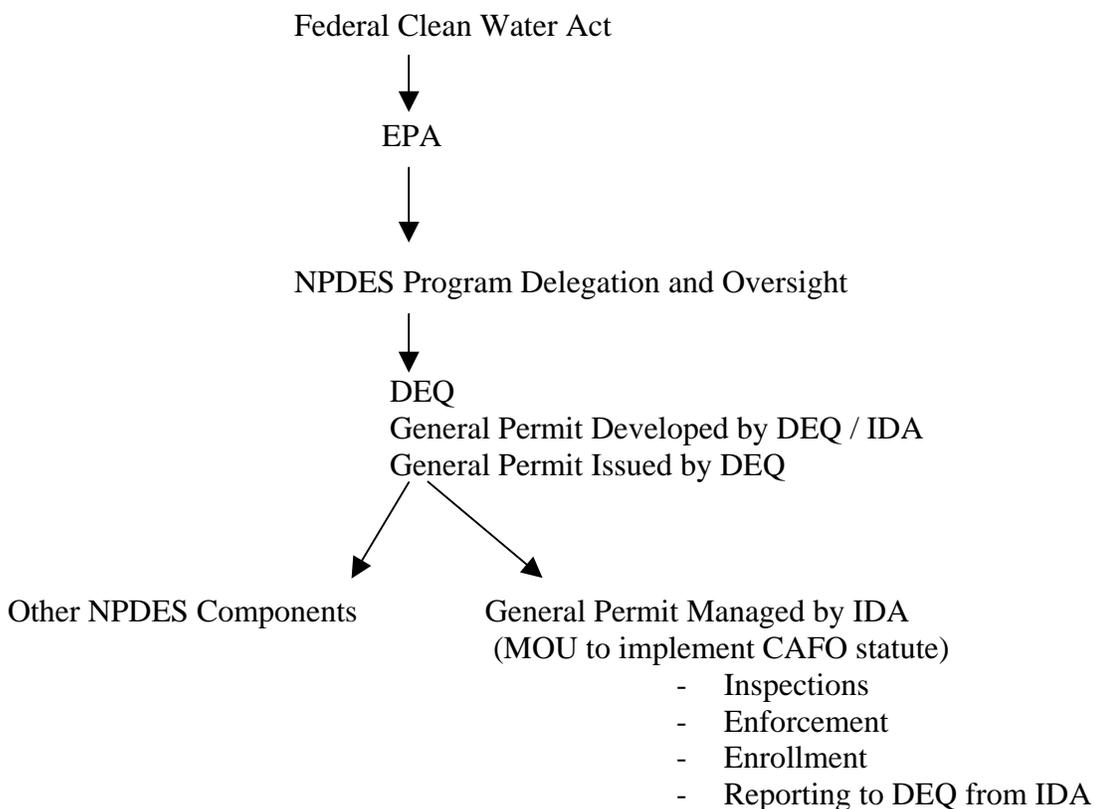
Agriculture Subcommittee Report

An agriculture subcommittee was formed to discuss issues related to the NPDES program and CAFOs. The subcommittee met twice, and participants included:

Lynn Tominaga, Idaho Groundwater Appropriators
Norm Semanko, Idaho Water Users Association
Sara Braasch and Lloyd Knight, Idaho Cattle Association
John Chatburn, Idaho Department of Agriculture (IDA)
Mike Bussell, U.S. Environmental Protection Agency
Greg Nelson, Idaho Farm Bureau
Kevin Beaton, Stoel Reeves Law Firm
David Mabe, Dave Hovland, and Nate Fisher, Idaho DEQ

From the meetings, a matrix was devised to describe the relationship between EPA, DEQ and IDA if the state were to gain primacy of the NPDES program. The matrix follows:

Draft Matrix of Relationship Between IDA and DEQ for CAFOs



DEQ would be the delegated authority in Idaho, and would develop and issue a general permit for CAFOs. However, the subcommittee believes that many of the permitting components should be managed by IDA, such as inspections, enforcement, and enrollment.

Members of the subcommittee discussed other topics pertinent to delegation of the program, and issued the following draft statements:

1) Funding for Program.

Based on the small, manageable number of currently permitted CAFO facilities, it is the intent of the Agriculture Subcommittee that DEQ and the IDA will absorb any necessary administrative costs. As the NPDES program for CAFOs grows, it is expected that the state agencies will work through the normal, legislatively approved budgeting process to fully fund the CAFO program.

2) Use of Water Conveyance Facilities.

Before granting any NPDES permit, which proposes the use of any canal, lateral, ditch, pipe, drain, or other conduit-to-facilitate the discharge of any pollutant to waters of the United States, DEQ will require the permit applicant to obtain written permission from the applicable irrigation entity or other owner or operator. In the case of irrigation conduits, such use shall not eliminate or otherwise jeopardize the existing NPDES permit exemption for irrigation return flows. This is consistent with current practices by EPA.

3) Use of Chemical Products.

DEQ recognizes that certain chemical products used in farming, irrigation, and related activities are regulated under other federal statutes and rules (e.g., aquatic herbicides, pesticides, etc.). NPDES permits are not required by EPA for the application of such chemical products and shall not be required by DEQ.

See Appendix A for reports/letters from other interested groups.

Outreach Strategy for Other Interested Groups

The steering committee and other contributing individuals agreed to take the responsibility for keeping their members apprised of the progress of this evaluation process.

Potential NPDES Primacy Program for Idaho

Scope

Information pertaining to a summary of requirements for Idaho to obtain an approved NPDES permit program under the CWA is listed in Appendix B. The scope of the potential NPDES Primacy Program for Idaho was estimated based on considering the full program components as listed below. A complete description of these components is provided in Appendix E.

