Idaho Pollutant Discharge Elimination System

Program Description

State of Idaho
Department of Environmental Quality

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September 2016
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Prepared by
Idaho Department of Environmental Quality
Water Quality Division
1410 N. Hilton
Boise, ID 83706

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Abbreviations, Acronyms, and Symbols

AG's Office	Office of the Attorney General
API	annual plan of inspections
BMP	best management practice
CAFO	concentrated animal feeding operation
CAR	corrective action report
CDX	Central Data Exchange
CFR	Code of Federal Regulations
CGP	construction general permit
CIE	compliance, inspection, and enforcement
CMS	compliance monitoring strategy
CRIPS	Compliance Reporting, Inspection, and Permitting System
CROMERR	cross media electronic reporting rule
CWA	Clean Water Act
DEQ	Idaho Department of Environmental Quality
DMR	discharge monitoring report
EPA	US Environmental Protection Agency
FTE	full-time equivalent
FY	fiscal year
gpd	gallons per day
IBOL	Idaho Bureau of Occupational Licenses
ICIS-NPDES	Integrated Compliance Information System–National Pollutant Discharge Elimination System
IDAPA	refers to Idaho Administrative Code
IPDES	Idaho Pollutant Discharge Elimination System
ISDA	Idaho State Department of Agriculture
IU	industrial user
IT	Information Technology
MGD	million gallons per day
MOA	memorandum of agreement
MOU	memorandum of understanding
MS4	municipal separate storm sewer system
MSGP	multisector general permit
NA	not available

NetDMR	web-based reporting for discharge monitoring reports
NOI	notice of intent
NOT	notice of termination
NOV	notice of violation
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resources Conservation Service
O&M	operation and maintenance
PARIS	Permit and Reporting Information System
PIP	permit issuance plan
POTW	publicly owned treatment works
PPA	performance partnership agreement
R-factor	rainfall erosivity factor
RIDE	required ICIS-NPDES data elements
SFY	state fiscal year
SIU	significant industrial user
SNC	significant noncompliance
SQL	Structure Query Language
SWMP	Storm water management program
SWPPP	Storm water pollution prevention plan
TBEL	technology-based effluent limit
TIE	toxicity identification evaluation
TMDL	total maximum daily load
TRE	toxicity reduction evaluation
TRIM	DEQ's electronic records management system
TSD	EPA's Technical Support Document for Toxics Control
WET	whole effluent toxicity
WQBEL	water quality-based effluent limit
XML	eXtensible Markup Language

Executive Summary

In 2014, the Idaho Legislature revised Idaho Code to direct Idaho Department of Environmental Quality (DEQ) to seek US Environmental Protection Agency (EPA) authorization for a state-operated pollutant discharge elimination system permitting program. The current National Pollutant Discharge Elimination System (NPDES) program is operated by EPA. For the Idaho Pollutant Discharge Elimination System (IPDES) Program, DEQ must submit a primacy application that adheres to the Clean Water Act and 40 CFR 123 to EPA by September 1, 2016. The goal of IPDES, like NPDES, is to address water pollution by regulating point sources that discharge pollutants to waters of the United States.

With NPDES program authorization, DEQ's IPDES Program will conduct permitting, compliance, inspections, and enforcement of the following:

- Both individual and general permits for discharges to waters of the United States from facilities or activities, including industrial (e.g., commercial, mining, oil and gas, and silviculture discharges; animal feeding operations; and aquatic animal production facilities) and municipal wastewater treatment facilities (e.g., publicly and privately owned treatment works)
- Discharges to waters of the United States from federal facilities
- Storm water discharges, including municipal storm sewer systems (combined and separate); construction and industrial storm water general permits; and individual permits for storm water discharges
- Sewage sludge (biosolids)
- NPDES pretreatment program

DEQ will implement the IPDES Program using the authorities, procedures, resources, policies, and guidance documents described in this program description.

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1 Introduction

As required under the Clean Water Act (CWA) Section 402(b) and 40 CFR 123.22, the Idaho Pollutant Discharge Elimination System (IPDES) program description specifies how the Idaho Department of Environmental Quality (DEQ) will administer the National Pollutant Discharge Elimination System (NPDES) program.

The program description is part of a full program submission to the US Environmental Protection Agency (EPA) that includes the following:

- A letter from the Governor of Idaho requesting program approval.
- This program description, which details the organization, staffing and funding resources, and procedures for DEQ to carry out its responsibilities.
- A memorandum of agreement (MOA) describing the transfer of permitting and compliance of specified permits from EPA to DEQ administration; identifying draft permits EPA will review; specifying the frequency and content of information DEQ is required to submit to EPA; and describing the provisions of DEQ's compliance monitoring and enforcement program (DEQ and EPA 2016).
- An Office of the Attorney General (AG's Office) statement certifying that state laws provide adequate authority to implement the IPDES Program.
- Copies of all applicable statutes and regulations necessary to implement the IPDES Program.
- A continuing planning process document (DEQ 2016a) describing the procedures to manage and keep DEQ's water quality program current.

2 Program Scope (40 CFR 123.22(a))

House Bill 406, passed during the 2014 Legislative session, amended existing sections of Idaho Code Title 39 Chapter 1. This statute directs DEQ to seek approval from EPA to implement a state permitting, compliance, and enforcement program in lieu of the EPA-administrated NPDES program. The legislation directed DEQ to seek authorization of the NPDES program by filing a complete application with EPA by September 1, 2016.

In 2015, DEQ completed administrative rules for the IPDES Program that govern discharges of pollutants into waters of the United States, including storm water, pretreatment controls for certain discharges to publicly owned treatment works (POTWs), and sewage sludge. These rules apply to discharges within Idaho with the exception of facilities DEQ is not authorized to assume authority over, such as facilities located within tribal lands (DEQ and EPA 2016, Appendix D). EPA retains authority for NPDES permitting and compliance for these facilities. DEQ will assume authority for the NPDES sewage sludge management program, which is an optional program component complementary to the existing Wastewater Rule (IDAPA 58.01.16.650).

With NPDES program authorization, DEQ will conduct permitting, compliance, inspections, and enforcement of the following:

- Both individual and general permits for discharges to waters of the United States from facilities or activities, including industrial (e.g., commercial, mining, oil and gas, and silviculture discharges; animal feeding operations; and aquatic animal production facilities) and municipal wastewater treatment facilities (e.g., publicly and privately owned treatment works)
- Discharges to waters of the United States from federal facilities
- Storm water discharges, including municipal storm sewer systems (combined and separate); construction and industrial storm water general permits; and individual permits for storm water discharges
- Sewage sludge (biosolids)
- NPDES pretreatment program

DEQ will implement the IPDES Program using the authorities, procedures, resources, policies, and guidance documents described in this program description. DEQ guidance documents referenced in this program description will be submitted separately or if applicable may be included as an appendix to this document. DEQ will use all EPA guidance documents referenced in this program description until DEQ develops its own guidance document consistent with the corresponding EPA guidance document. Each DEQ regional office will have access to all procedures, policies, and guidance documents referenced in this program description. The most current procedures, policies, and guidance documents are listed in Section 15, "References."

DEQ will issue IPDES permits; conduct compliance and enforcement activities; record information and report to EPA; and oversee the activities of all IPDES-permitted facilities. EPA retains the authority to issue NPDES permits for facilities located on tribal lands and, if applicable, will certify that the discharges meet applicable water quality standards. EPA will comply with CWA §401(a)(2) regarding the effect of discharges on state waters.

DEQ will assume permitting and compliance authority for the NPDES program in phases. Per CWA §402(n)(4) and 40 CFR 123.1(g)(2), EPA will retain full permitting and compliance authority over facilities until that authority is transferred to DEQ according to the transfer schedule in Table 1 and the MOA (DEQ and EPA 2016, Appendix A). In addition, the MOA, lists each permitted facility according to its transfer phase (DEQ and EPA 2016, Appendix F).

Table 1. Schedule to transfer authority.

Phases of Authorization	IPDES Program Components
Phase I: At program approval	Municipal discharges (individual permits) and pretreatment program
Phase II: 1 year from program approval	Industrial discharges (individual permits)
Phase III: 2 years from program approval	General permits (excluding storm water)
Phase IV: 3 years from program approval	Federal facilities, storm water, and biosolids

3 Organization and Structure (40 CFR 123.22(b))

DEQ is a state department within the executive branch of the Idaho's government. DEQ was established with its sole mission to protect human health and the environment (Idaho Code §39-102A). As such, it is responsible for ensuring Idaho's citizens are protected from the adverse health impacts of pollution and ensuring clean air, water, and land in the state.

As a regulatory agency, DEQ enforces various state environmental regulations and administers a number of federal environmental protection laws including the CWA and Resource Conservation and Recovery Act. DEQ manages a broad range of activities:

- Assessment of environmental problems
- Oversight of facilities that generate air, water, and hazardous waste pollution
- Monitoring of air and water quality
- Cleanup of contaminated sites
- Education, outreach, and technical assistance to businesses, local government agencies, and interested citizens

DEQ is committed to working in partnership with local communities, businesses, and citizens to identify and implement cost-effective environmental solutions.

DEQ is governed by both a director and a board consisting of seven members appointed by the governor. Within DEQ are four divisions responsible for developing, administering, and enforcing environmental policies and for providing technical and administrative support. These divisions are air quality, water quality, waste management and remediation, and technical services. Division staff members are housed in DEQ's state office.

DEQ also maintains regional offices in Boise, Coeur d'Alene, Idaho Falls, Lewiston, Pocatello and Twin Falls. Two satellite offices are located in Grangeville and Kellogg. Regional and satellite office staff are responsible for on-the-ground implementation of environmental programs. Appendix A provides DEQ's organizational structure.

3.1 Board of Environmental Quality

The responsibilities of the Board of Environmental Quality include adopting, amending, or repealing DEQ's rules necessary to carry out the department's mission and to enforce the laws of the state. Rules adopted by the board have the force of law but are subject to legislative review. The board does not take part in the drafting or issuing of IPDES permits.

The board members are appointed by the governor, with the advice and consent of the Senate. Members serve a 4-year term at the pleasure of the governor. The board generally meets 3 to 4 times a year to conduct business including the hearing and adoption of proposed rules.

For the IPDES Program, the DEQ board is the governing body with authority to review and adopt rules proposed by the department. However, due to the nature of the board's sitting members and the likelihood that conflicts of interest will arise under 40 CFR 123.25(c), appeals of IPDES permits will be heard by a hearing authority appointed by the director from a pool of hearing officers approved by the board. As with board decisions in contested cases from other programs, the decision of the hearing officer regarding an IPDES permit appeal may be appealed for judicial review.

3.2 Director's Office

The Director's Office oversees the activities of all DEQ's divisions, provides direction for DEQ, establishes department objectives, and ensures performance. The director is appointed by the governor and serves as spokesperson for the governor on environmental matters. The legislation and administrative code for the IPDES Program states all permits will be issued by the director or the director's designee. The director retains the final decision-making authority on all department actions relating to permit issuance, compliance, and enforcement. The director's final IPDES permitting decision is appealable first through an administrative appeal process and then through the state court system (section 6.4.4).

DEQ's Communications and Outreach Team, an arm of the Director's Office, assists in communicating DEQ's message to stakeholders, the regulated community, the news media, and the general public in a user-friendly manner. Examples of outreach activities include information-sharing via the department's website; developing and disseminating written publications; issuing news releases on agency activities; participating in community events; presenting to classroom students, businesses, local and state leaders, and community groups; and providing technical and pollution prevention assistance visits to businesses and industries. Skilled technical writers/editors review documents to ensure that they are clear, concise, and accessible to present a professional image consistent with DEQ's mission. IPDES Program staff will use the Communications and Outreach Team to ensure quality documents are produced for public consumption and to communicate news regarding the IPDES Program such as creating brochures and using social media to inform the public of changes and updates to the program.

The Director's Office develops department policies; prepares department-wide annual budget and work plans, strategic plans, performance measures, and performance reports; authorizes divisions to draft regulations and manages the board's regulation promulgation process; makes decisions on informal reviews of staff; works with deputy AG to draft state legislation; testifies on behalf of the administration at legislative hearings; reviews federal initiatives and regulations relating to the IPDES Program; where appropriate, aligns the state's priorities with the national priorities; and acts as the liaison between DEQ and EPA Region 10.

DEQ's Human Resources group and Fiscal Office are also part of the Director's Office. DEQ's Human Resources group advises management in the IPDES program on recruitment, hiring practices, and employee performance management; advises employees on compensation and benefits; facilitates training and career development activities; conducts problem solving; and manages

employee personnel records. The Fiscal Office assists the Water Quality Division with developing, tracking, and managing federal grant applications; developing the division's budget and spending plans; carrying out accounting; and providing internal management and administrative support to the IPDES Program. The Fiscal Office will also assist with the billing and accounts receivable for the administration of the fees associated with the IPDES Program.

3.3 Technical Services Division

The Technical Services Division provides scientific and engineering support to all of the department's divisions and regions including performing engineering reviews and construction inspections; conducting air, water, and waste compliance and enforcement inspections; identifying and quantifying environmental problems related to ground water, soils, rock masses, and the interaction of surface water with ground water; planning and participating in subbasin assessments and preparing water quality improvement plans (total maximum daily loads [TMDLs]); reviewing technical aspects of air permit applications, industrial facility emission tests, state implementation plans, emission inventory data, emission controls, and air quality compliance issues; providing technical support for evaluation of hazardous, radioactive, and mixed waste permits; and developing innovative fate, transport, and risk modeling approaches for all programs.

The Technical Services Division may provide, in some instances, additional support in developing permit effluent limits, mixing zone analyses, inspections of IPDES-permitted facilities, or other work identified by the IPDES Program as necessary. Personnel in the Technical Services Division are not devoted entirely to a single program and provide assistance on as-needed basis. However, any staff person working on the IPDES Program will be required to have adequate training as outlined in the capacity building plan (DEQ 2015a) (Appendix B) before performing work.

Within the Technical Services Division, the Information Technology (IT) teams provide the department's IT functions. IT directly supports DEQ's core business functions by ensuring that critical tools are available to DEQ programs, allowing the programs to concentrate on protecting human health and the environment. IT's responsibilities are divided between database and network analysis and support and software development. IT provides assistance to the IPDES Program with database management, web design and application development, and network administration.

The software development team's responsibilities include developing environmental data management systems and applications; using technology to improve DEQ information management and business processes; managing data in a manner that will reduce data redundancy, improve data access, and improve data quality; and coordinating information management initiatives that may be department-wide, statewide, and regional or national.

The network support team's responsibilities are to maintain and support DEQ's e-mail system, develop and maintain the internal and wide area network, ensure connectivity to the World Wide Web, support and maintain DEQ's server and database environment, and provide end-user support through the help desk.

The IPDES Program is funding a full-time equivalent (FTE) employee to work within the software development team to manage the database and develop online applications for internal and external users to access and apply for permits, develop permit limits, comply with permit requirements, and transfer data from DEQ to EPA. More information on these procedures is provided in section 13.

3.4 Water Quality Division

The Water Quality Division implements the IPDES Program through the state office in Boise and the regional offices. This program description details the IPDES Program resources and funding (section 4) and how DEQ will:

- Draft and issue permits (section 6)
- Implement pretreatment (section 7), sewage sludge (section 8), storm water (section 9), and concentrated animal feeding operations (CAFOs) (section 10) programs
- Conduct compliance and enforcement activities (sections 11 and 12)
- Implement data management and reporting requirements (section 13)

The Water Quality Division organization chart is provided in Appendix A. A program analysis identifying staff responsibilities, required knowledge, and necessary skills is provided in Appendix C.

3.4.1 IPDES Program Management

The IPDES program manager reports to the Water Quality Division administrator and monitors any revisions to federal laws, regulations, and policies relating to the IPDES Program. The IPDES program manager negotiates budgets, work plans, performance partnership agreement (PPA) components; contributes to the DEQ strategic plan; supervises and hires staff; and integrates the IPDES Program with other Water Quality Division programs and the regional offices. As part of the federal regulatory review, necessary changes in DEQ statutes or administrative rules are identified. Necessary legislative changes are submitted by DEQ through the governor's office to the legislature for amendment of Idaho's IPDES-related statutes. DEQ initiates necessary rule changes. Proposed changes to either DEQ's statutes or administrative rules and new or revised program guidance are coordinated with EPA Region 10 to ensure that the proposals will adequately address the federal program requirements.

Continuing planning is done according to the division's continuing planning process document (DEQ 2016a). Specific projects and goals are negotiated annually with EPA via the PPA.

3.4.1.1 Administration

The IPDES administration staff supports the IPDES Program's implementation. The administration staff will coordinate and manage developing and revising IPDES rules and guidance, the IPDES data management (including database and online interface), and assessment and processing of IPDES fees.

The IPDES rules/guidance coordinator will work with permitting staff to ensure that notices and hearings are public noticed in an appropriate time frame. IPDES data managers will coordinate

the receipt of electronic applications and the tracking of permit applications, permits, inspections, and other IPDES administrative actions. The IPDES administration staff will ensure that IPDES applications and permits are stored properly in the IPDES database. See Section 13 regarding the IPDES data management system for more details.

3.4.1.2 Permitting

The IPDES permitting staff will issue permits for the discharge of pollutants to waters of the United States. The permitting staff will work with the regulated community to develop applicable permits and associated fact sheets (section 6). While the permits will authorize effluent discharges to Idaho's surface waters, fact sheets will provide the details about how the permit's contents were developed.

In addition, the permitting staff will oversee and implement the Municipal Wastewater Pretreatment Program authorized in 40 CFR 403, Appendices D, E, and G, incorporated by reference in IDAPA 58.01.25.003 and the Sewage Sludge Program authorized in 40 CFR 503 incorporated by reference in IDAPA 58.01.25.003.

3.4.1.3 Compliance, Inspection, and Enforcement

The IPDES compliance, inspection, and enforcement (CIE) staff will conduct compliance reviews (e.g., discharge monitoring reports [DMRs]; reports of upsets, bypasses, sanitary sewer overflows, and annual reports; and file review); provide compliance assistance; conduct inspections to ensure compliance with program requirements and IPDES permits; collect and analyze data; take enforcement actions; coordinate enforcement actions with the IPDES permits staff and the AG's office; and enter and track compliance and enforcement information in DEQ's database.

3.4.2 Surface Water Program

The Surface Water Program develops water quality standards based on regulations in 40 CFR 131 and EPA's *Water Quality Standards Handbook*: *Second Edition* (EPA 1994a) that serve as the basis to protect and improve the quality of the state's waters; conducts triennial reviews of Idaho's water quality standards based on an agreed upon schedule in the PPA; reviews and modifies designated uses for specific water bodies; and adopts site-specific criteria.

This program certifies CWA §404 permits and EPA-issued NPDES permits to ensure compliance with state water quality standards and other appropriate requirements of state law; perform quadrennial Idaho Forest Practices Act audits of timber harvest operations and perform related field inspections; monitor surface water quality; assess water quality to identify impairments under CWA §303(d); report on the status and trends of Idaho's surface waters by preparing the CWA §§303(d) and 305(b) Integrated Report; develop TMDLs and watershed management plans; and identify state water quality priorities and needs.

The IPDES and the Surface Water Programs will conduct quarterly coordination video teleconferences and meetings between permit writers, TMDL writers, and water quality standards personnel to ensure that permits are written to Idaho's water quality standards and properly implement TMDL wasteload allocations, where applicable. Additionally, an annual workshop will be held where issues about implementing water quality standards, TMDL

requirements, and permitting components may be discussed and highlighted as case studies for future permitting actions.

3.4.3 Wastewater Program

DEQ's Wastewater Program develops rules and guidance addressing infrastructure configuration; installation, operation, and maintenance for wastewater collection systems, treatment facilities, and disposal facilities; issues wastewater reuse permits limiting the amount of wastewater that may be land applied for irrigation; and establishes standards for on-site wastewater systems (e.g., septic systems). The Wastewater Program also reviews engineering plans and specifications for all waste treatment and disposal facilities (with certain exceptions) and issues Individual and Subsurface Sewage Disposal Permits.

Land application is a method of irrigating land with reuse wastewater where it is absorbed by the crop or assimilated into the soil structure. Wastewater reuse may contain a number of chemicals and, in some cases, human pathogens. To protect public health and prevent pollution of surface and ground waters, Idaho's *Recycled Water Rules* (IDAPA 58.01.17) require anyone wishing to land-apply or otherwise use wastewater reuse to obtain a permit before constructing, modifying, or operating a reuse facility in the state. (The rules do not apply to feedlots, dairies, and mining.) DEQ is assigned responsibility by the Idaho Legislature to issue wastewater reuse permits in the state. DEQ will not be combining reuse permits with IPDES permits.

The IPDES and Wastewater Programs will participate in quarterly coordination teleconferences and meetings between permit writers, compliance officers, and engineering personnel to ensure that wastewater facilities are complying with the various rules and regulations applicable to the discharge of wastewater in Idaho. Additionally, an annual conference is held where issues about implementing facility plan and specification review, reuse and discharge permitting, and other issues may be discussed and highlighted as case studies for future permitting actions.

3.5 Office of the Attorney General

The AG's Office is separate from DEQ and provides legal representation for the State of Idaho. The Environment Section in the AG's Office is housed at DEQ with DEQ staff. The Environment Section attorneys provide legal services to DEQ with respect to the IPDES Program, including advice and assistance needed in rulemaking, statutory changes, permit development, permit appeals, and administrative, civil, and criminal enforcement.

County Prosecutors in Idaho have general criminal jurisdiction over all criminal matters pursuant to the Idaho Constitution. However, Idaho Code 39-109 provides primary prosecutorial authority to the Attorney General for violations of the Environmental Protection and Health Act. The section allows for delegation to the County prosecutor, but does not mandate delegation. The Office of the Attorney General (OAG) has a Memorandum of Understanding with the Association of County Prosecutors delineating the types of criminal prosecutions that will be generally handled by the OAG and those that will be handled by the Counties. The current MOU does not address violations of IPDES regulations. During the next update of the MOU, the OAG will include provisions indicating that criminal IPDES violations will be prosecuted by the OAG. In the interim the MOU has provisions that advise that before filing charges in a county; the

OAG will consult with the County Prosecutor and obtain designation as a special deputy county prosecutor prior to bringing the enforcement case. While this is very rare since most environmental criminal matters are referred to EPA CID, the OAG has never been in a situation where it could not bring an environmental criminal case in the county.

The Environment Section is part of the AG's Office, Natural Resource Division, and the Environment Section attorneys may be assisted with IPDES-related work by the other division attorneys who are experienced in a broad range of state and federal environmental laws. In addition, the attorneys in the Civil Litigation and Criminal Law Divisions may provide assistance. The Civil Litigation Division provides advice and representation to state agencies in major civil cases. The Criminal Law Division has the responsibility of discharging the statutory criminal law duties assigned to the AG's Office.

4 IPDES Budget and Funding (40 CFR 123.22(b))

In 2015 DEQ produced a report (DEQ 2015b) evaluating the IPDES Program's needs that included staffing and cost, comparing possible options for staffing, and presenting a final program budget estimate based on projected workload (Appendix C).

As part of the Gap Analysis Effort sponsored by EPA's Office of Wastewater Management, the State Water Quality Management Resource Model was prepared to evaluate resource needs. This model was designed to permit states to develop a national estimate of the resource needs faced by state water quality management programs and to provide states with a flexible budget and planning tool. The State Water Quality Management Resource Model version 5.1 was used for this report.

