

Comments for the Effluent Limit Development Guidance (ELDG)

Meeting Date	Comment Date	Commenter	Comment No.	Section	Page	Topic	Comment
10.27.17	10.27.17	EPA Water Permits Division	1	Abbreviations and Acronyms	viii – ix		Recommend adding two Acronyms used in the document – Toxicity Identification Evaluations (TIEs) and Toxicity Reduction Evaluations (TREs).
10.27.17	10.27.17	EPA Water Permits Division	2	Section 3.4	66-68	Reasonable Potential	§ Define Reasonable Potential”, pg. 67, last paragraph, last sentence – sentence does not contain all three parts of reasonable potential (RP) as is provided in the first paragraph of this section which includes “...will cause, have the reasonable potential to cause, or contribute to an excursion...” Therefore, the last sentence is inconsistent with the first paragraph in this section and is also inconsistent with EPA RP regulations. It is missing the “potential to cause.” Sentence says only, “...reasonable potential to cause or contribute to an excursion...”
10.27.17	10.27.17	EPA Water Permits Division	3	Section 3.6.2.2,	126	RPA Assessment	§ The first sentence states, “An RPA can be assessed if there are at least 10 valid WET test results for acute, chronic or both (whichever is applicable), ...” The requirement for a minimum number of test results is a prerequisite to determining RP and therefore is inconsistent with EPA’s NPDES RP regulations which have no minimum threshold requirement. IN addition, the Idaho document itself at Section 3.4.4.1, “What to do if Data are not Available”, pg. 111 provides how to do a RP determination using a qualitative approach when no data are available and appropriately references EPA’s 1991 TSD’s Section 3.2. Therefore, Section 3.6.2.2 is inconsistent both with EPA’s RP regulations and Idaho’s draft itself. Finally, most importantly not assessing RP for a discharger is not protecting the state’s WQS for possible excursions which can impair the receiving stream, and impact aquatic life.

