

Idaho Pollutant Discharge Elimination System

Rule Update



State of Idaho
Department of Environmental Quality

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1. Introduction

1.1 Purpose and Scope

This discussion paper presents the Idaho Department of Environmental Quality's (DEQ) justification and recommendations for changing parts of IDAPA 58.01.25 to comply with recent changes to the Code of Federal Regulations regarding the National Pollutant Discharge Elimination System (NPDES) Program and to address other rule issues encountered.

1.2 Background

As Idaho implements delegated authority for the NPDES Program, it is necessary to ensure that Idaho's rules comply with federal requirements for regulating dischargers under the Idaho Pollutant Discharge Elimination System (IPDES) Program. With help from the stakeholders, in 2015 and 2017 DEQ drafted, adopted, and revised a chapter of rules (IDAPA 58.01.25) regarding the IPDES Program. Updates to this rule chapter are required to remain consistent with 40 CFR 122 through 503.

DEQ is also seeking to make clarifying changes to some portions of the rule and to update sections to address issues encountered as DEQ continues with program implementation.

2 Proposed Changes

2.1 Section 02 – Incorporation by Reference

DEQ is proposing to update the dates for all sections incorporated by reference to ensure compliance with the current CFR.

Section bb – DEQ is proposing to update the definition of “Waters of the United States or waters of the U.S.” to ensure compliance with current federal rulemakings. Alternatively, DEQ may propose to shorten the description to reference and comply with 40 CFR 122.2.

2.2 EPA's eReporting Rule

EPA's eReporting Rule (Vol 80 No 204 FR 64064) was published on October 22, 2015 and became effective on December 21, 2015. This rule provided updates to 40 CFR 122, 123, 403, and 503. DEQ previously incorporated these updates, but did not include the information, below. This was an oversight and DEQ is proposing the following updates to ensure IDAPA 58.01.25 remains consistent with this rule:

Section 300.12.f.ii(5) requires permittees to report specific information related to noncompliance events related to combined sewer overflows, sanitary sewer overflow, or bypass events.

2.3 NPDES Applications and Program Updates

EPA's NPDES Applications and Program Updates Rule (Vol 84 No 229 FR 33324) was published on February 12, 2019 and became effective on June 12, 2019. This rule provided updates to 40 CFR 122, 124, and 125. The following updates are proposed to ensure IDAPA 58.01.25 remains consistent with this rule:

- Section 010.xx. includes definitions of “Pesticide Discharges” and “Pesticide Residue”
- Section 105.04.a. includes pesticide applicators
- Section 105.06 includes pesticide applicators
 - Sections b. and d. include email addresses
 - Sections i. and j. include an indication of cooling water and whether the facility is requesting variances.
- Sections 107.n.i. – iii clarifies that existing data may be used if they were collected and analyzed less than 4 ½ years before submission, are representative of the discharge, and all representative data are considered
- Section 105.11
 - Sections c.ii, viii(4), and ix. include email addresses
 - Section c.x. required an indication of whether the applicant is operating or requesting to operate under a variance
 - Section h. requires publicly owned treatment works (POTW) applying prior to commencement of discharge to submit data with 24 months of discharge
- Section 105.12.a. requires POTWs applying prior to commencement to submit whole effluent toxicity data with 24 months of discharge
- Section 105.13.a. requires an applicant to report the number significant industrial users and non-significant categorical industrial users discharging to the POTW
- 105.15.h. includes email addresses
- 105.16.c. changes 2 years to 24 months
- 105.17.b.ii., h.vi(1), i.iii(4) and (5), i.iv(1), j.ii(1), k.ii(1), l.i., m. include email addresses
- 109.d.iii. identifies that in lieu of notification in a newspaper, DEQ may publish notices on the DEQ website. DEQ must also post the draft permit and fact sheet on the website and ensure the methods of public notice are appropriate for inform all interested communities and individuals wishing to participate.

2.4 Other Changes

In the course of implementing the IPDES Program DEQ believes additional detail and clarification are needed in the following areas.