The analysis report in Appendix C provides the results from the national resource model. Additionally, estimates of resource needs for a fully functioning IPDES Program were calculated based on the current number of NPDES permits in Idaho and resources used for the program from both EPA and DEQ. Results and recommendations from this report were updated in May 2015 (DEQ 2015b) after receiving comments and more current information from EPA and stakeholders. Appendix C provides the updated report with position descriptions identifying staff responsibilities, required knowledge, and necessary skills for the various personnel working in the IPDES Program (to comply with 40 CFR 123.22(b)(1)). The following subsections provide the final estimates of resources necessary to administer the IPDES Program.

4.1 Human Resources

DEQ has worked with EPA for many years participating in NPDES inspections and submitting inspection reports to EPA. Prior to submitting the NPDES application, the state program included 11 FTEs and a $1 million budget. Results from the model DEQ used to estimate human resource needs are shown in Table 2.

Table 2. Number of hours allocated to each IPDES Program section.

Activity	Hours	Number of FTEs
Permitting	12,728	7.1
CIE	26,023	14.6
Administration	11,596	6.5
Legal[a]	1746	1.0
Total	52,093	29.2

a. Deputy AG is contracted from the AG's Office and is not part of the FTEs allocated to DEQ.

DEQ utilized the State Resource Model provided by EPA to identify to number of FTEs that the agency would need to request as new FTEs from the Idaho Legislature. This model did not specifically identify the roles and responsibilities in the enforcement module, such as an attorney vs. compliance or enforcement officer. DEQ will contract with the Attorney General's office for specific legal help with the IPDES program. The AG's office made the request for a new FTE before the 2017 Legislature and was approved. It is the purview of the Attorney General's office, specifically the lead deputy AG of the Environment Section, regarding the allocation of responsibilities to staff in the AG's office.

Table 3: Program workload and allocation of staff in IPDES program areas.

Number of Full Time Equivalent Positions					
Job Class	**Administration***	**Permitting**	**Compliance & Inspection**	**Enforcement**	**Total**
Analyst 5 (Manager)	0.9			0.1	1
Analyst 4 (Program Lead)	2.5			0.5	3
Analyst 3 (Specialist)	1	7.6	7.2	6.2	22
IT Analyst	1				1
Administrative Assistant	1				1
Deputy Attorney General	0.1	0.2	0.2	0.5	1
Totals	6.5	7.8	7.4	7.3	29

*Includes rules, guidance, data, and fee management

Idaho's Attorney General's office requested an additional FTE from the 2017 Legislature which will be specifically assigned to the Environment Section at DEQ for work in the IPDES program. DEQ is assigned attorneys to work at the agency regarding environmental issues. DEQ currently has five attorneys who work on a variety of issues covering the different programs with delegated authority including the Title V air permitting program, Idaho National Laboratory, the drinking water program, surface water quality standards, reuse permitting, and the RCRA permitting and enforcement program. The addition of another attorney to work on IPDES will

be sufficient. As stated in Section 3.5 attorneys in the Environment Section may be assisted by other division attorneys with more expertise in state and federal laws, such as deputy attorneys general in the Civil Litigation and Criminal Law Divisions.

Table 4. Hiring professional, technical, and administrative staff for IPDES Program implementation.

Fiscal Year	FTEs to Hire	Cumulative FTEs	Program Management FTEs (Cumulative FTEs)	Permits FTEs (Cumulative FTEs)	CIE FTEs (Cumulative FTEs)	Legal, Administrative, and Support
2015	3	5	3	—	2	—
2016	3	8	2 (5)	1	—	—
2017	4	12	—	2 (3)	1 (3)	1 (1)
2018	10	22	—	4 (7)	4 (7)	2[a] (3)
2019	4	26	—	—	4 (11)	—
2020	3	29	—	—	3 (14)	—
2021	0	29	—	—	—	—
Total	27	29	5	7	14	3

a. A deputy AG will be contracted from the AG's office.
FY2019: 4 compliance officers
FY2020: 3 compliance officers
Notes:
FY2015: Program Manager, Rules/Guidance Coordinator, Permits Lead, equivalent of 2 FTE compliance officers already on staff.
FY2016: Compliance, Inspections and Enforcement Lead; Data Management Coordinator; Municipal Permit Specialist
FY2017: Web Design/Database Administrator, Biosolids/Pretreatment Specialist, Industrial Permit Specialist, Compliance & Enforcement Coordinator
FY2018: Administrative Assistant, 4 Permit Writers, Compliance & Enforcement Coordinator, 3 compliance officers

A significant component of the legislature's authorization of the IPDES Program is the allocation of 17 additional permanent full-time positions and additional funding to support the IPDES Program. These positions will be funded through appropriation requests over the next 3 years according to the hiring plan outlined in Table 4.

The new positions and funding will become a part of DEQ's base annual budget. DEQ will be allocated the resources for an IPDES Program fully staffed with 29 FTEs and funded at approximately $3 million. Descriptions of the IPDES Program professional, technical, and administrative positions are included in Section 4 of Appendix C. IPDES professional, technical, and administrative staff hires for the IPDES Program are shown in Table 4

Approval of Idaho's permitting program is anticipated to occur in July 2018, which corresponds to the beginning of SFY2019. In this first year of the program, DEQ anticipates writing and issuing municipal permits.

4.2 Fiscal Resources

During the initial planning, development, and negotiated rulemaking, DEQ proposed to the rule-making committee a program budget and fee schedule based on a model provided by EPA for calculating programmatic resource needs. This model estimated that 28 FTEs would be needed to achieve full program performance at a budget estimate of $2.8 million per year. These 28 FTEs are identified as those hired by the department to work directly on IPDES Program elements. In addition to these 28 FTEs, at least one FTE will be supplied by the AG's Office. The IPDES Program budget accounts for this through operating dollars in the contracting program element.

Further revisions to the estimated budget occurred after discussions with the DEQ's Fiscal Office, Idaho Department of Administration, and Governor's Office. The final revised budget is shown in Table 5.

Table 5. Cost to implement IPDES Program (years 1 through 5).

Fiscal Year	2019	2020	2021	2022	2023
			($)		
Personnel	2,540,300	2,839,400	2,839,400	2,839,400	2,839,400
Travel	37,000	37,000	28,000	28,000	28,000
Contractual[a]	140,100	140,100	140,100	140,100	140,100
Supplies	23,300	22,100	14,000	14,000	14,000
Equipment	13,000	13,000	13,000	13,000	13,000
Total cost	2,753,700	3,051,600	3,034,500	3,034,500	3,034,500

a. Includes operating dollars to cover cost of deputy AG contracted from the state's Office of the Attorney General.

A total of 27 FTEs will be hired over the course of 7 fiscal years (the first FTEs were hired in SFY2015). Two existing FTEs support several staff in implementing the existing PPA element: 50 NPDES permit inspections.

As shown in Table 5, the IPDES Program will operate with a total budget of approximately $3 million. Table 6 shows that state general funds and permit fee receipts will be the primary funding sources for the IPDES Program. The ongoing federal investment in FY2016 and beyond is projected to be approximately $168,000 annually. Federal grant funding for state wastewater permitting work is provided under CWA §106. This funding is based on a formula that is unaffected by whether or not the state has NPDES primacy.

Table 6. Revenue estimates for IPDES Program (years 1 through 5).

Fiscal Year (Phase)	Fees collected	Estimated Invoices	State General Fund-ongoing	State General Fund (One Time)	Federal Contribution
			($)		
2019(1)	None	0	2,000,000	585,700	168,000
2020(2)	Municipal	653,043	2,000,000	198,800	168,000
2021(3)	Municipal and industrial	901,034	2,000,000	0	168,000
2022(4)	Municipal and industrial	901,034	2,000,000	0	168,000
2023(5)[a]	All phases	1,368,224	2,000,000	0	168,000

a. DEQ will review the regulatory fee schedule during this fiscal year to determine if it is revenue neutral.
b. Estimated income from fees is highly variable in FY2023 and beyond due to the reliance on submitted notices of intent for construction projects.

The state has committed to providing ongoing fiscal support for the program at the level of $2 million per year. In the beginning, however, the state general fund will be required to support the program until the fee authority and receipts are implemented. As DEQ begins to receive fees, the state's general fund contribution will reduce equivalent to the amount of fees received until the minimum $2 million is reached.

Estimated annual revenues are highly variable as they rely on construction storm water applications and annual invoices. These estimated revenues will change regularly depending on the number and type of construction projects covered under the construction storm water general permit. The actual invoices for FY2023 and beyond may be greater or less than anticipated. DEQ will review the fee schedule in FY2023 to ensure that it is generating an adequate amount of funds to support the program along with the federal and state contributions. More detailed information of the estimated cost and funding for the program is found in Appendix C.

4.3 Fee Administration

A fee schedule was negotiated with the regulated community where the fee burden is spread across three categories of discharge types: municipal, individual industrial, and storm water (DEQ 2015d). Municipal fees are billed at a rate of $1.74 per EDU for POTWs. EDUs are calculated as the population served by the POTW divided by the most current U.S. Census Bureau persons per household (2.78 in 2010) and cover costs associated with municipal wastewater facilities (POTWs), municipal separate storm sewer systems (MS4s), and pretreatment. Storm water fees cover costs associated with construction and industrial storm water permit issuance and administration. This fee schedule was included in the rule and is shown in Table 7.

Table 7. Fee schedule for IPDES permits.

Permit Type	Application	Annual
	($)	
Industrial permits		
Major	0	13,000
Minor	0	4,000
Storm water permits		
Construction general permits (CGP)		
1–10 acres	200	0
10–50 acres	400	75
50–100 acres	750	100
100-500 acres	1,000	400
>500 acres	1,250	400
Low erosivity waiver (CGP)	125	0
Industrial permits (municipal storm water general permits)	1,500	1,000
Certificate of no exposure	250	100
Other general permits	0	0

Fees will be assessed and billed at the beginning of the state fiscal year following the year of approval for that element of the program. This means that DEQ will send invoices for municipalities in July 2019 (SFY2020) presuming that phase I of the IPDES Program is approved in July 2018 (SFY2019). Fees will be assessed for a 12-month period covering October 1 of the previous year through September 30 of the current calendar year. For phase I of the IPDES Program, municipal fees will be assessed for each facility covered under an IPDES permit for the period from October 1, 2018, through September 30, 2019.

All municipalities covered by an IPDES permit will be invoiced in July 2019, and DEQ expects payments for the first year after October 1, 2019. Future invoices will follow the same pattern—sent in July for the 12-month period covering October of the previous calendar year through September of the current year and expecting payment after October 1 of the current calendar year (Table 8).

Individual industrial permit fees will follow the same general process but will not be implemented until July 2020 (SFY2021), with the first annual payment due October 1, 2020.

Fees for construction and industrial storm water permits and waivers will follow a slightly different schedule. Small construction projects (those disturbing from 1 to under 10 acres) will be billed an application fee but no annual fee. Additionally, those seeking a low erosivity waiver under the construction general permit (CGP) will also only be billed an application fee.

Both an application fee and an annual fee will be assessed for larger construction projects (those disturbing 10 acres or more) and for industrial storm water discharges and waivers. The fee schedule for these permittees is found in IDAPA 58.01.25.110.

Payment of application fees is expected at the time a permittee submits their notice of intent (NOI) for coverage. No authorization for discharge, or certification of waiver, will be allowed unless the appropriate fee is paid.

Table 8. Invoice schedule as applied to the transfer of IPDES permit sectors.

IPDES Permit Sector	Anticipated Approval Date	First Invoices Sent	Annual Payment Due
Individual municipalities	July 1, 2018	July 1, 2019	October 1, 2019
Individual industrial	July 1, 2019	July 1, 2020	October 1, 2020
General permits (CAFO, pesticide, aquaculture, etc.)	July 1, 2020	Not applicable	Not applicable
Storm water, biosolids, federal facilities	July 1, 2021	July 1, 2022	October 1, 2022

5 Discharge Permits in Idaho

An IPDES permit will authorize a facility to discharge pollutants into waters of the United States in Idaho, except on tribal land, under specified conditions. Each facility requiring an individual IPDES permit will be categorized as either a major or minor facility. A major publicly or privately owned treatment works is defined as a facility with a treatment plant design flow of 1 million gallons per day (MGD) or greater; serves a population of 10,000 or more; or facility that is designated at the director's discretion due to a high potential for violation of water quality standards or a potential or actual threat to human health or the environment. A nonmunicipal facility will be defined as a major facility based on the IPDES permit rating work sheet or at the director's discretion due to a high potential for violating water quality standards or a potential or actual threat to human health or the environment. The IPDES Permit Rating Work Sheet is modeled after EPA's NPDES Permit Rating Work Sheet, except that it does not include Factor 6, Proximity to Near Coastal Waters, which does not apply to IPDES-permitted facilities or activities in Idaho.

A minor facility is a discharger not classified as a major facility.

DEQ will issue IPDES permits only for discharges to waters of the United States. DEQ will only require those classes or sectors of discharges required by EPA to have an NPDES permit to obtain an IPDES permit.

The IPDES Program will also administer permits for storm water discharges in Idaho. The storm water component is described in section 9.

5.1 Individual Permits

An individual permit is issued to a single facility and is specifically tailored to the unique aspects of that facility and the receiving water body. Consistent with EPA's process and upon receipt of the appropriate application, DEQ will develop a permit for a particular facility or activity based on the information contained in the permit application (e.g., type of activity and nature of discharge and receiving water). If all permitting requirements are met, DEQ will issue a permit to the facility for a specific time period (not to exceed 5 years) with a requirement to submit a

complete application for renewal at least 180 days before the expiration date, unless DEQ granted permission to submit the application on a later date.

The procedures to develop and issue an individual permit are found in section 6.

Table 9 shows individual NPDES permits issued by EPA and certified by DEQ under CWA §401. With the exception of facilities where EPA will retain authority, DEQ will continue to issue similar types of individual permits under its IPDES Program. A list of the facilities issued an NPDES individual permit is found in the MOA (DEQ and EPA 2016, Appendix E). Table 9 does not include a number for storm water permits or those covered under either an individual or general storm water permit.

Table 9. NPDES individual permits[a].

NPDES Individual Permits	Major	Minor	Not Reported[b]
Municipal			
Publicly-owned treatment works	28	87[c]	4
Federal facilities	—	4	—
Privately owned[d]	—	2	—
Nonmunicipal (Industrial)			
Chemical production plant	—	1	—
Federal facilities	—	2	—
Food processing (including meats)	2	6	1
Mining	5	6	5
Timber products	1	2	1
Power plants /utilities	—	1	—
Fish hatcheries	—	5	—
Water supply	—	12[e]	—
Other[f]	—	3	7
Total	36	131	18

a. Federal NPDES permits administered by EPA are based on a February 18, 2016, query from EPA's Integrated Compliance Information System (ICIS)-NPDES database. Authority will transfer to DEQ at IPDES Program approval according to the transfer schedule agreed to in the MOA (DEQ and EPA 2016, Appendix A).
b. Facilities did not have a major or minor designation reported in EPA's dataset.
c. Includes one permit for a tribal government.
d. Municipal discharges from privately owned facilities.
e. Includes two privately owned systems.
f. Other permits have been issued to control discharges from landfills, petroleum bulk stations, ship building, transportation, and an aquarium.

5.2 General Permits

A general permit covers discharges from multiple facilities. DEQ's regulations (IDAPA 58.01.25.130) provide general permitting authority that allows issuing one permit to cover a class or category of similar discharges in a defined geographic area or political boundary with similar effluent limits. The continued use of general permits will allow the state to allocate resources in an efficient manner and provide timely permit coverage. For example, a large number of facilities that have certain elements in common may be covered under a general permit without expending the resources necessary to issue an individual permit to each facility.

Use of general permits will ensure consistent permit conditions for similar facilities. DEQ may issue a general permit for a specific geographic area to cover the following categories of discharges:

- Involve the same or substantially similar types of operations.
- Discharge the same types of wastes or engage in the same types of sludge use or disposal practices.
- Require the same effluent limits, operating conditions, or standards.
- Require the same or similar monitoring.
- Are more appropriately controlled by a general permit, as determined by DEQ.

The procedures to develop and issue a general permit and the process to authorize a discharge under a general permit are provided in section 6.5.

EPA has issued NPDES general permits that cover discharges for major and minor facilities. Table 10 lists the NPDES general permits issued by EPA and the number of authorizations under each permit. DEQ will continue using general permits and, upon program approval and according to the transfer schedule in the MOA (DEQ and EPA 2016, Appendix A), will assume permitting and compliance authority for the NPDES general permits. DEQ will introduce legislation in 2018 that excludes discharges from vessels from the IPDES program. EPA will continue to operate and issue the vessel general permit(s) under their authority in Idaho.

A list of the facilities authorized to discharge under an EPA-issued NPDES general permit is found in the MOA (DEQ and EPA 2016, Appendix D). Table 10 does not include storm water general permits (section 9.1, Table 13).

Table 10. NPDES general permits and authorizations [a].

NPDES General Permits	Number of Authorizations	Expiration Date
Municipal		
Drinking water treatment plants—freshwater discharge	7	2021[b]
Aquaculture		
Discharges to impaired waters	86	2021[b]
Discharges to nonimpaired waters	10	2021[b]
Fish processors	4	2021[b]
Mining		
Small suction dredge placer	Not available	4/30/2018
Other		
Pesticide application[c]	136	2021[b]
CAFO	0	5/8/2017
Vessel	Not available	12/18/2018
Small Vessel	Not Available	12/18/2019
Ground water remediation	7	9/14/2019

a. Data for this table are based on a February 18, 2016, query from EPA's NPDES General Permit Web Inventory (*http://ofmpub.epa.gov/apex/aps/f?p=GPWI:HOME:::::*) and exclude permits and authorizations issued for storm water discharges only (Table 13).
b. General permit in draft form, expect issuance in 2016.
c. Data shown is for the 2011 Pesticide General permit and was accessed from *https://ofmpub.epa.gov/apex/aps/f?p=PGP_2011:HOME*::::::

6 State Permitting and Administrative Procedures (40 CFR 123.22(a))

This section presents an overview of the permitting procedures associated with both individual and general permits. Procedures presented will address the potential permittee's completion and submittal of either an application or NOI. The public comment procedure will also be presented.

6.1 General Administrative Procedures

An EPA-issued NPDES permit in effect at the time the state's administration of the IPDES Program is approved and permit authority is transferred to DEQ per the schedule in the MOA (DEQ and EPA 2016, Appendix A) will continue to be in effect and serve as the IPDES permit required by state law. An EPA permit transferred to DEQ will be the same permit originally issued by EPA with the same terms and conditions and will retain the original expiration date. An EPA-administratively extended permit will retain its extension until DEQ reissues or takes other action on the permit.

An application for a new, revised, or reissued IPDES permit will be filed under the requirements of IDAPA 58.01.25.105 that outline the timing, content, and format of information submitted to DEQ for municipal and industrial discharge permits. IDAPA 58.01.25.105 prescribes permit application forms and content. A permit applicant will complete electronic application forms

equivalent to EPA forms but modified to include DEQ's logo, state-specific regulation citations, information to process a mixing zone, contractor information, and billing information and submit the forms to DEQ. For those instances where an applicant has filed for and received a waiver from electronic reporting, or DEQ has not completed an electronic application form, DEQ will use the appropriate paper federal application form or DEQ equivalent.

DEQ will follow the procedures specified in Individual Permit Application Review (IDAPA 58.01.25.106), Decision Process (IDAPA 58.01.25.107), Draft Permit and Fact Sheet (IDAPA 58.01.25.108), Public Notification and Comment (IDAPA 58.01.25.109), and General Permits (IDAPA 58.01.25.130) to process a permit application and general permit NOI. DEQ's intent is as follows:

- Issue individual permits within 180 days after receiving a complete application.
- Reissue general permits before the existing permit expires.
- Issue new general permits within 180 days after identifying a need for a general permit.
- Process authorizations to discharge under a general permit within 30 days of receipt of a complete NOI to discharge (when required by the terms of the general permit).
- Maintain IPDES permits for at least 90% of all major and minor permitted facilities in effective status (i.e., not administratively continued).

DEQ will assume authority under the IPDES Program for administratively continued EPA-issued NPDES permits and unpermitted facilities in Idaho. DEQ will prioritize permit issuance, including reissuing administratively continued permits and issuing permits to unpermitted facilities, based on the potential impact to human health and the environment. The general permitting priorities are identified in the continuing planning process document (DEQ 2016a). A schedule to address the administratively continued permits and unpermitted facilities will be identified in the permit issuance plan (PIP) and transmitted to EPA annually and specified in the annual PPA.

Upon reissuance of an EPA-issued NPDES permit as a state-issued IPDES permit, DEQ will include effluent limits, standards, and conditions at least as stringent as in the previous permit. However, DEQ will, on a case-by-case basis, evaluate permit limits and conditions during the reissuance of a permit to ensure that the limits and conditions are appropriate for that facility, discharge, and receiving water body, and according to state regulations, including antibacksliding and antidegradation provisions.

6.2 Permitting Procedures Applicable to all Permits

Permits will include conditions applicable to all permits as required in IDAPA 58.01.25.300.

6.2.1 General Procedures

Permit Issuance Plan—DEQ will prepare a PIP identifying the permits that DEQ intends to issue or reissue during the next 3-year period. The PIP will be updated annually and posted on DEQ's web page with notification made that the PIP is available for public review.

Signature—All permit applications and NOIs seeking coverage under a general permit; DMRs; written reports of upsets, bypasses, and sanitary sewer overflows; and annual reports submitted to DEQ must be signed by a certifying official as required by IDAPA 58.01.25.090.

Entry and Inspections—DEQ requires an applicant to consent to entry to the premises by DEQ representatives at reasonable times (e.g., normal business hours) upon presenting appropriate credentials and other documents as required. By completing and signing an IPDES application, the applicant acknowledges this consent. This right of entry allows DEQ the following:

- Access to and copies of any records that permit conditions require the applicant to retain onsite or make available upon request.
- Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under a permit.
- Sample and/or monitor any substances or parameters at any location to ensure permit compliance or as otherwise authorized by the CWA.

Trade Secret—A permit applicant or permittee may assert a claim of confidentiality for proprietary information or trade secrets as specified in IDAPA 58.01.21. It is the applicant's responsibility to notify DEQ of confidential information at the time of submittal by placing a stamped, typed, or other notation using language such as *trade secret*, *proprietary*, or *confidential* prominently on each sheet containing such information. The applicant shall have the burden of demonstrating that the information is a trade secret subject to protection from disclosure by DEQ. DEQ will treat the stamped submission as confidential in these cases:

- Confidentiality claim has not expired by its terms, nor waived, nor withdrawn.
- Permit applicant or permittee has satisfactorily shown that reasonable measures were taken to protect the confidentiality of the information and intends to continue to take such measures.
- Information is not, and has not been, reasonably obtainable without the permit applicant or permittee's consent.
- Permit applicant or permittee has satisfactorily shown that the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use.
- Information is not otherwise required to be made public by state law.

All confirmed proprietary material, received in hardcopy form, will be stored in a locked cabinet when it is not under direct control of staff. The locked cabinet will be dedicated to containing confidential material and separate from the rest of the application and facility file. All confirmed proprietary material received electronically will be stored on a secure server or DEQ's electronic records management system (TRIM). The materials will be marked with the *confidential* configuration, necessary to inform DEQ personnel that information contained in this folder type may be exempt from Public Records Requests. A *Confidential Information* notice will be included in the permit file advising that confidential information related to the permit exists. DEQ will clearly mark any confidential material transmitted to EPA to facilitate proper handling of the information and will adhere to the requirements of 40 CFR 2.

