



Association of Idaho Cities
3100 South Vista, Suite 201, Boise, Idaho 83705
Telephone (208) 344-8594
Fax (208) 344-8677
www.idahocities.org

October 20, 2016

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

Re: IPDES Effluent Limit Development Guidance (ELDG): Outline and Section 1 and 2

Dear Mr. Smith/Troy,

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. 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 IPDES. AIC is actively engaged in water quality issues through the work of our Environment Committee, chaired by Boise City Councilmember Elaine Clegg.

IDEQ has requested comments concerning the outline and Section 1 and 2 to the IPDES Effluent Limit Development Guidance (ELDG). AIC's comments are included as an attachment to this letter.

AIC appreciates the opportunity to comment on the development of the IPDES program and looks forward to working with our state and other 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
Johanna Bell, AIC Policy Analyst
Tom Dupuis, AIC Environmental Consultant



Association of Idaho Cities
3100 South Vista, Suite 310, Boise, Idaho 83705
Telephone (208) 344-8594
Fax (208) 344-8677
www.idahocities.org

The Idaho Department of Environmental Quality (DEQ) is developing a program to address water pollution by regulating point sources that discharge pollutants to waters of the United States. In 2014, the Idaho Legislature revised Idaho Code to direct DEQ to seek the Environmental Protection Agency's (EPA) authorization for a state-operated pollutant discharge elimination system permitting program. The current program is operated by EPA and called the National Pollutant Discharge Elimination System (NPDES) program. The state program will be called the Idaho Pollutant Discharge Elimination System (IPDES) program. Current authorizations provided by the Idaho Legislature can be found in Idaho Statutes Title 39, Chapter 1, Sections 39-175A through 39-175E.

On August 31, 2016, DEQ submitted to EPA for review a program application petitioning for the authority to become the discharge permitting authority in Idaho. There are multiple steps toward state primacy and development of a program. Two of these steps include preparation and development of IPDES rules and guidance documents. Currently, DEQ is in the process of developing additional IPDES Effluent Limit Development Guidance (Draft ELDG) and is seeking comments. Specific items of interest include:

- 2016_0930 IPDES Effluent Limit Development Guidance – Draft Outline.pdf
- 2016_0930 Effluent Limit Development Guidance – Sections 1 and 2.pdf

DEQ presented these materials at a meeting held on October 7, 2016. Written comments were requested by October 14, 2016. We appreciate the opportunity to submit these comments for your consideration and look forward to our future collaborations.

GENERAL COMMENTS

AIC recommends the IPDES ELDG provide information to the permit writer on a wide range of permit elements and have guidance specific to Idaho. A broad range of comments have previously been provided on IPDES rules and guidance by AIC and other AIC member cities. With regards to the development of the ELDG, AIC supports each of the comments submitted by the City of Meridian on October 14, 2016 in response to the DEQ request for comments on the Draft ELDG materials presented at the October 7, 2016 meeting.

Section 1 and 2, and subsequent sections of the IPDES ELDG, need to address challenges unique to Idaho. Most of Idaho's communities are small, with limited technical resources and limited funds. Even the monitoring requirements can be challenging and expensive. The IPDES ELDG is anticipated to help permit writers connect the issues, and have monitoring effluent limits and compliance frequencies that make sense. Data collection requirements must be directly linked to the permitting regulations, aligned from top to bottom, and be coordinated at the appropriate scales (i.e., state-wide or basin-wide) in order to conserve resources.

AIC comments on the data analysis issues in Section 1 and 2 of the IPDES ELDG are for DEQ to:

- Include the use of "blank" samples to help determine if lab or field contamination is present;
- Eliminate all requirements that use lab methods not officially approved by the EPA;

- Include appropriate analytical tools and methods to address missing data, outliers, and samples where the results are below the "minimum level of quantification" (ML) or "method detection limit" (MDL);
- Acknowledge and address situations where a parameter does not have an MDL or ML;
- Include the use of "sufficiently sensitive EPA-approved analytical methods" when quantifying the presence of pollutants in a discharge and for analyses of pollutants or pollutant parameters under a permit; and
- Use the appropriate limit averaging period(s) for toxics, consistent with the underlying health-based risk assumptions.

SPECIFIC COMMENTS

1. IPDES Guidance Outline

AIC requests that additional detail be developed for two items listed in the IPDES ELDG outline, specifically Item 4.c.iii, "Conduct RPA without Data," and Item 4.c.vii, "Emerging Contaminants." Both of these items appear to be outside of the NPDES universe at this time. Therefore, AIC members look forward to a greater understanding and additional discussion on these items later in the IPDES ELDG development process.

