



UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY
REGION 10

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OFFICE OF
WATER AND
WATERSHEDS

July 26, 2016

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

(sent to: IPDESGuidance@deq.idaho.gov)

Re: U.S Environmental Protection Agency Comments on IPDES User's Guide to Permitting and Compliance – July 2016

Dear Mr. Smith:

The U.S Environmental Protection Agency Region 10 (EPA) has reviewed the above-mentioned IPDES document that the Idaho Department of Environmental Quality (DEQ) presented at the July 19, 2016 stakeholders meeting. EPA appreciates the efforts put forth by DEQ and stakeholders to develop this comprehensive guide. The EPA has the following comments.

1. Section 1.1 – Page 1 (PDF p. 17/251)
 - Broken hyperlink to EPA's *NPDES Permit Writers' Manual* (new link: <https://www.epa.gov/npdes/npdes-permit-writers-manual>)
 - Fix the formatting and reference to EPA's *NPDES Compliance Inspection Manual*
2. Section 3.1.1 Individual Permits. Last sentence in paragraph states "DEQ then issues a permit to the facility for a 5 year cycle, with a requirement to reapply within a specified time before the expiration date." Some clarification or reworking may be in order since a permit term may be less than 5 years. In addition, for clarification, perhaps the specified time before expiration may be clarified to "no less than 180 days" before the expiration date.
3. Section following 3.2.4.2 (bottom of page 19) may be missing a heading number.
4. Section 3.2.4.7 MS4s, p. 17, end of the page. There is a sentence that describes MEP and then says, "Therefore, permit writers must rely on application requirements specified in the regulations and the applicant's proposed management program when developing appropriate permit conditions." It should be noted that the permit writer can consider water quality based concerns such as total maximum daily loads (TMDLs) to include additional water quality based conditions in the permit beyond MEP (*Defenders of Wildlife v. Browner*).
5. Section 3.2.4.9, Vessel Discharges. If DEQ decides not to take on program authorization for vessel discharges, the sections in the user's guide that discuss vessel discharges will need to be taken out or modified.

6. Section 3.2.6, Non-Permitted Sectors. Please clarify whether this section only refers to sectors of discharges. There are some sectors, such as MS4s, CAFOS and CAAP facilities, where DEQ has the authority to designate facilities. EPA would expect that DEQ use that designation authority, where appropriate.
7. Section 4.3, Time to Apply. The 4th sentence of the first paragraph states “*In order to be eligible for an administrative continuation, if the applicant cannot submit...prior to permit expiration or beginning discharge, they must obtain DEQ’s written approval in advance of the 180 day requirement.*” The original sentence makes it appear that an administrative extension can be granted for a new discharge because of the words “beginning discharge” in the sentence. In addition, the sentence needs to clarify that the application must be submitted 180 days prior to expiration of the existing permit unless DEQ allows a later date, not to exceed the expiration date of the permit. The EPA recommends that this sentence be edited to read “In order to obtain an administrative extension of a permit, the applicant must submit an application 180 days prior to the expiration date of the existing permit unless a later date is allowed by DEQ. The later date cannot be granted past the expiration date of the permit.”
8. Section 5.1 Development of Draft Permit and Fact Sheet. “All IPDES permit consist of 5 sections”...second bullet should read “Effluent Limitations” instead of “Development of Effluent Limitations” since the development of effluent limitations is contained in the fact sheet. The bullet list of IPDES fact sheet contents should include a description of the facility and location, description and location receiving water, applicable water quality standards, and development of effluent limitations.
9. Section 5.1.2.1.2 TBELs for Industrial Dischargers. This paragraph states that site-specific TBELs reflect the best professional judgement (BPJ) of DEQ. To clarify, BPJ TBELs can also be applied to POTW and Domestic Sewage Dischargers. BPJ is not limited to industrial dischargers. Refer to EPA’s Permit Writers Manual (page 5-4) where BPJ may be used to establish equivalent to secondary treatment standards.
10. Section 5.1.2.7 and 5.1.2.7.1, Antibacksliding p. 55. The first paragraph of 5.1.2.7, second to last sentence states “*This means proposed effluent limits that are less stringent than previous effluent limits may have to be revised.*” The phrase “proposed effluent limits” makes it sound like the effluent limits have been public noticed. For antibacksliding, permit writers should compare the effluent limits calculated under the new (draft) permit to the current (existing) permit limits and if the current permit limit is more stringent, it should be continued in the new permit unless an exception applies. The EPA recommends the permit and limits in effect be referred to as the *current* permit and *current* limits. EPA generally refers to a proposed permit as a permit that has been public noticed, but is not yet issued and in effect.
11. Section 5.3 Permit and Public Participation on the Draft Permit. 2nd Paragraph, last sentence, “DEQ any errors and omissions in the preliminary draft permit, it also provides the public notification that a draft permit will be made available for public review and comment in 10 days.” (emphasis added) Note it will likely take longer than 10 days to public notice the draft after receiving comments on the preliminary draft.

