



Association of Idaho Cities
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May 5, 2016

Mr. Troy Smith
IPDES Rules and Guidance Coordinator
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706

(filed by email to troy.smith@deq.idaho.gov)

RE: AIC Comments on Sections 7 and 8 of the IPDES User's Guide

Dear Mr. Smith,

The Association of Idaho Cities (AIC) was founded in 1947 and is a nonpartisan, nonprofit corporation owned, organized, and operated by Idaho's city governments. The organization serves to advance the interests of the cities of Idaho through legislative advocacy, technical assistance, training and research. AIC is actively engaged in water quality issues through the work of our Environment Committee, chaired by Boise City Councilmember Elaine Clegg.

Idaho cities play an important role as the primary implementers of the Clean Water Act and have a significant interest in the development of rules and guidance related to the Idaho Pollutant Discharge Elimination System permit program.

IDEQ requested input concerning Sections 7 and 8 of the proposed IPDES User's Guide. AIC's comments are included as an attachment to this letter.

AIC appreciates the opportunity to comment on the development of the IPDES User's Guide and looks forward to working with our state partners in the development of this important resource for city officials. Should you have questions concerning our comments, please feel free to contact me.

Sincerely,


Seth Grigg
Executive Director

Cc: Elaine Clegg, AIC Environment Committee Chair, Tom Dupuis, HDR



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AIC Comments on Sections 7 and 8 of the IPDES User's Guide

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

Section 7.1.2.1 (applicability of a major permit modification) – The bullet pertaining to the permit reopener on page 113 suggests that a reopener is specific to only toxics effluent limitations and pretreatment program requirements. At the April 26th meeting DEQ stated that this language is from the IPDES rule. AIC notes that a more general reopener clause is common in NPDES permits, those issued by EPA Region 10 in Idaho, and in most other states. More specific reopeners have also become more common in recent years (e.g., specific to TMDLs in the Treasure Valley). AIC requests that this section of the User's Guide note that reopeners for permit modification do not have to be restricted only toxics effluent limitations and pretreatment program requirements, but can be used for other purposes at the discretion of DEQ.

Section 7.3.1 (applicability of permit transfer) – At the April 26th meeting, DEQ noted that when a permit is simply transferred to a new owner or operator, that all of the conditions of the permit also transfer, including any wasteload allocations from a TMDL. AIC recommends that this should be noted in this or some other subsection of the User's Guide.

Section 8 – Variances, Waivers and Intake Credits

Table 5 (summary of available variances, waivers and intake credits) – This Table shows that the eligibility for the 316(a) thermal discharge variance includes all IPDES permittees. AIC supports this conclusion.

Section 8.2.1 (thermal discharge – CWA Section 316(a) variance) – The first paragraph states that most thermal limitations are based on water quality standards, so thermal variances must be “consistent with applicable water quality standards.” The next paragraph correctly states that alternative limitations may be included if the limitations are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of fish and shellfish and wildlife. AIC recommends that this subsection note that alternative limitations and/or variances developed consistent with Section 316(a) and applicable regulations are consistent with applicable water quality standards.

Also the last paragraph of this subsection states that the majority of thermal variance requests are from power plants. Although this has historically been the case, Section 316(a) is not limited to power plants, as DEQ has determined and noted in Table 5, the use of the section of the CWA is seeing broader applicability in recent years, including publicly owned treatment works and other types of industrial

dischargers. AIC recommends this be noted in the User's Guide, or the sentence on power plants be deleted.

Section 8.2.2 (water quality standards variances) – In several places in this subsection, the text references TBELs (technology based effluent limits). Because this type of variance is applicable to water quality based effluent limits (WQBELs), this reference to TBELs is not correct.

Section 8.2.3 (economic guidance for water quality standards) – This subsection includes a bullet that states that a discharger must demonstrate that not meeting a standard would result in substantial and widespread economic and social impacts. Section 8.2.2, however, correctly stated that this factor is one of six that can be applied to support a variance. AIC recommends that Section 8.2.3 be modified to note that the socioeconomic factor is one of six factors that can be used, and that it is not necessary to use it if one or more of the other technical factors is applicable. Or alternatively, the conflicting language in 8.2.3 can be deleted.

Also in Section 8.2.3, the only guidance explicitly identified as pertaining to economic guidance is the 1995 interim guidance by EPA. Under the subheading "Integrated Planning" there are other documents listed as citations, one of which is the 2013 Conference of Mayors et al. AIC appreciates references to Integrated Planning in this subsection and elsewhere in the User's Guide. AIC's only comment here is that the subsection clarifies that other financial capability guidance, such as the Conference of Mayors citation, are not applicable only to a formal Integrated Planning process, but are applicable to any evaluation of socioeconomic impact pertaining to a variance. A simple way to accomplish this would be to revise the first several sentences of this subsection to read:

"EPA has developed Interim Economic Guidance for Water Quality Standards (EPA 1995). Other guidance and tools for evaluating financial affordability and capability have been developed (e.g., Conference of Mayors et al, 2013). The EPA guidance..."

Section 8.3 (waivers) - At the April 26th IPDES meeting, DEQ noted that language pertaining to a Net-DMR waiver will be added to Section 8 and discussed at the IPDES next meeting. As stated in earlier comments, AIC supports the need for such a waiver for certain types of data and documents, and will reserve further comment on this item until the language is available and discussed at the next meeting.