Information that will not be held confidential includes the following:

- Name and address of any IPDES applicant or permittee
- Content of any IPDES permit
- IPDES permit applications and information required to be submitted by the IPDES application forms or IPDES general permit NOI, and information required to be submitted for general permits, whether the information is submitted on the application forms themselves or in any attachments used to supply information required by the application forms
- Effluent data as defined in 40 CFR 2.302

Duty to Comply—The permittee must comply with the permit conditions. Any noncompliance is grounds for the following:

- An enforcement action
- Permit termination, revocation and reissuance, or modification
- Denial of a permit renewal application.

The permittee is required to comply with effluent standards or prohibitions specified in CWA §307(a) for toxic pollutants. A permittee using or disposing sewage sludge must comply with standards for sewage sludge use or disposal specified in the CWA §405(d), IPDES rules (IDAPA 58.01.25.380), and Wastewater Rules (IDAPA 58.01.16.650).

Duty to Reapply—The permittee must apply for and obtain an individual permit, or submit an NOI and receive coverage under a general permit if they wish to continue discharging. The permittee must comply with the application requirements specified in IDAPA 58.01.25.105, or with the NOI requirements specified in IDAPA 58.01.25.130.

Need to Halt or Reduce Activity—If an enforcement activity is imposed upon the permittee, the permittee will not assert in their defense that halting or reducing operations or activities would have been required to avert noncompliance with the permit.

Duty to Mitigate—If the permittee's activities or discharges have a reasonable likelihood to adversely impact human health or the environment, then the permittee is required to take all reasonable actions to prevent the discharge, or sludge use or disposal.

Proper Operation and Maintenance—All activities or facilities and collection, treatment, and control systems must have proper operation and maintenance (O&M) protocols identified, documented, and executed by the operator at all times. Proper O&M ensures that the protocols and infrastructure installed to process pollutants will function as required to achieve compliance with the permit conditions. O&M protocols also include laboratory controls and procedures. Redundant infrastructure or auxiliary equipment present to ensure continuous compliance with standards, specifications, and permit requirements must also receive proper O&M.

Permit Actions—The permit may be modified, revoked and reissued, or terminated for cause. Permit conditions are not stayed if the permittee files a request for permit modification, revocation and reissuance, or termination. Additionally, any notification of planned facility or activity changes or anticipated noncompliance does not stay the specified permit conditions.

Property Rights—The IPDES discharge permit does not grant any property rights or special privileges.

Duty to Provide Information—The permittee is required to supply all information requested by DEQ and required by permit conditions to submit the information to DEQ within a reasonable time. DEQ will use this information to assess permit compliance and to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit.

Monitoring and Records—The permit will specify the pollutant limits and require that the pollutants and discharge characteristics are monitored on a specified schedule, including continuous monitoring. The monitoring records must be retained for at least 3 years or longer, as specified in the permit; sewage sludge monitoring records must be retained for at least 5 years. Samples collected and monitoring performed must represent the discharged effluent's pollutants and characteristics. Retained records also include all equipment calibration and maintenance records required to verify the veracity of the resulting analytical results.

Reporting Requirements—The permittee is required to provide DEQ advanced notice of scheduled changes in ownership or operator, or to the facility or activity in these cases:

- Alteration may qualify as a new source.
- Alteration could significantly change the nature of or increase the quantity of pollutants discharged, including pollutants not addressed in the current permit.
- Alteration results in a significant change to sludge use or disposal practices and may justify including different conditions not present in the existing permit. The alteration may require modifying the current sludge disposal plan or approving additional land application sites.
- Alteration may result in noncompliance with the current permit's requirements.
- Ownership or operation is proposed to be transferred to another owner or operator. This change may require a permit modification, or revocation and reissuance to identify the new permittee and incorporate requirements that may be necessary under IPDES rules (IDAPA 58.01.025.202).

The permittee is also required to report monitoring results on the interval specified in the permit. These results may be reported on a DMR or other form, electronic or paper, identified by DEQ. If the permittee monitors any pollutant more frequently than required by the permit, the results must be included in the required calculations and data reporting submitted in the DMR or other reporting form specified by DEQ.

All reports of compliance or noncompliance, or progress reports on interim and final requirements contained in compliance schedules must be submitted within 14 days of the scheduled date of each requirement. Additionally, any noncompliance that may endanger health or the environment must be verbally reported within 24 hours, followed by a written report within 5 days.

Bypass Terms and Conditions—The intentional diversion of wastewater from any portion of the treatment process is called a bypass and is prohibited except in one or more of the following:

- The diversion was necessary to prevent loss of life, personal injury, or severe property damage.
- A feasible alternative to the bypass was not possible.
- The permittee notified DEQ at least 10 days in advance of the need for the bypass.

If the bypass was unexpected, then the permittee must notify DEQ verbally within 24 hours and provide a written explanation within 5 days. If the bypass does not exceed pollutant limits specified in the permit, and it is essential for periodic maintenance to ensure efficient operations, then no notification is required.

Upset Terms and Conditions—An exceptional incident in which an unintentional and temporary discharge results in noncompliance that is beyond the control of the permittee is known as an upset. The permittee bears the burden of proof that a technology-based effluent limit (TBEL) noncompliant discharge was due to an upset. Factors necessary to prove that a noncompliant discharge was due to an upset include the following:

- Proof an upset occurred and the cause was identified.
- Facility was properly operated at the time of the upset.
- Permittee notified DEQ within 24 hours of the upset.
- Permittee complied with the necessary remedial measures to prevent or minimize any noncompliant discharge that has a reasonable likelihood of adversely affecting human health or the environment.

DEQ has discretion in implementing compliance assistance and enforcement related to upset events.

Penalties and Fines—Permits will include statements addressing penalty and fine requirements corresponding to permit violations. Permit violations may be subject to the appropriate administrative, civil, or criminal enforcement actions, depending upon the nature of the violation.

Permit and Fact Sheet Templates—DEQ will use permit and fact sheet templates (Appendix D) to ensure uniformity and consistency that includes the following:

- Limits and their basis
- Monitoring, recording, and reporting requirements
- Compliance responsibilities
- Any special conditions DEQ deems necessary
- General requirements

All IPDES permits will consist, at a minimum, of the following general sections:

- Cover page
- Effluent limits
- Monitoring and reporting requirements
- Special conditions
- Conditions applicable to all permits

IPDES fact sheets typically contain the following major components:

- Information on public comment, public meeting, and appeal procedures
- Description of the proposed discharge
- Description of the discharge location
- Water body information and applicable water quality standards and criteria
- Effluent characteristics and pollutant data
- Technical analysis and derivation of effluent limits

- List of the proposed effluent limits and other conditions
- Information supporting the conditions in the draft permit

All templates will contain standard conditions to maintain consistency among similar permit types.

Permit Writer—Permit development will be assigned to a permit writer with appropriate municipal, storm water, or industrial sector expertise and training or to a permit writer mentored by senior staff with the sector-specific expertise.

Data Review—DEQ will review available data and information collected during a permit cycle or earlier data if appropriate (e.g., effluent, ambient, or sediment) and may revise permit limits in the reissued permit based on the technical analysis of data and facts. Revised limits will comply with water quality standards, including antidegradation and antibacksliding provisions.

Minor Modifications of Existing Permits—Upon receipt of a permittee's request for a minor modification to an existing permit, the permit writer shall consider the list of minor modifications in IDAPA 58.01.25.201. The minor modification provision requires that any modification that DEQ may approve as minor (e.g., approving the use of a more sensitive analytical methodology for discharge monitoring) is, in fact, minor in nature. The permit writer may only process a minor modification application if the proposed change will have no potential for additional deleterious impact on the environment or will not reduce the ability to confirm a permittee's compliance with applicable requirements. If the proposed change could not meet these regulatory requirements, or fit into one of the other categories listed in IDAPA 58.01.25.201.03, the proposed change cannot be processed as a minor modification and must be processed according to the draft permit and public notice requirements in IDAPA 58.01.25.108 and 58.01.25.109.

Administrative Record—An administrative record will be prepared for every permit developed (section 6.2.6).

Data Management—All Required Integrated Compliance Information System (ICIS) NPDES Data Elements (RIDE) will be entered into CRIPS and electronically transmitted to ICIS-NPDES (section 13).

Issuance and Effectiveness—A permit will be effective 28 days following issuance by DEQ, unless a petition to review the permit is filed, which stays contested permit conditions, or a later effective date is specified in the permitting decision. The service of notice for the decision will be the same for all parties requiring notification (i.e., permittee and those who provided comment on the draft permit or requested notification of the final permit decision). Notification to the permittee and others will be through mailings or any other reasonable method. DEQ will also post the final permit, response to comments, revised fact sheet, and associated permit documents to DEQ's website, which is available to the public.

A permit is effective for a fixed term not to exceed 5 years; however, nothing in IPDES or federal regulations prohibits DEQ from issuing a permit with an expiration date less than 5 years. DEQ may issue some individual permits for periods less than 5 years to synchronize permits with other DEQ-issued water quality permits, such as a Reuse Permit, under the Recycled Water Program (IDAPA 58.01.17).

6.2.2 Permit Prohibitions

DEQ will not issue an IPDES permit in the following instances:

Clean Water Act Compliance—The permit conditions do not comply with the applicable requirements of Idaho's Water Quality Standards (IDAPA 58.01.02), Rules Regulating the Idaho Pollutant Discharge Elimination System Program (IDAPA 58.01.25), and the CWA and federal NPDES regulations required by state programs.

EPA Objection—When EPA has objected to issuing an individual or general permit.

Water Quality Requirements—The permit cannot ensure compliance with Idaho's applicable water quality requirements and affected downstream states including water within tribal lands.

Anchorage and Navigation Impaired—The Secretary of the United States Army, through the Army Corp Chief of Engineers, determines that the discharge will substantially impair anchorage and navigation in or on any waters of the United States.

Banned Content—If the discharge contains any radiological, chemical, or biological warfare agents or has high-level radioactive waste in the discharge, the permit will not be issued.

Area-Wide Waste Treatment Management Plans—The permit conflicts with a plan or plan amendment approved under CWA §208(b).

New Sources or New Dischargers—DEQ will not issue a permit if the discharge from the construction or operation of a new source or new discharger will cause or contribute to a violation of a water quality standard. If the receiving water has a TMDL, it must be demonstrated prior to authorizing a discharge that there is reserve capacity sufficient for a new source or new discharge and that current dischargers have compliance schedules designed to return the receiving water to compliance with the applicable water quality standards.

Antidegradation—DEQ will continue to implement the existing antidegradation policy in Idaho's Water Quality Standards (IDAPA 58.01.02), approved by EPA, and deny any permit that violates or contributes to the violation of the antidegradation policy.

Antibacksliding—DEQ will not reissue or modify a permit (originally issued by EPA or DEQ) to contain an effluent limit, standard, or condition that is less stringent than required by the previous permit, unless one of the exceptions outlined in CWA §402(o)(2) or IDAPA 58.01.25.200.02 is met. In no event will such a permit be reissued or modified to contain a less stringent effluent limit if implementing such a limit would result in violating a water quality standard. DEQ will consult EPA's guidance—*Interim Guidance on Implementation of Section 402(o) Anti-backsliding Rules for Water Quality-Based Permits* (EPA 1989a).

6.2.3 Modification or Revocation and Reissuance

DEQ can decide to modify a permit based on a review of new information received, an inspection of the facility, the results of a file review, or a request to modify or revoke and reissue the permit.

Permit Modification—DEQ may modify a permit before its expiration date only for causes specified in IDAPA 58.01.25.201. A modification other than a *minor modification* requires preparing a draft permit that incorporates the proposed changes, preparing a fact sheet, and conducting a public review period. Only the permit conditions subject to the modification will be reopened when a permit is modified. All other conditions of the existing permit will remain in effect. Modifying a permit does not change the expiration date of the original permit.

Revoke and Reissue—Substantial modifications may require that the permit be revoked and reissued and that the permittee submit a new application. When a permit is revoked and reissued, the entire permit will be reopened as if the permit has expired and is being reissued. The permittee will comply with all conditions of the existing permit until it is replaced with a reissued permit. In addition to a substantive permit modification, a permit may be revoked and reissued when there is cause to terminate the permit as described in IDAPA 58.01.25.203. A revoked and reissued permit will be issued for a new term not to exceed 5 years.

Denial of Permit Modification or Revocation and Reissuance—If DEQ decides that a request to modify, or revoke and reissue, a permit is not justified, a written response will be sent to the requester giving the reason for the decision. DEQ will not provide public notice for a decision to deny a request to modify or revoke and reissue a permit.

Additional Information—DEQ may request additional information or require the permittee to submit an updated application if the permit is modified for any of the following reasons:

- Alterations—Material and substantial alterations or additions to the permitted facility or activity occurring after permit issuance that justify applying for permit conditions that are different or absent in the existing permit.
- Information—New information is received that was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified applying for different permit conditions at the time of permit issuance.
- New regulations—The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued.
- Compliance schedules—Good cause exists for modifying a compliance schedule over which the permittee has little or no control.
- Request for variance—When the permittee files a request for a variance under CWA §§301(c), 301(g), 301(i), or 316(a) or for fundamentally different factors within the time specified in IDAPA 58.01.25.310.01.b.i.
- Toxics—When required to incorporate an applicable CWA §307(a) toxic effluent standard or prohibition incorporated by reference in IDAPA 58.01.25.003.02.t.
- Reopener—When a reopener clause in the permit requires the permit to be reopened to include toxic effluent limits or pretreatment program requirements.
- Net limits—Upon request of a permittee who qualifies for effluent limits on a net basis or when the discharger no longer is eligible for net limits.
- Pretreatment—When required to include a compliance schedule for developing a pretreatment program.

- Nonlimited pollutants—When the level of discharge of any pollutant that is not limited in the permit exceeds the level that can be achieved by the technology-based treatment requirements appropriate to the permittee.
- Notification levels—To establish a *notification level*, as provided in IDAPA 58.01.25.302.08.
- Small municipal separate storm sewer systems—To include an effluent limit requiring implementation of minimum control measures, as specified in 40 CFR 122.34(b) (IDAPA 58.01.25.201.02.c.xiv), when the permit does not include such measures based upon the determination that another entity was responsible for implementing the requirements and the other entity failed to implement the measures that satisfy the requirements.
- Technical mistakes—To correct technical mistakes, such as errors in calculation or mistaken interpretation of law, made in determining permit conditions.
- Inability to achieve limits—When a properly installed and maintained treatment technology fails to meet effluent limits DEQ considered appropriate at the time of permit issuance. In this case, the limits in the modified permit may reflect the level of pollutant control actually achieved but shall not be less stringent than required by a subsequently promulgated effluent limit guideline.

Minor Modification—When modifying an existing permit satisfies the criteria of a *minor modification* described in IDAPA 58.01.25.201.03, a permit is modified without preparing a draft permit or providing a public review period.

6.2.4 Transfer

A currently active permit may be transferred to a new permittee by either of the following:

- Modifying or revoking and then reissuing a permit to the new permittee
- An automatic transfer if the permittee notifies DEQ in writing at least 30 days before the proposed transfer date

An automatic transfer requires that the parties prepare a written agreement between the existing permittee and the new permittee containing the specific date of transfer of permit responsibility, coverage, and liability, and provide this document to DEQ with the notification. If DEQ does not notify the permittee that the permit will be modified or revoked and reissued, then the transfer occurs automatically as stipulated in the agreement. An automatic transfer will be effective on the date specified in the written agreement between the original and new permittees.

Expired permits are not eligible for transfer. Permits that have been administratively continued will not be transferred. DEQ will require that the proposed new permittee submit an application. Previously supplied data and information that is determined to be applicable to the proposed new permittee may not need to be submitted with the new application.

6.2.5 Termination

As provided for in IDAPA 58.01.25.203, an existing permit may be terminated or a permit reissuance denied for any of the following conditions:

- Permittee does not comply with the permit.

- Permittee fails to fully disclose relevant information in the application or misrepresents the information.
- Discharge endangers human health or the environment.
- Change in any condition that requires either temporarily or permanently reducing or eliminating any discharge (e.g., plant closure or terminating the discharge by connecting to a POTW).

DEQ will prepare an NOI to terminate describing DEQ's rationale. An NOI to terminate is a type of decision that follows the same procedures as any draft permit. The NOI to terminate will be sent to the permittee, EPA, and others upon request. Depending on the reasons for termination and public interest, a public meeting may be held. DEQ will respond to comments received and issue a final decision. If the final decision is to terminate the permit, termination will be effective 28 days after public notice, unless specified otherwise in the final decision. The final decision to terminate the permit is appealable.

If the final decision is not to terminate a permit, then DEQ will document its decision in a fact sheet and send a copy to the permittee, EPA, and anyone who commented during the public review period and specifically requested to be notified. The final decision will be posted on DEQ's web page. The final decision to not terminate the permit is appealable.

An expedited process for terminating a permit may be used if the discharge is permanently eliminated (e.g., facility connects to a POTW's collection system, eliminates discharge to surface water, or closes). In this case, DEQ will provide termination by notice that will be effective 30 days after the termination notice is sent, unless the permittee objects within that time. If the permittee objects to the termination, then DEQ will follow the procedures for terminating a permit stated above.

If the permittee is actively addressing an enforcement action, whether federal, state, or third party, the permit is not eligible for termination until the enforcement is rectified.

6.2.6 Administrative Record

Once a final permit is issued, DEQ will enter permit limits, monitoring requirements, any special conditions, and a compliance schedule, when applicable, into the CRIPS database to track a facility's compliance performance with the permit. Compliance schedules are special permit conditions that address permit compliance activities.

Before final issuance, DEQ will prepare an administrative record for a final permit that consists of the following:

- Application and supporting data
- NOI to deny the application or, if applicable, to terminate, modify, or revoke and reissue a permit
- Inspection report, if applicable
- Preliminary draft, draft, proposed final, and final permits
- Fact sheets addressing both the draft and final permits
- All documents cited in the fact sheet (except EPA and state guidance documents), including calculations used to derive permit limits

- List of EPA and state guidance documents used to develop the permit and fact sheet
- Comments received during the public review and comment period, including during any meeting, as well as comments received from the applicant on the preliminary draft permit and proposed final permit
- Response to comments
- Permit appeal-related documents, when applicable
- Other documents contained in the supporting file for the permit

The permit file will include the associated documentation for a permit that is modified, revoked and reissued, transferred, or terminated.

6.2.7 Integrated Permitting

Multiple Discharges—DEQ will issue one IPDES permit for multiple discharges from a facility or activity at a particular geographic site whenever possible or feasible. If the applicant requests a separate permit for each of the discharges from the geographic site by filing separate applications, DEQ may process the applications as submitted.

Watershed Permitting—DEQ will consider permitting on a watershed basis based on EPA policy and guidance, if feasible and/or appropriate.

6.3 Permitting Procedures for Individual Permits

This section describes the IPDES individual permit development, review, issuance, and modification processes required under IDAPA 58.01.25 (40 CFR 122 and 124). All individual permits will follow the same process, except that an application for a new or substantially modified industrial facility will include a new source determination review. Every IPDES facility will be assigned to a permit writer who will be responsible to determine application completeness, determine whether DEQ should deny or issue a permit, compose the draft permit and fact sheet, navigate the documents through the public comment process, and issue or reissue the permit.

6.3.1 Permit Application and Review

Preapplication Meeting—The applicant is encouraged to schedule a preapplication meeting with DEQ as identified in the preapplication process (IDAPA 58.01.25.104). The applicant should take this opportunity to describe the facility or activity and discuss the wastewater discharge alternatives offered by the state. If surface water discharge is deemed the most appropriate avenue to pursue, DEQ will provide the applicant guidance on required application content, the permitting process, and estimated permit issuance date.

Work Plan—DEQ and the applicant may negotiate a tailored permit work plan for a major new source, major new discharger, or for a complex project. The work plan will establish target dates for the applicant to submit a complete permit application and for DEQ to prepare a draft permit and supporting documents, provide public notice, complete the public review process, and issue the permit.

Application—The operator will submit to DEQ an application for an individual permit on approved forms as specified in IDAPA 58.01.25.105 with the appropriate information for a new source, new discharger, or existing source. An applicant seeking to renew an existing permit must submit a complete application at least 180 days before the permit expiration date, unless a later date is requested and approved by the director before the 180-day deadline. An applicant proposing a new discharge must submit a complete application at least 180 days before the anticipated date of the discharge.

Required information, specified on the forms, submitted for a new or renewed permit, may not be classified as a trade secret. The following information will be denied confidentiality:

- Name and address of any permit applicant or permittee
- Permit applications, permits, and effluent data
- Information submitted on the application forms and any attachments used to supply information required by the forms

Data Management—Application information will be automatically stored in the CRIPS database when a permittee submits an online electronic application. DEQ staff will manually enter application information submitted as a hard copy within 14 days of receipt of an application.

Application Completeness Determination—DEQ's intent is to determine whether an application is complete (a process called application completeness determination) in as timely a manner as workload and staffing allow. According to IPDES rules, DEQ will notify the applicant regarding completeness within 30 days for a new source or new discharge, or within 60 days for an existing source or sludge-only facility (IDAPA 58.01.25.106.03). The review verifies that the submitted information is complete. For example, DEQ will check that the application is properly signed, appropriate fee submitted, all informational fields are filled out properly, all submitted quantitative data have been collected in accordance with sufficiently sensitive methods approved under 40 CFR part 136 or required under 40 CFR chapter I, subchapter N or O, and required attachments are included. Acceptance of an application for processing does not preclude DEQ from requesting additional information from the applicant at a later date. DEQ may waive any application requirement for new and existing POTWs, or currently permitted treatment works treating domestic sewage, regulated under part 503, that is determined to not be of material concern for a specific permit, with EPA regional administrator approval.

Incomplete Application—If DEQ determines that an application is incomplete, the breadth of information is inadequate, or fees unpaid, DEQ will contact the applicant directly to request additional information or fee payment. If the application is deficient, a letter defining these deficiencies will be sent (e-mailed) to the applicant. In the event that the information is not readily available or the applicant is not responsive, DEQ will provide a written summary of the application deficiencies to the applicant. Application review will be suspended pending receipt of the additional information or appropriate fee. If an applicant fails or refuses to correct application deficiencies, the permit may be denied. An applicant of an existing facility that fails to submit a complete application to reissue a permit before its expiration date but continues to discharge after the expiration date will be operating without a valid permit required under IDAPA 58.01.25.102 and violating IDAPA 58.01.25.

Fees—DEQ is required to verify that the applicant is current on all IPDES fees for the permit application to be determined complete. IPDES fee structure segregates applicants into categories that are charged an annual fee, an application fee concurrent with application or NOI submittal, or both.

Administrative Extension—If DEQ determines that after receiving a complete application, submitted in a timely manner, augmented by any supplemental information that satisfies the administrative completeness review, and through no fault of the applicant, that an existing permit will expire before a permit is reissued, then the permit will be administratively extended per IDAPA 58.01.25. The administrative extension has no time limit, and the existing permit will remain fully effective and enforceable until DEQ issues the replacement permit, or takes alternative action. Administratively extending a permit does not extend the original expiration date of the permit. DEQ will not modify an administratively extended permit. DEQ will notify the applicant by letter that the application was received, determined to be complete, and that the permit is eligible for an administrative extension, if necessary.

Engineering Plans and Specifications—According to Idaho Code §39-118, engineering plans and specifications for the construction of, or material modification or expansion of, sewage systems, treatment plants, waste treatment or disposal facilities, public water systems, or public water treatment systems must be submitted to and approved by DEQ before construction may begin. When accompanying a permit application, the plans and specifications will be reviewed and approved concurrently with the development and issuance of a municipal permit and may be reviewed concurrently with the development and issuance of an industrial permit. Industrial facilities' plans and specifications may be required to assess the TBELs. Additionally, if different processes at the facility generate pollutants that interfere with analytical methods used to quantify other pollutants present, then suitable internal sampling points will need to be identified for each pollutant. Plan and specification review will be accomplished in conjunction with DEQ's regional office engineering staff for municipal facilities that must comply with DEQ oversight as specified in Idaho's Wastewater Rules (IDAPA 58.01.16).