- Permit Issuance
- Wet Weather (Storm Water Permitting)
- Pretreatment Program
- Biosolids (sludge) Program
- Compliance/Enforcement
- Data Management/Administration

Estimated Costs

A resource model was used to estimate NPDES program costs. The resource model used to estimate resource needs was the "State Water Quality Management Workload Model, ver. 3.0 (3/00)." This model was developed as part of the Gap Analysis Effort sponsored by EPA's Office of Wastewater Management. This effort is designed to: (1) help EPA develop a national estimate of the resource needs faced by state water quality management programs, and (2) provide states with a flexible, yet nationally-consistent, budget and planning tool.

At this time, the estimated cost of a full NPDES Program in Idaho is around \$2.5 million per year with about 30 full time staff. The information supporting this cost estimate is presented in Appendices C and D.

Potential Funding Mechanisms

Potential funding sources will likely consist of a mix of general state revenue, fees, and federal grant money. This will be determined in phase 4.

APPENDICES

APPENDIX A
LETTERS/POLICIES OF PARTICIPANTS



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

RECEIVED
DEC 18 2000
DEPARTMENT OF ENVIRONMENTAL QUALITY
PLANNING & SPECIAL PROJECTS

DEC 15 2000

Reply To
Attn Of: OW-130

Steve Allred, Director
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706-1255

Dear Mr. ^{Steve}Allred:

A few months ago, you advised us of your interest in seeking NPDES program authority. I understand there have been a series of productive NPDES Steering committee meetings along with separate subcommittee sessions and that a Decision Analysis Report will be prepared shortly.

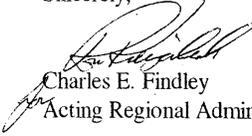
We are very supportive of the state seeking NPDES authority. With the passage of the 1972 amendments to the Federal Water Pollution Control Act, it was Congress' intent that states manage the NPDES program. Presently, there are 44 states/territories that are administering the program. Currently, the State of Maine is seeking the program. The State of Idaho is in an excellent position to seek primacy, since many of the NPDES permits issued by EPA will be current by the end of 2001 and contain applicable requirements to protect water quality.

We feel that a key component to implementing a successful water quality management program is for states to have the ability to issue and enforce their own NPDES permits. It offers states the opportunity to integrate NPDES with the implementation of TMDLs and water quality standards. States have the flexibility to direct appropriate resources to specific areas of concern. Resources can also be directed more effectively for compliance monitoring and inspections activities. States are in a better position to relate the issues around point source dischargers with an understanding of the local landscape and environmental impacts. NPDES states can also be more effective than EPA in working with stakeholders and appreciating local concern and issues.

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Undertaking a new program involves such key issues of adequate resources and funding. We understand that these, as well as other areas, will require additional analyses and we look forward to providing whatever support that we can. I am personally interested in this project and encourage that IDEQ continue the assessment process during the new calendar year. Please feel free to contact me, Jim Wertz, Director of the Idaho Operations Office, or Randy Smith, Director of the Office Water, at any time regarding this matter. Bob Robichaud, who manages the NPDES program, will continue to be our key staff person.

Sincerely,


Charles E. Findley
Acting Regional Administrator

cc: Dave Mabe, IDEQ
Nate Fisher, IDEQ

IACI POSITION ON NPDES PRIMACY

The Clean Water Act requires wastewater dischargers to have a permit establishing pollution limits and specifying monitoring and reporting requirements. *National Pollutant Discharge Elimination System* (NPDES) permits regulate household and industrial wastes that are collected in sewers and treated at municipal wastewater treatment plants. Permits also regulate industrial point sources and concentrated animal feeding operations (CAFOs) that discharge into other wastewater collection systems, or that discharge directly into receiving waters. Cities, industry and others are required to obtain NPDES permits.

The U.S. Environmental Protection Agency (EPA) retains “primacy” for the NPDES permitting program in Idaho. This means the EPA is responsible for permitting and enforcement of all NPDES permits in the state. Idaho is responsible for the water quality certification of all permits and for conducting a number of inspections per year for the EPA.

There are nearly 400 permitted entities in Idaho. They include cities, industries, CAFOs and mines. The permit is typically valid for five years. The level of complexity in a permit varies with the size of a facility or the type of discharge.

Impacts to water quality come from all segments of society. Conventional pollutants are contained in the sanitary wastes of households, businesses and industries. These pollutants include human wastes, laundry and bath water, oil and grease and lawn care products, as well as industrial and municipal waste water.

There is currently an extensive backlog at EPA of expired permits. A number of entities in Idaho have continued operations with permits that have been expired for a number of years. In addition to the backlog, the lack of efficiency in the EPA and required consultations with the National Marine Fisheries Service and the Fish and Wildlife Service on Endangered Species issues causes most applications to be delayed, amended and even rewritten—costing Idaho local government and private sector entities considerable expense.

The present system of EPA control over water quality in Idaho is slow, cumbersome, expensive and inefficient. A permitting program that is run by the state, rather than the federal government, could better serve Idaho citizens, provided that DEQ has the capacity to effectively run a state-wide permitting program and utilize all of the flexibility allowed within the Clean Water Act.

POLICY: IACI supports Idaho having primacy of the NPDES permitting program, if:

The program costs are substantially borne by the state from the General Fund.

DEQ is budgeted to a level that allows the agency to hire professional personnel who are qualified to run an efficient and effective permitting program.