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10/10/2017	10/27/2017	EPA Region 10	WET 1 (33)	3.6	122	Frequency of testing	Recommend removing the language re: semi-annual testing being "generally recommended for major facilities." EPA recommends monthly testing for majors and quarterly for minors, so the language re: recommended is not correct. Could revise it to read something to the effect: "For example, semi-annual acute and chronic testing, which is generally required of major facilities, will yield..."
10/10/2017	10/27/2017	EPA Region 10	WET 1 (34)	3.6	122	Acute vs Chronic testing	In the second paragraph of Section 3.6 it states, "For an RPTE analysis, data should be available for acute and chronic testing..." It is exceedingly rare for a permittee to be required to do both acute and chronic toxicity testing as the type of testing required is driven by the dilution allowance provided to the permittee, which rarely approaches 1000:1 (acute tests are recommended if the dilution factor is close to 1000:1). Recommend revising this language to reflect that for the reasonable potential analysis acute and/or chronic testing data should be available and used.
10/10/2017	10/27/2017	EPA Region 10	WET 1 (35)	3.6.1	123	Endpoints vs TU	This section states that each endpoint (NOEC/LOEC/IC/EC) can be converted/translated to Toxic Units, but that is not correct. Acute Toxic Units are defined as 100/LC50, and chronic toxic unit is 100/NOEC or EC/IC25. This section should be revised to include LC50 as an endpoint, and also clearly define the TUA and TUC.
10/10/2017	10/27/2017	EPA Region 10	WET 1 (36)	3.6.2	125	RPA	This section is confusing as it has calculating WLAs as the first step, when ideally a permit writer would review the data, determine RP using the procedures outlined in Box 3-2, Section 3.3.2 of the TSD. If RP is determined, then the permit writer should proceed to WLA determinations and limit development.
10/10/2017	10/27/2017	EPA Region 10	WET 1 (37)	3.6.2.1	126	RPA	Suggest revising this to state that a RPA can be performed quantitatively using effluent data and statistical procedures, as well as qualitatively using the procedures and considerations outlined in TSD Section 3.2. This section does specify that permit writers can still conduct an RPA if they have less than 10 data points by referring them to Section 3.4.4.1 (which references TSD Section 3.2), but it should be revised to state that the procedures can also be used when there is no effluent data at all, not simply less than 10. Suggested language: "If less than 10 acute or chronic data points are available, <u>or in cases where no effluent data is available</u> , an RPA may still be performed..." Also suggest expanding upon the list of things to consider when conducting RPA with minimal or no data, to include those factors identified in TSD Section 3.2 (ie. type of industry, compliance history, type of receiving water and designated use, etc.)
10/10/2017	10/27/2017	EPA Region 10	WET 1 (38)	3.6.2.2	126	RPA	See comment above re: RPA with no data. This section implies RPA can only be conducted "...if there are at least 10 valid WET test results..."
10/10/2017	10/27/2017	EPA Region 10	WET 1 (39)	3.6.3.2 and 3.6.3.3	127 and 128	Acute and Chronic WET Limit	Should include language specifying how the MDL and AML will be interpreted and enforced. For instance, R8, 9 and 10 WET guidance recommends the following for MDL and AML: "The permit should contain a condition indicating that the MDL is interpreted as the maximum acute or chronic WET result for that calendar month unless otherwise specified by State requirements. The AML is the highest allowable value for the average of daily discharges obtained over a calendar month. For WET, this is the average of individual WET test results for that calendar month, unless otherwise specified by State requirements." In addition, for deriving the AML, guidance should be provided for how many samples (ie. n) the permit writer should assume in situations where the monitoring frequency is once per month or less. The TSD recommends an n of 4 in those situations (TSD 5.5.3).
10/10/2017	10/27/2017	EPA Region 10	WET 1 (40)	3.6.2	125	Equation 40	An alternative to Equation 40 should be provided for cases where dilution cannot be expressed as percentage of stream flow (e.g., a modeled dilution factor for a discharge to a non-flowing waterbody). This is addressed for effluent limit calculations in Section 3.5.1.1.2 (Equation 31).
10/10/2017	10/27/2017	EPA Region 10	WET 1 (41)	3.6.3.1	127	Equation 41	An alternative to Equation 41 should be provided for cases where dilution cannot be expressed as percentage of stream flow (e.g., a modeled dilution factor for a discharge to a non-flowing waterbody). This is addressed for effluent limit calculations in Section 3.5.1.1.2 (Equation 31).

Special Considerations

We had previously commented that IDEQ should add a subsection to Section 3.7 to address the need to establish permit conditions which ensure compliance with the water quality requirements of all affected States.

We further recommend that this new subsection describe the methods that IDEQ permit writers will use to assess the impact of the discharges that it permits upon the waters of other States and Tribes.

For dischargers located on waterbodies shared with another State or Tribe, (e.g., reaches of the Snake River which form the border with Oregon or Washington) or for other discharges located a short distance upstream from a State or Tribal border, such that the discharge will not mix completely with the receiving water before reaching the downstream State or Tribe, (e.g., the Clearwater Paper mill in Lewiston), the same techniques used to evaluate mixing zones could be applied to evaluate the discharge's impacts upon waters of the downstream State or Tribe. For example, Cormix could be used to determine the dilution factor at the State or Tribal boundary.

For discharges located a substantial distance upstream from another State or Tribe, a simple mass balance assuming complete mixing and no degradation of the discharged pollutants could be used as a screening-level analysis to determine if a discharge could potentially cause or contribute to violations of applicable water quality requirements in the waters of downstream States or Tribes. If this simple analysis indicates that the discharge may cause or contribute to violations of water quality requirements in waters of the downstream State or Tribe, the permit writer could proceed with establishing limits necessary to meet the downstream State based on the mass balance.

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Alternatively, the permit writer could perform a more sophisticated analysis of the fate and transport of discharged pollutants. Surface water quality models, including those developed by the EPA's Center for Exposure Assessment Monitoring (CEAM, <https://www.epa.gov/exposure-assessment-models/surface-water-models>) could be used to evaluate the impact of an Idaho discharge upon a downstream State and calculate limits. This would be necessary if there is reason to believe a simple mass balance would be invalid, or if there is a need to determine the waterbody's response to discharged pollutants in addition to the concentrations of the pollutants themselves (e.g., for nutrients or oxygen demand).