Plan and specification submittal may be required of industrial facilities, under the Wastewater Rules (IDAPA 58.01.16.401), in order for the IPDES Program to ascertain whether the facility can comply with the Effluent Guidelines and Standards (40 CFR 401, 403, and 405 through 471). Additionally, plan and specification submittal may be required of industrial facilities in order for DEQ to evaluate process changes to determine appropriate permit documentation or evaluate variance requests for fundamentally different factors from those on which effluent guidelines were established.

Generate or Deny Permit Decision—After DEQ has determined that the permit application is complete, DEQ will assess whether the facility or activity warrants a permit. If DEQ determines that the facility or activity does not warrant a permit, DEQ will issue an NOI to deny the permit. An NOI to deny is a form of draft permit, eligible for public notification, comment, and public meeting as specified in IDAPA 58.01.25.109. DEQ will issue a public notice of the NOI to deny the permit application. All application information will be made available for public review. If necessary, or if requested, a public meeting will be scheduled. After the receipt of public comments, DEQ will generate a response to public comment and issue a final decision. The final decision may be to withdraw the NOI to deny and proceed to generate a draft permit, or concur

with the original decision to deny the permit application. If the decision is to deny the permit application, the applicant may appeal the decision as authorized in IDAPA 58.01.25.204.

6.3.2 IPDES Permit Development

Initial Review—The permit writer will review the permit application and facility file, including inspection reports, compliance information, DMR data, receiving water data (if available), and past and existing enforcement actions. Additional document review could include pretreatment program status, sanitary sewer overflow frequency, storm sewer overflow reports, and bypass or upset notifications.

Site Visit—When necessary and appropriate, DEQ will conduct a site visit of a facility as part of developing a draft permit and associated fact sheet. This site visit may occur before determining that the application is complete (Section 6.3.1).

New Source/New Discharge—DEQ will conduct a new source/new discharge determination for new applications and reissued permits for modified facilities according to New Sources and New Discharges (IDAPA 58.01.25.120).

Fact Sheet—DEQ will use a fact sheet template (Appendix D) to ensure consistent permit development and documentation. Adhering to IDAPA 58.01.25.108.02, a fact sheet will be prepared for draft IPDES permits.

The fact sheet will describe the discharge, outfall location and design, water quality information, and receiving water body characteristics. The fact sheet will explain the basis for the permit limits; why TBELs are suitable for some pollutants while others have water quality-based effluent limits (WQBELs); how any WQBEL was derived; present a mixing zone analysis if a mixing zone appears in the draft permit; when a new source/new discharger proposes a discharge to an impaired water body; use of compliance schedules; or when waivers from monitoring requirements are granted. The basis for monitoring frequencies and sampling locations will be described. Permit requirements and special conditions will be explained. The fact sheet will briefly establish the principal facts and the significant factual, legal, and policy questions considered in preparing the draft permit. The fact sheet may also address multiple draft permits if the conditions of the receiving water for the facilities and the operating conditions of each facility are suitably similar.

Sewage Sludge (Biosolids) Regulations—When applicable, DEQ will include language in the permit and fact sheet addressing sewage sludge requirements. Compliance with Idaho's IPDES rules addressing sewage sludge (IDAPA 58.01.25.380) and 40 CFR 503 is required. These rules and regulations establish standards consisting of general requirements, pollutant limits, management practices, and operational standards for processing, handling, collecting, using or disposing of sewage sludge and products made from sewage sludge.

Idaho may issue permits to treatment works treating domestic sewage that only receive, process, dispose of sewage sludge, or generate a product from sewage sludge for use as a soil augmentation. Applicants for these facilities will be directed to submit the information identified on EPA forms 1 and 2S. Additional information on sewage sludge (biosolids) management is provided in section 8.

Technology-Based Effluent Limits—TBELs and standards will be based on effluent limit guidelines, new source performance standards, best professional judgement, or a combination of the three as specified in 40 CFR 125.3, which DEQ has incorporated by reference. Various TBELs will be employed to control pollutant discharges from both existing and new dischargers.

DEQ will use the following EPA regulations that are adopted by reference into state regulations:

- Criteria and Standards for Imposing Technology-Based Treatment Requirements—40 CFR 125.1 through 125.3, adopted by reference in IDAPA 58.01.25.003.02.n
- Secondary Treatment Requirements—40 CFR 133, adopted by reference in IDAPA 58.01.25.003.02.u
- Effluent Limitations and Guidelines General Provisions—40 CFR 401, Subpart N, adopted by reference in IDAPA 58.01.25.003.02.w
- Industry Sector Effluent Limitations and Guidelines—40 CFR 405 through 471, adopted by reference in IDAPA 58.01.25.003.02.y

DEQ may also refer to the *NPDES Permit Writers' Manual* (EPA 2010).

Idaho's Wastewater Rules (IDAPA 58.01.16) establish the procedures and requirements for planning, designing, and operating wastewater facilities, while the IPDES Program regulates the treatment and discharge requirements related to the discharge of pollutants from such facilities. DEQ will rely upon these state regulations for municipal collection system and unit process evaluations, along with sewage sludge siting, processing, and disposal or reuse. Section 8 "Sewage Sludge (Biosolids) Program" provides more information on this activity.

Reasonable Potential Analysis and Water Quality-Based Effluent Limits—DEQ will determine if any pollutant in the discharge has the potential to cause or contribute to an excursion of a state water quality standard. IDAPA 58.01.25.302.06.a.i (40 CFR 122.44(d)(1)(i)) requires that effluent limits be established for all pollutants and pollutant parameters that are or may be discharged at levels that will cause, have the reasonable potential to cause, or contribute to an excursion above any state narrative or numeric water quality criteria. Where reasonable potential is found, a permit must include WQBELs that ensure the discharge will not cause violations of applicable water quality standards for individual pollutants and whole effluent toxicity (WET).

DEQ will determine reasonable potential for an exceedance of numeric water quality criteria by following the procedures consistent with EPA's *Technical Support Document for Water Quality-Based Toxics Control* (*TSD*) (EPA 1991). DEQ will also ensure compliance with antibacksliding and antidegradation requirements.

In addition to EPA (2010), DEQ will consult EPA and DEQ guidance, policy, and regulations/rules, as follows:

- *NPDES Permit Writers' Manual*, Chapter 6, "Water Quality-Based Effluent Limits" (EPA 2010)
- *Guidance on Water Quality-Based Effluent Limits Set Below Analytical Detection/Quantitation Limits* (EPA 2005)
- *Policy for the Development of Water Quality-Based Permit Limitations for Toxic Pollutants* (EPA 1984)

- *Permit Writer's Guide to Water Quality-Based Permitting for Toxic Pollutants* (EPA 1987)
- *Water Quality Standard Handbook: Second Edition* (EPA 1994a)
- Toxic Pollutant Effluent Standards and Prohibitions—40 CFR 129.1 through 129.105, incorporated by reference in IDAPA 58.01.25.003.02.t.
- Criteria and Standards for Determining Alternative Effluent Limitations—40 CFR 125.70 through 125.73, incorporated by reference in IDAPA 58.01.25.003.02.q.
- *Idaho Antidegradation Implementation Procedures* (DEQ 2012)

Mixing Zone—The applicant must request a mixing zone in their application, even if the applicant received a mixing zone in a previous permit. This notification will direct DEQ to evaluate the facility's discharge using a mixing zone to establish discharge limits. DEQ will use the Water Quality Standards Mixing Zone Policy (IDAPA 58.01.02.060), *Idaho Mixing Zone Implementation Guidance* (DEQ 2016b), and EPA's TSD (EPA 1991) to establish pollutant discharge limits. The fact sheet supporting the permit will document the associated mixing zone analysis.

Metals Limits—DEQ will establish effluent limits for metals consistent with the TSD and Idaho water quality standards (which are often based on total recoverable metal) and, when appropriate, may develop a translator to calculate a total recoverable permit limit from a dissolved criterion. However, ambient monitoring in the receiving water body may be reported as dissolved if the water quality standard for that parameter is measured as dissolved. The fact sheet accompanying the permit will explain the circumstances. DEQ will consult the following EPA guidance to develop a translator:

- *The Metals Translator: Guidance for Calculating a Total Recoverable Permit Limit From a Dissolved Criterion* (EPA 1996a)
- *Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria.*(EPA 1993a)
- *Guidance Document on Dynamic Modeling and Translators* (EPA 1993b)
- *Guidance Document on Clean Analytical Techniques and Monitoring* (EPA 1993c)
- *Interim Guidance on Determination and Use of Water-Effect Ratios for Metals* (EPA 1994b)

Establishing Effluent Limits—DEQ will compare the TBELs to the calculated WQBELs and place the more stringent of the two in a preliminary draft permit, a draft, and a final permit according to IDAPA 58.01.25. The fact sheet will explain the basis for establishing the effluent limits. DEQ will prepare a preliminary draft permit that includes consistent permit terms and conditions and monitoring and reporting requirements as in other IPDES permits with similar treatment processes and waste streams, unless compelling circumstances exist that warrant otherwise. DEQ will employ best professional judgement on a case-by-case basis to establish monitoring frequencies to collect samples that represent the treated wastewater discharged and sufficient in number to determine the impact to the receiving water body. DEQ will require similar and consistent monitoring requirements for similar facilities, discharges, and receiving environments. DEQ will consider unique Idaho conditions and will consult EPA guidance documents and policy to assist with establishing monitoring locations, frequencies, analytical methods, and reporting requirements:

- *NPDES Permit Writers' Manual*, Chapter 8, "Monitoring and Reporting Conditions" (EPA 2010)
- *Representative Sampling in NPDES Permits* (EPA 1983a)

Site-Specific Conditions—DEQ will establish effluent limits and permit conditions based on site-specific conditions in the receiving water body (IDAPA 58.01.25.302. and 303.). The permit may include requirements to conduct concurrent monitoring of receiving water quality or other conditions specific to the project to determine compliance with state water quality standards.

Compliance Schedule—When appropriate, DEQ will include compliance schedules in IPDES permits that will identify necessary improvements and stipulate completion dates in order for the facility to meet final effluent limits or other permit conditions. Compliance schedules will identify the manner of system alteration, whether technology based or operational modifications, that will bring the discharge into compliance as quickly as possible. Compliance schedules may exceed 1 year (6 months for sewage sludge activities), but only if interim requirements and interim progress report submittal dates are set forth in the compliance schedule. Compliance schedules may allow a discharger to phase in, over time, facility improvements necessary to comply with WQBELs or other permit conditions. Compliance schedules may identify necessary facility upgrades, alternate operating procedures, or other equipment changes required to bring the facility's discharges into compliance with the permit conditions. The permit may establish interim effluent limits, enforceable during the duration of the compliance schedule, that terminate when the facility attains the stipulated final effluent limits.

Variances—The IPDES rules, CWA, and federal regulations provide limited mechanisms allowing DEQ to modify or waive the generally applicable effluent limit requirements or CWA time deadlines for an IPDES-permitted discharger. Variance requests may include those for fundamentally different factors; variances under CWA §§301(c), 301(g), 301(n), and 316(a); modification to federal effluent limits established under CWA §302; and water quality standards.

DEQ will process a variance request consistent with IDAPA 58.01.25.310. DEQ will conduct an initial review of a variance request received on or after the date of program authorization and when permitting authority for the permit has been transferred from EPA to DEQ per the transfer schedule in the MOA. DEQ may deny or approve a request for a variance under CWA §316(a) or water quality standards. For other variance requests, a copy of the request will be sent to EPA, and DEQ's determination to deny a request for a variance will be sent to the requester and EPA. If DEQ determines factors exist that may warrant such a variance or modification, the request and recommendation for approval will be sent to EPA. If EPA denies a variance or modification request, EPA will notify the requester and DEQ. EPA will consider a fundamentally different factor variance only after DEQ has forwarded the variance to EPA with their written concurrence. If EPA approves a variance or modification request, DEQ will prepare a draft permit factoring in the variance. DEQ will consult the following EPA regulations and guidance documents to process variance requests:

- Criteria and Standards for Determining Fundamentally Different Factors, adopted by reference in IDAPA 58.01.25.003.02.p
- *Procedures for Processing Fundamentally Different Factor Variances* (EPA 1983b)
- Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Clean Water Act, adopted by reference in IDAPA 58.01.25.003.02.q

Whole Effluent Toxicity—DEQ will include WET testing requirements in permits for POTWs with a design flow greater than 1.0 MGD; POTWs with approved pretreatment programs; and for facilities with a discharge that has a reasonable potential to cause or contribute to an exceedance of a state water quality standard (IDAPA 58.01.02).

WET Testing—For facilities required to conduct WET testing, DEQ will include conditions in the permit requiring the permittee to prepare and implement a toxicity reduction evaluation (TRE) plan that may also include a toxicity identification evaluation (TIE) if WET test results do not comply with the WET limits or monitoring trigger. The purpose of the TRE will be to investigate the causes and identify corrective actions for effluent toxicity problems. DEQ will consult the following EPA guidance and policy to assist with developing the TRE/TIE plan and to reduce and control toxicity:

- *Generalized Methodology for Conducting Industrial Toxicity Reduction Evaluations (TREs)* (EPA 1989b)
- *Toxicity Reduction Evaluation Guidance for Municipal Wastewater Treatment Plants* (EPA 1999a)
- *Clarifications Regarding Toxicity Reduction and Identification Evaluations in National Pollutant Discharge Elimination System Program* (EPA 2001a)
- *Guidelines Establishing Test Procedures for the Analysis of Pollutants; Whole Effluent Toxicity Test Methods* [Final Rule Federal register/Vol. 67 69951] (EPA 2002a)
- *Whole Effluent Toxicity (WET) Control Policy* (EPA 1994c)

Toxics Control—DEQ will modify a permit to include WQBEL or WET limits when permit conditions to control toxicity are different or absent in the existing permit. When toxicity is detected, DEQ will include a requirement in the permit to prepare a TRE plan in accordance with EPA guidance listed above.

Primary Industry—DEQ will include a special condition in a permit for a Primary Industry Category, identified in 40 CFR 122, Appendix A (incorporated by reference in IDAPA 58.01.25.003.02.j.), requiring the permittee to conduct a priority pollutant scan.

Quality Assurance Project Plan—In a permit, DEQ will require a Quality Assurance Project Plan (QAPP) to be developed and/or implemented that describes appropriate quality assurance procedures to ensure proper collection, laboratory controls, and sample analysis. The permit writer will consult the following EPA guidance:

- *EPA Requirements for Quality Assurance Project Plans* (EPA 2001b)
- *Guidance for Quality Assurance Project Plans* (EPA 2002b)

Best Management Practices—In a permit, DEQ will include the requirement to implement best management practices (BMPs) according to CWA §402 and 40 CFR 122.44(k), incorporated in IDAPA 58.01.25.302.13, to encourage waste minimization and pollution prevention. DEQ will consult the *Guidance Manual for Developing Best Management Practices (BMP)* (EPA 1993d) to assist with developing the BMP conditions.

Discharge Monitoring Report—IPDES permittees will submit monitoring and reporting data via EPA's NetDMR. EPA's electronic reporting rule requires that all NPDES-permitted facilities submit data via NetDMR by December 21, 2016. As a result, IPDES permittees will already be

fully using NetDMR when DEQ begins implementing the IPDES Program. DEQ will acquire data from NetDMR and/or ICIS-NPDES to follow IPDES permit compliance.

Permit Checklist—DEQ will use a Permit Submission Checklist to develop consistent, legally defensible permits throughout the state. DEQ will conduct an internal peer review of the preliminary draft permit, fact sheet, and DMR template (if applicable) to ensure consistency with similarly issued permits and allow for senior management review, when appropriate.

Compliance and Enforcement Program—At the discretion of the IPDES Program's permit lead and CIE lead, the permit writer may provide the preliminary draft permit for review to the CIE staff assigned to the facility. The CIE staff will review and provide comments on the preliminary draft permit for content concerning compliance and enforceability.

6.3.3 Draft Permit

Applicant Draft Review—DEQ will transmit a preliminary draft permit and fact sheet to the applicant for a 10-business day review period, unless the applicant waives all or part of the review period. DEQ may allow the applicant a longer preliminary draft review period for complex permits. During the applicant review period, the applicant will review the documents for errors and omissions and may provide comments on the preliminary draft permit. Discussions with DEQ staff concerning the preliminary draft permit are encouraged. DEQ may revise the preliminary draft permit and fact sheet based on comments received from the applicant. These changes will be tracked and become part of the administrative record.

The preliminary draft becomes the draft permit and is posted for public review and comment. The posted draft permit undergoes public participation procedures identified in section 6.4. The draft permit will be transmitted simultaneously to EPA for a review period. EPA may request up to an additional 60 days to review draft permits pursuant to the MOA (DEQ and EPA 2016).

6.4 Public Participation Procedures

Sound permitting decisions based on a complete understanding of local conditions are an intended and expected result of Idaho obtaining authorization to administer the NPDES permitting program.

Public Access—As the state's environmental permitting authority, DEQ intends to rely on input from stakeholders to inform its permit decisions. An important goal in DEQ's IPDES Program is to enhance public access to permit information and processes to produce accurate permits and compliance with permit terms and conditions.

Efficiency—The IPDES permit issuance process must efficiently inform the public and collect, consider, and respond to input. An efficient permit issuance system is capable of clear and open communication with interested stakeholders while maintaining a schedule for timely permit development and issuance. The process also should engage the interested public in a thoughtful and effective manner to be accessible and informative but not a burden. An anticipated byproduct of these efforts is a high degree of public confidence in DEQ and in the permits issued and administered by the department.

Because DEQ will not have delegated NPDES authority on tribal lands, tribes retain the government-to-government relationship they currently have with EPA. At the same time, the IPDES public participation process extends coordination efforts and opportunities to tribal governments about concerns with potential IPDES permits that may impact waters flowing across tribal lands.

Record Keeping—Documentation of public comments will be included as part of the administrative record along with department responses, actions, decisions, and supporting information. DEQ will maintain an official record of each permitting action and make those records readily available to the public through DEQ's web interface.

Notification of IPDES Actions—When an application is determined to be complete, DEQ will post it to the department's website for the public comment period. DEQ will be mindful of the advantages of communicating with stakeholders during the permit process.

DEQ seeks to be proactive in the IPDES permitting process. A PIP will be posted on the DEQ website and updated biannually. The PIP lists all permits proposed to be issued or reissued during a calendar year. The PIP will be posted on DEQ's website and e-mailed to local contacts and any interested party upon request.

6.4.1 Basic Public Process

Although DEQ may use additional communication tools as described throughout this document, the basic process for providing public participation on an IPDES permit (either individual or general permit) is identified in IDAPA 58.01.25. This process begins once a draft permit has been prepared. Each step in the required process is described below.

Preliminary Draft Permit—Before formal public notice of a draft IPDES permit, DEQ will post the notice of a forthcoming draft permit on the DEQ website and provide a permit applicant 10-business days to review the preliminary draft permit, unless the review period is waived in part or in whole by the applicant. For some complex permits, DEQ may allow the applicant a longer preliminary draft review period. This period is primarily intended for the applicant to review and discuss any errors and omissions in the preliminary draft permit with DEQ, but it also provides public notification that a draft permit will become available for public review and comment after DEQ has addressed any errors and omissions identified in the preliminary draft.

Draft Permit—Publication of a notice that a draft permit is available initiates a minimum 30-day public review and comment period (IDAPA 58.01.25.109.01.a–c). This public notice is provided by a combination of mailings to the applicant, certain listed state and federal agencies, affected Indian tribes, any users identified in the permit application or a privately owned treatment works, persons who specifically request to be kept on the mailing list, and any local government having jurisdiction over the area where the facility is located. DEQ may also provide notice of opportunities on the department's website, through mailing lists, periodic publication in newspapers, regional and state-funded newsletters, environmental bulletins, state law journals or similar publications, or any other method reasonably calculated to give notice of the action to persons potentially affected (IDAPA 58.01.25.109.01.d).

The permit application, draft permit, and fact sheet describing the terms of the permit will be available during the public comment period (IDAPA 58.01.25.109.01.d). DEQ may schedule a

public meeting on the draft permit if significant public interest exists, an interested party requests in writing a public meeting within the first 14 days of the public comment period (IDAPA 58.01.25.109.02.b.), or for another good reason (IDAPA 58.01.25.109.01.i).

As identified in the MOA (DEQ and EPA 2016), EPA will review draft permits rather than proposed permits. EPA, however, may choose to review a proposed permit instead of, or in addition to, reviewing the draft permit. EPA may take up to 90 days to provide specific grounds for objection of a proposed permit.

Proposed Permit—After the close of the minimum 30-day public comment period, DEQ considers information provided by the public, prepares a document summarizing the public comments received on the draft permit and may make changes to the draft permit. After the public comment period and before issuing the final permit decision, DEQ will give the applicant an opportunity to provide additional information to respond to public comments. DEQ may request more information from the applicant to respond to public comments (IDAPA 58.01.25.109.02.h.). The information received from the permittee in response to Public Comment received during the Public Comment period will be documented in the Response to Public Comment. Additionally, if the permittee's submitted response or data results in a change in the permit, this change will be documented in the Fact Sheet. New data and information provided after the public comment period may necessitate another public comment period if it results in substantive changes to the draft permit.

DEQ may then develop a proposed permit. If EPA objects to a proposed permit, any state, interstate agency, or interested person may request that EPA hold a public hearing about the objection. Alternatively, DEQ may submit a revised permit that meets EPA's objections. EPA may, but is not obligated to, issue the final permit if DEQ does not submit a revised permit that meets EPA's objections within the time periods specified in the NPDES MOA (DEQ and EPA 2016) (40 CFR 123.44).

Final Permit—Following the close of the public comment period on a draft permit and fact sheet, and upon resolution of any objections from EPA, DEQ will issue a final permit decision and fact sheet. A final permit decision means a final decision and the final permit action to issue, deny, modify, revoke and reissue, or terminate a permit (IDAPA 58.01.25.107.04.). The final permit, response to comments, revised fact sheet, and associated permit documents will be posted on DEQ's web page. If DEQ does not resolve or redraft the permit within 90 days of receiving formal objection from EPA, exclusive authority to issue the permit will transfer to EPA.

Administrative Record—The final permit, response to comments, final fact sheet, and associated permit documents (e.g., application and maps) will be compiled in the administrative record. The public will have access to copies of the administrative record through DEQ's web interface.

Accommodations for Persons with Disabilities—DEQ will comply with the Americans with Disability Act (42 USC 12101–12213). A person with a disability can request and receive special accommodation to participate in the permit process.

6.4.2 Supplemental Communication Tools

DEQ has several tools to supplement required permit communications. Some of these supplemental tools will always be used, while others are optional.

Preapplication Process—Any person who intends to apply for a permit or who proposes to discharge a pollutant into the waters of the United States in Idaho should contact DEQ to schedule a meeting before submitting an application. This preapplication process (IDAPA 58.01.25.104) takes place before a permit application is submitted, involves the voluntary participation of the permit applicant, and serves three purposes: (1) determine whether the activities or facility will require an IPDES permit and whether other suitable permitting options are available (e.g., reuse, discharge to ground water, or eliminate the discharge); (2) identify the IPDES permit application requirements; and (3) identify the IPDES permit application submittal schedule. The number of preapplication meetings can range from a single event to a series depending on the situation and may include discussion of plans for, or results of, baseline monitoring efforts.

