

IPDES User's Guide to Permitting and Compliance Volume 2—POTW

Comment deadline: October 27, 2017

Summary of Comments Received

US Environmental Protection Agency (EPA) Region 10:

1. **Section 1.2.3, page 2, Idaho Water Quality Standards** – This section should reference the Idaho Water Quality Standards in Idaho's administrative rules (IDAPA 58.01.02).

DEQ has added reference to Idaho Water Quality Standards, IDAPA 58.01.02.

2. **Section 3.1, page 4-6, Pat A. Basic Information** – ... “The applicant's response to whether the POTW is currently covered under an NPDES/IPDES permit (not a new source or new discharger) determines subsequent sections of the permit application that need to be completed”...

The parenthetical in this sentence should be revised to read “not a new discharger or recommencing discharger” and the references to the rules should be changed accordingly. A POTW (as defined in IDAPA 58.01.25.010.73 and 40 CFR 122.2) cannot be a “new source” (as defined in IDAPA 58.01.25.010.58 and 40 CFR 122.2) because POTWs are not subject to standards of performance under Clean Water Act section 306 (i.e., new source performance standards).

The fact that a source is not currently covered under an NPDES or IPDES permit does not necessarily mean it is a “new discharger.” In order to be a “new discharger,” a discharger must never have received a finally effective NPDES or IPDES permit for discharges at a particular site and must not have commenced a discharge of pollutants prior to August 13, 1979 (See IDAPA 58.01.25.010.57 and 40 CFR 122.2). A POTW which ceased discharging and wishes to resume discharging is a “recommencing discharger,” not a “new discharger.” See IDAPA 58.01.25.010.75 and 40 CFR 122.2.

DEQ deleted the reference to new sources and new dischargers and clarified that the intent is only to identify applicants not currently covered under a permit that would not have the data required to complete Part D. Expanded Effluent Testing or Part E. WET Testing.

3. **Section 4.2, page 13-14, Effluent Limits and Associated Monitoring Requirements** – The descriptions of the effluent limit types should be rewritten to be consistent with the definitions of the terms “average monthly discharge limitation,” “average weekly discharge limitation,” “maximum daily discharge limitation,” and “daily discharge” in State and federal regulations. See IDAPA 58.01.25.010 and 40 CFR 122.2.

POTWs often have effluent limits which are expressed in ways that are not discussed in this section. For example, limits for E. coli are generally expressed, in part, as monthly geometric mean concentrations, limits for pH are generally expressed as a range of acceptable pH values, and POTWs are subject to technology-based effluent limits for removal rates for TSS and oxygen demand. Since these types of limits are common in POTW permits, they should

be discussed in this section in addition to average monthly, average weekly, maximum daily, and seasonal or annual average limits. This section should also note that permits may include limits expressed in other ways that are not discussed in this section.

DEQ added “daily” discharge, revised the definitions to be consistent IDAPA, and clarified that additional expressions or effluent limit types not described in the section may be included in permits, as appropriate.

4. **Section 4.3, page 14, Regulatory Mixing Zone** – This section states that “The permittee must monitor and report the effluent and upstream receiving water concentration of all pollutants with authorized mixing zones.”

While we agree that it is generally advisable to monitor the background concentrations of pollutants with authorized mixing zones, there are cases in which such monitoring would not be necessary. For example, non-conservative pollutants such as chlorine would be unlikely to be present in receiving waters (absent another nearby source), or there may be a long history of receiving water monitoring data showing low or undetectable concentrations of a given pollutant.

The EPA suggests that the phrase “and upstream receiving water” from this sentence. If DEQ wishes to discuss receiving water monitoring in this section, the language should be changed so that it’s clear that DEQ will decide whether to require receiving water monitoring on a case-by-case basis. We also suggest the use of the more general term “background,” in lieu of “upstream,” since it addresses both flowing and non-flowing receiving waters.

DEQ changed the sentence to, “The permittee must monitor and report the effluent and, in most instances, the background receiving water concentration of all pollutants with authorized mixing zones.

5. **Section 4.4, page 14, Monitoring** – This section should note that if the permittee monitors any pollutant more frequently than required by the permit, using approved test procedures, the results of such monitoring shall be included in the calculation and reporting of the data submitted on DMRs. See IDAPA 58.01.25.300.12d.ii and 40 CFR 122.41(l)(4)(ii).

