



**Association of Idaho Cities**  
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May 4, 2017

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

Re: IPDES Effluent Limit Development Guidance (ELDG ) April 26<sup>th</sup>, 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,

  
Seth Grigg

Executive Director

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



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## **Idaho Pollutant Discharge Elimination System: Effluent Limit Development Guidance, April 26, 2017**

**Comment on Fourth Circuit’s Decision in OVEC v. Fola Coal Company:** DEQ stated previous comments regarding this case were “cryptic.” Stakeholders provided additional discussion during the meeting. Questions asked and discussed during the April 26<sup>th</sup> meeting included:

- *Is the expanded effluent testing required in permit renewal applications sufficient?*
- *Can DEQ and the discharger maintain that discharges conform to state water quality standards for constituents that are not regularly monitored, but have previously not resulted in reasonable potential and effluent limitations?*
- *What about narrative standards? How is compliance with these standards to be interpreted in permits?*

**Request:** AIC is attaching a copy of a document prepared by the National Association of Clean Water Agencies (NACWA) regarding the case and implications for NPDES permittees. AIC requests that the AG review the case and the NACWA overview in relationship to DEQ IPDES permit language that could be problematic for both DEQ and dischargers.

**Comment on Section 3.3.2.3 Page 53 Narrative Criteria:** There is not a WET standard.

**Request:** Change the language in the sixth bullet from WET standard to WET **trigger** or similar.

**Comment on Section 3.4.3.8 Page 81 Mixing Zone Assessment Process:** There was significant concern from stakeholders and EPA regarding the inserted paragraph about notification level and notifying DEQ. The basis for the requirement was not explained sufficiently. The discussion included concerns that permit holders would be confused and miss this requirement in their reporting as it is a non-standard permit requirement. It will place an onerous burden on the discharger to understand the requirement and perform the monitoring for likely multiple constituents. Also discussed was that sufficient data would be part of the monitoring requirements and available to DEQ in the DMRs anyway. This paragraph will lead to confusion, and potential violations (e.g., if a discharger fails to understand or recognize when a notification is required). In addition, the DEQ mixing zone policy is not that mixing zones will only be as large as needed (i.e., small as practicable) and thus the notification level will also be very low. This will result in increased probabilities of dischargers having effluent concentrations that

approach the notification levels. The combined effect if minimal mixing zone allowances and the low notification levels will provide an unreasonable and unnecessary burden. AIC is not aware of any similar requirement in other states' NPDES programs.

**Request:** AIC respectfully requests that DEQ delete the paragraph: "The permit writer will document, in the fact sheet, the end of pipe pollutant concentration and low flow criteria used in the mixing zone analysis, affiliated with the mixing zone sizing, so that the concentration, mixing zone size, and receiving water low flow attributes are all documented in the permit. This concentration will be called a notification level and will require the permittee to notify DEQ when concentrations exceeding this level are discharged to the receiving water. A notification level is not an enforceable limit."

**Comment on Section 3.5.1 and Figure 9 Page 100:** In section 3.5 the text includes "The calculation of WQBELs for toxic pollutants and for a number of conventional or non-conventional pollutants with effluent concentrations that tend to follow lognormal distribution will have a similar procedure."

**Request:** Include specificity in the Figure 9 title and Section 3.5.1 that this is primarily for toxics as indicated in the earlier section.

**Comment on Section 3.5.1.1 - .5 Pages 100 through 104 Calculate Pollutant-Specific WQBELs:** There was significant discussion from stakeholders about this section. There appeared to be some confusion if DEQ was applying reasonable potential multipliers in the context of translating LTAs in the AMLs and MDLs. The RPM tables and LTA conversion tables are two distinct and separate processes.

**Request:** AIC requests that DEQ review and revise this section as needed in relation to the TSD guidance and make sure the applications and processes are consistent with the TSD.

**Comment on Section 3.6 Pages 104 through 110 Section 3.6 Pertaining to WET:** In addition, AIC commented on several WET issues in the previous comment letter on this guidance document (e.g., consider the WET RPTE and limits methods in the previous WQBELs guidance developed for DEQ, and consider a suggested TIE/TRE process in that letter).

AIC is concerned specifically with Section 3.6.3 in which DEQ states that the trigger value should be 90% of the numeric criterion. Given that DEQ has identified 0.3 TU (toxic unit) as the acute criterion, AIC notes that testing for 90% of that criterion is physically impossible (0.3 TU equal 333% effluent, which obviously cannot be tested). In addition, simply using 90% of a criterion does not account for dilution in the receiving water, which is also applicable to WET. AIC has reviewed the NPDES permit and Fact Sheet recently issued by EPA for the City of Caldwell's wastewater facility. This permit used WET RPTE and limits calculation methods that seem more consistent with the TSD and more sensible than what DEQ has included in Section 3.6. For example, EPA used an ACR of 10 to translate the chronic TU criterion to an acute of 3.0 TU, and

used that for the acute criterion, and also used applicable dilution to both evaluate RPTE and calculate the limits.

**Requests:** As with the previous comment, the WET section also should be checked for consistency with the TSD regarding methods and calculations for WET. Consider WET comments in the previous AIC comment letter. AIC also suggests that DEQ review the Caldwell Fact Sheet and consider using those methods. Most importantly, AIC recommends that DEQ **not** use 90% of the criterion as a trigger value. If there is no WER RPTE, WET limits are not needed and the trigger value should be set at what the limits would have been, including factoring in applicable dilution. This is how EPA has determined WET triggers in Idaho NPDES permits and is a more defensible approach.

**Comments on the draft document: Idaho Pollutant Discharge, Elimination System, User's Guide to Permitting and Compliance, Volume 2—Sector-Specific Information, State of Idaho, Department of Environmental Quality, April 26, 2017**

**Comment in General:** There stakeholders expressed concern about both the current EPA application forms and the electronic application DEQ is developing. Concerns included having to fit data into fix formatted boxes in the application and not being able to explain the information or data. DEQ indicated that there will be the possibility to attached files and/or upload other information to provide explanation and data. Stakeholders are optimistic about such capabilities.

**Request:** DEQ show live examples of the application during a future meeting and/or provide a beta version to be available for testing by the stakeholders.