IPDES Enforcement Response Guide – EPA Comments

1. General Comment - Please remove references to the quarterly noncompliance report (QNCR), as it does not exist anymore. See 40 CFR 123.45.

2. Section 3. Technical Assistance as a Conjunctive Tool – EPA suggests omitting the beginning of the first sentence of the second paragraph ("Where enforcement actions have proven onerous or hinder a return to compliance…"). This section appears to be an explanation of how technical assistance may support a facility's efforts to return to compliance.

3. Section 4.1. Escalating Enforcement Response – EPA suggests omitting the statement "For those noncompliance events identified as insignificant, DEQ may offer technical assistance and may deploy an escalating informal response process to bring permittees back into compliance." The previous section explained how technical assistance may be utilized and did not limit the use of technical assistance to a category of violations (e.g. significant).

   When the program is fully phased, IDEQ will be responsible for over 500 facilities. EPA is concerned about IDEQ's capacity to effectively implement its compliance and enforcement program (compliance assistance, inspections, and enforcement) while utilizing the escalating informal enforcement response process as proposed.

4. Section 4.3.1 Compliance Assistance – The last sentence in this section describes compliance assistance activities, including "operator training." Is this an activity to be completed by IDEQ compliance and enforcement staff? This seems like a technical assistance activity and for purposes of this guide, it's important to keep compliance assistance efforts and technical assistance separate.

5. Section 4.3.2 Notice of Noncompliance – The NPDES Program is a self-monitoring, self-reporting program with paperwork as a fundamental cornerstone. EPA finds the statement "A NONC is best suited for addressing paperwork-related noncompliance." to be broad. What type of paperwork-related noncompliance is IDEQ referring to in this statement? If a facility failed to develop a quality assurance plan, a best management practices plan, or stormwater pollution prevention plan, issuance of NONC may not be an appropriate enforcement response.

6. Section 4.3.4 Notice of Intent to Enforce – Please more fully describe this tool, including the purpose of this informal enforcement action.

7. Attachment A. Permit Compliance Schedule, missed final date – The force majeure provision

8. Attachment A. Compliance Evaluation Inspection – For this heading, EPA suggests changing it to "Compliance Inspection" to allow for flexibility regarding the type of inspection conducted.

9. Attachment A. Noncompliance events, circumstances, and range of responses – In numerous instances, IDEQ has identified "noncompliance letter" in the range of responses for violations, which EPA believes may not be appropriate responses to violations. These include:
   a. Failure to report biological testing results, submitted within 30 days of due date.
   b. Failure to submit final toxicity reduction evaluation (TRE) planning or implementation report as required.

c. Effluent limit exceedance, isolated or infrequent minor violation.
d. Exceeding interim effluent limits, no known harm.
e. Failure to meet interim whole effluent toxicity testing limits, isolated or infrequent with no known harm.
f. Minor violation of sampling or analytical procedure (e.g., failure to update quality assurance project plan), one instance or as many as three unrelated instances.
g. Major violation of sampling or analytical procedure (e.g., failure to follow quality assurance project plan), no evidence of intent.
h. Violation of permit conditions other than (numerical) effluent, schedule, or reporting requirement (e.g, BMP, O&M, unauthorized discharge or bypass, record detention, or record detention, or record availability), no evidence of negligence or intent.

10. Attachment A. "Pretreatment Program: POTW Implementation" – For nonsubmittal of required pretreatment reports, should "NONC" be NOV?