DEQ made the suggested change and added, “If the permittee monitors any pollutant more frequently than required by the permit, using approved test procedures, the results must be included in the data calculations submitted on DMRs.”

6. **Section 4.5.4.1, page 19, Twenty-Four Hour and Five Day Noncompliance Reporting** – The last paragraph of this section, describing circumstances that are not considered bypasses, is overly broad. The phrase “or environmental conditions” should be deleted.

The preamble to the bypass rule (40 CFR 122.41(m)) explains that: “Seasonal effluent limitations which allow the facility to shut down a specific pollution control process during certain periods of the year are not considered to be a bypass. Any variation in effluent limits accounted for and recognized in the permit which allows a facility to dispense with some unit processes under certain conditions is not considered bypassing” (49 FR 38037). Thus, the

ability to shut down certain pollution control processes is based on “seasonal effluent limitations” or other “variation(s) in effluent limits.” Neither the State or federal bypass rules nor the preamble to the federal bypass rule provides an exception to the prohibition of bypass based on “environmental conditions.”

DEQ believes that 49 FR 38037 identifies that dispensing with some unit processes under certain conditions is related to those conditions being “accounted for and recognized in the permit,” rather than being restricted to seasonal impacts. As a result, DEQ has changed the sentence to, “If the facility has effluent limits that depend on differing treatment options, which are accounted for and recognized in an IPDES permit and implemented consistent with the permit conditions, they are not considered a bypass.”

7. **Section 4.7.1, page 20, Compliance Schedules and Interim Effluent Limits** – The last sentence of this paragraph reads “For compliance schedules longer than 1 year the permittee must also submit an annual progress report that describes efforts made in reaching compliance by the date specified in the compliance schedule.”

This is not consistent with the IPDES rule which it references (IDAPA 58.01.25.305.01.d) or the corresponding federal rule (40 CFR 122.47(a)(3)). The State and federal rules for compliance schedules require that compliance schedules longer than 1 year include interim requirements and dates for their achievement. Progress reports are required if the time necessary for completion of an interim requirement is more than 1 year and is not readily divisible into stages for completion.

DEQ updated the sentence to, “For compliance schedules with longer than 1 year between interim requirements, the permit will specify dates for submitting interim progress reports that describe progress toward completing the next compliance schedule requirement and a projected completion date reaching compliance by the date specified in the compliance schedule.”

8. **Section 4.7.2, page 20-21, Facility Capacity** – This section states that “Each month the permittee must record and report on DMRs the influent maximum daily flow, BOD5 and TSS loading averaged over the month. These are compared to the maximum daily flow, BOD5 and TSS loading, and other facility design capacity ratings identified in the facility plan.”

The use of the phrase “maximum daily” implies that treatment plant capacity will be evaluated based on “maximum daily” flows and loadings, but this paragraph also states that flows and loadings will be “averaged over the month.” We presume the intent was to use monthly average flows and loadings for capacity planning purposes. If so, we suggest deleting the phrase “maximum daily” from this paragraph.

DEQ changed the sentence to, “Each month the permittee must record and report on the DMR the influent average daily flow...”

9. **Section 4.7.3.1, page 22, Test Requirements** – This section should clarify that the “dilution factor” which determines whether acute or chronic whole effluent toxicity (WET) testing (or

both) is required is based on the authorized mixing zone. See the EPA's Technical Support Document for Water Quality-based Toxics Control at Figure 3-2.

DEQ changed the sentence to, "When the dilution factor from the authorized mixing zone is >1,000..."

10. Section 4.7.3.5, page 23, Accelerated Testing – We recommend not stating a specific interval between receipt of a WET rest result which exceeds a WET trigger or limit and the start of accelerated testing. While two weeks is common practice, DEQ should retain the discretion to set this interval on a case-by-case basis.

DEQ changed the sentence to, "... the permit specifies how many tests are required, and when testing must begin (usually within 2 weeks of any WET testing results that exceed trigger or limit values)."

11. Section 4.7.3.6, page 23, Toxicity Reduction Evaluations – We recommend not stating in guidance a specific interval between receipt of an accelerated WET rest result which confirms toxicity and the initiation of a toxicity reduction evaluation (TRE). DEQ should retain the discretion to set this interval on a case-by-case basis.

