9 Standard Permit Conditions

The following conditions apply to all IPDES GPs (IDAPA 58.01.25.300). Nothing in this GP shall be construed to preclude the institution of any legal action or relieve the operator from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by CWA § 510.

A. Duty to Comply

The operator must comply with all conditions of the GP. Any GP noncompliance constitutes a violation of Idaho law, the CWA, and is grounds for enforcement action, GP termination, revocation and reissuance, or modification, or denial of a GP renewal application. The operator shall comply with effluent standards or prohibitions established under IDAPA 58.01.02 for toxic pollutants and with standards for sewage sludge use or disposal established under the CWA §§ 380 and 405(d) and the "Wastewater Rules" (IDAPA 58.01.16.650), within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the GP has not yet been modified to incorporate the requirement.

B. Duty to Reapply

If the operator wishes to continue an activity regulated by the GP after the expiration date of the GP, the operator must apply for and obtain a new GP coverage. If the operator complies with the NOI requirements for a GP, and GP coverage is not issued prior to the GP's expiration date, the GP shall remain in force as stipulated in the GP.

C. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for the operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with this GP.

D. Duty to Mitigate

The operator shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the GP that has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance

The operator shall at all times properly operate and maintain all operations and systems of treatment and control (and related appurtenances) that are installed or used by the operator to achieve compliance with the conditions of the GP. Proper operation and maintenance also include adequate laboratory controls and appropriate quality assurance procedures. This provision requires

the operation of back-up or auxiliary facilities or similar systems that are installed by an operator only when the operation is necessary to achieve compliance with the conditions of the GP.

F. General Permit Actions

The GP may be modified, revoked and reissued, or terminated for cause as specified in IDAPA 58.01.25.201 and 58.01.25.203. The filing of a request by the operator for a GP modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any GP condition.

G. Property Rights

The issuance of, or coverage under, an IPDES permit does not convey any property rights or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local laws or regulations. The issuance of, or coverage under, an IPDES permit does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity and does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits.

H. Duty to Provide Information

The operator shall furnish DEQ, within a reasonable time, any information DEQ may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the GP coverage or to determine compliance with the GP. The operator shall also furnish DEQ upon request, copies of records required to be kept by the GP.

I. Inspection and Entry

Pursuant to Idaho Code § 39-108, the operator must allow DEQ's compliance, inspection, and enforcement personnel, or authorized representative (including an authorized contractor acting as a representative of DEQ), upon the presentation of credentials and other documents as may be required by law, to:

1. Enter the operator's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise required by the CWA, any substances or parameters at any location.

J. Monitoring and Records

An operator must comply with the following monitoring and recordkeeping conditions:

1. Samples and measurements taken for the purpose of monitoring must be representative of the volume and nature of the monitored activity.
2. The operator shall retain the following records:
   a. All monitoring information, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by DEQ's request at any time.
   b. The permittee's sewage sludge use and disposal activities shall be retained for a period of at least 5 years or longer as required by 40 CFR 503.

3. Records of monitoring information shall include the following:
   a. All calibration and maintenance records.
   b. All original strip chart recordings for continuous monitoring instrumentation or other forms of data
   c. Copies of all reports required by the GP.
   d. Records of all data used to complete the NOI for the GP.
   e. The date, exact place, and time of sampling or measurements.
   f. The name of any individuals who performed the sampling or measurements.
   g. The dates any analyses were performed.
   h. The name of any individuals who performed the analyses.
   i. The analytical techniques or methods used.
   j. The results of the analysis.

4. Monitoring must be conducted according to test procedures approved under 40 CFR 136 unless another test method is required by 40 CFR 401–471 or 501–503.

K. Signatory Requirements

1. All NOIs must be signed as follows:
   a. For a corporation, by a responsible corporate officer as specified in IDAPA 58.01.25.090.01.a.
   b. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively as specified in IDAPA 58.01.25.090.01.b.
   c. For a municipality, or other public agency, by either a principal executive officer or ranking elected official as specified in IDAPA 58.01.25.090.01.c.
2. Any report or information required by this permit, including the SWPPP, corrective action log, monitoring and reporting provisions, and any other compliance documentation required by this permit, must be signed by a person described in item 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if the following is true:
   a. The authorization is made in writing by a person described in item 1 above;
   b. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company; and

c. The written authorization is kept in the SWPPP.

3. Changes to authorization. If an authorization is no longer accurate because a different operator has responsibility for the overall operation, a new NOI satisfying the requirements of IDAPA 58.01.25.130.04 must be submitted to DEQ before or together with any report, information, or application to be signed by an authorized representative. However, if the only change that is occurring is a change in contact information or a change in the facility's acreage, the operator need only make a modification to the existing NOI submitted for authorization.
4. Certification. Any person signing a document under this section must make the following certification:

   "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
5. The operator must ensure that any electronic submission of any report or information required by this permit, notice of intent, monitoring and reporting provisions, and information requested by DEQ satisfies all of the relevant requirements of 40 CFR 3 (Cross-Media Electronic Reporting) and 40 CFR 127 (NPDES Electronic Reporting Requirements).

