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March 20, 2017

Troy Smith, IPDES Rules Coordinator
Idaho Department of Environmental Quality
1410 N Hilton
Boise, ID 83705

Re: IPDES Effluent Limit Development Guidance (ELDG) March 7th, 2017 Rulemaking Meeting

Dear Mr. Smith/Troy,

The Association of Idaho Cities (AIC) 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 rules and guidance. AIC is actively engaged in water quality issues through the work of our Environment Committee, chaired by Boise City Councilmember Elaine Clegg.

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.

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 these important resources for city officials. Should you have questions concerning our attached comments, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'S Grigg', is written over the name 'Seth Grigg'.

Seth Grigg

Executive Director

cc: Elaine Clegg, AIC Environment Committee Chair
Johanna Bell, AIC Policy Analyst
Tom Dupuis, AIC Environmental Consultant



GENERAL COMMENTS

AIC respectfully provides the following comments on the draft guidance provided:

Idaho Pollutant Discharge Elimination System: User's Guide to Permitting and Compliance Volume 2 – Sector Specific Information (Draft Outline):

- Section 2. Forms
Discussion: Please clarify whether DEQ plans to use EPA's forms or develop their own forms. AIC anticipate potential additions as DEQ works on the text and would like to provide input on any associated forms developed.

- Section 2.2.4. For WET RPA and WQBELs
Discussion: AIC suggests that DEQ considers the use of previously developed WQBELs guidance for Idaho; especially regarding the language that pertains to unique aspects for WET and TRE/TIE. AIC also suggests the two following items pertaining to WET:
 - WET testing is a highly-specialized laboratory method. AIC recommends that IDEQ develop criteria certifying laboratories for WET testing.

 - AIC recommends DEQ clarify steps to be taken when a discharger exceeds a WET trigger. For example: accelerated testing is to be done using the single species found to be more sensitive. WET tests should be run at least once every 2 weeks, for up to 5 tests, until either: 1) 2 consecutive tests fail, or 3 out of 5 tests fail, at which point a pattern of toxicity will have been identified, or 2) 2 consecutive tests pass, or 3 out of 5 tests pass, in which case no pattern of toxicity is identified. If a pattern of toxicity is found, then the permittee should move into a TIE/TRE. If no pattern of toxicity is found, this is determined to be spontaneous disappearance of toxicity and the permittee shall return to routine WET testing as outlined in the permit. If a pattern of toxicity is not demonstrated but a significant level of erratic toxicity is found, DEQ may require an increased frequency of routine monitoring or some modified approach to ensure toxicant identification and control.

Idaho Pollutant Discharge Elimination System: Effluent Limit Development Guidance

- Section 4.1.1.2 Bottom of Page 59.
Discussion: AIC suggests the DEQ clarify how a permit writer might know and document that a pollutant was erroneously omitted. AIC understands that the permit writer should develop permits that are consistent with any approved TMDLs. If a discharge containing a pollutant is erroneously omitted, then AIC suggests that a TMDL addendum be published first before a pollutant of concern is used by a permit writer.

- Section 4.2.1 Pages 62-63. StreamStats
Discussion: AIC suggests that the use of StreamStats should not be simply referenced. DEQ should provide guidance on how to properly interpret and use the volume of information generated by its use, including how to use the confidence levels provided in the results.
- Section 4.4.3 Page 75-112. Mixing Zones
Discussion: AIC suggests further discussion and review opportunities for the mixing zone material in the ELDG. It is unclear what was imported from the mixing zone guidance and what has been modified and/or is new. AIC observes that mixing zone requirements when pollutant minimization plans are in place may benefit from some additional review and discussion. As discussed in a separate comment below, it is also unclear what the respective responsibilities are for DEQ versus permittees in reapplications concerning information needed for and determinations of allowable mixing zones.

Also, the figure on page 78 appears to indicate that no mixing zone will be authorized if the applicant did not request a mixing zone. AIC notes that existing NPDES permit application forms do not explicitly include a place for a permittee to request a mixing zone. If DEQ intends to develop a specific form(s) for IPDES, including a mixing zone request and information form, then that should be stated and the nature and content of the form discussed in the context of the ELDG. AIC suggests DEQ conduct some additional review and revise the text to improve clarity of the wording and intent. For example, will the expectations and process be the same for major and minor permittees? Minor permittees may not have the resources to conduct the Level 2 and 3 analyses indicated in Table 27.

