



Region 10 Briefing Paper for the Office of the Regional Administrator

MEETING/EVENT TITLE: Idaho NPDES Program
MEETING DATE: January 9, 2018, 1:00 PM
LOCATION: ET Conference room
PREPARED BY: Karen Burgess, OWW-NPU, NPDES Oversight Lead
DATE: December 22, 2017
ATTENDEES: Chris Hladick, Michelle Pirzadeh, Dan Opalski, Angela, Chung, Michael Lidgard, James Werntz
EXTERNAL PARTICIPANTS: None

I. REQUESTING OFFICE

Regional Administrator

II. TIMING

Approval of Idaho's NPDES program will be requested during the second quarter of 2018 to meet Idaho's target date for the transfer of authority of phase I permits to the Idaho Department of Environmental Quality (IDEQ) on July 1, 2018.

III. PURPOSE

EPA Region 10 and EPA HQ staff have worked with IDEQ since 2015 as they developed their Idaho Pollutant Discharge Elimination System (IPDES) program. During the first half of 2018, R10 and concurring offices (OW, OECA, OGC) will request the Administrator's approval of the IPDES program. The State of Idaho and IDEQ have expended significant time and resources to develop an approvable NPDES program. As required, EPA will retain enforcement authority and oversight for NPDES permitting to ensure IDEQ implements their program in accordance with the CWA and federal regulations. EPA's approval of the program and transfer of NPDES permitting authority to IDEQ will reduce R10's NPDES permitting workload over time.

IV. BACKGROUND/HISTORY

- In 2014, the Idaho Legislature revised Idaho Code § 39-175C to direct IDEQ to seek EPA authorization for a state-operated pollutant discharge elimination system permitting program with an IPDES program application submitted to EPA by September 1, 2016.
- In 2015, IDEQ commenced with a negotiated rulemaking process to develop the IPDES regulations. The final rule became effective March 24, 2016.
- In 2016, IDEQ developed the IPDES program application with significant stakeholder involvement and submitted it to EPA on August 31, 2016. Regulations at 40 CFR 123.21 allow EPA 30 days to notify IDEQ whether application is complete. EPA provided the Completeness Finding Letter on September 30, 2016. As allowed, IDEQ requested to extend the application review period to July 1, 2018 and EPA concurred.
- In 2017, EPA and IDEQ worked to address comments/concerns with the program application, EPA completed the required public process, and IDEQ commenced with IPDES program and guidance development.
- In 2018, complete final review of program application, public process and tribal consultation. Approve or disapprove IPDES program on or before June 30.

Refer to the Attachment A for a more detailed chronology of Idaho's NPDES program development along with EPA's points of involvement in the process.

V. KEY ISSUES

Environmental/health concerns and technical issues are not impacted by the delegation of NPDES authority. Generally, there has been wide acceptance for the IPDES program by the regulated community. Environmental groups and tribes have expressed concerns about IDEQ's ability to implement the NPDES program. EPA has reviewed all aspects of the program to ensure it meets the legal requirements of the CWA and federal regulations; however, our approval of the program may be subject to concerns about Idaho's criminal negligence standard.

VI. REGULATORY SUMMARY (if appropriate)

Section 402 of the CWA, 33 U.S.C. § 1342, created the NPDES program under which the EPA may issue permits authorizing the point source discharge of pollutants to waters of the United States under conditions required by the Act. The CWA Section 402(b), 33 U.S.C. § 1342(b), provides that the EPA shall approve a State to administer its own permit program, upon the Governor's request, provided the State has appropriate legal authority and a program sufficient to meet the Act's requirements. The regulatory requirements for state program approval are set forth in 40 CFR Part 123, and Subpart B provides the requirements of state program submissions, which IDEQ refers to as the IPDES program application. Pursuant to 40 CFR 123.21 and 123.61(b), the EPA must approve or disapprove the submitted IPDES program, which has been determined to be complete, within 90 days of receipt, unless this review period is extended by mutual agreement between the EPA and the State. EPA shall approve a submitted program unless adequate authority does not exist as required by the CWA.

VII. ADDITIONAL POLICY/TECHNICAL INFORMATION (if appropriate)

None

VIII. ANTICIPATED STAKEHOLDER REACTION/INVOLVEMENT

IDEQ provided extensive opportunities for public involvement throughout the development of their program. In addition, EPA Region 10 conducted a public process in accordance with 40 CFR 124.12. EPA's process included publishing notice of Idaho's NPDES application in the Federal Register, accepting comments and holding informational meetings and public hearings in five Idaho cities. See Attachment A for more information.