L. Reporting Requirements

1. Planned Changes. The operator must give notice to DEQ as soon as possible, but no fewer than 30 days, of any planned physical alterations or additions to the permitted facility. Notice is only required when:
   a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or
   b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limits in the permit, nor to notification requirements under 40 CFR 122.42(a)(1).
2. Anticipated noncompliance. The operator must give advance notice to DEQ of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.
3. Transfers. This permit is non-transferable to any person except after notice to DEQ. Where a facility wants to transfer the permit coverage, the new owner or operator must submit a NOI in accordance with Part 1.C and Table 1-2. See the requirements in Part 9.K.1 and 9.K.2. The original operator (the first owner or operators) must submit a NOT pursuant to Part 1.D. When changing only the *name* of the operator, a name change can be requested through the IPDES E-Permitting System.

4. Monitoring Reports. Monitoring results must be reported at the intervals defined in the permit.
   a. Monitoring results must be reported with the project's NOT, submitted through NetDMR. If you monitor any pollutant more frequently than required by the permit using testing procedures approved under 40 CFR 136, the results of this monitoring must be included in the calculation and reporting of the data submitted in the monitoring report.
   b. Calculations for all limitations that require averaging of measurements must use an arithmetic mean. For averaging purposes, if a sufficiently sensitive test method was used for analysis, use a value of zero for any individual sample parameter that is determined to be less than the method detection limit (MDL). For sample values determined to be less than the minimum level (ML), or for sample values that fall between the MDL and the ML (i.e., a confirmed detection but below the level that can be reliably quantified, also known as "estimated value"), use a value halfway between zero and the ML. If a sufficiently sensitive test method was not used for analysis, use the ML as the value. For any parameter with a benchmark or limitation that is below the ML, including for monitoring-only requirements such as impaired waters monitoring where the water quality standard is below the ML, use a value of zero for any individual sample parameter that is determined to be less than the ML if the test method used for analysis has the lowest ML of the EPA-approved analytical methods for the parameter.
   c. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date.
5. Twenty-four hour reporting. In addition to reports required elsewhere in this permit:
   a. The operator must report any noncompliance that may endanger human health or the environment directly to the DEQ regional office through the 24-hour IPDES hotline at 1-833-IPDES24 (1-833-473-3724). Any information must be provided orally within 24 hours from the time the operator becomes aware of the circumstances. A written submission must also be provided within 5 days of the time the operator becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
   b. The following must be included as information that must be reported within 24 hours under this paragraph:
      1) Any unanticipated bypass which exceeds any effluent limit in the permit (40 CFR 122.41(m)(3)(ii)).
      2) Any upset which exceeds any effluent limit in the permit.
      3) Violation of a maximum daily discharge limit for any numeric effluent limit (40 CFR 122.44(g).)
   c. DEQ may waive the written report on a case-by-case basis for reports under Part 9.L.5.b if the oral report has been received within 24 hours.

6. Other noncompliance. The operator must report all instances of noncompliance not reported under Parts 9.L.4 and 9.L.5, at the time monitoring reports are submitted. The reports must contain the information listed above.
7. Other Information. Where the operator becomes aware that it failed to submit any relevant facts in the NOI or submitted incorrect information in the NOI or in any report to DEQ, it must promptly submit such facts or correct information.

M. Bypass Terms and Conditions

1. Bypass, as defined in Appendix A, is prohibited, and DEQ may take enforcement action against an operator for bypass, unless:
   a. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
   b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or performing maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and
   c. The operator submitted a notice of a bypass to DEQ according to IDAPA 58.01.25.300.13.c. and d. As of December 21, 2020, all notices submitted in compliance with this permit part must be submitted electronically by the operator to DEQ in compliance with this permit part and 40 CFR 127 unless waived pursuant to 40 CFR 127.15. Regulation 40 CFR 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR 127, operators may be required to report electronically if specified by a particular GP.
   d. DEQ may approve an anticipated bypass, after considering its adverse effects, if DEQ determines that it will meet the three conditions listed in IDAPA 58.01.25.300.13.a.
   e. If the operator knows in advance of the need for a bypass, it shall submit prior notice to DEQ, if possible, at least 10 days before the date of the bypass.
   f. The operator shall submit notice of an unanticipated bypass as required in IDAPA 58.01.25.300.12.f. (24-hour notice).
   g. Bypasses not exceeding limitations, are allowed to occur, and are not subject to IDAPA 58.01.25.300.13.a. or 300.13.d. if:
      1) The bypass does not cause effluent limitations to be exceeded, and
      2) It is for essential maintenance to ensure efficient operation.