Whenever DEQ determines that waters of another State or Tribe are affected by a draft IPDES permit, DEQ must notify such affected State or Tribe. Although IDAPA 58.01.25.109.d.i.(3) requires such notification when a draft permit is issued for public review and comment, we recommend notifying affected States or Tribes as soon as an effect upon their waters is identified and coordinating with the downstream State or Tribe to ensure that the draft permit will ensure compliance with their water quality requirements. See also Clean Water Act Section 402(b)(3).

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10/10/2017	10/14/2017	EPA Region 10	1	2.1	6	TBELs for Publicly Owned Treatment Works (POTWs)	The first paragraph should note that a POTW is a treatment works which is owned by a state or municipality. This section should also point out that permits for other treatment works may include conditions similar to POTW permits, as described in Section 2 of the IPDES User's Guide to Permitting and Compliance Volume 2.
10/10/2017	10/14/2017	EPA Region 10	2	2.1.3.1	11	Determine Appropriate Standards to Apply	The statement that, for new facilities using trickling filters or waste stabilization ponds, "the ultimate design capability of the treatment processes (waste stabilization ponds, trickling filters, or both), geographical and climatic conditions, and the performance capabilities of recently constructed facilities in similar situations should be considered when determining which standard applies," should be supported with references to the preamble to the secondary treatment regulation (49 FR 37002, September 20, 1984) and 40 CFR 133.105(f)(2). See also the US EPA NPDES Permit Writers' Manual at Section 5.1.3.1.
10/10/2017	10/14/2017	EPA Region 10	3	2.2.2.4	26	Determine whether Existing or New Source Standards Apply	As written, this section implies that new source performance standards (NSPS) are applicable to new dischargers in addition to new sources. As explained in this section of the ELDG and in 40 CFR 122.2, the terms "new discharger" and "new source" are distinct. NSPS are applicable to "new sources," not to "new dischargers." See also the US EPA NPDES Permit Writers Manual at Appendix D. The statement that "new dischargers are required to meet the requirements of their applicable technology-based guidelines before they begin discharging" is misleading. According to 40 CFR 122.29(d)(4), new dischargers, as well as new sources and recommencing dischargers, "shall install and have in operating condition, and shall 'start-up' all pollution control equipment required to meet the conditions of its permits before beginning to discharge." However, this does not mean that such dischargers "are required to meet the requirements of their applicable technology-based guidelines before they begin discharging," because 40 CFR 122.29(d)(4) also provides that "within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions." See also the U.S. EPA NPDES Permit Writers' Manual at Section 9.1.3.
10/10/2017	10/14/2017	EPA Region 10	4	2.2.2.5.1	27-28	Calculating Mass-Based TBELs from Production-Normalized Effluent Guidelines	This section states that "the production rate used in the production-normalized TBEL calculation should be representative of the actual production likely to prevail during the next term of the permit..." The use of the word "should" implies that this is only a recommendation, from which permit writers may deviate. In fact, the use of "a reasonable measure of actual production of the facility" is a regulatory requirement (40 CFR 122.45(b)(2)(i)). The use of alternate limitations based on anticipated increased or decreased production levels is discretionary (40 CFR 122.45(b)(2)(ii)).
10/10/2017	10/14/2017	EPA Region 10	5	3.1	47	Characterize the Effluent	The opening sentence of this section states that "the permit writer uses information from the permit application to identify pollutants that may be discharged by the facility and impact the receiving water." In fact, the permit application is just one of several sources of information that a permit writer should consider when identifying pollutants of concern. Although this is clear from the subsequent discussion, this sentence should be revised to be more general.
10/10/2017	10/14/2017	EPA Region 10	6	3.1.2	49	Identify Effluent Critical Conditions	The final sentence in this section states that "Receiving water critical conditions are presented in Section 0." The section reference is incorrect; the correct reference is Section 3.2
10/10/2017	10/14/2017	EPA Region 10	7	3.2.1	50	Receiving Water Upstream Flow	The statement that "DEQ will assess non-flowing water bodies on a case-by-case basis" is unnecessarily vague. Since this statement appears in a section that concerns critical flows for flowing receiving waters, which are an important consideration for water quality-based effluent limits (WQBELs) and mixing zones, this section should reference the section of the guidance addressing mixing zones for non-flowing waters (3.4.3.4.2).

