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From: Wayne Hammon <whammon@idahoagc.org>
Sent: Thursday, April 23, 2020 2:12 PM
To: IPDES Guidance
Cc: Wayne Hammon; Adam Lyman
Subject: Comments on the Draft IPDES User's Guide (#1)

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The Idaho AGC would like to submit the following comment regarding the User's Guide and the conversations about it at the DEQ meeting on April 14, 2020. Please let me know if you need anything else from us.

The Idaho Associated General Contractors (AGC) suggests removing the statement from Section 4.1.2 that reads: "Protect historic properties by consulting with SHPO to determine if your project has the potential to damage them."

We suggest that should any statement concerning this topic be required to be included that such statements should be more general. This might include language such as "The applicant should follow the requirements to protect historic properties as required in the General Permit" or "Protect historic properties as required by IDAPA XXXX".

We understand that the historic properties requirements in the EPAs CGP Appendix E are written to conform to the National Historic Preservation Act (NHPA) [reference 2017 Construction General Permit - Fact Sheet page 94 of 98]. The CGP Fact Sheet states "Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of Federal "undertakings" on historic properties that are listed on, or eligible for listing on, the National Register of Historic Places. The term Federal "undertaking" is defined in the NHPA regulations to include a project, activity, or program under the direct or indirect jurisdiction of a Federal agency including those requiring a Federal permit, license or approval. See 36 CFR 800.16(y). Historic properties are defined in the NHPA regulations to include prehistoric or historic districts, sites, buildings, structures, or objects that are included in, or are eligible for inclusion in, the National Register of Historic Places. See 36 CFR 800.16(l)." From our experience SHPO has a history of stretching the bar of sites that are or could be eligible for registry on the National Register of Historic Places. Therefore, we are uncomfortable with a general statement that all construction projects must consult with SHPO.

It appears that the application of the NHPA is not required by the IPDES program. The IPDES is a State of Idaho program and as a State program not subject to other federal permits such as NFPA. [reference House Bill 406 2014 Legislative Session 39-175A.(f) which states: "That a state program must be run with a minimum of federal interference in permitting, inspection and enforcement activities and that all state permitting actions under the approved state program are to be state actions and are not subject to consultation under the endangered species act or analysis under the provisions of the national environmental policy

act. There should be no conditions of approval of the state program that have the effect of undermining or circumventing these principles;”}. We believe that including a statement in the rules to require operators to consult with SHPO should be done with the intent of complying with state law.



Wayne L. Hammon, CEO

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