Public Meetings—IPDES rules provide DEQ with discretion to hold public meetings on draft permits during the public comment period. Public meetings can provide a more convenient means for the public to comment on a permit. The meetings also provide an opportunity for the public to hear from other members and organizations. According to IPDES rules (IDAPA 58.01.25.109.02.b), DEQ will hold a public meeting whenever, based on requests, significant public interest exists in a draft permit. DEQ may also hold a public meeting if it needs to clarify one or more issues involved in the permit decision or for any other reason at DEQ's discretion. If a public hearing is held for the purpose of receiving comments, IDEQ will make an audio recording or hire a court reporter to record the hearing and shall prepare a transcript of the hearing if an appeal is filed. Comments provided at a public meeting will be entered into the administrative record for the permit.

Supplemental Notice and Information—The IPDES rules include both prescribed and optional methods for notifying the public of draft IPDES permit availability (IDAPA 58.01.25.109.01.d.iii). DEQ will strive to identify and employ the most effective ways to notify stakeholders of permit actions and other matters. Notification will typically consist of some combination of posting on DEQ's website, individual notification via mailings or e-mail, advertisements in local or regional publications, and press releases.

For larger projects, DEQ will compile lists of interested individuals and parties. DEQ's experience suggests that maintaining lists of e-mail addresses for stakeholders and communicating via e-mail is an effective and efficient means of keeping the public informed. DEQ will also use the Internet to make information available to the public.

Extended Public Comment Periods—While IPDES rules require a minimum 30-day public comment period on draft permits (IDAPA 58.01.25.109), DEQ may extend a comment period if a request is received in writing by the department before the last day of the comment period (IDAPA 58.01.25.109.02.g). DEQ will extend comment deadlines or provide supplemental public comment opportunities consistent with IDAPA 58.01.25.109 when the commenter requesting additional time demonstrates the need or when significant public sentiment exists that the initial time allotted was insufficient for reasons unknown to DEQ when it initially established

the schedule. At the same time, DEQ will weigh the benefits of longer public comment periods against impacts of project and permit schedules.

6.4.3 Other Permit Actions—Modify, Revoke and Reissue, or Terminate

In addition to issuing IPDES permits, DEQ may take other actions to modify, revoke and reissue, or terminate permits, which may include a public participation process.

Modify or Revoke and Reissue—DEQ may modify or revoke and reissue an active permit for specific reasons identified in IDAPA 58.01.25.201.02. DEQ will follow the same public involvement procedures used for new permits when it modifies or revokes and reissues an existing permit, except for minor modifications (IDAPA 58.01.25.201.03) that do not require developing a draft permit, fact sheet, or public notification and comment. The minor modification provision is restricted to a very narrow range of truly minor changes.

When DEQ modifies a permit, interested parties will have the opportunity to review the draft permit modifications and request a public meeting. In a permit modification, only those conditions to be modified are reopened. All other aspects of the existing permit remain in effect for the duration of the unmodified permit (IDAPA 58.01.25.201.01.b.ii). However, when a permit is revoked and reissued, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee must comply with all conditions of the existing permit until a new final permit is reissued (IDAPA 58.01.25.201.01.b.iii).

Terminate—Permits may be terminated either at the request of any interested person (including the permittee) or upon the department's own initiative. All requests for termination must be in writing and contain facts or reasons supporting the request. However, permits may only be terminated for the reasons specified in IDAPA 58.01.25.203.03 or 04. If DEQ tentatively decides to terminate a permit, an NOI is issued and made available for public comment and notice is given for an opportunity for public meetings (IDAPA 58.01.25.109).

6.4.4 Appeals

The public has access to a permit appeals process (IDAPA 58.01.25.204). Appeal of a final IPDES permit decision begins by filing a petition for review with DEQ's hearing coordinator within 28 days after DEQ serves notice of the final permit decision. DEQ will serve notice by mailing the permittee and other parties specified in IDAPA 58.01.25.07.04.a, or another reasonably determined method for notification. The notice initiates an administrative appeal that is heard by a hearing officer appointed by the director. Only a person who is aggrieved by the final permit decision (i.e., the permit holder or applicant and any person or entity who filed comments or who participated in the public meeting on the draft permit) may file a petition for review. Ultimately, any person aggrieved by a final department action or determination resulting from an administrative appeal has a right to judicial review by filing a petition for review in state district court (IDAPA 58.01.25.204.26).

6.4.5 Additional Ways to Stay Informed

Permit Issuance Plan—DEQ will prepare a PIP that identifies the permits the department proposes to issue during the upcoming year. The PIP will be updated annually and posted on

DEQ's web page, with notification sent via the electronic mailing list that the PIP is available for review. This process will allow the public advance notice of a permit that is proposed to be issued or reissued and the opportunity to contact DEQ to discuss the project or schedule a meeting.

IPDES Web Interface—DEQ is developing an IPDES web interface that will provide the general public with electronic access to most publicly available information pertaining to permits. In this web interface, users will be able to search for, view, and download information and documents pertaining to applications, permits, facilities, compliance, inspection, and enforcement. This tool will allow the public to easily locate specific information of interest and reduces the need for public records requests.

6.5 Permit Procedures for General Permits

Idaho's IPDES rule provides DEQ with the general permitting authority to the same extent granted EPA under CWA. DEQ intends to make optimal use of general permits for situations where multiple discharges meet the criteria specified in IDAPA 58.01.25.130.01 and are more appropriately controlled under a general permit. When DEQ determines a need for a new general permit or reissues an existing general permit, DEQ will follow similar issuance procedures as for an individual permit. For a new general permit, there may be no specific applicant at the time of the general permit development.

DEQ will notify permittees authorized to discharge under an existing general permit at least 210 days before the general permit's expiration date that the permit will expire and provide instructions to submit an NOI to continue coverage under the general permit. A permittee authorized to discharge under a general permit will be required to meet similar requirements as a permittee issued an individual permit (e.g., self-monitoring, reporting, and allowing DEQ inspections).

6.5.1 General Permit Development

DEQ will follow procedures similar to individual permit development (section 6.3.2) to develop a new general permit or reissue an existing general permit.

DEQ will prepare a preliminary draft general permit that includes technology-based and/or water quality-based discharge limits, and/or BMPs.

A fact sheet will accompany every general permit to explain the legal authority, principal facts, permit limit development, or application of BMPs. DEQ will rely on a fact sheet template similar to the individual permit's fact sheet template.

A general permit will be issued, modified, revoked and reissued, or terminated according to the procedures and conditions as specified in IDAPA 58.01.25.130.05.

6.5.2 General Permit Reviews

Draft Permit—The draft general permit will be posted for public notification as indicated in the public participation procedures (section 6.3). The draft general permit will be transmitted simultaneously to EPA for a 90-day review period as required in 40 CFR 123.44(a)(2).

As identified in the MOA (DEQ and EPA 2016), EPA will review draft permits rather than proposed permits. EPA, however, may choose to review a proposed permit instead of, or in addition to, reviewing the draft permit.

6.5.3 Final General Permit Decision

After the public comment period closes and comments are received on the proposed general permit from EPA (if any), DEQ will review all comments received and revise the draft general permit as appropriate. DEQ will post its final permit decision online and notify the entities that have current coverage under the existing general permit, or entities that were notified and reviewed a new general permit. The final permit decision will become effective 28 days after the service of notice of the decision unless the following occurs:

- A later effective date is specified in the decision or
- A Petition for Review is filed with DEQ as specified in the appeals process (IDAPA 58.01.25.204).

The newly issued final general permit will have an effective term not to exceed 5 years.

6.5.4 General Permit Authorizations

This section describes DEQ's procedures and reporting requirements to authorize a discharge under an effective general permit.

The general permit will specify when and where to submit an NOI to discharge and the dates when a discharge is authorized under the permit. An applicant will submit an NOI to discharge under a general permit and the appropriate fee to DEQ. The NOI, at a minimum, will include the legal name and address of the owner or operator, site contact information, facility name and address, billing information, type of facility or discharge, name of the receiving water, other information as required by the general permit, and, as appropriate, any requests for waivers or variances. The NOI must be signed as required by IDAPA 58.01.25.090. DEQ's web interface will allow electronic submittal of signed NOIs for general permits and accept fee payments (IDAPA 58.01.25.110).

Upon receipt of an NOI and appropriate fee, DEQ will initiate a timely review of the NOI, as well as coordinate the review of any necessary engineering plans and specifications. If necessary, DEQ will contact the applicant for clarification or additional information.

Unless otherwise noted in the general permit, DEQ's intent is to issue an authorization to discharge under a general permit within 30 days of receipt of a complete NOI when no waiver or variance have been requested. Depending on the conditions of the general permit, an applicant may submit a waiver or variance request rather than an NOI (e.g., low erosivity waiver, no exposure certificate). DEQ would then evaluate the validity and applicability of the waiver or variance and either approve or deny the waiver or variance.

DEQ's intent is to issue an authorization to discharge under a general permit within 60 days from when an applicant requests a waiver or variance for their coverage when a 30-day public comment period is required. DEQ will continue to batch the public notice for NOIs for coverage under a general permit. DEQ may notice an NOI for coverage under a general permit separately if the facility or activity is classified as a major discharger.

Based on the information submitted in the NOI, DEQ will determine if the applicant qualifies for coverage under the general permit. If the applicant qualifies for coverage under the general permit and authorization to discharge is not automatic based on the requirements of the general permit, DEQ will sign and transmit an authorization to discharge to the applicant, including any site-specific conditions. An authorization to discharge under a general permit will be effective until the expiration date of the general permit.

If DEQ determines that the applicant does not qualify for coverage under the general permit, DEQ will notify the applicant that coverage is denied and require the applicant to submit an application for an individual permit if the applicant wants to continue to seek an authorization to discharge pollutants to waters of the United States in Idaho.

DEQ will notify an applicant who applies for an individual permit when the applicant qualifies for coverage under a general permit. The applicant may withdraw the individual application and submit an NOI for coverage under the general permit.

An authorized discharger under an existing general permit must reapply to continue coverage under the general permit before the general permit's expiration date, in compliance with the time frame established in the general permit.

The general permit will specify that authorization to discharge will be effective once one the following cases are met:

- Immediately after an applicant's submittal of an NOI to discharge under the general permit and the required fees,
- After a period specified in the general permit,
- On a date specified in the general permit, or
- Upon receipt of notification of coverage by DEQ.

Except for discharges from POTWs, combined sewer overflows, MS4, primary industrial facilities, and storm water discharges associated with industrial activity, DEQ may authorize a discharger to discharge under a general permit without submitting an NOI when submittal of an NOI would be inappropriate.

If DEQ is unable to reissue a general permit before its expiration date, coverage for a permittee under the existing general permit will continue if the permittee submitted a timely and complete reissuance NOI request before the general permit expiration date and according to the general permit. The administratively extended general permit will remain fully effective and enforceable until the general permit is reissued and DEQ reauthorizes coverage under the reissued general permit. Administratively extending a general permit will not extend the original expiration date of the general permit. DEQ will transmit authorizations to the permittees once the general permit is reissued. DEQ will not authorize a new discharge under an administratively extended general

permit until the general permit is reissued. DEQ will instruct an applicant seeking coverage under an administratively extended general permit to apply for an individual permit.

DEQ may revoke a permittee's coverage under a general permit if the permittee violates the terms or conditions of a general permit, or conditions change and coverage under a general permit is not appropriate and requires the permittee to apply for an individual permit. A violation of any general permit condition, as with all permits, will be subject to enforcement action with potential commensurate penalties.

A facility operating under a general permit designated as a major facility will be tracked, inspected, and reported on in the same manner as a major individual permit holder.

On a regular basis, DEQ will update the list of permittees authorized to discharge under an IPDES-issued general permit and post the information on DEQ's web page.

7 Pretreatment Program (40 CFR 403)

DEQ's pretreatment program will control pollutants from industrial and commercial facilities that discharge directly into POTWs. DEQ will assume authority over the pretreatment program according to the transfer schedule in the MOA (DEQ and EPA 2016, Appendix A).

7.1 General

DEQ's pretreatment program will be essentially the same as the federal program established in 40 CFR 403 and adopted by reference in IDAPA 58.01.25.003. The objectives for the pretreatment program are as follows:

- Prevent the introduction of pollutants into a POTW that will interfere with the operation of the POTW, including interference with the use or disposal of sewage sludge.
- Prevent the introduction of pollutants into a POTW that will pass through the treatment works or otherwise be incompatible with the works.
- Improve the opportunities to recycle and reclaim municipal and nonmunicipal wastewater and sewage sludge.

The pretreatment program enforcement activities are provided in section 12.7.

7.2 Definitions

The full regulatory definitions for the pretreatment program are found in 40 CFR 403.3. Terms commonly used in this section are briefly described below.

Approval authority means the Idaho Department of Environmental Quality.

Control authority refers to the following:

- POTW if the POTW's pretreatment program submission has been approved according to the requirements of 40 CFR 403
- Approval authority if the submission has not been approved

Industrial User (IU) or **User** refers to a source of an indirect discharge.

Interference means a discharge alone or in conjunction with a discharge or discharges from other sources that inhibits or disrupts the POTW; its treatment process or operations; or its sludge processes, uses, or disposal and causes a violation of any requirement of the POTW's IPDES permit or prevents the use of sludge or its disposal.

Nonsignificant Categorical Industrial User refers to an IU subject to federal categorical standards that never discharges more than 100 gallons per day (gpd) of total categorical wastewater, has consistently complied with all pretreatment standards and requirements, never discharges untreated concentrated wastewater, and submits an annual compliance certification.

Pass through means a discharge that exits a POTW and enters waters of the United States in quantities or concentrations that alone, or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirements of the POTW's IPDES permit.

Significant Industrial User (SIU) is defined in 40 CFR 403.3(v) and refers to an IU subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; and any other IU that discharges on average 25,000 gpd or more of process wastewater to a POTW; contributes a process waste stream that makes up 5% or more of the average dry weather hydraulic or organic capacity of the POTW; or is designated as such by the control authority on the basis that the IU has a reasonable potential to adversely affect the POTW's operation or to violate any pretreatment standard or requirement.

7.3 POTW Program Application Submission

DEQ will first rely on a POTW to regulate industrial dischargers to its sewer system. A POTW with a total design flow greater than 5 MGD receiving discharges from IUs that could interfere with or pass through the POTW's operations, or are otherwise subject to pretreatment standards, may be required to develop a pretreatment program, unless DEQ chooses to assume local responsibilities. DEQ may also require a POTW with a design flow less than 5 MGD to develop a pretreatment program if the POTW receives significant industrial contributions that warrant a pretreatment program to prevent interference or pass-through. Once the pretreatment program is approved to implement, according to the transfer schedule in the MOA (DEQ and EPA 2016, Appendix A), DEQ will be the approval authority responsible for the following:

- Review and approve a POTW's pretreatment program application.
- Designate the POTW as the control authority authorized to control discharges to its POTW.
- Ensure that the POTW complies with pretreatment conditions in its IPDES permit and with the appropriate provisions of 40 CFR 403.

In addition, DEQ will be responsible to ensure that an SIU discharging to a POTW without an approved pretreatment program complies with the National Pretreatment Standards (40 CFR 403.6).

Under 40 CFR 403.10(e), DEQ has discretion not to require a POTW with industrial facility discharges to develop and implement a pretreatment program. In this situation, DEQ will assume the role of the control authority responsible for imposing pretreatment requirements on any IU or

SIU, as defined in 40 CFR 403, discharging to the POTW. These requirements are contained in 40 CFR 403.8(f); however, nothing will preclude a POTW from independently developing a pretreatment program. If a POTW decides to develop a pretreatment program, although not formally required by DEQ, the POTW will be subject to the same program approval procedures as POTWs required to develop a program and must adhere to all federal and state requirements relating to the pretreatment program.

7.3.1 Industrial Survey

The control authority will be responsible for identifying all IUs that might be subject to pretreatment requirements. The POTW as the control authority will notify DEQ of a new IU discharging to its POTW. The control authority will determine if pretreatment standards and requirements apply to a particular IU. The control authority will maintain a current list of IUs subject to pretreatment requirements and update the list as needed. The POTW as the control authority will transmit a list of IUs to DEQ as part of its annual reporting requirements incorporated in its IPDES permit.

Before assuming authority from EPA to implement the pretreatment program, DEQ will develop a plan to complete a state-wide industrial survey of all IUs in nondelegated POTWs that might be subject to pretreatment requirements to identify all facilities meeting the definition of a categorical or significant noncategorical IU. Once the initial survey is complete, DEQ will determine if a pretreatment program will be required of the POTW, or if DEQ will accept responsibility for regulatory oversight of the identified SIUs within a particular municipality. DEQ will periodically review and update the inventory of SIUs and determine if pretreatment requirements are necessary.

7.3.2 POTW Pretreatment Program Approval Process

DEQ will review future pretreatment program applications except for an application from a POTW for which EPA retains NPDES jurisdiction. Currently, 12 POTWs have EPA approved pretreatment programs in place. The status of these programs is discussed in section 7.13. After state program approval, DEQ will work with EPA to develop appropriate *pretreatment program development* permit language and an approval checklist if a new local program is identified in the future as needing a pretreatment program.

DEQ will require the permittee to submit a pretreatment program for department approval within the shortest reasonable time but not to exceed 1 year after written notification from DEQ to develop a program. A compliance schedule will contain progress reporting due dates until a program is developed and submitted for approval. A compliance schedule will be incorporated into the IPDES permit according to 40 CFR 403.8(e), incorporated by reference in IDAPA 58.01.25.003. DEQ will work with the permittee to develop the compliance schedule. DEQ will also provide technical assistance to any new POTW identified to develop a pretreatment program.

DEQ will review a POTW's program application to ensure it meets the requirements for pretreatment program approval as set forth in 40 CFR 403, incorporated by reference in the IPDES rules. To review and approve a local pretreatment program application, DEQ will consult

EPA's *Procedures Manual for Reviewing POTW Pretreatment Program Submission* (EPA 1983c).

The POTW requesting program approval will need to complete and submit a pretreatment program application to DEQ. Within 60 days of receipt of the application, DEQ will make a preliminary determination of whether the application meets the requirements of 40 CFR 403.8 and 403.9. If the preliminary determination is that the submission is inadequate and does not comply with the requirements, DEQ will transmit a written notice to the POTW according to 40 CFR 403.9(f) that identifies the deficiencies in the application and includes advice on how the POTW may comply with the applicable requirements.

If the preliminary determination is that the submission meets the requirements, DEQ will notify the POTW and proceed with the public review and evaluation procedures established in 40 CFR 403.11. DEQ will follow the public participation requirements in 40 CFR 403.11 and will initiate a public review of the draft program application within 20 days of the preliminary determination and provide for a minimum 30-day public review period. DEQ will hold a public meeting if significant interest exists, or if a significant issue or information is brought to the attention of DEQ during the comment period that was not considered previously in the approval process.

Based on the program application evaluation and comments received, DEQ will approve, conditionally approve the program with modifications, or deny the program application. If the decision is to deny the program application, DEQ will transmit a denial notification to the local government that contains suggested modifications and a time extension to correct the application, and resubmit. If DEQ intends to approve the program application, the program will be submitted to the EPA Region 10 administrator. According to 40 CFR 403.11(d), no POTW pretreatment program or authorization to grant removal allowances will be approved by the director if, following the public review period and any meeting, EPA objects in writing to the approval. A copy of EPA's objections will be provided to the applicant and each person who requested individual notice. EPA will provide for a period to accept written comments and may hold a hearing on the objections. Unless retracted, EPA's objections will constitute a final ruling to deny approval of a POTW pretreatment program or authorization to grant removal allowances 90 days after the date the objections were issued.

Denial or approval of an application will be published in the same newspaper, website, or media outlet that published the original public review notice. Program modifications, determined to be substantial under 40 CFR 403.18(b), follow the same review process. DEQ approval of a pretreatment program application or modification of an existing program requires a minor modification of the IPDES permit to incorporate the approved or modified program, as outlined in 40 CFR 403.18(e), and permit modifications shall comply with IDAPA 58.01.25.201.03.g.

Issuance of a new IPDES permit with pretreatment requirements supplants a previously issued state permit for a POTW. As the control authority, the POTW is responsible to ensure compliance with pretreatment requirements. However, DEQ will retain oversight authority and may initiate enforcement actions for noncompliance at any time. DEQ may provide technical assistance to a control authority in its enforcement of pretreatment requirements, as resources allow.

7.4 Control Authority

POTW as the Control Authority—The POTW as the control authority must have the legal authority, appropriate procedures, funding, adequate staff, and local limits to implement and enforce the pretreatment requirements, as outlined in 40 CFR 403.8(f). The POTW's legal authority typically will be detailed in its Sewer Use Ordinance.

DEQ as the Control Authority—DEQ may establish itself as the temporary control authority over IUs that introduce pollutants into a POTW that does not have an approved pretreatment program according to 40 CFR 403.10(e) and (f). DEQ will provide this service temporarily while the POTW develops its own pretreatment program and submits it to DEQ for review and approval. As the temporary control authority, DEQ will have legal authority and procedures to require compliance by IUs, carry out inspections, conduct surveillance and monitoring, obtain remedies for noncompliance by an IU with any pretreatment standards and requirements, and comply with confidentiality requirements. DEQ will control through its IPDES permitting program all IUs according to 40 CFR 403.8. DEQ will be responsible for enforcing the National Pretreatment Standards promulgated by EPA in accordance with CWA §307(b) and (c) that apply to IUs, including the prohibitive discharge limits established pursuant to 40 CFR 403.5.

The CRIPS system, combined with the IPDES program business practices, will perform the following:

- Distinguish IU IPDES permits discharging to POTWs.
- Associate an industrial or commercial indirect discharger with a *parent* permit, such as is required when associating IU permit information with a receiving POTW.
- Routinely map and batch data to ICIS-NPDES.

As the control authority, DEQ will consult EPA's *Control Authority Pretreatment Audit Checklist and Instructions* (EPA 1992) to track an IU's compliance status with the pretreatment program. For SIUs discharging to POTWs without approved pretreatment programs, DEQ will act as the control authority and track/review SIU semiannual reports submitted pursuant to 40 CFR 403.12(e) and (h).

7.5 Local Limits

According to 40 CFR 403.8(f)(4), the control authority will establish local limits to implement the prohibitions listed in 40 CFR 403.5(c)(1), or demonstrate that local limits are not necessary.

As the control authority, DEQ will determine if specific local limits beyond the National Pretreatment Standards will be necessary to prevent interference and pass-through of pollutants to the POTW. If local limits are necessary, DEQ will work with the affected POTW to establish local limits to be incorporated into its Sewer Use Ordinance. DEQ will include the local limits in the affected POTW IPDES permit once the limits are established and adopted by the affected POTW into its Sewer Use Ordinance. DEQ will track the IU's local limits and associated DMRs as required by RIDE in ICIS-NPDES. The mechanism for tracking these data will be either manually in ICIS-NPDES or via the batch mechanism from CRIPS discussed in section 13**,** depending on the number of IUs discharging to POTWs in the state. In addition to applying the National Pretreatment Standards and specific local limits (whichever apply and are more

restrictive), DEQ will also include the general prohibitions (40 CFR 403.5(a)(1)) and the specific prohibitions (40 CFR 403.5(b)) in the POTW's permit. As the approval authority, DEQ retains the authority to enforce local limits established by the control authority (40 CFR 403 incorporated by reference in IDAPA 58.01.25.003).