AIC suggests DEQ generally use a default of 25% of the applicable stream design flow unless site specific considerations dictate larger or smaller percentages. DEQ's statement on the top page 82 that the permit writer will perform an iterative series of RPAs to adjust the mixing zone until there is no RPTE will lead to considerable confusion and complications, with different mixing zones for different pollutants for a given discharge. In addition, this approach appears to negate the purpose need for more detailed mixing zone evaluations described in these sections. An additional concern pertains to how such nested mixing zones established in a given permit will be used in future permits? It is likely that the iterative RPA process will result in different mixing zones for a future permit for some parameters because the effluent and receiving water databases will be different for each permit cycle. If a future permit would allow a larger mixing zone than a previous permit, will the larger allowance be granted or constrained by anti-backsliding? AIC suggests that DEQ consider simplifying the overall approach to mixing zones.

- Section 4.4.3.2.6 Page 87. Mixing Zone in Waters with ESA and/or Species of Conservation Need
Discussion: This section has the following sentence: "To be adequately protective of vulnerable aquatic communities, mixing zones for Idaho's streams and rivers may not be allowed within all areas during any time of the year that the area provides critical habitat for any life stage of Sockeye Salmon, Chinook Salmon, Steelhead, Kootenai River population of White Sturgeon, or Bull Trout." AIC suggests DEQ conduct some additional review and revise the text to improve clarity of the wording and intent. As written, it

implies a ban on mixing zones in these areas, and is unclear about any distinctions between state species of concern versus ESA-listed species and their critical habitat.

- Section 4.3.2.3 Narrative Criteria

Discussion: This section addresses Whole Effluent Toxicity (WET), DO and nutrients in a general context. AIC comments here may be applicable to other current or future sections of the ELGD, but are made here for convenience. AIC has already provided material to DEQ regarding permitting considerations for nutrients, but we have not seen yet how DEQ will use that information for the ELDG. In addition, AIC has suggestions specific to WET at this time (see comments on the Volume 2 Outline above) and anticipates additional comments on still to be written DEQ guidance on WET.

AIC also requests additional consideration and discussion be given to the January 4, 2017 United States Court of Appeals for the Fourth Circuit decision in the *Ohio Valley Environmental Coalition v. Fola Coal Co., LLC*. This decision has significant implications for potential NPDES permit violations related to narrative water quality criteria.

- Various Sections, Comments on Implementation of Toxics Criteria

Discussion: In a number of places in the draft ELDG, there is reference to or discussion of implementation of toxics criteria in NPDES permits. For example, page 67 discusses hardness-dependent metals criteria, but does not identify how to determine the applicable hardness value. Pages 68-69 discuss pH and temperature dependent ammonia criteria and state that the 95th percentile values for the upstream receiving water be used (this is reiterated on Page 108 and 109). On pages 109 and 110 the document says to use the 5th percentile of upstream hardness for metals. Page 76 notes the use of the 95th percentile of effluent data for mixing zone RPTe evaluations. On page 88 there is extensive discussion of bioaccumulative toxics in the context of mixing zones. AIC's overall comment on these various pages pertaining to implementation of toxics criteria is that DEQ reconsider some of these apparent decisions based on material related to toxics provided previously by AIC to DEQ. These are all important policy decisions that DEQ can make, and AIC has provided specific recommendations. These include use of mixed hardness, pH and temperature; use of geometric mean for background concentrations; and special considerations for bioaccumulative toxics like PCBs and mercury (e.g., pollution prevent or source control plans in place of numeric effluent limits).

- Section 4.4.4 Page 113 Table 28.

Discussion: AIC supports the use of Table 3-2 from TSD (95% confidence level and 95% probability basis).

AIC has reviewed and has no comments on the other documents discussed at the March 7 meeting:

- **2017_0228 User's Guide to Permitting and Compliance Volume 1 – General Information**
- **Idaho Pollutant Discharge Elimination System: User's Guide to Permitting and Compliance Volume 2 – Sector-Specific Information (POTW)**
- **Idaho Pollutant Discharge Elimination System: Effluent Limit Development Draft Outline**