IX. ROLL-OUT / COMMUNICATIONS PLAN

EPA R10, in coordination with HQ, will issue a press release concurrent with the publishing of the notice in the FR and Idaho newspapers, as appropriate. IDEQ will implement their own communication strategy as well.

X. NEXT STEPS / UPCOMING DEADLINES

- The Administrator will make a decision to approve or disapprove the IPDES program based on the requirements of Section 402 of the CWA and 40 CFR 123.
 - If the Administrator approves the IPDES program, the Administrator will notify the State and sign the proposed Memorandum of Agreement between the EPA and IDEQ. Notice would be published in the Federal Register and, as of the date of program approval, the EPA would suspend issuance of NPDES permits in Idaho in accordance with the State's approved schedule to transfer NPDES program authority in accordance with the phased implementation plan.
 - If the Regional Administrator disapproves the IPDES program, IDEQ will be notified of the reasons for disapproval and of any revisions or modifications to the program that are necessary to obtain approval.
- The EPA will not make a final decision on IPDES program approval until after: (1) considering all public comments received and preparing a responsiveness summary, (2) completion of government to government tribal consultations.
- EPA anticipates program approval in the second quarter of 2018 concurrent with CROMERR (Cross Media Electronic Reporting Rule) to facilitate transfer of phase 1 permits on July 1, 2018.

Attachment A: EPA REGION 10 EXECUTIVE SUMMARY

Topic: Idaho National Pollutant Discharge Elimination System (IPDES) Program
Date: December 1, 2017
Current Status: Under EPA final review for program approval.

- In 2014, the Idaho Legislature revised [Idaho Code § 39-175C](#) to direct DEQ to seek EPA authorization for a state-operated pollutant discharge elimination system permitting program. DEQ was required to submit a primacy application that adheres to the Clean Water Act and 40 CFR 123 to EPA by September 1, 2016. DEQ met this deadline.
- DEQ is targeting July 1, 2018, for phase I transfer of program authority and other phases annually thereafter with phase IV transfer occurring July 1, 2021.

Background

- Phase I – Individual Municipal Permits and Pretreatment
 - Phase II – Individual Industrial Permits
 - Phase III – General Permits (Aquaculture, Pesticide, CAFO, Suction Dredge, Remediation)
 - Phase IV – Federal Facilities, General and Individual Stormwater Permits and Biosolids
 - DEQ budgeted for 29 FTE with a program cost of \$3 million per year. Staffing levels: July 2016 – 8 FTE, July 2017 – 12, July 2018 - 22, July 2019 – 26, July 2020 – 29
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Rulemaking

December 2014 –
July 2015

- Members of the public participated in a negotiated rulemaking process by attending eight meetings and by submitting written comments. A record of the negotiated rule drafts, written comments, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary are available at <http://www.deq.idaho.gov/laws-rules-etc/deq-rulemakings/docket-no-58-0125-1401/>
 - [Final rule](#) became effective March 24, 2016.
 - DEQ plans to revise portions of the IPDES regulations to reflect any new NPDES regulations that went into effect after the rulemaking (e.g. MS4 Remand)
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Guidance Development

December 2015 –
Ongoing

- Through an ongoing series of meeting with stakeholder involvement, DEQ developed documents and guidance to include in the Program Description with the program application.
 - [Idaho Pollutant Discharge Elimination System: User's Guide to Permitting and Compliance Volume 1 — General Information](#) (August 2016)
 - [Idaho Pollution Discharge Elimination System Compliance Monitoring Strategy](#) (July 2016)
 - [Idaho Pollutant Discharge Elimination System: Enforcement Response Guide](#) (June 2016)
 - [Designation Criteria and Selection Process for Small Municipal Separate Storm Sewer Systems](#) (February 2016)
 - [Public Participation in the Permitting Process](#) (February 2016)
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On August 31, 2016, DEQ submitted to EPA for review a program application petitioning for the authority to become the discharge permitting authority in Idaho. The application consisted of six main components:

Program Application Submission

December 2015 – September 2016

1. A letter from the governor requesting approval of the state’s application;
2. A program description that describes how the state will issue IPDES permits, ensure compliance with permit conditions, conduct enforcement, as well as fund and manage the program including programmatic information and data.
3. A memorandum of agreement (MOA) between the state and EPA which establishes, in part, timeframes for a phased approach for the state to assume authority.
4. A statement from the attorney general’s office confirming that the state’s laws and regulations provide sufficient authority to the state to implement the discharge, pretreatment, and biosolids components of the NPDES program.
5. Copies of all pertinent statutes and regulations, which the state adopted to ensure the necessary authority for implementing the IPDES program, including HB 406 directing DEQ to pursue permitting authority.
6. A document detailing Idaho DEQ’s continuing planning process.