7.6 Variances

In 40 CFR 403.13(h) the information is described that must be included to request a variance from categorical pretreatment standards for fundamentally different factors. Refer to 40 CFR 403.13(h) for the specific details. The required information is summarized below:

- Name and address of requesting party
- Interest of the requester
- POTW receiving waste from the IU
- Categorical standards applicable to the IU
- List of pollutants or pollutant parameters for which an alternate discharge limit is sought
- Alternative limits proposed by the requestor for each pollutant
- Detail of the IU's water pollution control facilities
- Schematic flow chart of the IU's water system
- Statement of fact establishing why the request should be approved
- Other facts necessary to evaluate the request

An incomplete submission will be returned and the request denied if the submission is not corrected within 30 days. A complete request will be subject to a 30-day public comment review period. If it is determined that fundamentally different factors do not exist, then DEQ will deny the request. If DEQ believes that fundamentally different factors do exist, DEQ will recommend to the EPA Region 10 administrator that the request be approved. The Region 10 administrator will either deny or approve the variance request and notify DEQ, the POTW, and the IU of the determination.

7.7 Removal Credits

A POTW acting as control authority may seek authorization from DEQ and EPA to grant removal credits by submitting a list of industrial pollutants for which discharge limits will be revised to DEQ. Applications, decisions, and revisions will be made according to 40 CFR 403.7. The POTW will provide data indicating consistent pollutant removal, the proposed revised discharge limits, the amount of pollutants in the residual, and the method of residuals disposal to DEQ to determine compliance with applicable standards.

If DEQ determines that the POTW's request for a removal credit is approvable, then the findings, together with the application and supporting information, will be submitted to EPA Region 10. No request for a removal credit will be approved by DEQ if EPA objects in writing to the submission's approval during the 30-day (or extended) evaluation period provided for in 40 CFR 403.11(b)(1)(ii) and any meeting held pursuant to 40 CFR 403.11(b)(2). Revised discharge limits, if approved by DEQ and EPA, will be included in the IPDES permit upon the earliest reissuance and become enforceable permit conditions to verify consistent pollutant removal. DEQ may provide assistance to the POTW seeking removal credits. DEQ will consult

EPA's *Guidance Manual for Preparation and Review of Removal Credit Applications* (EPA 1985).

For those POTWs authorized to grant removal credits, DEQ will determine compliance or noncompliance with permit conditions with respect to those pollutants through routine records review and sampling inspection procedures for the affected facilities. DEQ will analyze conventional pollutants for the POTW's permit for those pollutants receiving removal credits. Inspections and sampling may be performed more frequently than the scheduled inspections to determine compliance status. Following authorization to give removal credits, a POTW shall continue to monitor and report on the POTW's removal capabilities. Reporting intervals may be specified by the approval authority but in no case will reporting be less than once per year. A minimum of one representative sample per month during the reporting period is required, and all sampling data must be included in the POTW's compliance report.

7.8 Categorical Determinations

Adhering to 40 CFR 403.6(a), DEQ will review requests from IUs for industrial category or subcategory determinations received within 60-calendar days after the effective date of a National Pretreatment Standard published by EPA under which an IU believes itself to be included. DEQ will prepare a written determination and justification whether the IU does or does not fall within that particular subcategory. DEQ will forward its findings along with a copy of the request and necessary supporting information to EPA Region 10. If EPA does not modify or object to DEQ's proposed findings within 60-calendar days after receiving the determination and justification, then DEQ may take action to approve or deny the request. A SIU may also submit a categorical determination request to DEQ if process modifications occur. These modifications could include removing or modifying an existing line, as well as the adding a completely new process or operation. The existing SIU must request certification before discharging from the added or changed process or operation. New sources must request certification before discharging to the POTW.

7.9 Time to Comply

Existing IUs subject to Pretreatment Standards for Existing Users will be required to comply with pretreatment standards no later than the compliance date established for the applicable categorical pretreatment standard. Dischargers subject to Pretreatment Standards for New Sources will be required to achieve compliance in the shortest amount of time not to exceed 90 days from commencement of the discharge (40 CFR 403.6(b)).

7.10 Public Participation

DEQ will make the program applications, request for removal credits, fundamentally different factors variance requests, program modifications, local limits development and modifications, and a list of IUs in significant noncompliance (SNC) available for public review and comment according to 40 CFR 403.8(f)(2)(viii).

7.11 Reporting

A POTW IPDES permit will include requirements for SIUs to submit reports to the control authority (either a POTW with an approved pretreatment program or DEQ in cases where the SIU is discharging to a POTW without an approved pretreatment program) according to 40 CFR 403.12. The types of reports include the following:

- Baseline monitoring reports
- Compliance schedule reports
- Final compliance reports
- Periodic reports on compliance (sampling and monitoring results)
- Notice of potential problems, including slug loading

In addition, a POTW with an approved pretreatment program must submit annual reports to DEQ documenting status and activities performed during the previous calendar year, as required by 40 CFR 403.12(i). The requirement to submit an annual report will be included in the POTW's IPDES permit. Refer to 40 CFR 403.12(i) for a complete detailed description of elements that must be included in the annual report. The list below is not inclusive but provides a summary of the elements to include in the annual report:

- List of IUs that discharge to the POTW
- Summary of the compliance status of the IUs during the reporting period
- Summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period
- Summary of changes to the POTW's pretreatment program that have not been previously reported to the approval authority

DEQ will develop procedures and time frames for reviewing monitoring reports, including reports submitted by POTWs and semiannual reports submitted by categorical and significant noncategorical IUs in areas without local programs. DEQ will establish and maintain a complete inventory of POTWs with a pretreatment program (Appendix E).

7.12 Reporting to EPA

DEQ shall provide EPA with the following information:

1. An annual report on program implementation received from a POTW with an approved pretreatment program (40 CFR 403.12(i))

2. A pretreatment facility inspection and sampling plan including POTW audit/pretreatment compliance inspection and IU inspections

3. A noncompliance report for all SIUs to include the following:
   - Facility name
   - Location and permit number
   - Inspection and date history for each noncompliance
   - Description of DEQ actions and dates to obtain compliance
   - Current compliance status including date of resolution or date returned to compliance

- Mitigating circumstances

DEQ will use EPA-created checklists to implement the pretreatment program until DEQ creates its own checklists. EPA guidance documents DEQ will adopt to implement the pretreatment program include the following:

- *Local Limits Development Guidance* (EPA 2004a)
- *FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation Requirements* (EPA 1989c)
- *Industrial User Inspection and Sampling Manual for POTWs* (EPA 1994d)
- *Industrial User Permitting Guidance Manual* (EPA 1989d)
- *Pretreatment Compliance Monitoring and Enforcement Guidance* (EPA 1986a)

DEQ will track receipt of required reports, as well as noncompliance, inspection results, and compliance dates in the CRIPS database.

7.13 Existing Pretreatment Programs in Idaho

A review of all currently effective and administratively continued permits in Idaho (issued by EPA) found 62 permits that had sections referring to the control of undesirable pollutants and IUs. Of those 62, 16 permits had a specific section outlining the various requirements of a pretreatment program. Another five permits had a section on industrial waste management, and one had a section on requirements for oversight of IUs. Table 11 provides a list of 21 permits that have pretreatment components but may not have a complete and approved pretreatment program.

Table 11. Permits in effect with sections regarding pretreatment requirements.

NPDES ID	Permit Name	Permit Status Code[a]	Permit Contains Pretreatment Component
ID0021504	CALDWELL, CITY OF	ADC	Section I.D Pretreatment
ID0022063	NAMPA, CITY OF	ADC	Section I.D Pretreatment
ID0020192	MERIDIAN, CITY OF	ADC	Section I.F Pretreatment
ID0020095	BURLEY, CITY OF	ADC	Section II Pretreatment Requirements
ID0023817	REXBURG, CITY OF	ADC	Section II Pretreatment Requirements
ID0020842	SANDPOINT, CITY OF	ADC	Section II Pretreatment Requirements
ID0020044	BLACKFOOT, CITY OF	EFF	Section II.A Pretreatment Requirements
ID0020443	BOISE, CITY OF	EFF	Section II.A Pretreatment Requirements
ID0021261	IDAHO FALLS, CITY OF	EFF	Section II.A Pretreatment Requirements
ID0021784	POCATELLO, CITY OF	EFF	Section II.A Pretreatment Requirements
ID0023981	BOISE, CITY OF	EFF	Section II.A Pretreatment Requirements
ID0021270	TWIN FALLS, CITY OF	ADC	Section II.A Pretreatment Requirements
ID0000663	BURLEY, CITY OF	ADC	Section II.C Pretreatment Requirements
ID0022055	LEWISTON, CITY OF	EFF	Section II.C Pretreatment Requirements
ID0022853	COEUR D ALENE, CITY OF	EFF	Section II.E Pretreatment Requirements
ID0025852	POST FALLS, CITY OF	EFF	Section II.E Pretreatment Requirements
ID0028355	KUNA, CITY OF	ADC	Section II.C Requirements for Oversight of Industrial Users
ID0023825	GRACE, CITY OF	EFF	Section II.C Industrial Waste Management
ID0020672	PAYETTE, CITY OF	EFF	Section II.D Industrial Waste Management
ID0023591	STAR WATER AND SEWER DISTRICT	EFF	Section II.D Industrial Waste Management
ID0020176	ABERDEEN, CITY OF	EFF	Section II.D Industrial Waste Management

a. ADC = administratively continued; EFF = effective

8 Sewage Sludge (Biosolids) Program (40 CFR 503)

DEQ is seeking authorization for the biosolids component in year 4 of the phased transfer (Table 1). In the interim between receiving approval for POTWs (year 1) and biosolids (year 4), DEQ will include language in the IPDES permit fact sheet informing the permittee of the following:

- Compliance with the federal biosolids regulations is required and
- Submit Form 2S directly to EPA for a biosolids handling and management permit.

Upon receiving approval for the biosolids component, DEQ will follow the procedures outlined in this section to manage biosolids in Idaho.

8.1 General

DEQ's Sewage Sludge (Biosolids) Program will address the disposal of sewage sludge or the beneficial reuse of biosolids resulting from the treatment of sewage sludge as specified in CWA

§405 (40 CFR 503, IDAPA 58.01.25, and IDAPA 58.01.16.650). The program will regulate sewage sludge processing, disposal, or use through the following:

- Incorporating sewage sludge conditions in permits for new or currently permitted POTWs and treatment works treating domestic sewage
- Issuing sludge only permits to nondischarging treatment works treating domestic sewage consistent with CWA §405(f)(2)

Section 12.7 provides information on Sewage Sludge (Biosolids) Program enforcement activities.

8.2 Definitions

The term sewage sludge encompasses any solid, semisolid, or liquid residue removed during the treatment of domestic sewage in a treatment work. Sewage sludge includes, but is not limited to, domestic septage, scum or solids removed during primary, secondary, or advanced wastewater treatment, and a material derived from sewage sludge. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge. General terms used when addressing sewage sludge processing, handling, sampling, monitoring, reporting, transporting, and disposal or beneficial use are defined in 40 CFR 503.9, incorporated by reference in Idaho's Rules Regulating the Idaho Pollutant Discharge Elimination System Program (IDAPA 58.01.25.003.02.z).

8.3 Disposal of Sewage Sludge into Municipal Solid Waste Landfills

The solid waste program within DEQ's Waste Management and Remediation division has been and will continue to review and approve solid waste facility plans for solid waste landfills that accept sludge from a wastewater treatment plant according to Idaho Code §39-7401 et seq. and the Solid Waste Management Rules (IDAPA 58.01.06).

8.4 Disposal of Biosolids in a Surface Disposal Site

A person who prepares or places biosolids in a sewage sludge unit or who owns or operates a biosolids surface disposal site shall comply with 40 CFR 503, Subpart C and meet pathogen and vector attraction reduction requirements. DEQ will include 40 CFR 503, Subpart C requirements within an IPDES permit for any individual who prepares sewage sludge for disposal in surface disposal sites or who owns or operates a surface disposal site.

8.5 Incineration of Biosolids

Idaho does not currently have any facilities that incinerate biosolids. A person who fires sewage sludge in a sewage sludge incinerator shall comply with 40 CFR 503, Subpart E and meet requirements for exit gas from a sewage sludge incinerator stack. If a facility were to apply for a biosolids incineration permit at DEQ, they would be required to apply for a Title V Air Operating Permit from the Air Program. DEQ would also need to develop a 111(d) state air plan should a facility apply for and be approved to incinerate biosolids in Idaho.

DEQ will include 40 CFR 503, Subpart E requirements within an IPDES permit for any individual who prepares sewage sludge for firing in a sewage sludge incinerator.

8.6 Land Application of Septage (40 CFR 503.17(b)) and Sludge

An approved biosolids management plan is required before land application of biosolids except for biosolids application that meets Class A Exceptional Quality requirements. A biosolids management plan is equivalent to a sludge disposal plan referenced in IDAPA 58.01.16.650. These plans will be evaluated by DEQ for their protection of water quality and public health. At a minimum, a management plan must provide the following:

- Only stabilized sludge will be used.
- Criteria for selecting a site for disposal include the following:
    - Soil description
    - Geological features
    - Ground water characteristics
    - Surrounding land use
    - Topography
    - Climate
- Description of the land application process
- Statement detailing procedures to prevent application that could result in a reduction of soil productivity or in the percolation of excess nutrients
- Identification of potential adverse health effects in regard to the sludge and its proposed use
- Delineation of methods or procedures to be used to alleviate or eliminate adverse health effects

DEQ has published a septage land application guidance for the development of a management plan. This document may be found at *http://www.deq.idaho.gov/water-quality/wastewater/septic-systems/septic-tank-pumping-and-septage-disposal/* and guidance specific URL at *http://www.deq.idaho.gov/media/60178675/guidance-for-land-application-domestic-septage.pdf*

8.7 Permitting for Sewage Sludge Facilities

Application—DEQ's sewage sludge and biosolids permitting program applies to any person who generates, prepares sewage sludge, applies sewage sludge to the land, or fires sewage sludge in an incinerator and to the owner or operator of a surface disposal site. The operator will submit the online Sewage Sludge electronic application, based on EPA Form 2S, to DEQ. The permit applies to the following:

- Person(s) referenced above
- Sewage sludge applied to the land or placed on a surface site
- Land where sewage sludge is applied or to a surface disposal site
- Sewage sludge fired in a sewage sludge incinerator and to the exit gas from a sewage sludge incinerator stack

DEQ will perform an application completeness review and make a determination on application completeness in a timely manner as stated in section 6.2.1. The submitted information must meet the requirements specified in IDAPA 58.01.25.105.17, including the sludge management (disposal) plan required in IDAPA 58.01.16.650. DEQ will contact applicants that submit applications found to be deficient of required information. The missing itemized information will be requested from the applicant. The application review will be suspended pending submittal of the required information. If an applicant fails or refuses to correct application deficiencies, the application will be denied and no permit will be drafted.

All data required to be submitted in support of permit renewal will be required to be obtained from qualifying samples that are collected and analyzed according to analytical methods approved under SW-846 (EPA 1993e), unless an alternative has been specified in an existing sewage sludge permit. New applications must identify the sewage sludge processes that the facility will employ for pathogen and vector attraction reduction as specified in 40 CFR 503.32 and 503.33.

Modification—DEQ may modify an existing permit to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.

8.8 Record Retention

As described in 40 CFR 503.17(b) and incorporated by reference in IDAPA 58.01.25.003, persons who apply domestic septage to an agricultural land, forest, or reclamation site shall develop and retain for no less than 5 years, records detailing the following information:

- Location of each site on which domestic septage is applied.
- Number of acres in each site on which domestic septage is applied.
- Date domestic septage is applied to each site.
- Nitrogen requirement for the crop or vegetation grown on each site during a 365-day period.
- Rate, in gallons per acre per 365-day period, at which domestic septage is applied to each site.
- Description of how the pathogen requirements in 40 CFR 503.32(c)(1) or (c)(2) are met.
- Description of how the vector attraction reduction requirements in 40 CFR 503.33(b)(9), (b)(10), or (b)(12) are met.
- Certification statement below:

  I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements (insert either §503.32(c)(1) or §503.32(c)(2)) and the vector attraction reduction requirement in [insert §503.33(b)(9), 503.33(b)(10), or §503.33(b)(12)] was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.

8.9 Compliance Monitoring for the Final Use or Disposal of Biosolids

As detailed in DEQ's Compliance Monitoring Strategy (Appendix G) facilities engaged in a regulated sludge or biosolids activity will be inspected and evaluated on a regular basis to ensure that the facility is in compliance with all applicable regulatory provisions. Refer to Appendix G Section 4.4 Sludge and Biosolids Metrics for more information regarding inspection frequency for biosolids facilities. During compliance monitoring inspections, DEQ will emphasize verification of the accuracy of facility records and reports and application and storage techniques. The purpose will be to determine compliance with, or violation of monitoring requirements, treatment requirements, management practices, site restrictions, case-by-case requirements or recordkeeping requirements. EPA may accompany DEQ staff on inspections in accordance with the MOA.

DEQ will follow inspection procedures in a manner consistent with Section 11 of this document and the Compliance Monitoring Strategy (Appendix G Section 6 Sewage Sludge/Biosolids Inspection).

Additionally, all Class 1 sludge management facilities, POTWs (defined in 40 CFR 501.2) with a design flow equal to or greater than 1,000,000 gallons per day, and POTWs that serve 10,000 people or more shall be required to submit annual reports by February 19 of each year as required by §503.18, §503.28, and §503.48. Those annual reports will be reviewed by DEQ for compliance with the applicable requirements for each permitted facility. Facilities not required to submit annual reports will have their compliance records reviewed during their inspection or more frequently through an audit or complaint investigation when deemed necessary by DEQ.

Noncompliance with the requirements of 40 CFR 503.2-503.48 by a sewage sludge facility (generator or preparer) shall be handled by DEQ as described in Section 12.7. Determination on the appropriate enforcement action shall be made by DEQ as described in Section 12.1 through 12.3, the *IPDES Enforcement Response Guide* (Appendix I), and DEQ's IPDES *Enforcement Procedures Manual* (DEQ 2017, Appendix H).

8.10 Reporting to EPA

DEQ shall provide EPA with the following information:

1. An annual report summarizing any incidences of noncompliance during the calendar year. This report will include the following:
    - Facility name
    - Location and permit number
    - Type of noncompliance including brief description of event and date
    - Inspection and date history for each noncompliance
    - Description of DEQ actions and dates to obtain compliance
    - Current compliance status including date of resolution or date returned to compliance
    - Mitigating circumstances

2. Information to update the inventory of all sewage sludge generators and disposal facilities, including the following:

- Facility name
- Location and permit number
- Sludge management practices used
- Sludge production volume

EPA guidance documents DEQ will adopt to implement the Biosolids Program include the following:

- *A Plain English Guide to the EPA Part 503 Biosolids Rule* (EPA 1994e)
- *Biosolids Generation, Use, and Disposal in the United States* (EPA 1999b)
- *A Guide to the Biosolids Risk Assessments for the EPA Part 503 Rule* (EPA 1995a)
- *POTW Sludge Sampling and Analysis Guidance Document* (EPA 1989e)
- *Guide to Field Storage of Biosolids* (EPA 2000a)

DEQ will track receipt of required reports, as well as noncompliance, inspection results, and compliance dates in the CRIPS database.

8.11 Existing Septage and Sludge Facilities in Idaho

DEQ estimates that there are approximately 222 generators of sewage sludge in Idaho (Tressa Nicholas, personal communication, 2016). Of these sewage sludge generators, 118 facilities operate under NPDES permits to discharge to waters of the United States. Eighty additional facilities operate only under active DEQ reuse permits and do not discharge to waters of the United States (25 facilities with both NPDES and DEQ reuse permits). Twenty-four facilities generate sewage sludge but do not have NPDES or DEQ reuse permits (e.g., generate sewage sludge and send to landfills or other treatment and disposal options). Finally, in addition to the generators, three facilities process but do not generate sewage sludge. Table 12 presents the breakdown of sewage sludge generators and processors.

Table 12. Summary of Idaho's municipal sewage sludge-generating facilities.

Category	Total Numbers
NPDES permits	118
Active reuse permits	105
Both	25
Other	24
Total generators	222
Processors only	3

9 Storm water Program

CWA authorizes states, delegated authority by EPA, to regulate discharges from MS4s, construction activities, industrial activities, and those designated by EPA or the state due to water quality impacts. This section describes the IPDES Storm Water Program required under CWA §402(p), as regulated in 40 CFR 122.26 and 40 CFR 122.30 through 40 CFR 122.37 and adopted by reference in IDAPA 58.01.25.003.

Adhering to the transfer schedule, DEQ will assume authority for permitting and compliance of storm water discharges within 4 years from program approval. DEQ will evaluate the existing permits' effectiveness and applicability to Idaho conditions over the life of each permit for the different types of storm water discharges.

9.1 Permit Categories and Coverage

Three categories of storm water discharges are covered in the IPDES Program: MS4s, industrial activities, and construction activities. The EPA program currently administers 16 individual permits and 2 general permits covering storm water discharges in Idaho. Table 13 provides a summary of the storm water individual permits, general permits, and general permits that authorize storm water as one of several discharges.

DEQ will require permit coverage of storm water discharges according to the applicable federal requirements but will not expand required coverage under the Storm Water Program beyond federal regulatory requirements. DEQ will apply the regulatory criteria in IDAPA 58.01.25.130 to determine when a general permit versus an individual permit should be issued.

Table 13. Storm water permits in Idaho.

Permit Name or Number	Type of Permit	Effective Date	Expiration Date	Estimated Number of NOIs
Construction	General	4/9/2012	2/16/2017	1326
Multisector General Permit	General	8/12/2015	6/4/2020	278
Large/Medium MS4[a]				
IDS027561	Individual	2/1/2013	1/30/2015	
Small MS4*				
IDS028185	Individual	10/15/2009	10/14/2014	
IDS028118	Individual	10/15/2009	10/14/2014	
IDS028134	Individual	10/15/2009	10/14/2014	
IDS028215	Individual	1/1/2009	12/31/2014	
IDS028070	Individual	05/01/2007	04/30/2012	
IDS028223	Individual	01/01/2009	12/31/2014	
IDS028177	Individual	10/15/2009	10/14/2014	
IDS028207	Individual	01/01/2009	12/31/2014	
IDS028100	Individual	10/15/2009	10/14/2014	
IDS028142	Individual	10/15/2009	10/14/2014	
IDS028126	Individual	10/15/2009	10/14/2014	
IDS028151	Individual	10/15/2009	10/14/2014	
IDS028053	Individual	12/15/2006	12/14/2011	
IDS028231	Individual	1/1/2009	12/31/2014	
IDS028193	Individual	1/1/2009	12/31/2014	

a. EPA is currently pursuing a general permit for all MS4s in Idaho pursuant to changes in the MS4 remand rule.

9.2 Construction

Storm water discharges from construction activities can significantly impact water quality. As storm water flows over a construction site, it can pick up pollutants like sediment, debris, and chemicals and transport them to nearby storm sewer systems or directly into rivers, lakes, or coastal waters.

The IPDES storm water program requires permits for discharges from construction activities that disturb one or more acres, and discharges from smaller sites that are part of a larger common plan of development or sale. Construction storm water permits include effluent limits for erosion and sediment control, pollution prevention, and site stabilization from the Construction and Development Effluent Guidelines and Standards (40 CFR 450).

9.2.1 Coverage under a General Permit

The existing CGP regulates industrial activity involving large construction activity (disturbing 5 or more acres) under 40 CFR 122.26 (b)(14)(x) and small construction activity (disturbing 1 to 5 acres) under 40 CFR 122.26 (b)(15). It is likely that EPA will be issuing the next CGP in 2017. This general permit would then likely be effective until 2022, which is the year after the IPDES Program intends to phase in storm water permitting. When authority of the Storm Water Program is transferred to DEQ, DEQ will reissue the general permit to include Idaho specific requirements and conditions upon expiration of the effective CGP.