The state program will be run by the state with a minimum of federal interference in permitting, inspection and enforcement activities.

All state permitting actions under the approved state program are to be state actions and are not subject to consultation under the Endangered Species Act or analysis under the provisions of the National Environmental Policy Act. There should be no conditions of approval of the state program, which have the effect of undermining or circumventing this principle.

DEQ is able to prove that they have the capacity to effectively run another statewide permitting program.

Municipal Group Report Concerning NPDES Delegation

The Association of Idaho Cities (AIC) has participated in the NPDES Delegation Steering Committee on behalf of Idaho municipalities since June 2000.

Municipalities have played a key role in the successful implementation of the Clean Water Act and have contributed substantially to the progress we have made as a nation in the last 30 years in improving and restoring water quality. AIC recognizes that significant challenges remain and municipalities will continue to play an important role in maintaining and improving water quality in the future.

AIC generally supports the concept of state delegation of the NPDES program for two key reasons:

1. the general philosophy that services are best provided at the unit of government nearest the customer; and,
2. the state will be better able to address existing and future water quality issues, using flexible, innovative, and efficient approaches, if it has the resources, knowledge, and programmatic experience to do so.

However, there are important issues that remain unaddressed, including but not limited to; Endangered Species Act/NPDES interaction, fees, flexibility, and IDEQs plan/capacity to implement a new, large, and complex program. These issues need to be addressed prior to AIC or other stakeholders making a final decision to support or oppose State Delegation of the NPDES program.

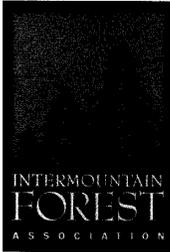
The AIC Environment Committee has recommended and the Legislative Committee has adopted the position that:

1. AIC supports further investigation of NPDES delegation by Idaho Department of Environmental Quality (IDEQ) during the next 18 months, including addition of new staff to accomplish this task during this budget year;
2. AIC continue to participate with IDEQ and other stakeholders in an NPDES Delegation Advisory Committee; and,
3. AIC will perform a detailed review and adopt an approval/disapproval position for the NPDES Delegation proposal, including key programmatic issues (e.g. flexibility, fees, ESA, capacity...), prior to the 2003 legislative session.

Municipal Subcommittee Members/Participants

The following have participated in one or more of the NPDES Delegation meetings:

Bill Ancell, PW Director, Boise
Chris Beck, Councilmember, Hayden
Debbie Bloom, Deputy Director, AIC
Mayor Cleo Cheney, Heyburn
Mayor Louis Christensen, Driggs
Tom Courtney, City Manager, Twin Falls
Robbin Finch, Water Quality Manager, Boise
Sid Fredrickson, WW Supervisor Coeur d'Alene
Carl Ellsworth, Environmental Manager, Boise
Chuck Geska, Councilmember, Buhl
Ken Harward, Director, AIC
Case Houson, Nampa
Karl Huffaker, Mountain Home
Brent Hokkenson, Pocatello
Dave Jett, Mountain Home
Mayor Steve Judy, Coeur d'Alene
Clay Larkin, Councilmember, Post Falls
Gordon Law, PW Director, Caldwell
Jenni Light, Environmental Manager, Pocatello
Mayor Doug Manning, Burley
Erica Mcguire-Anderson, ACHD
John Millar, Facilities, Rexburg
Paul Raymond, PW Director, Nampa
Gary Smith, PW Director Meridian
Chad Stanger, PW Director Idaho Falls
Rick Wells, Councilmember, Caldwell
Terry Werner, WW Supervisor, Post Falls
Urban Wessels, WW Systems Manager Lewiston



December 29, 2000

350 N. 9th Street, Suite 304E
Boise, Idaho, 83702
208•342•3454
Fax 208•424•0759
www.intforest.org

Mr. David Mabe
Director, Water Programs
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706

Dear Mr. Mabe:

The Intermountain Forest Association (IFA), representing Idaho businesses that own forestlands, operate lumber, plywood and paper mills appreciate the opportunity to submit comments to you and the National Pollution Discharge Elimination System (NPDES) Steering Committee regarding the review of whether the State of Idaho, Department of Environmental Quality (DEQ) should seek primacy over the federal NPDES program. As you know, IFA has been represented on the Steering Committee since its inception.

Under the current federal EPA program there is currently an extensive backlog of expired permits. A number of entities in Idaho have continued operations with permits that have been expired for a number of years. In addition to the backlog, the lack of efficiency in the EPA and required consultations with the National Marine Fisheries Service and the Fish and Wildlife Service on Endangered Species issues causes most applications to be delayed, amended and even rewritten—costing Idaho local government and private sector entities considerable expense. The present system of EPA control over water quality in Idaho is slow, cumbersome, expensive and inefficient. A permitting program that is run by the state, rather than the federal government, could better serve Idaho citizens, provided that DEQ has the capacity to effectively run a state-wide permitting program and utilize all of the flexibility allowed within the Clean Water Act.

Since the beginning and continuing through today, concerns of our member companies have been the same: cost, capacity and consultation. For support to be garnered for Idaho DEQ to obtain primacy over the NPDES program, the State of Idaho must substantially bear, from the General Fund, program costs. DEQ must budget to a level that allows the agency to hire professional, capable personnel who are qualified to run an efficient and effective program. DEQ is able to prove that they have the capacity to effectively run another statewide permitting program.