2. Section 2.1 Background – Additional Section to Address Blank Correction

Paragraph three recognizes the issue of sample contamination and quality control, yet there is not a section or subsection providing guidance on how to determine if contamination is present and how to screen and interpret the data when contamination is an issue. Guidance on when and how to recognize and when to review laboratory flags and examine the data more closely should be provided.

AIC recommends the Draft ELDG include the use of "blank" samples to help determine if lab or field contamination is present. That is, blank corrections should be allowed for pollutants with significant widespread distribution (e.g., Phthalates, PBDE, PCBs, mercury, etc.).

3. Section 2.3.1, p4, ML and IML

"Minimum level of quantification" (ML) and "interim minimum level of quantification" (IML) language in permits is an important issue. All parameters will not have MLs, so a combination of ML, IML, reporting levels, or level of sensitivity will need to be used as described below.

The proposed ML definition in the Draft ELDG is appropriate for methods that use calibration curves. EPA method 1664B for hexane extractable materials defines the IML and ML, but there is no calibration curve used. Therefore an acceptable calibration point is not applicable because the method is gravimetric.

IML is applicable to gravimetric methods (i.e., parameters such as TSS, TS, HEM, etc.) and titration methods (i.e., parameters such as alkalinity, TKN, etc.). Reporting levels only, not IMLs, should be used for parameters such as BOD, temperature, and dissolved oxygen.

Further, temperature may be more appropriately defined as a level of sensitivity (i.e., +/- a tenth of a degree). The IML term applied as a reporting level may also be applicable to methods using factory calibrated spectrophotometers (e.g. Hach methods used for COD, ammonia, nitrate, nitrite, and phosphorous).

AIC observes that the definition given for ML in a recent Nampa NPDES permit ID0022063 is very broad as it attempts to address several scenarios:

“Minimum Level (ML)” means either the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL). Minimum levels may be obtained in several ways: They may be published in a method; they may be sample concentrations equivalent to the lowest acceptable calibration point used by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a lab by a factor.”

AIC members note that problems arise when Permits specify ML concentrations equivalent to MDL as with BOD and other pollutants. AIC encourages DEQ to contact lab managers that deal with this issue every day to ensure that the Draft ELDG is consistent with good lab practice. AIC supports analytic methods that are realistic and implementable.

4. Sufficiently Sensitive Methods

AIC recommends the Draft ELDG address the sufficiently sensitive method rule¹ and use sufficiently sensitive EPA-approved analytical methods when quantifying the presence of pollutants in a discharge and for analyses of pollutants or pollutant parameters under a permit.

For example, the selection of the appropriate analytical method for various media for some pollutants (e.g., Mercury) may include a range of MLs to determine the best analytical method. Use of the lowest ML/MDL does not always produce the best analytical result (e.g. use of 1631 on biosolids requires serial dilutions and a less accurate analytical result than use of 245.1).

5. Use of Non-40 CFR 136 Methods

The guidance suggests the use of non-40 CFR 136 approved methods. AIC is concerned that use of non-40 CFR 136 methods will open the door to use of data that are of insufficient quality to make informed regulatory decisions. AIC recommends use of 40 CFR 136 methods only.

6. Censored Data

During the discussion AIC members and other stakeholders identified a number of issues associated with how the guidance will deal with censored data (e.g., data less than ML, MDL, etc.). AIC looks forward to working with HDR, ICL, Boise City, DEQ, and others to develop appropriate resolutions on these and similar issues.

7. Toxics

AIC is concerned that the toxic exposure duration assumptions (70 year exposure, harmonic mean flow...) are inconsistent with the IPDES limits (daily, weekly, monthly...) proposed for toxics. AIC recommends the Draft ELDG use the appropriate limit averaging period(s) consistent with the underlying health-based risk assumptions.

Should you have questions concerning these comments, please contact Robbin Finch, Boise City Water Quality Manager.

¹ This final rule codifies that, where EPA-approved methods exist, NPDES applicants must use sufficiently sensitive EPA-approved analytical methods when quantifying the presence of pollutants in a discharge, and that only sufficiently sensitive EPA-approved methods be used for analyses of pollutants or pollutant parameters under the permit be prescribed. See <https://www.federalregister.gov/documents/2014/08/19/2014-19265/national-pollutant-discharge-elimination-system-npdes-use-of-sufficiently-sensitive-test-methods-for>, accessed 10/19/2016.