DEQ will follow the procedures and process for drafting and issuing a general permit found in IDAPA 58.01.25.130 and detailed in section 6.

An owner or operator will need CGP coverage for the following:

- Project will disturb 1 or more acres of land
- Project is less than 1 acre of land *and* is part of a common plan of development or sale that will ultimately disturb 1 or more acres of land
- Operator is responsible either for
  - Construction plans and specifications, including modifications to them (e.g., you are the owner or developer)
  - Daily project activities necessary to ensure compliance with a storm water pollution prevention plan (SWPPP) (e.g., you are the general contractor)

General permits for construction storm water will incorporate BMPs, as authorized under CWA §402(p) or when the practices are reasonably necessary to achieve effluent limits and water quality standards. Additionally, WQBELs may be evaluated and reasonable potential analyses may be conducted if sufficient data become available and DEQ perceives a need for the additional analyses before issuing the general permit.

9.2.2 Review and Approval of NOIs

DEQ will provide an electronic NOI application available through DEQ's website (section 13.1.1). The website will allow permittees to submit their electronic NOIs and provide electronic copies of all required documents such as the SWPPP. DEQ will review submitted NOIs for

completeness and eligibility under the CGP and provide written notice via e-mail to the permittee regarding the approval or denial of coverage under the CGP.

If requested by the applicant, DEQ may review a SWPPP for completeness. DEQ will notify a submitter by telephone or e-mail if a SWPPP is determined to be incomplete or if additional information is needed. DEQ will continue collaboration of SWPPP review with the City of Boise and will consider expanding this collaboration to other local governments (township or city). Before expanding this collaboration, DEQ will develop criteria for local governments to adhere to and provide oversight for the local program.

SWPPP review will determine the accuracy of and compliance with required elements of the SWPPP such as project and activity description, site map, adequate controls to reduce pollutants, non-storm water discharge management, and project eligibility related to TMDLs, routine inspections, and certifying signatures.

9.2.3 Small Construction Activity Waivers

DEQ may allow operators of small construction sites (i.e., sites that disturb 5 acres or less) to be waived from the requirement to obtain IPDES permit coverage for their storm water discharges in three limited circumstances:

1. If the small construction site has a rainfall erosivity factor (R-factor) of less than five during the period of construction activity. This waiver depends on the time period during which a construction activity takes place, how long it lasts, and the expected rainfall amount and intensity during that time.
   DEQ will accept applications for a low erosivity waiver via an online interface. DEQ will use EPA's Online Rainfall Erosivity Factor Calculator or agency equivalent to calculate the R-factor when reviewing applications for a low erosivity waiver.
2. *Approved TMDLs*—If it is determined that storm water controls on the small construction site are not necessary based on an EPA-approved TMDL that addresses the pollutants of concern for construction activities (e.g., sediment).
3. For discharges to nonimpaired waters, if an analysis equivalent to a TMDL is developed that determines allocations for the pollutants of concern or that such allocations are not needed to protect water quality. The equivalent analysis must be based on existing in-stream concentrations, expected growth in pollutant concentrations from all sources, and a margin of safety.

9.2.4 Notice of Termination

To terminate permit coverage for a general or individual permit, the permittee must submit a notice of termination (NOT) to DEQ. NOTs may be submitted via DEQ's online reporting system as described in section 13.1. NOTs will be reviewed by DEQ staff, and written notification may be provided to the applicant once DEQ has determined that conditions identified in the permit have been met.

9.2.5 Compliance Monitoring and Enforcement

Compliance monitoring, or inspections, will take place for construction storm water activities according to the IPDES compliance monitoring strategy (CMS) and the annual plan of inspections (API) negotiated between EPA and DEQ and outlined in the PPA.

Corrective actions for compliance with the effective CGP include the following:

- Repairing, modifying, or replacing any storm water control used at the site
- Cleaning up and properly disposing of spills, releases, or other deposits
- Remedying a permit violation

Corrective actions taken by a permittee will be tracked using a corrective action report (CAR). DEQ will not require permittees to submit CARs on a routine basis but will expect the permittee to provide all CARs when requested by the department.

DEQ will complete the following:

- Review SWPPPs and annual reports connected with that plan.
- Review changes to the SWPPPs.
- Review other records (e.g., monitoring data).
- Review and, as appropriate, approve specific submittals (e.g., LEWs).
- Coordinate on administrative and technical issues.

9.3 Industrial

Materials and equipment handling and storage activities at industrial facilities are often exposed to the weather. Runoff from rain or snow fall that comes in contact with these activities may pick up pollutants and transport them either directly or indirectly to a surface water body.

Industrial activities subgrouped under 40 CFR 122.26 (b)(14), excluding construction, will be regulated under the existing multisector general permit (MSGP), unless due to ineligibility, an individual or alternate general permit is required. State use of the MSGP will allow all regulated industries to be covered under a general permit for discharges of storm water runoff. DEQ will evaluate compliance and effectiveness of this permit, along with experience of other states' NPDES programs (e.g., Oregon and Washington) to determine whether general permits for one or more specific industrial sectors is appropriate. When authority for the Storm Water Program is transferred to DEQ and upon expiration of the MSGP, DEQ will reissue the general permit to include Idaho-specific requirements and conditions.

9.3.1 Coverage under a General Permit

For those facilities covered under the current and effective EPA MSGP, coverage will continue until DEQ issues a new general permit (IDAPA 58.01.25.101.01.e). Facilities with effective coverage under the general permit will not be required to resubmit an NOI. Instead, DEQ will transmit a cover letter to all permit holders to inform them that DEQ has assumed responsibility for permitting, compliance, and enforcement authority over the general permits.

For facilities seeking coverage under the general permit for the first time, or seeking renewal of coverage under a newly issued general permit, the NOI for coverage procedures outlined in section 6.5.4 will be applied. NOIs must be submitted as outlined in section 13.1.1.

In issuing a general permit for industrial storm water discharges, DEQ will follow the process for issuing coverage under the general permit presented in section 6.5.4. Facilities needing coverage under the general permit will be required to submit an NOI via DEQ's electronic application system outlined in section 13.1.1.

DEQ will continue the requirements for submitting additional SWPPP information under the MSGP. During an inspection, DEQ will review SWPPPs for content and applicability. If a SWPPP is deemed to be incomplete or insufficient, DEQ will notify the discharger in writing and identify the specific items that need to be addressed before authorizing coverage under the general permit.

9.3.2 Coverage under an Individual Permit

If a facility does not qualify, or requests not to have, coverage under the general permit, DEQ will require an application for an individual permit as outlined in section 6.3. The application for an individual permit will require information identified in IDAPA 58.01.25.105.19, which is consistent with 40 CFR 122.26.

DEQ will require submittal of a SWPPP as part of the application for an individual industrial storm water permit.

9.3.3 Certificate of No Exposure

The intent of the no exposure provision is to provide facilities, with industrial materials and activities that are entirely sheltered from storm water, a simplified way of complying with the storm water permitting provisions. This provision includes facilities located within a larger office building, or where the only items exposed to precipitation are roofs, parking lots, vegetated areas, and other nonindustrial areas or activities.

An industrial facility that protects its industrial materials and activities using a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff may be eligible for an exemption from the MSGP requirements (EPA 2000b). This *certificate of no exposure* applies to 10 of the 11 regulated categories of industrial storm water discharges. It does not apply to category 10, discharges from construction sites that disturb 5 or more acres. This category is permitted separately under the construction storm water general permit.

DEQ will require a facility seeking this exemption to submit the No Exposure Certification form via DEQ's online application website (*http://www.deq.idaho.gov/water-quality/ipdes/waivers/NOEC*). This form is equivalent to EPA's Form 3510-11.

9.3.4 Notice of Termination

To terminate permit coverage for a general or individual permit, the permittee must submit a notice of termination (NOT) to DEQ. NOTs may be submitted via DEQ's online reporting system as described in section 13.1.1. NOTs will be reviewed by DEQ staff, and written

notification will be provided to the applicant once DEQ has determined that conditions identified in the permit have been met.

9.3.5 Compliance Monitoring

DEQ will require facilities covered under either a general permit or an individual permit to submit DMRs using EPA's NetDMR application (section 13.3) according to the frequency of submittal identified in the permit. DEQ will also perform compliance inspections according to the frequency and type identified in the current version of the IPDES CMS (Appendix G).

DEQ will complete the following:

- Review SWPPPs and annual reports connected with that plan.
- Review changes to the SWPPPs.
- Review other records (e.g., monitoring data).
- Review and, as appropriate, approve specific submittals (e.g., QAPPs).
- Coordinate on administrative and technical issues.

Storm Water Program compliance inspections and enforcement are discussed in Section 11 "Compliance Evaluation" and Section 12 "Enforcement."

9.4 Municipal

MS4s are regulated as either large/medium (Phase I) or small (Phase II) systems. There are currently 16 individual permits for MS4 coverage: one for large/medium systems and 15 for small systems. DEQ will evaluate other small MS4s for designation as regulated MS4s based on the *IPDES Designation Criteria and Selection Process for Small Municipal Separate Storm Sewer Systems* (DEQ 2016c), as well as criteria and models developed by other states and EPA Region 10. EPA is issuing a general permit in 2016 to cover both Phase I and Phase II MS4 discharges. DEQ will likely continue with the general permit for MS4 discharges upon approval of that component of the IPDES Program.

9.4.1 Coverage under an Individual Permit

All MS4 permittees with effective permits must submit a complete application for renewal of permit coverage at least 180 days before the permit's expiration date. When DEQ determines that a complete application has been submitted, a permittee's coverage under an expired permit and the conditions of that permit will continue until the effective date of a reissued permit. According to EPA's *Interpretive Policy Memorandum on Reapplication Requirements for MS4s* (EPA 1996b), requirements to demonstrate adequate legal authority, perform source identification, characterize data, and develop a storm water management program will not apply to the reapplication of Phase I MS4s (large and medium).

The basic required reapplication information for Phase I MS4s (large and medium) will include the following:

- Name and mailing address of the permittee operating the MS4
- Names and titles of the primary administrative and technical contacts for the municipal permittee

- Identification of any proposed changes or improvements to the storm water management program and monitoring activities for the upcoming 5 years

The applicant can use the fourth-year annual report information along with submittal of the basic information as the permit reapplication.

As the permitting authority for the regulated small MS4s, DEQ will comply with the requirements of 40 CFR 123.35 to ensure consistent implementation of the MS4 program.

DEQ will complete the following:

- Review storm water management programs (SWMP) plans and associated annual reports connected with that plan.
- Review changes to the SWMPs.
- Review other records (e.g., monitoring data).
- Review and, as appropriate, approve specific submittals (e.g., QAPPs).
- Coordinate on administrative and technical issues (e.g., Adopt-a-Stream Program).

DEQ may refer to the EPA guidance document: *Interpretive Policy Memorandum on Reapplication Requirements for Municipal Separate Storm Sewer Systems* (EPA 1996b).

9.4.2 Coverage under a General Permit

In issuing a general permit for municipal storm water discharges, DEQ will follow the process presented in section 6.5. Facilities needing coverage under the general permit will be required to submit an NOI via DEQ's electronic application system (CRIPS) as outlined in section 13.1.

For those facilities covered under a current and effective EPA MS4 general permit, coverage will continue until DEQ issues a new general permit (IDAPA 58.01.25.101.01.e). Facilities with effective coverage under the general permit will not be required to resubmit an NOI. Instead, DEQ will transmit a cover letter to all permit holders to inform them that DEQ has assumed responsibility for permitting, compliance, and enforcement authority over the general permits.

For facilities seeking coverage under the general permit for the first time, or seeking renewal of coverage under a newly issued general permit, the NOI for coverage procedures outlined in section 6.5 will be applied. NOIs must be submitted as outlined in section 13.1.1.

DEQ will continue the requirements for submittal of SWMPs under a MS4 general permit. DEQ will review SWMPs for content and applicability. If a SWMP is deemed to be incomplete or insufficient, DEQ will notify the applicant in writing identifying the specific items that need to be addressed before authorization for coverage under the general permit can be issued.

9.5 Public Outreach

At the outset of program approval, DEQ will develop a communications plan targeting operators of activities that are currently regulated for storm water discharges to provide information on the change in permitting authority. Outreach to the planning departments of local governments will also occur to provide information on the Storm Water Program requirements. DEQ has convened

an IPDES permittee work group and will continue to use this forum to inform regulated industries and local governments.

DEQ intends to make compliance requirements understandable to the regulated dischargers (MS4 communities, industrial facility operators, and construction contractors). DEQ will provide training on permit requirements and procedures for storm water permitting staff responding to storm water inquiries. This training will be reviewed and upgraded as necessary to keep abreast of emerging issues. Training that staff complete will be identified in DEQ's capacity building summaries (Appendix B). To provide compliance outreach, DEQ will complete the following:

- Maintain a web page that provides the following:
  - Information about specific permit requirements and procedures to obtain coverage.
  - Links to other resources.
  - Web access to postings that will include the names of persons authorized to discharge under the permit and the locations the discharge is authorized of those with current CGP and MSGP NOIs.
- Answer telephone and e-mail inquiries in a complete and consistent manner.
- Provide outreach to interested groups, particularly local government planning and permitting offices, construction contractors, engineers, and designers.
- Make training materials available online.
- Develop technical guidance for BMPs, as required, for Idaho-specific conditions. Some of the guidance will be based on the outcome of several current grant-funded studies of BMPs.

10 Concentrated Animal Feeding Operations

Concentrated Animal Feeding Operations are operations confining animals for more than 45 days during a growing season, in an area that does not produce vegetation, and meeting certain size thresholds. The categorization of CAFOs affect whether the facility is subject to regulation under the Clean Water Act. CAFOs are only made subject to regulations under the Clean Water Act if there is a discharge into a water of the U.S.

DEQ's IPDES program authorities overlap with Idaho State Department of Agriculture's (ISDA) existing state CAFO programs. For example, a discharge of wastewater or dairy byproducts to state surface water may be a violation of ISDA's program requirements and the IPDES program requirements. This overlap is recognized and dealt with by the state legislature in several ways. First, the Idaho legislature has expressly recognized that nothing in the ISDA authorities "shall affect the authority of the department of environmental quality to administer and enforce an Idaho NPDES program for… [CAFOs—either beef cattle feeding operations or dairy farms], including without limitation, the authority to issue permits, access records, conduct inspections and take enforcement actions, as set forth in Chapter 1, Title 39, Idaho code, and the rules adopted pursuant thereto. The provisions of this Chapter [ISDA authorities] do not alter the requirements, liabilities and authorities with respect to or established by an Idaho NPDES program." Idaho Code section 22-4903(2); Idaho Code section 37-603 (3) (bracketed language added).

Second, the Idaho legislature has provided that the ISDA programs should be consistent and coordinated with the DEQ IPDES program authorities and that the two agencies shall, as appropriate, establish an agreement to implement the IPDES program with respect to CAFOs in Idaho. Idaho Code section 22-4903(3); Idaho Code section 37-603(4); Idaho Code section 39-175(C)(5). Pursuant to this authority, DEQ and ISDA have entered into a MOU that recognizes DEQ as the sole authority with respect to implementing the IPDES program, and under which ISDA agrees to inspect CAFOs on behalf of DEQ. The MOU also provides that DEQ retains all enforcement authority for any violations of the IPDES program requirements and that the agencies shall coordinate and consult with respect to enforcement for actions that violate both IPDES program requirements and the requirements of the ISDA programs.

10.1 Multiple Jurisdictions

As outlined in sections 10.1.1–10.1.5, CAFOs are subject to regulations from different state and local agencies although the Idaho State Department of Agriculture (ISDA) is the primary state agency interacting with beef and dairy cattle operations in Idaho. ISDA has the authority under the Beef Cattle (Idaho Code §22-49) and Dairy (Idaho Code §37-6) Environmental Control Acts to regulate CAFO operations; however, both acts specifically provide that DEQ has the sole authority to regulate CAFOs to the extent required under the IPDES Program. This authority includes, without limitation, issuing permits, accessing records, conducting inspections, and taking enforcement actions.

DEQ rules regarding CAFOs are incorporated in IDAPA 58.01.25.003 from the Code of Federal Regulations, and are also included in IDAPA 58.01.25.301.05. As the regulatory authority, DEQ will be issuing either an IPDES individual CAFO permit or authorizing coverage under an IPDES general CAFO permit.

Idaho Code directs ISDA and DEQ to coordinate efforts and authorizes a memorandum of understanding (MOU) between ISDA and DEQ to this end (Appendix F). Therefore, DEQ will implement the IPDES Program for CAFOs in partnership with ISDA, including determining whether facilities are required to obtain permits, issuing and enforcing permit conditions, inspecting facilities, and when necessary taking action to ensure compliance with permit conditions. DEQ will use ISDA's experience and knowledge in reviewing and approving nutrient management plans and inspecting both permitted and unpermitted CAFO facilities. As noted, DEQ will have the responsibility and authority to pursue enforcement actions regarding violation of permits and for unauthorized or illegal discharges from CAFOs.

10.1.1 Siting CAFOs in Idaho

Idaho counties hold the authority to regulate siting of CAFOs in the state. County ordinances regulate CAFO zoning and contain environmental protection clauses and rules about waste removal as well.

Dairies must apply for county CAFO permits before they can open. Planning and zoning boards or county commissioners approve or deny the applications. The opportunity for public input before CAFOs are sited is required by Idaho statute. At a minimum, the board of county commissioners must hold at least one public hearing at which the public may comment on a

proposed site. Only members of the public with their primary residence within a 1-mile radius of a proposed site may provide comment at the hearing. However, this distance may be increased by the board. The board must consider public comments when deciding whether to approve or reject a proposed site.

The state plays an advisory role in the siting of CAFOs. Representatives of DEQ, ISDA, and Idaho Department of Water Resources serve on Idaho's CAFO Site Advisory Team. The team reviews sites proposed for CAFOs, determines environmental risks, and submits site suitability determinations to counties.

10.1.2 Beef Cattle Operations

The Beef Cattle Environmental Control Act (Idaho Code §22-4901 et seq.) authorizes ISDA to regulate beef cattle animal feeding operations to protect state natural resources, including surface and ground water. It also provides that the authority of DEQ to administer and enforce IPDES rules regarding discharge of pollutants is not altered by the provisions of Idaho Code Title 22 Chapter 49.

Idaho's Rules Governing Beef Cattle Animal Feeding Operations (IDAPA 02.04.15) govern the design, function, and management practices of waste systems on beef cattle animal feeding operations. The rules also prohibit any unauthorized discharge of manure or process wastewater from a beef cattle feeding operation. ISDA's responsibilities include conducting inspections, ensuring compliance with BMPs designed to protect natural resources, providing technical assistance to beef cattle operations, conducting enforcement activities, and responding to complaints from the public.

DEQ and ISDA will work cooperatively to ensure that beef CAFOs comply with the appropriate state and federal regulations. In general, IDAPA 02.04.15 apply to those CAFOs that do not discharge pollutants to waters of the U.S. in Idaho, while IDAPA 58.01.25 apply to CAFOs that do discharge pollutants to waters of the U.S.

10.1.3 Dairies

Similar to the Beef Cattle Environmental Control Act, the Dairy Environmental Control Act (Idaho Code §37-6101 et seq.) authorizes ISDA to regulate dairies to protect state natural resources. It also provides that the authority of DEQ to administer and enforce IPDES rules regarding discharge of pollutants is not altered by the provisions of Idaho Code Title 37 Chapter 6. The DECA requires dairies to have an approved dairy environmental management plan in place.

IDAPA 02.04.14 rules governing dairy environmental management systems include criteria for managing the areas and structures within a dairy farm where dairy byproducts are collected, stored or treated in conformance with engineering standards and specifications published by the USDA Natural Resources Conservation Service or by the ASABE, or other equally protective criteria approved by the director. These areas may include corrals, feeding areas, collection systems, conveyance systems, storage ponds, treatment lagoons, evaporative ponds and compost areas, but do not include pastures as defined in these rules. The dairy environmental management plan includes a dairy nutrient management plan which must be prepared in conformance with the

nutrient management standard by a certified planner and approved. The nutrient management standard are criteria for managing the land application of nutrients and soil amendments published in the USDA NRCS conservation practice standard nutrient management code 590 or other equally protective criteria approved by the Director of ISDA.

DEQ and ISDA will work cooperatively to ensure that dairy CAFOs comply with the appropriate state and federal regulations. In general, IDAPA 02.04.14 apply to those dairy CAFOs that do not discharge pollutants to waters of the U.S. in Idaho, while IDAPA 58.01.25 apply to dairy CAFOs that do discharge pollutants to waters of the U.S.

10.1.4 Swine Facilities

DEQ is authorized to regulate swine facilities to ensure animal waste is properly controlled so as not to adversely affect public health or the environment. New or expanding swine facilities having a one-time animal unit capacity of 2,000 or more animal units must be permitted whether or not the capacity is currently being met. No such facilities are currently located in Idaho.

10.1.5 Poultry

The Poultry Environmental Act, Idaho Code section 25-4001 et.seq. authorizes ISDA to regulate poultry CAFOs. ISDA has adopted the Rules Governing Poultry Operations (IDAPA 02.04.32) that govern the design, function, and management practices of waste systems on poultry CAFOs and establish processes and procedures for regulating these facilities. ISDA rules require poultry animal-feeding operations to have wastewater storage and confinement facilities to control runoff and nutrient management plans to manage land application of nutrients or soil amendments. The rules are administered by ISDA and also give ISDA inspection and enforcement authority. Among ISDA's responsibilities are conducting inspections, ensuring compliance with BMPs designed to protect natural resources, providing technical assistance to poultry operations, conducting enforcement activities, and responding to complaints from the public.

DEQ and ISDA will work cooperatively to ensure that poultry CAFOs comply with the appropriate state and federal regulations. IDAPA 02.04.32 apply to poultry operations that do not discharge pollutants to waters of the U.S. in Idaho, while IDAPA 58.01.25 apply to poultry CAFOs that do discharge pollutants to waters of the U.S. For poultry operations identified as CAFOs, DEQ has authority to regulate under the IPDES program the same as a beef or dairy operation.

10.2 Duty to Apply

Notwithstanding regulations applicable under the various authorities granted to ISDA, those CAFOs that discharge to waters of the United States must apply for coverage under the CAFO general permit or apply for an individual discharge permit according to 40 CFR 122.23(d) and incorporated by reference in IDAPA 58.01.25.003.02.b. DEQ is solely responsible and authorized to determine whether a CAFO is required to obtain a permit. (See Idaho Code section 37-608(2)). CAFOs applying for coverage under the general permit are expected to follow the processes and procedures outlined in section 6.2, while CAFOs applying for an individual permit should follow procedures outlined in section 6.3.

10.3 Coverage under a General Permit

DEQ will issue a general permit for CAFOs within Idaho that discharge to waters of the United States consistent with the CWA and state regulations. The process for issuing coverage under the general permit will be consistent with that laid out in section 6.5. In addition to submitting an NOI for coverage under the general permit, the applicant must submit the nutrient management plan for review and approval.

DEQ and ISDA have established a MOU to implement this review process. ISDA staff members have been working closely with the CAFOs in Idaho for the last several decades to provide state services and implement regulations associated with Idaho's Dairy and Beef Cattle Environmental Control Acts. This established relationship means that ISDA has both the knowledge and support of the agricultural community to perform review of nutrient management plans. DEQ would need to develop this specialized knowledge if the reviews of all nutrient management plans were done by DEQ staff. To implement an effective and efficient program, DEQ will rely on the specialized knowledge of the ISDA staff and will work closely with ISDA to ensure that the nutrient management plans meet the regulatory requirements.