In addition, the state program must be run by the state with a minimum of federal interference in permitting, inspection and enforcement activities. A particular requirement for IFA support would be that all state permitting actions under the approved state program are to be state actions and are not subject to consultation under the Endangered Species Act or analysis under the provisions of the National Environmental Policy Act. There should be no conditions of approval of the state program, which have the effect of undermining or circumventing this principle.

We appreciate the amount of time and effort you, your staff and others have spent in bringing the review to its current status. Given our understanding of the draft report, we would support DEQ's proposal to move forward with a request to appropriate funds to continue to pursue the possibility of the State of Idaho receiving primacy in the future. However, we retain the opportunity to oppose primacy if the above issues (cost, capacity and consultation) are not adequately addressed as the process moves forward.

Sincerely,

Jane A. Gorsuch
VP Idaho Affairs



IDAHO FISH & GAME

600 South Walnut
P.O. Box 25
Boise, Idaho 83707-0025

January 8, 2001

Dirk Kempthorne / Governor
Rod Sando / Director

RECEIVED

JAN 10 2001

Mr. Dave Mabe
Department of Environmental Quality
1410 N Hilton
Boise ID 83706-1255

DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE WATER QUALITY PROGRAMS

Dear Dave:

The Idaho Department of Fish and Game (Department) is interested in the concept of the Department of Environmental Quality (DEQ) taking primacy of the National Pollutant Discharge Elimination Permits (NPDES) from the U.S. Environmental Protection Agency (US EPA). Of course there are many issues that will go along with this primacy – including adequate funding and logistical support for the program. These topics need to be addressed in the earliest possible stage of development in a state proposal.

From our perspective, some of the advantages to our agency and the local industry would include: the program could be operated more effectively from a local authority, response time and communication would probably be better, and local authority is usually more efficient overall. We would then perceive US EPA's role as more of a "quality control" and support organization for state operations.

To reiterate, the biggest concern the Department sees for resolution is the need for the DEQ to fully fund this program as the US EPA has. The Department does not support use of sporting public license dollars for this. This issue needs to be resolved before the Department can back such a proposal.

If you have any questions or further comments, please do not hesitate to call or write me.

Sincerely,

Virgil Moore, Chief
Bureau of Fisheries

c: Idaho Aquacultural Associates
Carla Fromm, US EPA
Phil Mamer, IDA
Magic Valley Region

Keeping Idaho's Wildlife Heritage

Equal Opportunity Employer • 208-334-3700 • Fax: 208-334-2114 • Idaho Relay (TDD) Service: 1-800-377-3529 • <http://www.state.id.us/fishgame>

APPENDIX B

INITIAL SUMMARY OF REQUIREMENTS UNDER THE CLEAN WATER ACT FOR IDAHO TO OBTAIN AN APPROVED NPDES PROGRAM

Note: The information listed below was summarized by J. Ron Sutcliffe of the Attorney General's Office. This analysis examines the CWA statute and the Codes of Federal Regulations (CFRs) and compares those requirements to existing state regulations and statutes to determine what, if any, state statutory or regulatory amendments might be necessary.

1) Does Idaho have authority to run an NPDES program?

Idaho Code supports a grant of authority to enter into a NPDES agreement with EPA and comply with the regulations and standards required by the CWA. The Idaho Code arguably infers permission for a state agency to run a NPDES permitting program, but does not contain specific authority.

Therefore, Idaho should probably pass a statute authorizing NPDES permitting by the state and the ability to adopt appropriate regulations. New regulations adopting federal standards will be needed in addition to statutory changes.

2) What additions to Idaho law does the CWA require for NPDES authority?

Note: There are numerous requirements under both the CWA and the regulations adopted under the CWA to implement the NPDES program. In several instances the CWA is not clear as to exactly what the state would need to do, whereas the CFRs contain specifics.

The first requirement of the CWA is that the state must submit a statement from the attorney general certifying that the laws of the state provide adequate authority to carry out the described program as listed below. The Idaho Attorney General would not be able to draft a letter without implementing new regulations. The letter must show that the submitted program has adequate authority to:

- Issue permits for fixed terms, not exceeding five years, which can be terminated or modified for cause. These permits need to ensure compliance with applicable requirements found in 33 U.S. Code sections 1311 and 1312 (effluent limits) and 1316-1318 (national standards of performance, toxic/pretreatment effluent standards, and record and inspection criteria). Section 1343 applies to oceans and is not applicable to Idaho.

- Issue permits to control the disposal of pollutants into wells. **A program approved under section 1422 of the Safe Drinking Water Act (SDWA) satisfies the requirements of 40 CFR Sec. 123.28 "Control of Disposal of Pollutants into Wells."**
 - Ensure that the public, and any other state that the waters of which may be affected by the issuance of a permit, receive notice of each permit application and have the opportunity for a public hearing before a ruling on each such application. **This would require a regulation.**
 - Ensure that the EPA Administrator receives notice of each application (including a copy thereof) for a permit. **This would require a regulation.**
 - Ensure that any state (other than the permitting state), whose waters may be affected by the issuance of a permit, may submit written recommendations to the permitting State Director with respect to any permit application. Also, if any part of such written recommendations are not accepted by the permitting state, that the permitting state will notify such affected state (and its administrator) in writing of its failure to accept such recommendations together with its reasons for so doing. **This would require a regulation.**
 - Ensure that permits will not be issued if, in the judgement of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Coast Guard, anchorage and navigation of any of the navigable waters would be substantially impaired thereby. **This would require a regulation.**
 - Abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement. **Idaho already has civil administrative penalties it could enforce with a criminal provision applicable to any violation of a state health and welfare statute or regulation so no need for an additional statute. DEQ could also adopt rules under the Environmental Protection Health Act (EPA) and the Water Quality Statues to provide for penalties to satisfy this requirement.**
 - Ensure that any permit for a discharge from a publicly-owned treatment works includes the conditions to require the identification, in terms of character and volume of pollutants, of any significant source introducing pollutants subject to pretreatment standards under...etc....**This would require a regulation.**
 - Ensure that any industrial user of any publicly owned treatment works will comply with 42 U.S. Code sections 1284(b), 1317, and 1318. **This would require a regulation.**
- 3) **The DEQ State Director and EPA Regional Administrator must execute a Memorandum of Agreement as per 40 CFR Sec. 123.24. This would not require state legislation.**
- 4) **State programs must have legal authority to implement the requirements for permitting under 40 CFR 123.25. Requirements need to be at least as stringent when passing administrative regulations.**