N. Upset Terms and Conditions

1. In any enforcement action for noncompliance with technology-based GP effluent limitations, an operator may claim upset, as defined in Appendix A, as an affirmative defense. An operator seeking to establish affirmative defense for the occurrence of an upset has the burden of proof.

2. Any determination made in administrative review of a claim that noncompliance was caused by upset, before an action for noncompliance is commenced, is not final administrative action subject to judicial review.
3. The following conditions are necessary for an operator to demonstrate that an upset occurred. An operator who wishes to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
   a. An upset occurred and the operator can identify the cause(s) of the upset;
   b. The permitted operation was operating properly at the time of the upset;
   c. The operator submitted 24-hour notice of the upset as required IDAPA 58.01.25.300.12.f.iii (2); and
   d. The operator complied with all remedial measures required under IDAPA 58.01.25.300.04.

O. Penalties and Fines

1. General Enforcement and Penalties. Any person who violates any permit condition, filing or reporting requirements, duty to allow or carry out inspections, entry or monitoring requirements or any other provision in these rules shall be subject to administrative, civil, or criminal enforcement and those remedies authorized in the Environmental Protection and Health Act, Section 39-101 et seq., Idaho Code, including without limitation, civil and criminal penalties as provided in Idaho Code § 39- 108 and § 39-117.
2. Truth in Reporting. It is a violation of these rules for any person to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under an IPDES permit. In addition to any other remedy available to the DEQ, such a violation is punishable by a fine as provided in Idaho Code § 39-117.
3. False Statements. It is a violation of these rules for any person to knowingly make any false statements, representation, or certification in any record or other document submitted or required to be maintained under an IPDES permit, including monitoring reports or reports of compliance or non-compliance. In addition to any other remedy available to the Department, such a violation is punishable by a fine as provided in Idaho Code § 39-117.
4. Public Participation in Enforcement. DEQ shall provide for public participation in the state enforcement process by:
   a. Investigating and providing written response to citizen complaints;
   b. Not opposing intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and
   c. Publishing notice of and providing at least 30 days for public comment on any proposed settlement of a state enforcement action.
5. Penalties for Violations of Permit Conditions (IDAPA 58.01.25.500).

   If the permittee violates any permit condition, filing or reporting requirement, duty to allow or carry out inspections, entry or monitoring requirements, or any other provision in this permit the permittee is subject to administrative, civil, or criminal enforcement.

Pursuant to Idaho Code § 39-175E and § 39-108, any person who violates any rule, permit or order related to the IPDES program is liable for a civil penalty not more than $10,000 per violation or $5,000 for each day of a continuing violation, whichever is greater.

Pursuant to Idaho Code § 39-175E, § 39-108 and § 39-117, any person who willfully or negligently violates any IPDES standard or limit, permit condition or filing requirement is guilty of a misdemeanor and upon conviction will be punished by a fine of not more than $10,000 per violation or for each day of a continuing violation.

Pursuant to Idaho Code § 39-175E, § 39-108, and § 39-117, any person who knowingly makes any false statement, representation or certification in any IPDES form, in any notice or report required by an IPDES permit, or who knowingly renders inaccurate any monitoring device or method required to be maintained is guilty of a misdemeanor and upon conviction will be punished by a fine of not more than $5,000 per violation or for each day of a continuing violation.

Pursuant to Idaho Code § 18-113, a misdemeanor violation of the IPDES program requirements as stated in § 39-117, is also punishable by imprisonment in a county jail not exceeding 6 months.

In addition to civil penalties as described above, pursuant to Idaho Code § 39-175E and § 39-108, any person who has been determined to have violated any provision of the rules, permits or orders relating to the IPDES program is liable for any expense incurred by the state in enforcing the program requirements, or in enforcing or terminating any nuisance, source of environmental degradation, cause of sickness or health hazard.

P. Availability of Reports

In accordance with the “Rules Governing the Protection and Disclosure of Records in the Possession of the Department of Environmental Quality” (IDAPA 58.01.21), information submitted to DEQ pursuant to this permit may be claimed as confidential by the operator. In accordance with IDAPA 58.01.25.002, permit applications, Notices of Intent, permits, and effluent data are not considered confidential. Any confidentiality claim must be asserted at the time of submission by stamping the words “trade secret,” “proprietary,” or “confidential” on each page containing such information. If no claim is made at the time of submission, DEQ may make the information available to the public without further notice to the operator. If a claim is asserted, the information will be treated in accordance with the procedures in IDAPA 58.01.21.

Q. Retention of Records

Copies of the SWPPP and all documentation required by this permit, including records of all data used to complete the NOI to be covered by this permit, must be retained for at least 3 years from the date that permit coverage expires or is terminated. This period may be extended by request of DEQ at any time.

R. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the operator from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by the CWA § 510. This includes, but is not limited to, IDAPA 58.01.02, 58.01.16, and 58.01.17.