



UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY
REGION 10

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OFFICE OF
WATER AND
WATERSHEDS

August 11, 2016

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

(sent to: troy.smith@deq.idaho.gov)

Re: U.S. Environmental Protection Agency Comments on IPDES Program Description,
September 2016

Dear Mr. Smith:

The U.S. Environmental Protection Agency Region 10 (EPA) has reviewed the above-mentioned Idaho Pollutant Discharge Elimination System (IPDES) document that the Idaho Department of Environmental Quality (DEQ) presented at the July 19, 2016 stakeholders meeting. The EPA has the following comments.

1. Section 3.4.1.1, Administration – This or another section should identify how additional permit administration duties/tasks such as coordinating public notices and hearing, and tracking submittal of applications will be handled.
2. Section 4.1, Human Resources – The EPA remains concerned about the relatively small number of FTEs for permitting (7.1 FTE) as compared to CIE (14.6 FTE). Based on EPA's experience, this level of staffing will not be sufficient to maintain a low permit backlog. DEQ should consider and identify how resources between permitting and CIE could be leveraged to ensure steady progress on permit issuance rate.
3. Section 4.3, Fee Administration, Table 7 – It would be helpful to include the municipal fee rate on the table even if the annual dollar amount can be not included because it is variable. Information for a few representative cities could be included as an example of expected fees for the sector.
4. Section 5.1 General Permit, Table 10 – The expiration date of the current VGP can be added to the table, which is 12/18/2018. EPA's small vessel general permit (sVGP) expires on 12/18/2019.
5. Section 6.1 General Administrative Procedure, RPA section (page 18, last bullet) – Note that EPA's metric for permit backlog is 90%, which includes permits and covered facilities (for R10 EPA-issued GPs) expired more than 180 days. For more information about the EPA's permit backlog metric, refer to <https://www.epa.gov/npdes/npdes-program-management-and-oversight>.

6. Section 6.3.2 IPDES Permit Development, RPA (page 33, second paragraph) – DEQ must determine if a mixing zone will be authorized before using the TSD procedure to calculate the WLA for pollutants. With regard to this section and the summary of the TSD procedure to controlling toxics provided, the summary level of detail may not be appropriate for the Program Description, but rather only indicate that EPA’s TSD guidance will be used for establishing WQBELs. The summary level provided does not accurately characterize the detail and flexibility provided by the TSD. DEQ’s RPA guidance could provide the details.
7. Section 6.3.2 IPDES Permit Development, Mixing Zone (page 33, last paragraph) – This section indicates DEQ may authorize a mixing zone to establish limits for an “activity”, Please explain they type of activities that may have a mixing zone and limits. We suggest the statement say, “This notification will direct DEQ to evaluate the facility’s discharge using a mixing zone to establish discharge limits.”
8. Section 6.3.2 IPDES Permit Development, Metals Limits (page 34, first paragraph) – The level of detail provided in the description for metals limits does not appear to take into account the possibility of future changes to standards (e.g. Copper Biotic Ligand Model). EPA would expect DEQ to establish limits for metals consistent with their procedures (e.g. TSD for toxics) and state water quality standards.
9. Section 6.3.2 IPDES Permit Development, Compliance Schedules (page 34), Consider revisions to the paragraph to indicate that compliance schedules may be established in permit to allow time to meet final effluent limits, not “bring... into compliance with the CWA and receiving water body’s water quality standards”. Compliance schedules relate directly to conditions in the permit. Compliance schedules should not allow time to implement operating procedure or managerial changes.
10. Section 6.3.2 IPDES Permit Development, WET Testing (page 35, last paragraph), The requirement for toxicity identification evaluation/toxicity reduction evaluation (TIE/TRE) plans would generally be tied to a permit condition such as toxicity trigger or effluent limit not directly to water quality standards exceedances.
11. Section 6.3.2 IPDES Permit Development, Toxics Control (page 36, first paragraph), This section states, “DEQ will include a requirement in the permit to prepare a TRE plan if actions are necessary to achieve WQBELs.” Enforcement action would be the only appropriate action to address non-compliance with final WQBELs in a permit.
12. Section 6.4.1 Basic Public Process, Preliminary Draft Permit (last sentence) – The last sentence states, “ but it also provides public notification that a draft permit is available for public review and comment within 10 days.”, but should say “preliminary draft permit” since it is not associated with notice of the draft permit (for 30-day review).
13. Section 6.4.2 Public Meetings – It is unclear whether comments provided at meetings are fully captured as formal or official comments on a permit (e.g. in the form of testimony) or whether written comment must also be provided. The EPA recommends that unless

comments are clearly identified at the meeting, that written comments be required to serve as the official record of the comment.