- 5) **The state should adopt 42 CFR 123.26 "Requirements for Compliance Evaluation Programs."**

- 6) **State agencies administering a NPDES Program need to satisfy the requirements for enforcement authority under 40 CFR Sec. 123.27. The state would need to pass a statute making it a crime to lie to DEQ in a NPDES permit or required record, or preferably, failure to accurately report under the Clean Water Act would be a crime.**

- 7) **State permit programs shall provide that no permit will be issued when the EPA Regional Administrator has objected in writing under Sec. 123.44**

- 8) **The post application process:**
 - EPA will determine whether or not the application is complete within 30 days after receiving the application
 - EPA will issue a public notice in the Federal Register inviting public comments if the application is complete. The public comment period will be open for at least 45 days
 - A public hearing will be scheduled for not less than 30 days after publication of the public notice

APPENDIX C

Modular Estimates of Annual Costs

NPDES STAFFING PACKAGE

Full Program

December 6, 2000

Responsibility	Position	FTE est	DEQ mid pt	Idaho Industry/ Consulting (a)	Idaho Department of Labor Survey (b)	National Average (c)
Rule/Guidance Development	Sci/An 3	1.0	21.41	29.03	22.31	28.01
	An 5	0.1	29.19	41.12	30.30	44.70
Permit Iss/Renewal	Eng/Sci/An3	10.6	21.41	29.03	23.91	31.17
Program Management	An 5	1.9	29.19	41.12	30.30	44.70
Admin. Fee Program	An 3	1.0	21.41	29.03	20.88	23.56
Permit Appeals	An 4	0.5	25.29	29.03	25.29	29.03
Review DMRs	Off. Sp 2	1.0	10.79	10.79	10.79	10.79
Inspections	Sci/An3	2.2	21.41	29.03	22.31	28.01
Pretreatment Inspections	Staff Eng	0.3	21.41	29.03	26.83	37.50
Diagn Inspect.	Staff Eng	0.5	21.41	29.03	26.83	37.50
Biosolids	Eng/Sci3	0.5	21.41	29.03	25.29	34.98
Assist Activities	Eng/Sci3	1.0	21.41	29.03	25.29	34.98
Complaint Invest.	Sci/An3	1.6	21.41	29.03	25.29	28.01
Violation Resp.	Sci/An3	1.5	21.41	29.03	25.29	28.01
Data Management	Off. Sp 1	1.0	8.71	8.71	8.71	8.71
Reporting	Sci/An3	1.0	21.41	29.03	25.29	28.01
Clerical	Admn 1	5.0	12.13	12.13	12.13	12.13
Totals		30.7				

Note: Pretreatment includes work in the pretreatment inspections and a very small amount in complaint investigations and violation response. The stormwater program is a broad-based program with work in virtually all activities of the program.

Estimated Annual Costs (Includes Operating and Benefits)

Full Program	
DEQ	\$1,955,687
Idaho Industry	\$2,465,971
Idaho Dept of Labor	\$2,111,437
National	\$2,554,857

(a) confidential corporate source, Boise, 2000

(b) Idaho Occupational Employment and Wages, August 1999

(c) from National Society of Professional Engineers, 1999, Environmental Protection 1999 Salary Survey, American Chemical Society 1998 Survey, 1999 Computer Industry Salary Survey, 1998 Geological Salary Survey

APPENDIX D

NPDES Funding Options

NPDES Funding Options

12/7/00

Assumptions: All costs are annualized, all programs are delegated, used Idaho DOL salaries,
 general permits were annualized over 5 years, it takes 2 FTE to issue a general permit but .2 FTE to maintain it

	FTE	Total Cost	# Facilities	Funding Levels											
				0%	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%	
Full Program	30.7	\$2,149,000	356	\$0	\$214,900	\$429,800	\$644,700	\$859,600	\$1,074,500	\$1,289,400	\$1,504,300	\$1,719,200	\$1,934,100	\$2,149,000	
Municipal Majors	4.9	\$345,100	28	\$0	\$34,510	\$69,020	\$103,530	\$138,040	\$172,550	\$207,060	\$241,570	\$276,080	\$310,590	\$345,100	
Municipal Minors	2.1	\$145,600	89	\$0	\$14,560	\$29,120	\$43,680	\$58,240	\$72,800	\$87,360	\$101,920	\$116,480	\$131,040	\$145,600	
Industrial Majors	4.5	\$312,200	38	\$0	\$31,220	\$62,440	\$93,660	\$124,880	\$156,100	\$187,320	\$218,540	\$249,760	\$280,980	\$312,200	
Industrial Minors	10.5	\$732,200	201	\$0	\$73,220	\$146,440	\$219,660	\$292,880	\$366,100	\$439,320	\$512,540	\$585,760	\$658,980	\$732,200	
Aquaculture	1.8	\$127,750	111	\$0	\$12,775	\$25,550	\$38,325	\$51,100	\$63,875	\$76,650	\$89,425	\$102,200	\$114,975	\$127,750	
CAFO	0.6	\$41,650	11	\$0	\$4,165	\$8,330	\$12,495	\$16,660	\$20,825	\$24,990	\$29,155	\$33,320	\$37,485	\$41,650	
Stormwater	6.3	\$440,300	357	\$0	\$44,030	\$88,060	\$132,090	\$176,120	\$220,150	\$264,180	\$308,210	\$352,240	\$396,270	\$440,300	
Total	30.7														

Note: Pretreatment program costs are included in Municipal Majors category. Biosolids are included in Municipal Majors and Municipal Minors.