DEQ changed the sentence to, "The permit will specify the minimum time interval between receiving the first accelerated test results that confirm toxicity and initiating the TRE (usually within 2 weeks of the first accelerated test results that confirm toxicity)."

12. Section 4.7.9, page 41, Mixing Zone Study – The phrase "for non-flowing waters" should be deleted from the first sentence of the last paragraph of this section. Waters need not meet the definition of "non-flowing" in order for temperature stratification to be an important factor in mixing.

DEQ deleted "For non-flowing waters..."

13. Section 4.7.13, page 42, Biosolids – This section should state that, until DEQ has an authorized biosolids program, POTWs and other treatment works treating domestic sewage (TWTDS) will be subject to federal regulations governing the use and disposal of sewage sludge at 40 CFR Part 503.

DEQ added two sentences to this section, "Until DEQ has an authorized biosolids program, POTWs and other TWTDS must continue submitting required reports to EPA. When DEQ is authorized to implement a biosolids program, POTWs and TWTDS will continue to be subject to federal regulations at 40 CFR 503 governing the use and disposal of sewage sludge..."

DEQ did not add a specific date for anticipated authorization, and did not add reference to tribal/federal lands, which have been addressed in the IDAPA 58.01.25 and the User's Guide Volume 1.

14. Section 4.7.13, page 42, Biosolids – This section should state that Idaho DEQ will begin administration of the biosolids program in 2021. This section should state that the EPA will

continue to have jurisdiction over biosolids generated, handled or disposed at federal facilities and on Tribal land even after IDEQ implements the delegated federal biosolids program in 2021.

Please see DEQ's response to EPA Region 10 comment #13.

Association of Idaho Cities (AIC):

1. **General** – DEQ has committed to adopting a supplemental document that provides permit writers details about contemporary permitting concepts for use in writing Idaho permits. Attached is a working draft of the supplemental document.

DEQ is committed to developing a supplement to the Effluent Development Guidance (ELDG); thank you for the working draft. DEQ will work with interested stakeholders through the guidance development process in 2018 to ensure the supplement is consistent with the Clean Water Act, the Code of Federal Regulations, IDAPA, and applicable NPDES/IPDES guidance.

2. **Section 4.7, page 20, Integrated Planning** – Add a subsection introducing the background and concept of integrated planning. Integrated planning is proposed as a topic in the supplemental document.

DEQ added the following to section 4.7.1, "User's Guide Volume 1, section 3.2.3.1 (DEQ 2017a) discusses a municipality's financial capability and integrated planning for compliance schedule purposes."

3. **Section 4.7, page 20, Nutrient Incentive** – Add a subsection introducing the background and concept of a nutrient incentive program. Nutrient incentive program is proposed as a topic in the supplemental document.

DEQ is not adding this subsection, because it tentatively part of the draft supplement to the ELDG.

4. **Section 4, page 13, WQBEL Calculations** – DEQ has stated they intend to adopt the "Idaho TSD Workbook template rev 0827171.xls" spreadsheet from EPA as is for WQBEL calculations and effluent limitations. This spreadsheet contains extensive EPA policy inherent to the calculations performed. AIC requests DEQ present this spreadsheet and its inherent policy and technical aspects for public comment.

DEQ intends to present the reasonable potential analysis (RPA) spreadsheet at the initial 2018 guidance development meeting. Many of the calculations and policies inherent to the RPA workbook are discussed throughout the ELDG, which has gone through public comment. Further, the RPA workbook calculations and resulting effluent limits will be described in each permit's fact sheet, which will be available for public comment as part of the IPDES permit development process.

5. **Section 4.7, page 20, Compliance Schedules** – The EPA's Financial Capability Assessment Framework for Municipal Clean Water Act Requirements recognizes that long-term approaches to meeting Clean Water Act objectives should be sustainable and within a local

government or authority's financial capability; and that financial capability includes Safe Drinking Water Act obligations as well. AIC recommends the DEQ recognize and consider the financial capabilities of Idaho cities as all schedules of compliance are developed. For Idaho cities, appropriate compliance solutions and time frames are critical to achieving water quality goals at lower costs and in ways that address the most pressing problems first.

