



UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY
REGION 10

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OFFICE OF
WATER AND
WATERSHEDS

December 16, 2015

Paula Wilson, Administrative Rules Coordinator
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706

(sent to: paula.wilson@deq.idaho.gov)

Re: U.S Environmental Protection Agency Comments on Guidance Documents Presented
December 2 for the Idaho Pollutant Discharge Elimination System (IPDES) Program

Dear Ms. Wilson:

The U.S Environmental Protection Agency Region 10 (EPA) reviewed the following IPDES documents that the Idaho Department of Environmental Quality (DEQ) presented at the December 2, 2015 stakeholder meeting:

- Public Participation in the IPDES Permitting Process (IPDES Public Participation Process Document);
- Designation Criteria and Selection Process for Small Municipal Separate Storm Sewer Systems (MS4 Designation Criteria Guidance Document);
- IPDES Permitting/Permit Writers' Manual;
- IPDES Guidance Development - DEQ Presentation (Presentation); and,
- Guidance Schedule Options (Schedule Options)

The EPA has the following comments on the guidance documents. Please note that the EPA does not have any comments on the MS4 Designation Criteria Guidance Document, Presentation, and/or Schedule Options.

IPDES Public Participation Process Document

1. Page 2 states, "*Because DEQ is not seeking delegated NPDES authority on tribal lands, tribes retain the government-to-government relationship they currently have with EPA.*" DEQ should clarify that they cannot be delegated NPDES authority on tribal lands. The statement implies that DEQ has the option of seeking NPDES authority on tribal lands and that tribes retain their government-to-government relationship for state-issued permits, which is not the case. The EPA suggests rewriting this sentence for clarification.
2. On page 4, Section 2, Proposed Permit. The document states, "*After the close of the public comment period and prior to the issuance of the final permit decision, DEQ will provide the permit applicant an opportunity to provide additional information to respond to public comments.*" The EPA notes that the permittee should submit relevant data for consideration before or during the permit drafting process. Consideration of new data and information by any party prior to issuing the proposed final permit may necessitate another public comment period if it results in substantive changes to the draft permit.

3. On page 4, Section 2, Proposed Permit. The document states, “*DEQ may provide an additional 60 days for EPA Region 10 to provide comments on the proposed permit (40 CFR 123.44).*” The EPA suggest removing the reference to “Region 10” since it is not needed. In addition, the EPA would note that, under 40 CFR 123.44, the EPA has up to 90 days to submit objections or comments on a proposed permit. The Memorandum of Agreement (MOA) between EPA and DEQ may specify a shorter period of time for the EPA to submit a general objection; however, the EPA can always take the full 90 days to submit specific objections. The sentence in the guidance document implies that DEQ may deny EPA’s request for additional time. For clarification, EPA suggests that the guidance document be revised to more accurately reflect the objection process.
4. On page 4, Section 2, Final Permit. The document states, “*The final permit, response to comments, revised fact sheet, and associated permit documents will be posted on the DEQ webpage.*” For clarification, the EPA does not currently revise fact sheets, but rather, uses the response to comments (RTC) document to explain changes made to the permit and, as needed, to provide new or supporting information or data.
5. On page 6, Section 4, Pre-Application Process. The document states that the pre-application process serves three purposes. The first purpose is to “*determine whether the activities or facility will require an IPDES permit, and whether other suitable permitting options are available.*” For clarification, the EPA suggests that DEQ elaborate on what other permitting options may be available (e.g. reclaimed water, discharge to ground, elimination of the discharge, etc.).
6. On page 7, Section 4, Extended Public Comment Period. The document states, “*DEQ will extend comment deadlines or provide supplemental public comment opportunities when there is significant public sentiment that the initial time allotted was insufficient for reasons unknown to or unforeseen by DEQ when it initially established the schedule.*” 40 CFR 124.13 provides a more liberal allowance for extending public comment periods upon request. The EPA suggests that the language in this guidance document more closely align with federal and IPDES regulations.

IPDES Permit Writers’ Manual

Page 1. The web link provided is outdated since the EPA recently changed its website structure. The EPA recommends using the EPA’s main webpage for the EPA Permit Writers’ Manual since it will be more stable over time at <http://www.epa.gov/npdes>.

Please contact me at (206) 553-1755 or by email at lidgard.michael@epa.gov if you have any questions about this letter or related matters, or you may contact Karen Burgess, of my staff, at (206) 553-1644 or burgess.karen@epa.gov.

Sincerely,



Michael J. Lidgard, Manager
NPDES Permits Unit

cc: Mary Anne Nelson, IPDES Program Manager (*sent to: mary.anne.nelson@deq.idaho.gov*)