APPENDIX E

Background Information on NPDES Opportunity

The following information regarding the NPDES opportunity is from a presentation by Mr. Bob Robichaud, Manager of EPA's NPDES Permitting Unit for Region 10. The presentation was given to the Idaho NPDES Steering Committee meeting on August 2, 2000, and it was divided into the following parts: I) NPDES Program Components, II) NPDES Delegation Procedures, III) Description of NPDES Program's Primacy Pieces, IV) Observations, and V) Information on Selected State NPDES Programs.

I) NPDES Program Components

- Permit Issuance
- Wet Weather (Storm Water Permitting)
- Pretreatment Program
- Biosolids (sludge) Program
- Compliance/Enforcement
- Data Management/Administration

II) NPDES Delegation Procedures

Listed below are the four phases of delegation.

1 Phase 1: Development

- Seek approval from legislature (funding is a key element). Also need to conduct outreach activities with industry, local communities, environmental groups, and the public to obtain feedback and the necessary buy-in.
- Prepare a complete a statutory/regulatory package.
- Develop the delegation package.
- Prepare Attorney General=s (AG) Statement
- Prepare implementation procedures (including all necessary forms).
- Describe resources (budget and staffing for the first two years).
- Issue draft Memorandum of Agreement (MOA) and Compliance Assurance Agreement (CAA) that describe the roles, responsibilities, and expectations of the state and EPA once assumptions have been granted .

(Note: It is strongly encouraged that the state and EPA work closely in developing the various pieces of the program. For example, during the development of the enabling legislation and regulatory package, drafts should be shared with EPA so that what is sent to the legislature is acceptable. This will eliminate confusion and/or rework down the road.)

2) Phase 2: Submittal

- A letter from the governor requesting program approval.
- Attorney General's statement (statutory authority and regulations need to be in place).
- A description of procedures related to all permit and enforcement and tracking tools.
- Resource discussion (staffing and funding).
- The MOA and CAA (should not be signed at this stage).

3) Phase 3: Review by EPA and the Public

- EPA has 30 days to determine if the application is adequate and complete. Upon a determination of adequacy, EPA then provides a notice of its intent to approve the application in the Federal Register. The public comment period is 45 days and includes a public hearing.
- Endangered Species Act consultation. (Note: It is important that the U.S. Fish and Wildlife Service and the National Marine Fisheries Service participate in the process from the beginning.)
- Evaluation of review comments.
- Address any outstanding issues (Note, this may result in additional modifications to the program delegation package).

4) Phase 4: Final Approval (40 CFR 123.25)

- The 90 day approval process by EPA is a best case timeframe
- Region 10 must also seek EPA Headquarters concurrence. Region 10 will involve EPA Headquarters from the beginning.
- Obtain final signature for the MOA and CAA.
- Once approved, EPA will send a letter to the governor, and publish notice in Federal Register.
- Turn NPDES documents over to the state as program is transferred (Note: permits issued by EPA remain in effect).

III) Description of NPDES Program's Primacy Pieces

1. Permit Issuance (industrial, municipal, and federal facilities)

- Type of permits: individual and general permits. Presently, two general permits have been issued by EPA (CAFO and aquaculture). EPA also expects to issue a general permit for ground water pump and treat remediation and small sewage treatment systems. (General Permits are an efficient method to cover a large number of similar type facilities.)
- Types of facilities: major and minor. The distinction between major and minor industrial facilities is based on a point system related to flow rate, discharge, type of pollutants and impacts to receiving streams; a score of greater than 80 points indicates a major facility. For municipal wastewater treatment plants, major facilities are those discharging at least one million gallons per day. EPA is now focusing resources on watershed permitting. Under this approach, several minor permits may have a large overall impact on the watershed. EPA publishes new effluent guidelines periodically that affect certain industrial categories. The most recent effluent guidelines are for the pulp and paper industry.
- Permits must contain limits based on national effluent guidelines and/or water quality standards, whichever is more restrictive. Water quality-based permitting is the rule, not the exception.
- Permitting process includes the following steps:
 - Evaluate applications for completeness
 - Draft a fact sheet and permit
 - Issue a public notice and provide a public comment period (for authorized state programs, EPA receives copy of draft permit; can comment, concur, or object)
 - Address comments
 - Issue final permit
 - The permit becomes effective 30 days after issuance. The permittee could have the opportunity to appeal within the 30-day period. The appeal process can vary for authorized states
- EPA's goal is to keep the backlog of expired permits to 10 percent or fewer
- Idaho's NPDES permit breakdown by type is shown in Table E-1. The projected Idaho major permit backlog is shown in Figure E-1 and the minor permit backlog in Figure E- 2.

