

May 10, 2017

To: IDEQ

From: United States Environmental Protection Agency (EPA)

Subject: IPDES Enforcement Response Guide

Thank you for the opportunity to comment on the IPDES Enforcement Response Guide. Below are EPA's comments.

1. On page 4, the escalating enforcement response arrow (Figure 1) only allows for civil enforcement. Criminal enforcement appears to not be contemplated in this figure. In instances of intransigent violations where the permittee basically refuses to come into compliance (i.e., willful violations), criminal prosecution should be an option. Escalation of the enforcement response to that level needs to be incorporated on the page.
2. The table's use of "consider" criminal referral merits considerable explanation regarding the underlying criteria. If, for example, the permittee is submitting false information, there is not much to consider - that is a criminal act and the table should say "criminal judicial action." If the permittee unknowingly has a broken/malfunctioning instrument, this act may not be willful but failure to determine the accuracy of the data submitted sounds negligent. As described in Section 1, this guide recommends an enforcement response; therefore, all the responses under the "Range of Response" column are "considerations" for staff, whether or not the word "consider" is used. EPA recommends omitting the word "consider" from the criminal actions (prosecutions/judicial action) for consistency throughout the table.
3. The use of "judicial action" in the table merits clarification. Judicial action seems to be used in the table as synonymous with civil judicial, however, in many places it likely should read civil or criminal judicial action. Any instance of continued or frequent noncompliance should have criminal judicial action in the "Range of Response" column because continued or frequent noncompliance may be the result of willful or negligent behavior, i.e., criminal behavior. The tables currently do not reflect those circumstances and need to.
4. Section 4.3.2.3 - EPA is concerned about IDEQ's title for the "Notice of No Further Action" enforcement response. The revisions to the section itself are satisfactory, with the exception of the title. The title itself gives the impression that there will be no further enforcement action, rather than no further action required of the owner/operator to achieve compliance.