10/10/2017	10/14/2017	EPA Region 10	8	3.2.1.1	51	Use DFLOW	<p>In this section, DEQ proposes to delete the word “continuous” when discussing the data requirements for calculations of critical stream flows using DFLOW. “Continuous” should not be simply deleted, but rather replaced with “daily.”</p> <p>This section should point out that biologically-based critical flows (e.g., 1B3, 4B3, and 30B3) may be calculated from only three years of daily flow data.</p>
10/10/2017	10/14/2017	EPA Region 10	9	3.2.1.2	51	Move Upstream or Downstream	<p>The portion of the first sentence including and after the word “provided” should be deleted. It is clear from the subsequent discussion that diversions and additional sources of flow must be accounted for when using a stream gauge located significantly upstream or downstream from the permitted source to calculate critical stream flows.</p>
10/10/2017	10/14/2017	EPA Region 10	10	3.2.3	53-54	Other Receiving Water Characteristics	<p>The phrase “For water bodies other than free-flowing rivers and streams” in the first sentence of this section should be deleted. The need to consider critical conditions other than flow is not limited to “water bodies other than free-flowing rivers and streams.”</p>
10/10/2017	10/14/2017	EPA Region 10	11	3.3	54	Determine Applicable Water Quality Standards (WQS)	<p>In the second paragraph of this section, the first sentence should be revised to read “WQS define water quality goals and pollutant limits that support beneficial uses.” Propagation of fish, shellfish, and wildlife and recreation in and on the water are not the only beneficial uses that are protected by the water quality standards.</p>
10/10/2017	10/14/2017	EPA Region 10	12	3.3.2.1	55-56	Numeric Criteria—Aquatic Life	<p>The description of the durations for ammonia criteria is incomplete. Idaho’s ammonia criteria also include a 4-day average criterion in addition to the 1-hour CMC and 30-day CCC (IDAPA 58.01.02.250.02.d.ii.(2)).</p> <p>The statement that “DEQ’s dissolved oxygen WQS include both minimum concentrations and percent oxygen saturation that must be maintained” is misleading, because dissolved oxygen criteria expressed as percent oxygen saturation are specific to the salmonid spawning use, which applies “in areas used for spawning and during the time spawning and incubation occurs” (IDAPA 58.01.02.250.02.f.i.(2)(a)).</p>
10/10/2017	10/14/2017	EPA Region 10	13	3.3.2.2	60	Numeric Criteria—Human Health	<p>This section states that “all Idaho human health numeric chemical criteria are based on an annual harmonic mean and are not to be exceeded.” This statement appears to be based on a provision of Idaho’s water quality standards which has not yet been approved by the EPA: “Frequency and duration for human health toxics criteria. Columns C1 and C2 criteria are not to be exceeded based on an annual harmonic mean.” (IDAPA 58.01.02.210.03.d.ii)</p> <p>In general, the human health water quality criteria that are in effect for Clean Water Act purposes are those published in the 2005 Idaho Administrative Code. The 2005 Idaho Administrative Code does not specify how human health criteria are to be averaged, however, the EPA stated in its notice of availability of final revisions to the Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health that “we recommend harmonic mean flow to calculate permit limits and taking the geometric mean of ambient water samples to determine attainment” (65 FR 66455).</p>
10/10/2017	10/14/2017	EPA Region 10	14	3.3.2.3	60	Narrative Criteria	<p>This section should point out that IPDES permits must ensure compliance with narrative water quality criteria in addition to numeric water quality criteria and should cite IDAPA 58.01.25.302.06.a.vi and the federal regulation 40 CFR 122.44(d)(1)(vi).</p>
10/10/2017	10/14/2017	EPA Region 10	15	3.3.2.3.1	60-61	Considerations for WET	<p>This section should cite Section 2.3.3 (Page 35) of the EPA’s Technical Support Document for Water Quality-based Toxics Control as the basis for the stated “typical” interpretations of Idaho’s narrative water quality criteria, for acute and chronic toxicity.</p>
10/10/2017	10/14/2017	EPA Region 10	16	3.3.2.5	61	Variances and Intake Credits	<p>The first sentence of this section is awkwardly worded. This could be addressed by deleting the words “from requirements.”</p>
10/10/2017	10/14/2017	EPA Region 10	17	3.3.3.2	64-66	Determining Applicable Tiers of Protection	<p>Figure 4 is a low-resolution image (perhaps obtained via a screen capture). Please replace with a higher-resolution image.</p>
10/10/2017	10/14/2017	EPA Region 10	18	3.4.2	67-68	Assess Critical Conditions	<p>The first full paragraph on Page 68 has an incorrect reference to section “0.” We believe the correct reference is Section 3.2.</p>
10/10/2017	10/14/2017	EPA Region 10	19	3.4.3	74	Establish an Appropriate Mixing Zone	<p>In Table 22, the direction for the consideration, “Are acute water quality criteria predicted to be exceeded in the mixing zone?” should include a decision as to whether a zone of initial dilution should be approved.</p>