(Note: EPA retains authority for regulating facilities on tribal lands)

**Table E-1.
NPDES FACILITY BREAKDOWN**

Types	Majors	Minors	Total
POTW¹ Municipals	28	89	117
Industrial:			
Hard Rock Mining	10	8	18
Pulp and Paper	1	0	1
Hatchery	20	91	111
Food Processing	3	19	22
CAFO ²		11	11
Timber Products	2	5	7
Inorganic	1	1	2
Sand and Gravel		4	4
Dams		3	3
Water Supply		10	10
Landfills		6	6
Geothermal		6	6
Groundwater Remediation		5	5
Private WWTP ³		15	15
Miscellaneous		17	17
Storm Water			
MS4 ⁴	1		1
Total	66	290	356

- Footnotes:
1. POTW: Publicly Owned Treatment Works
 2. CAFO: Concentrated Animal Feeding Operation
 3. WWTP: Wastewater Treatment Plant
 4. MS4: Municipal Separate Storm Sewer Systems

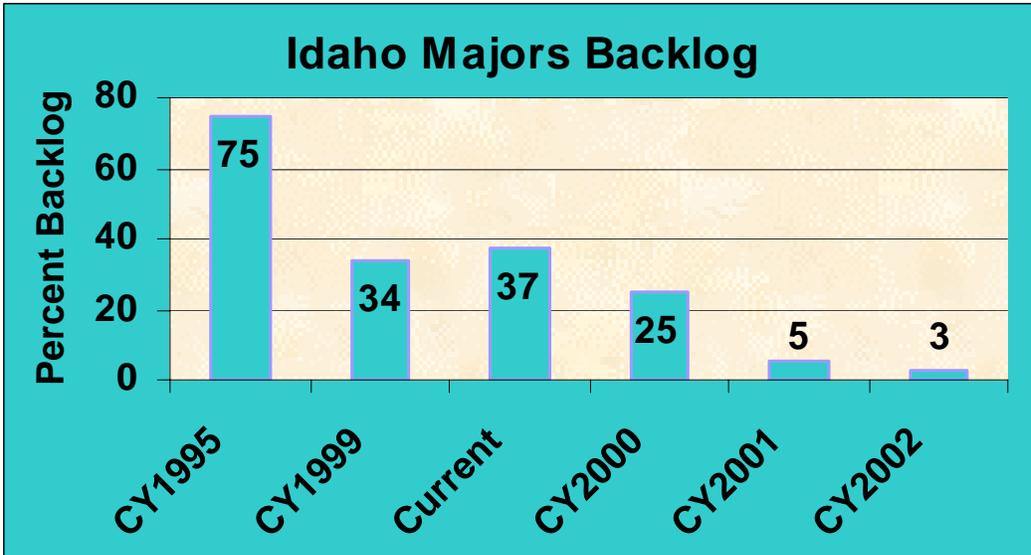


Figure E-1. Idaho Majors Backlog

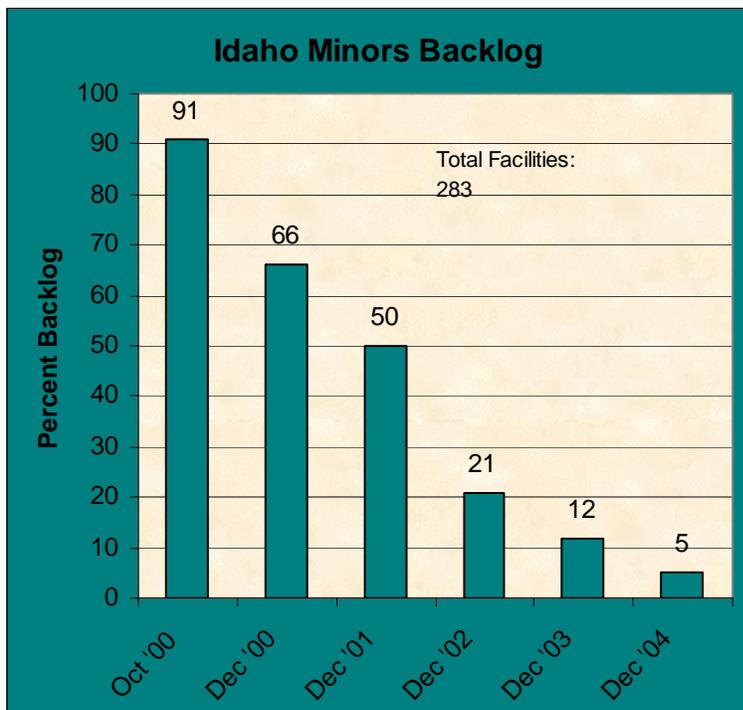


Figure E-2. Idaho Minors Backlog

2. Wet Weather

- Storm Water Permitting: MS4 (municipal separate storm sewer system)/construction/industrial. Region 10 issues separate permits to owners of MS4 facilities, such as in the Boise area. A national general permit is available for construction sites and to various industrial facilities discharging storm water. Authorized states must issue their own general permits for construction activities and for certain industrial storm water dischargers.
- Combined Sewer Overflows (CSO)
- Sanitary Sewer Overflows (SSO)

(Note: There are no Idaho cities with combined sewers. SSO requirements are placed in municipal permits; and are essentially a compliance and enforcement program, since SSOs are prohibited. There are new storm water regulations for construction activities and for smaller MS4 jurisdictions that could increase an authorized state's permitting program. In addition, there are new regulations for the various industrial storm water dischargers being proposed.)

