

# Fact Sheet for Idaho Power Company IPDES Settlement

## Who is involved in the lawsuit?

The parties to the complaint include the State of Idaho as plaintiff and Idaho Power Company (Idaho Power) as defendant. This civil enforcement action is being filed in 7 county courts including Ada, Valley, Power, Jerome, Twin Falls, Owyhee, and Valley counties covering hydroelectric facility operations at 15 dams along the Snake River and its tributaries.

## When was the lawsuit initiated and what does it contend?

DEQ filed the lawsuit April 7, 2022, alleging that Idaho Power has a discharge of pollutants without a permit to waters of the United States in violation of Idaho Code 39-101, et seq., IDAPA 58.01.25, and the Clean Water Act. In December 2021, Idaho Power met with DEQ and voluntarily disclosed that certain facilities have been operating without Idaho Pollutant Discharge Elimination System (IPDES) permit coverage and of the potential for unpermitted discharges from the facilities due to normal operations. In January 2022, Idaho Power submitted a self-reporting document describing the potential discharges and relevant permit information which DEQ reviewed to determine compliance with Idaho Code and IDAPA rules.

## Why is DEQ pursuing litigation now?

Due to historical interpretation of federal regulations and a Supreme Court case (*Nat'l Wildlife Fed'n v. Gorsuch*, 693 F.2d 156 (D.C. Cir. 1982)), the prevailing opinion at EPA and Idaho Power was that the facilities did not need NPDES permits. Therefore, Idaho Power asked for, and EPA concurred, with the termination of these permits in the 1990s.

Recent court cases in the Pacific Northwest have led Idaho Power to the conclusion that the remainder of their facilities in Idaho would be best served by having IPDES permit coverage. In January 2022, Idaho Power submitted a self-reporting document describing the potential of pH, temperature, and oil and grease discharges from normal operations at the facilities from non-contact cooling water along with discharges from equipment and floor drains. DEQ reviewed the reporting document and determined that the facilities identified in the report did not have required IPDES permit coverage. As a result of the negotiations with Idaho Power, DEQ and Idaho Power choose to file civil complaints with associated penalties to ensure Idaho Power comes into compliance with relevant statutory and regulatory requirements.

## What does the consent judgment do?

A consent judgment is an enforceable settlement agreement between the parties which is entered by a judge. In this case, Idaho Power voluntarily disclosed its unpermitted discharges of heat, oil and grease, and pH changes to DEQ. The proposed settlement directs Idaho Power to submit applications for IPDES permits for the 15 hydroelectric facilities and to comply with pH, temperature, and oil and grease effluent limits and monitoring requirements until IPDES applications are submitted. In addition, Idaho Power is required to pay a civil penalty of \$72,870 for each hydroelectric facility named in the complaints.

## **What is the goal of the consent judgment?**

The goal of the consent judgment is to identify a path for Idaho Power to comply with relevant statutes and rules. DEQ is seeking injunctive relief requiring Idaho Power to comply with DEQ permitting requirements through a schedule of permit application submissions, as well as meeting interim effluent limits and monitoring requirements until permit coverage is obtained. DEQ is also seeking civil penalties for effluent discharges occurring in the past and during the schedule of submissions.

## **What are the next steps?**

DEQ is providing the consent judgment for public comment. The public has until May 9, 2022, to provide written comments on the consent judgment. At the end of the public comment period, DEQ will review and evaluate the provided comments. Based on the comments provided DEQ may request an amendment to the filed consent judgment.

## **When will Idaho Power submit a permitting application?**

As part of the consent judgment a schedule of permit applications was developed, Exhibit A of the consent judgment. Applications may be accepted by DEQ at any time; however, under the schedule, Idaho Power will start submitting applications this year and finish submitting applications by the end of 2024. Applications are scheduled separately to allow DEQ an opportunity to determine the completeness of each application according to IDAPA 58.01.25

## **What do I do if I want more information?**

For more information, please contact Mary Anne Nelson, Surface & Wastewater Division Administrator at [Mary.Anne.Nelson@deq.idaho.gov](mailto:Mary.Anne.Nelson@deq.idaho.gov) or (208) 373-0291.