10/10/2017	10/14/2017	EPA Region 10	20	3.4.3.2.1	77-78	Toxicity to Aquatic Organisms	The final scenario (#4) under which it may be assumed that no lethality to passing organisms will occur reads, "A drifting organism, when traveling through the path of maximum exposure, would pass through the acute mixing zone within 15 minutes." This is inconsistent with Section 2.2.2 of the TSD (Page 33), which states that: "If a full analysis of concentrations and hydraulic residence times within the mixing zone indicates that organisms drifting through the plume along the path of maximum exposure would not be exposed to concentrations exceeding the acute criteria when averaged over the 1-hour (or appropriate site-specific) averaging period for acute criteria, then lethality to swimming or drifting organisms ordinarily should not be expected, even for rather fast-acting toxicants. In many situations, travel time through the acute mixing zone must be less than roughly 15 minutes if a 1-hour average exposure is not to exceed the acute criterion." Thus, limiting travel time through the acute mixing zone to 15 minutes is a rule of thumb which is intended to ensure that organisms drifting through the plume along the path of maximum exposure would not be exposed to concentrations exceeding the acute criteria when averaged over a period of 1 hour. Scenario #4 should be rewritten to be consistent with Section 2.2.2 of the TSD.
10/10/2017	10/14/2017	EPA Region 10	21	3.4.3.4.1	84-87	Flowing Waters	In Table 24, "Phosphorus" should be replaced with the more general term "Nutrients." The paragraph at the top of Page 86, discussing the methods for determining low flows, should reference Section 3.2.1.
10/10/2017	10/14/2017	EPA Region 10	22	3.4.4	106-111	Conduct a Reasonable Potential Analysis (RPA)	An alternative to Equation 26 should be provided for cases where dilution cannot be expressed as percentage of stream flow (e.g., a modeled dilution factor for a discharge to a non-flowing waterbody). This is addressed for effluent limit calculations in Section 3.5.1.1.2 (Equation 31).
10/10/2017	10/14/2017	EPA Region 10	23	3.5.1.1.2	114	Nonflowing Receiving Waters	The description of the dilution ratio for non-flowing waters is misleading. The dilution ratio is "a simple ratio of the effluent volume and the receiving water volume" only if it is determined using equation 32. If the dilution ratio is determined through modeling, then it may reflect incomplete mixing.
10/10/2017	10/14/2017	EPA Region 10	24	3.7	129-130	Special Considerations	A new subsection should be added, addressing the need to establish permit conditions which ensure compliance with the water quality requirements of all affected States, including downstream States and Tribes. This is required by IDAPA 58.01.25.103.03, which reads, "The Department will not issue an IPDES permit for a discharge...when the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states." Federal regulations include the same requirement (40 CFR 122.4(d)). Downstream States and Tribes may have water quality requirements which are more stringent than those in Idaho, including more stringent numeric water quality criteria. Even if a downstream State's water quality requirements are not more stringent than Idaho's, pollutants such as nutrients, biochemical oxygen demand, and bioaccumulative pollutants may exert their greatest impact upon water quality in a downstream State. The EPA-issued NPDES permits for POTWs discharging to the Spokane River in Idaho (City of Coeur d'Alene, City of Post Falls and Hayden Area Regional Sewer Board) are examples of permits which include conditions necessary to ensure compliance with the water quality requirements of a downstream State (specifically the State of Washington's water quality criteria for dissolved oxygen).
10/10/2017	10/14/2017	EPA Region 10	25	3.7.1.1.1	130-131	Nitrogen	This section states that "nitrate has a maximum contaminant level of 10 mg-N/L." While this is accurate, the more relevant "standard" for nitrate, for IPDES permits, is the EPA's Clean Water Act Section 304(a) criterion for nitrates, for the consumption of water and organisms, which is also 10 mg/L. IPDES and federal regulations allow for the EPA's 304(a) criteria to be used to establish effluent limits based on narrative criteria (IDAPA 58.01.25.302.06.a.vi.(2) and 40 CFR 122.44(d)(1)(vi)(B)).
10/10/2017	10/14/2017	EPA Region 10	26	3.7.1.2.3	132	Non Impaired Waters	The ways of determining reasonable potential to cause or contribute to excursions above nutrient criteria for impaired waters listed in Section 3.7.1.2.2 could also be used for non-impaired waters.