Available online at: https://www.epa.gov/sites/production/files/2015-10/documents/municipal_fca_framework.pdf

Please see DEQ's response to AIC comment #2.

US Environmental Protection Agency (EPA) Headquarters Water Permits Division:

1. **Section 3.1, 4.6, page 4, 20, "New Source"** – I think that there should be a clarification made that new sources and new dischargers are not equivalent, perhaps in section 3.1.? "New source" is defined in 122.2 of the NPDES regulations and the dischargers within this category consist of facilities that were constructed after an ELG was proposed, and this categorization remains in place for the life of the facility. A new discharger is not a new source by definition, and is one that had never previously received an NPDES permit.

Please see DEQ's response to EPA Region 10 comment #2.

2. **Section 4.7.1, page 20, Compliance Schedules** – This section should be revised a bit. I think that there are a few areas here where the use of schedules would not be consistent with the federal regulatory requirements. First, it should be clarified that compliance schedules in permits are intended to be used when dischargers cannot immediately meet their water quality-based effluent limitations. These schedules are not the same as compliance schedules in the enforcement and compliance context. So, the word in the 2nd sentence, "reacquire" should be deleted. I think that the specific reference to consent orders and compliance orders should be deleted because while a schedule can require tasks that are similar to what's required in those enforcement documents, the goal of the permit schedule is to meet the limit. The way it's currently drafted creates the possibility of confusion. Schedules are not intended to be used to document the generation or submittal of documents, so the last sentence in the first paragraph of this section should be revised to clarify that these are documents that are somehow related to the needed changes the facility is making to meet their limit(s).

DEQ made several changes to this section: (1) clarified that compliance schedules may be included in the permit when a permittee is unable to meet final WQBELs; (2) deleted "reacquire" from the second sentence; (3) explained that compliance schedules specify a series of tasks, with associated milestones, to acquire or maintain compliance with the effluent limits in the permit; and (4) clarified that compliance schedules associated with meeting new or more stringent effluent limits may incorporate tasks consistent with an existing CAS/CO.

3. **Section 4.7.4.4, page 25, Pretreatment Program** – As currently drafted, the development of a pretreatment program seems to be a tool for resolving compliance issues. I think that this section should be revised to reflect the language in 40 CFR Sec. 403.8(a) "Pretreatment Program Requirements: Development and Implementation by POTW"

DEQ revised this section to reflect language in 40 CFR 403.8(a) and moved the Significant Industrial Users to section 4.7.4.3.3, within the Industrial User Survey and Master List section.

4. **Section 4.7.7.7, page 39, De Minimis Sources** – What is the definition "de minimis" levels of mercury? Suggest including the specific level since a lot of the permitting approach described seems to be hinged on that factor.

DEQ defined de minimis dischargers in section 4.7.7 as, "...facilities that do not discharge enough mercury to be assigned a TMDL WLA nor do they have RPTE to exceed the mercury criteria. De minimis dischargers are confirmed through effluent monitoring of mercury concentration." DEQ will identify in the permit's fact sheet whether the discharge is considered significant or de minimis.

5. **Section 4.7.7.1, page 39-40, Mercury Minimization** – Suggest including a description or example of what is a "qualitative evaluation" that a de minimis discharger could perform to evaluate the possible contributing conditions to methylation.

DEQ clarified that for de minimis dischargers, the mercury minimization plan should qualitatively evaluate, "...methylation rates in systems with similar mercury sources and methylation conditions."

6. **Section 4.7.8, page 40, Phosphorus Management Plans** – Will a determination be made about whether there is reasonable potential when there is an applicable water quality standard for phosphorus in the receiving water? I think that it needs to be clear that these management plans will work along with the requirements of 40 CFR 122.44(d), which requires that water quality based effluent limitations be included in permits if there is reasonable potential.

DEQ clarified that the phosphorus management plan would be included: (1) "When the discharge contributes nutrients to an impaired water body without an approved TMDL, and not enough information exists to determine the facility's contribution to the impairment..." and (2) "...when there is a TMDL load allocation assigned to the receiving water body because it contributes to the impairment of a downstream water body." A facility's phosphorus management plan includes compiling effluent and monitoring data, developing reduction goals, and implementing phosphorus reduction strategies.