14. Section 7.3.1 Industrial Survey (page 46 bottom) – “Before assuming authority from EPA to implement the pretreatment program, DEQ will develop a plan to complete a state-wide industrial survey of all IUs in nondelegated POTWs that might be subject to pretreatment requirements.” Please clarify if the development only or actual implementation of the plan will be completed prior to the transfer of pretreatment to DEQ.
15. Section 7.4, Control Authority (page 49, first bullet) – Should the first bullet state, “Distinguish IU IPDES permits discharging to POTWs” instead of waters of the United States?
16. Section 9.1 Permit Categories or Coverage (page 58, second paragraph) – The statement “DEQ does not intend to expand required coverage under the Storm Water Program beyond what EPA requires” is vague and may not take into account changes in the permit universe or federal regulatory requirements. It could be interpreted to mean DEQ will not expand coverages beyond what EPA “currently” has permitted. Please clarify.
17. Section 10 CAFO – Due to resource constraints, the EPA was unable to review this section and Appendix F (MOU between DEQ and ISDA) during the comment period.
18. Section 11.1.1 Compliance Evaluation Procedures – The last paragraph describes the shared responsibilities between regional office staff and state office staff. EPA strongly encourages IDEQ to develop standard operating procedures, which describes the coordination between offices and how the enforcement process will proceed. It may also be relevant to cite the IPDES Compliance Monitoring Strategy, which describes state oversight (Section 3.3).
19. Section 11.1.2, IPDES Facility Inspections – The end of this section explains that upon completing a compliance inspection or complaint inspection, the inspector will draft a letter addressed to the permittee or unpermitted entity. Will this letter serve as the inspection report or will an inspection report accompany the letter?
20. Section 11.2, Assistance – The first sentence in the second paragraph mentions a “compliance inspector.” Does this refer to an IPDES-trained inspector or a different type of inspector? The second sentence mentions technical assistance; however, technical assistance is not described here. The EPA recommends that both inspection and technical assistant visits be documented for the record.
21. Section 12.2, Administrative Actions – In the description of how IDEQ plans to use a compliance agreement schedule, it states, “If a permittee has an active administrative action (e.g., compliance agreement schedule) at the time of permit renewal, DEQ will consider incorporating some or all of those agreements into the permit’s compliance schedule. EPA reminds DEQ that a permit compliance schedule (within a permit) is only allowed for specific circumstances.

Enforcement Response Guide

22. Appendix H, Enforcement Response Guide (ERG) does not include any noncompliance categories, circumstances, or range of responses for the biosolids program. EPA recommends adding a section specific to biosolids in this ERG.
23. Section 4.4.3, Criminal Remedies - There is no mention of imprisonment for criminal violations. 40 CFR 403.6 includes the possibility of imprisonment within the certification statement requirement for records. A fine may not be appropriate and effective in deterring noncompliance.

Pretreatment

24. The ERG includes a noncompliance category for “violation of general standards, categorical standards, or local limits (including no treatment installed).” The ERG does not include the specific federal prohibition under 40 CFR 403.5(B)(1) or the dilution prohibition under 40 CFR 403.6(d).
25. The ERG also does not include any discussion regarding injunctive relief as required under 40 CFR 403.8(f)(1)(vi)(A), except under interference or pass through.
26. The ERG does not address significant noncompliance (SNC) as required under 40 CFR 403.8(f)(2)(viii).
27. IDEQ’s ERG states “Failure to submit notice of slug loading or 24-hour report required by 40 CFR 403.12...” appears incorrect with 403.8(f)(2)(vi). 403.12(g)(2) states, “If sampling performed by an Industrial User indicates a violation, the user shall notify the Control Authority within 24 of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation.
28. IDEQ may consider defining isolated, infrequent or continued. For example, many significant industrial users (SIUs) only sample twice a year. Would a missed monitoring event be considered isolated or infrequent?

“Pretreatment - Major Violations by POTW”

29. Since IDEQ labeled this section “Major Violations,” IDEQ may considering removing “phone call and noncompliance letter” as remedies.
30. IDEQ should define SIU mechanism. Does IDEQ mean mechanism as in control mechanism (e.g., permit)?
31. The ERG includes a noncompliance for: “Failure to perform at least 80% of required inspections.” However, 40 CFR 403.8(f)(2)(v) states “Inspect and sample the effluent from

each Significant Industrial User at least once a year.” POTWs are expected to inspect SIUs at least once a year.

32. The ERG states “Failure to reissue SIU mechanism on a timely basis.” IDEQ should consider using the following language, “Failure to issue new control mechanism or reissue control mechanism to industrial user (IU) on a timely basis.”
33. IDEQ’s ERG states “Failure to appropriately enforce pretreatment standards (categorical standards and local limits).” IDEQ should consider using the following language: (categorical standards, local limits, including BMPs, and pretreatment requirements).
34. IDEQ’s IRG states “Failure to enforce against instances of pass through or interference.” EPA encourages adding any permit conditions (such as monitoring, record keeping, reporting or notification of hazardous waste discharge).”

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*)