10/10/2017	10/14/2017	EPA Region 10	27	3.7.1.6.1	134-135	Use WLAs as WQBELs	The use of a wasteload allocation (WLA) directly as an effluent limit for nutrients is valid not only in cases where the WLA is from a TMDL, rather, it is also a valid method of establishing effluent limits for nutrients when the WLA is developed for an individual permit based on a mixing zone or applying the interpreted narrative nutrient criterion at the end-of-pipe.
10/10/2017	10/14/2017	EPA Region 10	28	3.7.2.2	138-139	Receiving Water Temperature Considerations	This section should note that certain waters of the State of Idaho are subject to site-specific water quality criteria for temperature.
10/10/2017	10/14/2017	EPA Region 10	29	3.7.2.4	139-140	Calculating Effluent Limits	In Equation 49, "Df" is defined as the "dilution factor for flowing receiving water." It is not clear why a dilution factor from a mixing zone in a non-flowing receiving water could not be used in the same way as a dilution factor for a flowing receiving water, when calculating effluent limits for temperature.
10/10/2017	10/14/2017	EPA Region 10	30	3.7.7.2	144	Receiving Water Characterization	The last paragraph of this section should be edited to clarify that the data and monitoring requirements being discussed are fish tissue data and monitoring requirements.
10/10/2017	10/14/2017	EPA Region 10	31	3.8.1	147	Tier I Review	This section states that, "The process of developing WQBELs provides Tier I protection by ensuring that the discharge does not cause or contribute to a violation of WQC." This is true in cases where there are no existing uses of a receiving water which have not been designated. However, in cases where the receiving water has an existing use, which is not designated, compliance with Tier I antidegradation requirements would require the application of WQC necessary to support the existing uses, in addition to designated uses.
10/10/2017	10/14/2017	EPA Region 10	32	4.1.1	149-150	Antibacksliding Provisions	This section should note that the anti-backsliding regulatory provisions in IDAPA 58.01.25.200 and 40 CFR 122.44(l) restrict the relaxation of "standards or conditions" in existing permits. Thus, these regulatory provisions address all types of backsliding not addressed in the Clean Water Act antibacksliding provisions, including relaxation of conditions which are not effluent limitations (e.g., monitoring requirements). See the US EPA NPDES Permit Writers' Manual at Section 7.2.2.