EPA Review of Program Application

September 2016 – February 2017 (extended to June 2018)

- 40 CFR 123.21 allows EPA 30 days to notify DEQ whether application is complete. EPA provided Completeness Finding Letter on September 30, 2016.
- 40 CFR 123.61(b), EPA shall approve or disapprove within 90 days of the receipt of a complete program application. DEQ requested and EPA agreed to extend statutory review period until June 30, 2018.
- EPA agreed to provide final comments on application to allow DEQ to make necessary revision prior to publishing notice of the program application. Target end of February 2017.
- 40 CFR 123.61, EPA must publish notice of application in Federal Register; provide 45-day public comment period and public hearing. See below, EPA Public Process and Hearing.

EPA Final Comments on Program Application

February 2017

The letter included a reiteration of initial issues identified in the attachment to the Completeness Finding Letter along with a table of specific comments on the application.

- Criminal Negligence Standard – DEQ must put forth legislation to ensure simple negligence standard for the IPDES program.
- Statute of Limitations and Criminal Enforcement Capacity – DEQ must demonstrate they have sufficient resources to promptly process criminal enforcement cases though revisions to the Program Description or other program documents.
- CAFOs – Reliance on Idaho State Department of Agriculture (ISDA) to administer portions of the CAFO program. DEQ must clarify roles and responsibilities as specified in the MOU between these state agencies. DEQ must ensure their access to document to assess discharges requiring permits.
- MOA – Must be approved by legislature in 2018. DEQ must address any changes with EPA.
- Vessel Permitting – Currently vessel permitting would be under DEQ’s authority upon program transfer. DEQ will pursue legislation exclude vessels from their authority.
- Changes to NPDES regulations since Idaho’s adoption of the IPDES regulations – EPA expressed the need for DEQ to update the IPDES regulations.
- Pretreatment/Biosolids Program – DEQ must address comments on Program Application.
- Compilation of comments, questions and concerns regarding Program Application.

IPDES Program Application for Public Comment	<ul style="list-style-type: none"> In July 2017, DEQ submitted to EPA a revised program application documents that addressed comments and questions that arose during EPA's review. http://www.deq.idaho.gov/water-quality/ipdes/program-application/
EPA Public Process and Hearings August 2017 – December 2017	<ul style="list-style-type: none"> Published notice of the application and required information in the Federal Register and State newspapers on August 11, 2017 for a 60-day public comment period. https://www.epa.gov/npdes-permits/idaho-npdes-program-authorization Public hearings were held in five Idaho cities in coordination with Idaho DEQ September 11-15, 2017. Initiated Tribal consultation in July with the IPDES Tribal Information Webinar on July 12. Met with five Idaho and two Eastern Washington Tribes during the week of September 11, 2017. Consultation with interested tribes is ongoing. IDEQ prepared the Tribal Participation Process, dated Nov. 2017. Responsiveness summary including public participation activities conducted, comments received and agency response to be completed early in 2018.
IPDES Permit Guidance and Tools September 2016 – June 2018	<ul style="list-style-type: none"> Develop tools for permit writers (Permit and Fact Sheet Templates, Permit Development Tools, Reasonable Potential Analysis, Limits Development) Develop compliance, inspection and enforcement procedures. Develop data management systems including electronic applications, e-reporting.
IPDES Capacity Building March 2017 – June 2018	<ul style="list-style-type: none"> DEQ contracted with Tetra Tech to provided Idaho specific NPDES Permit Writers training in Boise, October 24-28, 2016. DEQ staff will job shadow with EPA Region 10 permit writers, and compliance and enforcement staff. Capacity building began in 2017. Initially, six permits have been assigned to DEQ permit writers and EPA mentors. Periodic informal meetings are scheduled to facilitate knowledge transfer.
Before Program Approval Early 2018	<ul style="list-style-type: none"> Legislative approval of the MOA expected early 2018. Revision and adoption of IPDES regulations to address new or revised NPDES rules. Revised program application based on comments received, as needed. Program approval, publish notice in the FR and date of final transfer of authority (July 1, 2018, phase I only).
Post Program Approval July 2018 – July 2021	<ul style="list-style-type: none"> Phase transfer of permit authority and permit files from EPA to DEQ over 4 years. Increased state oversight including permit quality review, and compliance, inspection and enforcement activity review. Provide technical assistance to ensure program efficacy. Expect to transition to standard level of state oversight in no less than 5 years after the initial transfer of program authority.

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