3. Pretreatment (To protect Publicly Owned Treatment Works [POTWs])

- Oversee local implementation and provide technical advice
- Implement national categorical pretreatment standards
- Review POTW pretreatment annual reports
- Review and approve local program modifications
- Regulate industries discharging into non-pretreatment POTWs

(Note: Pretreatment conditions are placed in municipal permits. The program is designed to regulate non-domestic dischargers into POTWs. Certain POTWs are required to implement local regulatory programs.)

4. Biosolids (Sludge)

- Review sludge applications
- Review sludge management plans/reports
- Provide technical assistance
- Issue permits (biosolid conditions can be placed in individual municipal permits, separate biosolid permits can be issued, or a general biosolid permit can be developed)

(Note: States do not have to seek this part of the program in order to obtain primacy for the NPDES Program. Currently, only three states have the biosolids program.)

5. Compliance and Enforcement (Inspections/Enforcement)

- Types: Traditional NPDES ---- 1/year
Pretreatment; audits/inspections ----- 1/year
Storm water and biosolids
Special initiatives
- Review of discharge monitoring reports and special reports
- Preparation of inspection reports
- Quarterly assessment of significant non-compliance
- Initiating appropriate enforcement action (administrative/civil/criminal)

(Note: States will need to develop a compliance and enforcement policy and/or guidance document. A compliance assurance agreement (CAA) between EPA and the state is also needed. EPA requests that major facilities are inspected once/year; however, this is negotiable.)

6. Data Management/Administration

- Permit data entry
- Facility monitoring data entry; discharge monitoring reports (DMRs)
- Inspection tracking
- Compliance data retrievals
- Pretreatment and biosolids data entry
- Filing

(Note: EPA=s data management system [Permit Compliance System {PCS}] is available to states. If a state elects to develop its own system, it is still responsible for insuring that EPA=s PCS is populated with current information. Generally, links are developed by the state.)

7. Resources

- Funding: related to workload and staffing needs
- Staffing needs: engineers; physical scientists, such as hydrogeologists; biologists; water quality modelers; data processors; administrative support; legal support; lab technicians; manager(s).
- Appropriate data management software

IV) Observations

1. This is a good time for Idaho to seek delegation.

- EPA updates permits every 5 years
- EPA is writing water quality based permits
- EPA will have the backlog of major permits down to below 10 percent by 2002 (see Figure E-1). The minor permit backlog will be significantly reduced to just over 20 percent by the end of 2002 (see Figure E-2).

- EPA is completing over 100 permits on 18 watersheds through 2002. Hypothetically, if Idaho was granted primacy in 2003, the initial permit workload could easily be manageable.
- 2. Good state programs and associated tools exist for Idaho to use as models.**
 - The good state programs have a small backlog of permits, good compliance, good permitting tools, and water quality based permits
 - VA is now developing a completely automated permitting tools program
 - Other state programs that are working well are KY, GA, WI, OK, and WA.
 - 3. Legislative support is critical to the success of this process.**
 - 4. Adequate funding and qualified staff are critical.**
 - 5. Work closely with EPA on the legislative packages and other program delegation components.**
 - 6. EPA will provide training during the program development. This may include DEQ participation in drafting permits.**
 - 7. Strategic planning will help the process (e.g., scheduling TMDL and NPDES permit issuance).**
 - 8. ESA consultation with EPA would no longer be necessary.**
 - 9. Generally one state agency manages the NPDES program. Multiple agency implementation would require careful analysis initially.**
 - 10. State has control over implementing national initiatives (e.g., storm water).**
 - 11. The states target for permit backlog would be 10 percent maximum.**
 - 12. Delegation requires seeking primacy for all program components except for biosolids. EPA would encourage biosolids delegation at the same time that a state applies for primacy.**
 - 13. It generally takes 1.5 to 2 years to receive authorization for primacy, once the legislative green light is given.**

V) Information on Selected State NPDES Programs

Table E-2 shows a comparison between six state-run NPDES permit programs as well as programs in three states run by EPA.

Table E-2 State Comparisons - NPDES Program

State	Point Sources			FTE	FTE/M	FTE/T	\$/FTE	Budget	Fees	De-cent.
	T	M	%M	T						
ME	353	93	26	29	.3	.08	40,000	1.7M	X	
VA	1300	150	11	135	.9	.1	48,000	6.5M	X	Y
GA	957	171	18	43	.25	.04	65,000	2.8M	X	Y
KT	2007	130	6	76	.6	.04	63,341	4.8M	X	Y
WI	993	133	13	68	.5	.07	60,000	4.1M	X	Y
OK	723	93	13	40	.43	.06	60,000	2.4M	X	N
WA	774	89	11	75	.8	.1	88,000	6.6M	X	Y
AK	1383	76	5	20	.26	.01	70,000	1.4M		
ID	349	66	19	20	.3	.06	70,000	1.4M		

Notes: **T:** total number of permits; **M:** total number of Amajor facilities≡ under a NPDES permit; **%M:** percent of the total permitted facilities that are majors; **FTE (T):** total number of full time equivalents; **FTE/M:** FTE per major; **FTE/T:** FTE per total number of permits; **\$/FTE:** approximate salary per FTE; **Fees:** states who have permit fees; **de-cent.:** signifies if the state=s NPDES program is decentralized; ie. it has regional offices.

The bold portions of the chart indicate states with authorized NPDES programs. The state of Maine has submitted a request to EPA Region 1 for NPDES authority. For Alaska & Idaho, EPA region 10 issues permits and conducts compliance and enforcement activities; the FTE figures include permit and compliance staff as well as support staff (inspectors, legal staff, lab staff, specialists such as water quality modelers, biologists, and hydrogeologists.)

APPENDIX F

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