2.4.1 Section 010 – Definitions

Section 35. – DEQ is proposing to update the definition of “Equivalent Dwelling Unit (EDU)” to clarify that it applies to publicly or privately owned domestic sewage treatment. Additionally, it clarifies the term “average household size” which is used by the US Census Bureau. Lastly, for industrial facilities owned by a municipality, EDUs are calculated according DEQ’s wastewater rules in IDAPA 58.01.16. DEQ believes these changes add clarity for the regulated community

and others regarding who will be charged fees under the municipal rate (public and privately owned treatment works) and how those fees will be calculated.

Section xx. DEQ is proposing to include the definition of “Proposed Settlement of a State Enforcement Agreement Action” for clarification to section in 500.04.c.

2.4.2 050 – Computation of Time

Section 01. – DEQ is proposing to clarify that this section does not apply to submission deadlines for 24-hour reporting, permit applications, or notices of intent for coverage under a general permit.

2.4.3 105 – Application for an Individual IPDES Permit

Section 07.d.i and ii. – DEQ is proposing to clarify that 24-hour composite samples are not appropriate for dissolved oxygen and that all other pollutants should be sampled using 24-hour composites unless specified otherwise in 40 CFR 136.

Section 08.c.ii. – DEQ is proposing to clarify that pollutants identified should be sampled using 24-hour composites unless specified otherwise in 40 CFR 136.

Sections 105.11.g.ii.(1) and (2) – DEQ is proposing to clarify that 24-hour composite samples are not appropriate for dissolved oxygen and that all other pollutants should be sampled using 24-hour composites unless specified otherwise in 40 CFR 136. DEQ believes this is consistent with 40 CFR 122.21(g)(7).

Section 105.17.o.ii. and 18.a.i. – DEQ is proposing to include the email address.

2.4.4 106 – Individual Permit Application Review

Section 07. – DEQ is proposing to correct that a waiver is submitted to DEQ; however, EPA does retain the ability to disapprove a waiver request.

2.4.5 110 – Fee Schedule for IPDES Permitted Facilities

Section 02.a. and a.i. – DEQ is proposing to identify that EDUs are calculated according to the definition in Section 010.

Section 02.b. – DEQ is proposing to exclude small scale suction dredges from IPDES fees. Currently, individuals covered under the general permit are excluded from fees; however, if an individual were to be covered under an individual permit, they would be assessed an annual fee of \$4,000 or \$13,000.

DEQ is proposing to update the fee schedule table as follows:

- Change “Industrial Permits” to “Non-POTW Permits” to avoid confusion of what constitutes industrial
- Change “Storm Water Permits” to “Storm Water General Permits” because IPDES does not currently have a fee for individual storm water permits
- Add “>” symbols to differentiate the construction size category

2.4.6 203 – Termination of Permits

Section 03.d. – DEQ is proposing to clarify there may be other situations in which DEQ has sufficient evidence for determining a discharge will cease.

2.4.7 206 – Stays of Contested Permit Conditions

Section 01.a. – DEQ is proposing to simplify the text by removing reference to judicial review, which is not applicable in this stage of a contested permit condition.

2.5 General Housekeeping

DEQ is proposing the following general housekeeping changes to 58.01.25:

- Section 000 – formatting correction
- Section 010.57.d. – typo correction
- Sections 105.07.a.ii and b.i. – formatting corrections
- Sections 105.07.i. and k. – cross reference updates
- Sections 105.07.o. and p. – rule number updates
- Sections 105.16.b.iii.(3)(a) and (b) – cross reference updates
- Section 105.17.i.iv(2) – formatting correction
- Sections 105.18., a.iv.(4)(g), (5), b.ii., b.iii., b.iii.(1)(c), b.iii.(3), b.iv.(1)(b) and (e), b.iv.(3)(b), b.viii. – formatting corrections
- Sections 105.19.b.vi. and vii. – formatting corrections
- Section 109.h. – formatting correction
- Section 110.03.b. – formatting correction
- Section 130.01.d.iii – formatting correction
- Section 300.12.f.ii(6) – cross reference updates
- Section 300.14.c.iii – formatting correction
- Section 302.09. – formatting correction
- Section 303.07.vi. – formatting correction
- Section 310.01.c.ii. – formatting correction