12. Section 5.4, Proposed permit, last paragraph (Section 6.7, Proposed Permit – same comments). The discussion concerning the objection process is inaccurate. The 5th sentence states, “*Additionally, DEQ may submit a revised permit that meets EPA’s objections.*” Under the regulations, the State or other interested person may request a public hearing. If DEQ submits a revised permit *instead of* requesting a public hearing, the EPA will review the revised permit to determine whether the EPA’s objections have been met. Further, the last sentence states “*However, EPA may issue the final permit....*” That should be revised to state “If the State does not resolve EPA’s objections within the time specified in the MOA, exclusive authority to issue the permit passes to EPA. Following the issuance of an EPA-issued permit and its permit cycle, authority to reissue the permit refers to IDEQ.”
13. Section 6, page 74 (list of general permits). EPA has not issued a general MS4 permit for Idaho at this time. The document could distinguish nationwide GPs EPA administers by R10 in Idaho and Idaho specific GPs R10 has written and issued. Nationwide GPs include the MSGP, CGP, PGP and VGP.
14. Section 6.4, General permit section. Many of the subsections within this section are repetitive with information provided in Section 5 for individual permits. Some of the same comments may apply in Section 6.4 as above (Section 5 for IPs, comments 8-12). Alternatively, the EPA recommends deleting repetitive sections and referencing the IP section.
15. Section 6.4.3.7, General permits, Variances, Waivers and Intake Credits. Given the number of facilities covered under a general permit, it would be very difficult to issue a general permit with a variance or intake credit. The EPA recommends that for facilities where DEQ is proposing a variance or intake credit, that DEQ issue an individual permit.
16. Section 7.3.2, Procedure for permit transfer, p. 110, Second paragraph. The EPA suggests deleting the last sentence because the previous sentence says the same thing. If the sentence is not deleted, the EPA recommends changing the sentence to make it clear that the automatic transfer will be effective on the date specified in the agreement unless DEQ provides notification to the permittee that it intends to modify and revoke or reissue the permit.
17. Section 7.4.4, Consequences of Permit Termination, p. 112. First paragraph, last sentence states, “For example, if an application....the facility or activity may be subject to reclassification as a new source....” In all likelihood, if the facility is not a new source, it will never be reclassified as a new source because a new source is defined as one where construction commences after promulgation of the effluent limitation guideline (ELG). Therefore, if the facility was not a new source and allows its permit to be terminated, it would likely not be a new source if it later applied for a new NPDES permit unless changes occur at the facility that would cause the facility to be defined as a new source. *See* 40 CFR 122.29.
18. Section 8.0, Variance Waivers and Intake Credits. 1st Paragraph, 2nd sentence. Recommend rewording to “Two mechanisms used in permitting to delay implementation of limits and/or time deadlines are variances or waivers.” Since other mechanisms, such as compliance schedules, may be used as well.

19. Section 8.4 Intake Credits. Suggest removing 1st sentence of 2nd paragraph, “Intake credits have a narrower applicability than variances” since intake credits and variances are different and unrelated.
20. Section 9.3.1.8 (Closing Conference) – Page 137 (PDF p. 153/251)
- For closing conferences, “The inspector will describe any deficiencies and identify areas of concern.”
 - Recommend revising “any deficiencies” to “any potential deficiencies” in the above sentence. The way I read that sentence made it sound like IDEQ should make any preliminary compliance determinations at the closing conference.
21. Section 9.3.2 header – Page 137 (PDF p. 153/251)
- Hyphenate “Post Inspection”

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*)