Once DEQ, with input from ISDA, approves the nutrient management plan, DEQ will proceed with a public notice to grant coverage under the general permit. DEQ will make the NOI submitted by the CAFO, nutrient management plan, and draft terms of the nutrient management plan that will be incorporated into the permit available for public review and comment. The public comment process will follow the public notification and comment procedures outlined in IDAPA 58.01.25.109.

Upon close of the public comment period, DEQ will respond to comments received, and if necessary, work with ISDA to require the CAFO owner or operator to revise the nutrient management plan. After completing the response to comments and any necessary revisions to the nutrient management plan, DEQ shall notify the CAFO owner and operator of its decision either to approve or to deny coverage under the general permit. If DEQ authorizes coverage, the terms of the nutrient management plan will be incorporated as terms and conditions of the permit that are applicable to the CAFO.

IDAPA 58.01.25.130.05.b.vi discusses CAFO authorizations under a general permit and the information required for an application including data specified in IDAPA 58.01.25.105.09 and 40 CFR 122.21(i)(1). CAFOs may be authorized under a general permit only according to the process described in 40 CFR 122.23(h) (IDAPA 58.01.25.130.05.b.vii).

IDAPA 58.01.25.201.02.c.xvii discusses incorporating the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit (according to federal and state rules) and are not a cause for modification pursuant to the requirements of IDAPA 58.01.25.201. However, under IDAPA 58.01.25.201.03.h, they are a cause for a minor modification.

IDAPA 58.01.25 301.05 requires that any permit for a CAFO must include provisions pursuant to 40 CFR 122.42(e).

10.4 Coverage under an Individual Permit

In some instances a particular CAFO operation may not be eligible for coverage under the general permit, or the operator may request an individual permit. In these cases, DEQ will develop an individual permit following the procedures for individual permits outlined in section 6.3 and EPA's *NPDES Permit Writers' Manual for Concentrated Animal Feeding Operations* (EPA 2012).

A nutrient management plan is also required when a CAFO applies for an individual permit. DEQ will rely on the technical expertise of ISDA staff during the review of the nutrient management plan before public comment. Once the draft permit is developed, DEQ will provide a public comment period consistent with IDAPA 58.01.25.109. After closure of the public comment period, DEQ will prepare a response to comments if necessary and work with ISDA to require the CAFO to make any necessary revisions to the nutrient management plan before issuing a final permit. DEQ will follow the process and procedures for EPA review of a proposed final permit as outlined in the MOA (DEQ and EPA 2016) and 40 CFR 123.44. Terms set out in the nutrient management plan will be incorporated into the final permit.

10.5 Compliance Monitoring

10.5.1 Inspections

CAFO compliance monitoring verifies that the CAFOs are not illegally discharging to water of the United States and that permitted CAFOs are in compliance with their NPDES permits.

DEQ will work with ISDA to conduct inspections of permitted CAFOs according to the IPDES CMS to evaluate compliance with the permit conditions including the terms of the nutrient management plan, reporting, and record keeping. In some instances, a permitted CAFO may be inspected more frequently in the following cases:

- Is an exceptionally large livestock and poultry operation,
- Has a history of noncompliance,
- Has significant site-specific environmental concerns, including operations located on impaired water bodies, or
- Has a permit that includes a voluntary alternative performance standard.

Pursuant to the MOU between DEQ and ISDA, inspections of unpermitted CAFOs will be conducted by ISDA inspectors and will evaluate, among other things, practices associated with land application of dairy byproducts or beef cattle manure, litter, and process wastewater to determine whether all land application is consistent with the applicable NMP. ISDA inspectors will conduct these inspections in the time frame consistent with their current inspection practices. ISDA inspectors will notify DEQ of any discharge from a nonpermitted CAFO to state surface water in accordance with the MOU. DEQ will then be responsible for determining whether such a discharge requires an IPDES permit, and for determining appropriate enforcement or other response.

DEQ will provide training to ISDA inspectors in performing an IPDES inspection of CAFOs. This training will ensure that ISDA inspectors are aware of and will look for any potential

violations of the IPDES CAFO general permit. ISDA inspectors will be provided with DEQ forms for IPDES inspections of CAFOs and will be expected to provide a copy of those forms back to DEQ along with a narrative report at the completion of an IPDES CAFO inspection. Typical timeframes for receipt of these reports is 30 to 60 days post inspection.

10.5.2 Nutrient Management Plans

DEQ proposes to work with ISDA and the Natural Resources Conservation Service (NRCS) in developing nutrient management plans. DEQ proposes using NRCS tools and technical service providers when a CAFO is preparing a nutrient management plan. Idaho Code section 74-114 and IDAPA 58.01.25.002 provide that permit applications, information required to be submitted by the application forms and effluent data are available to the public. NMPs are a required part of IPDES permit applications for CAFOs. In addition, NMPs may be considered effluent data which is also required by state law to be available to the public. Therefore, if a CAFO owner or operator applies for coverage under a general or individual IPDES permit, NMPs would, as required by federal law, be available to the public for inspection and copying.

10.6 Reporting

For CAFOs covered under either a general or an individual permit, an annual report must be submitted to DEQ. This report will include those items required in the general permit:

- Number and type of animals, whether in open confinement or housed under roof
- Estimated amount of total dairy byproducts or beef cattle manure, litter, and process wastewater generated by the CAFO in the previous 12 months (tons/gallons)
- Estimated amount of total dairy byproducts or beef cattle manure, litter, and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons/gallons)
- Total number of acres for land application covered by the nutrient management plan developed according to 40 CFR 122.42(e)(1)
- Total number of acres under control of the CAFO that were used for land application of dairy byproducts or beef cattle manure, litter, and process wastewater in the previous 12 months
- Summary of all dairy byproducts or beef cattle manure, litter, and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume
- Actual crops planted and actual yields for each field
- Actual nitrogen and phosphorus content of the dairy byproducts or beef cattle manure, litter, and process wastewater
- Results of calculations conducted according to 40 CFR 22.42(e)(5)(i)B) and 122.42(e)(5)(ii)(D)
- Amount of dairy byproducts or beef cattle manure, litter, and process wastewater applied to each field during the previous 12 months
- For a CAFO that implements a nutrient management plan that addresses rates of application according to with 40 CFR 122.42(e)(5)(ii):
  - Results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months

- Data used in calculations conducted according to 40 CFR 122.42(e)(5)(ii)(D)
- Amount of any supplemental fertilizer applied during the previous 12 months

11 Compliance Evaluation (40 CFR 123.26)

The primary goal of IPDES CIE is to ensure and document whether entities regulated under the IPDES programs are complying with CWA obligations. To achieve this goal, IPDES CIE will ensure compliance with permit and program requirements by using a combination of (1) compliance monitoring, (2) compliance assistance, (3) compliance incentives, and (4) enforcement according to the principles established in the following:

- *EPA/State Agency Agreement on Compliance Assurance Principles* (EPA 1997a)
- *Compliance Assurance Evaluation Principles* (EPA 1998)
- *Enforcement and Compliance Strategy* (EPA 1997b)
- *NPDES Compliance Monitoring Strategy* (EPA 2014)
- *IPDES Compliance Monitoring Strategy* (DEQ 2016c) (Appendix G)
- *IPDES Enforcement Procedures Manual* (DEQ 2017) (Appendix H)
- *IPDES Enforcement Response Guide* (DEQ 2016d) (Appendix I)

Required by 40 CFR 123.26, DEQ must have the following procedures:

- Receive, evaluate, retain, and investigate all notices and reports required of permittees and other regulated persons.
- Inspect and provide surveillance to determine if entities are complying with applicable program requirements independent of information supplied by the regulated persons.
- Receive and ensure proper consideration of information from the public regarding violations.
- Initially screen all permit information to identify violations and establish priorities.
- Conduct a substantive technical evaluation following the initial screening to determine an appropriate agency response.
- Transfer the minimum set of NPDES data to EPA within 40 days.

These regulations also require DEQ to provide the following:

- Ensure periodic inspections of facilities including verifying the accuracy of information submitted by permittees and other regulated persons and the adequacy of sampling, monitoring, and other methods.
- Investigate information obtained about violations of applicable program and permit requirements.
- Maintain an electronic data management system capable of tracking and transferring all information related to facilities and activities subject to DEQ's authority and compliance with program requirements.

This section describes DEQ's programs and procedures that satisfy the requirements of the compliance evaluation program regulations in 40 CFR 123.26.

DEQ reserves the right to establish state compliance and enforcement priorities but will generally target resources to coincide with EPA's National Priorities, as set out in the *Office of*

Enforcement and Compliance Assurance National Program Manager's Guidance (EPA 2015). Traditional compliance monitoring and enforcement activities are and will continue to be an essential element of DEQ's compliance efforts.

Specific priorities, goals, and responsibilities will be negotiated annually with EPA through the PPA and will align with EPA's most current national program guidelines (EPA 2015). DEQ will determine and monitor a permittee's compliance with an IPDES permit and related orders as defined in DEQ's IPDES *Enforcement Procedures Manual* (DEQ 2017). DEQ will inspect the facility, document inspection findings, determine the appropriate enforcement response, and follow up with the permittee to ensure that compliance is achieved.

The IPDES Program intends to invest sufficient resources in compliance monitoring and enforcement to maintain a strong deterrent effect. In recent years, EPA has increased its use of innovative tools, and DEQ expects to identify and implement innovative tools in situations where they are more likely than traditional approaches to yield a successful result. The first priority, however, is to achieve and maintain deterrence through traditional tools before investing in innovative approaches. DEQ will strategically select and use tools most likely to provide maximum results.

DEQ will determine a permittee's compliance status with IPDES permit requirements using multiple approaches. As identified in the IPDES CMS, DEQ's goal for major permittees is to conduct one compliance evaluation inspection at least every 2 years (consistent with EPA's 2014 CMS), and the goal for traditional minor permittees will be once every 5 years. Additionally for traditional minor permittees, DEQ will review compliance information (e.g., monitoring reports) at least annually.

11.1 Monitoring

Compliance monitoring means any type of check that is done to evaluate whether a permittee is in or out of compliance. Examples are inspections, paperwork reviews, or CRIPS data and ICIS/NetDMR report reviews. DEQ will receive, evaluate, retain, and investigate all notices and reports required of IPDES-permitted dischargers to determine a facility's compliance status. DEQ's compliance monitoring program will invest resources categorically:

- Sector—A distinctive segment of the regulated community. Sector facilities may share similar locations, inputs, operating processes, discharges, or compliance requirements. Shared characteristics make sectors an efficient means of targeting compliance resources. Wastewater treatment facilities, land-disturbing activities (construction storm water), and aquaculture are examples of sectors.
- Geographically based environmental protection—Targeting compliance resources in a coordinated fashion toward a geographic area such as a watershed or DEQ regional office.
- Surface water quality—Priorities, statutory mandates, or agency policies that influence targeting of resources (e.g., complaint response policies or combining ambient water quality sampling with compliance evaluation inspections).
- Multimedia integration—Multimedia means an action (e.g., inspection or enforcement) that coordinates the efforts of two or more DEQ programs. The IPDES Program will collaborate with sister programs to target facilities for multimedia compliance oversight.

- Incentives—Policies or initiatives that are intended to achieve compliance by motivating the regulated community with incentives, such as regulatory flexibility.

Excluding DMRs, the IPDES CRIPS database will maintain an inventory of all IPDES-permitted sources, including application, facility, and billing information; permit limits; other permittee reporting requirements and in any related orders; facility location maps; inspection results; permittee compliance follow-up; enforcement actions; and compliance schedules. CRIPS will allow DEQ to perform the following:

- Compile, manage, track, review, and report on the compliance status of permitted facilities according to 40 CFR 123.26(e)(1).
- Verify compliance with the permit limits and conditions.

DEQ will require permittees to submit discharge monitoring data through EPA's NetDMR web application according to the self-monitoring and reporting timeline requirements of the permit. DEQ will obtain DMR data through exchange flows with ICIS/NetDMR. All other self-reporting information (e.g., WET testing results) that a permittee currently submits as an attachment in NetDMR will be submitted electronically via the user interface or other mechanisms (depending upon document size), unless permission has been granted to submit hard copies.

The date that NetDMR receives a complete DMR will be the receipt date considered for compliance purposes. DEQ will provide guidance and training to ensure permittees submit compliance data electronically. NetDMR reports will be tracked in CRIPS via their due dates specified in the permit.

If a facility is granted a waiver to submit hard copy DMRs, the receipt date will be the date stamped on the document when it is opened after delivery. For a hard copy annual or other report, the receipt date will be the date stamped on the document upon delivery to DEQ.

Self-monitoring and reporting violations can be classified into two categories: (1) a system-generated violation (e.g., an effluent limit violation discovered via DMR submission, DMR nonreceipt, or compliance schedule violation) and (2) a single-event violation that is distinct from a system-generated violation. A single-event violation violates an IPDES permit or regulatory requirement that is documented during a compliance inspection, reported by the facility, or determined through other compliance monitoring methods. Examples of a single-event violation include failure to obtain a required permit, sampling wastewater in an unauthorized location, an unauthorized bypass or discharge, a narrative violation description reported on a DMR, or a pretreatment violation.

Any information deemed to be a trade secret collected during the course of conducting compliance and enforcement activities will be handled in the same manner as trade secrets collected during permitting, as described in section 6.2.1.

11.1.1 Compliance Evaluation Procedures

To evaluate compliance, DEQ will conduct the following procedures:

1. Upon receipt, review DMRs and reports for completeness and determine compliance with permit limits and conditions. Staff will use ICIS to review DMR data and CRIPS for all other self-reporting data to evaluate compliance. Staff will follow up with

permittees, as needed, to request additional information. CRIPS reporting capabilities will enhance this review by creating automated exception reports for other self-monitoring data that are not submitted, incomplete, or otherwise out of compliance with permit conditions. These reports will be available to staff at the time of data exchange from ICIS/NetDMR.

2. Conduct a facility file review for the presence of other required permit reports (e.g., annual reports and update notifications for the QAPP and O&M manual) using CRIPS' compliance schedule capability to generate an automated exception report when the reports (notifications) are missing.
3. Review effluent and ambient monitoring data collected by DEQ or permittee.
4. Review baseline monitoring reports submitted by IUs to determine the applicability of categorical pretreatment standards for the CIU where DEQ is the control authority. In addition, determine whether the receiving POTW is required to develop a pretreatment program.
5. Review 90-day compliance reports submitted by the CIUs following the date for final compliance with applicable categorical pretreatment standards where DEQ is the control authority.
6. Review data in DEQ's statewide Complaint Tracker to determine whether the appropriate level of response was provided and status of open complaint investigations.
7. Review any permit-related orders.
8. May contact a facility and make a verbal or written information request when potential noncompliance issues are found during the review of required information. DEQ may follow up with an additional informal response or formal enforcement action and possibly an inspection.

IPDES staff will promptly notify the permittee of any potential noncompliance with the permit conditions or permit-related orders according to the *IPDES Enforcement Procedures Manual* (Appendix H) and *IPDES Enforcement Response Guide* (Appendix I). Noncompliance that warrants an informal response will be handled directly by an IPDES staff member and their immediate supervisor. Noncompliance that warrants a formal enforcement action will require additional coordination with IPDES CIE staff in the state office and consultation with the AG's Office. All correspondence and enforcement actions will be documented in CRIPS.

11.1.2 IPDES Facility Inspections

A compliance evaluation inspection is primarily a responsibility of DEQ regional offices. However, IPDES staff in the state office may initiate an inspection where regional staff resources preclude a timely compliance evaluation or complaint investigation. Generally, the IPDES Program will place an emphasis on regional staff establishing a working relationship with the regulated community. Specifically, compliance officers in each regional office will be a permittee's point of contact. Regional staff will be responsible for contacting a permittee when a self-reported noncompliance issue arises and to schedule a routine facility inspection (i.e., compliance evaluation inspection).

Under state law (Idaho Code §39-108(2)(b) and IDAPA 58.01.25.300.09), DEQ has authority to enter, at reasonable times, any private or public property to inspect or investigate possible

violations of IPDES rules, permits or orders, and other program requirements, such as the pretreatment regulations. An IPDES applicant, as part of the application process, and once permitted, must allow entry upon the premises by DEQ staff to (1) access and copy any records that permit conditions require the permittee to keep; (2) inspect facilities and equipment (including monitoring and control equipment) practices, or operations regulated or required under a permit; and (3) sample or monitor any substances or parameters at any location for the purpose of ensuring compliance or as authorized under CWA.

In addition to reviewing information supplied by the applicant or permittee, compliance and enforcement staff will conduct an on-site inspection of a facility to ascertain compliance or noncompliance with the following:

- IPDES permit limits and conditions
- Rules
- Compliance schedules
- Permit-related orders
- Water quality standards

The inspection will complete the following:

- Verify the accuracy of information submitted by the permittee
- Verify the adequacy of the sampling and monitoring conducted by a permittee
- Gather evidence to support enforcement actions
- Obtain information that supports the permitting process
- Assess compliance with previous administrative and judicial enforcement notices, orders, and agreements

The compliance officer will consult EPA's *NPDES Compliance Inspection Manual* (EPA 2017) for guidance on how to conduct and report on IPDES inspections of municipal and industrial facilities (including collection, conveyance systems, and disposal facilities); storm water discharges from industrial and construction sites; pretreatment facilities; municipal wastewater collection systems (combined with and separate from storm water); and unpermitted facilities.

For discharges other than storm water from construction sites, DEQ will use the EPA's Inspection Targeting Model as a guide for prioritizing and scheduling inspections. The model involves a comprehensive survey of IPDES facilities using a point system to identify facilities that pose a higher risk to human health or the environment. The Inspection Targeting Model sorting tool will generate a ranked report, and DEQ will use this report as a guide to develop an API.

Criteria that influence the ranked report include the following:

- Classification as a major or minor discharger
- Time since last inspection
- Type of receiving environment
- Cumulative effects from other discharges
- Discharge into an impaired water body
- Health effects from potential wastewater treatment process failure
- Failure to submit a DMR

- Post inspection compliance

For storm water discharges from construction sites (facilities operating under the CGP), DEQ will develop a ranking model specific to CGP facilities. Initially, a combination of planning methods for scheduling construction site inspections will be used. For example, DEQ may use a rotating geographic area basis for CGP inspection planning. An inspection may also be scheduled when inspecting another facility in the area. The criteria influencing where DEQ will conduct an inspection include the following:

- Whether a previous inspection required follow-up action
- Post inspection compliance
- Receiving environment of the discharge
- Cumulative effects from other discharges
- Whether the discharge is to an impaired water body
- Previous noncompliance by the operator
- Complaints and noncompliance
- If the project is on-going, particularly through more than one season
- Land area disturbed
- Operation size
- Heavy weather conditions
- Construction work timing
- Proximity to a water body
- Number of NOIs in a geographic area

Facilities that otherwise score low in the overall ranking may also be inspected at DEQ's discretion.

Additional criteria that may influence the annual inspection schedule for wastewater and storm water discharges, and sewage sludge use or disposal include the following:

- Legitimate complaint of human health or environmental hazards
- New site or significant modification to existing permitted site or facility
- Significant permit violations
- Other factors at DEQ's discretion, including fish kills, significant environmental or human health problems, joint inspections with other agencies, and inspections of opportunity due to travel to the vicinity

DEQ will ensure a representative number of inspections are conducted annually. The PPA will include a task for DEQ to provide EPA with an API for permitted facilities. DEQ's API will include the number of storm water inspections at construction sites that will be completed but not the actual site because many of NOIs filed under CGP are submitted just before construction activities begin. DEQ will also inspect unpermitted facilities. DEQ cautions that situations may arise that will change the actual facilities that are inspected.

DEQ will negotiate inspection schedules with EPA that will allow substituting two minor discharger inspections for one major discharger inspection when a major discharger has demonstrated long-term permit compliance or when it is otherwise deemed appropriate by DEQ. This approach will allow DEQ to inspect as many minor dischargers as possible and use staff

time and travel resources efficiently by inspecting several facilities on a single trip to a geographic area.

IPDES staff has the discretion to conduct unannounced inspections, particularly in more accessible locations or where noncompliance is suspected. DEQ will generally announce its inspections especially in remote locations to ensure that the facility operator will be present, to secure overnight accommodations for staff, if necessary, and to confirm that seasonal processes will be operating. The inspection form will document if the inspection was unannounced or announced.

The compliance officer will use an inspection checklist to assist with all inspections of permitted facilities (i.e., municipal and industrial facilities, pretreatment, storm water, and aquaculture).

Upon completing a compliance inspection or complaint investigation, the IPDES compliance officer will draft a letter addressed to the permittee or unpermitted entity. This letter documents the reason for the inspection or investigation and identifies any noncompliance issues and the corrective actions necessary to obtain compliance with CWA, Idaho statutes and rules, and/or IPDES permit conditions. The letter is reviewed and signed by the IPDES compliance officer's immediate supervisor. The types of the noncompliance letters a permittee may receive are explained in the *IPDES Enforcement Response Guide* (Appendix I).

Where a compliance evaluation warrants a formal enforcement action, regional office staff will consult CIE state office staff (compliance officers) to determine the appropriate enforcement action.

11.1.3 Inspection Types

The type of inspection conducted will depend on several factors, including, but not limited to, the complexity of the facility, volume and toxicity of the discharge, receiving water, and the facility's compliance history, including SNC and the number of single-event violations. DEQ will use standard report forms and methods to conduct an inspection.

Every completed inspection will conclude with an exit interview with the permittee to verbally identify areas of concern or noncompliance issues noted during the inspection. The exit interview will also serve to note any activities or actions the permittee should initiate immediately to reduce the risk to human health or the environment and to come into compliance with their permit conditions.

The types of comprehensive and noncomprehensive inspections DEQ will conduct are described in the CMS (Appendix G). Comprehensive inspection types satisfy the requirements of 40 CFR 123.26(b)(1).

DEQ will cross-train staff of other divisions (e.g., Waste Management and Remediation) and other state agencies (e.g., ISDA) to provide enough knowledge to identify illegal discharges, problems, or violations when at a facility conducting other business. IPDES inspections conducted by non-DEQ staff will be performed by properly trained DEQ-certified inspectors. The cross-trained staff will report all findings to the IPDES Program. IPDES staff may accompany the cross-trained staff on inspections. On behalf of DEQ or at DEQ's request, cross-trained staff may conduct a follow-up inspection to verify that a previously identified

noncompliance issue has been addressed. More information on the specific training requirements for each of the various programmatic sections is found in the capacity building plan (DEQ 2015a) (Appendix B).

11.2 Assistance

DEQ will provide compliance assistance to the regulated community. Compliance assistance includes any activity not considered part of a formal enforcement action and is designed to help a permittee achieve or remain in compliance with environmental regulatory requirements. Compliance assistance will be exercised as a proactive tool to help a permittee before a noncompliance event necessitates formal enforcement action. DEQ will attempt to resolve potential compliance issues early on during the permit development process. Compliance assistance may be offered after the permit is issued but is not a waiver of DEQ's enforcement authority or right of obligation to pursue other responses to noncompliance.

As a valuable resource to the regulated community, the IPDES compliance officer will determine whether an activity or discharger is complying with state water quality standards and IPDES Program requirements. All technical assistance will be provided by DEQ staff not directly responsible for IPDES compliance and enforcement activities.

Compliance assistance includes the following activities and tools to provide clear and consistent information:

- Helping the regulated community understand and meet its obligations under environmental regulations
- Helping a permittee understand changes in or conditions of a permit
- Assisting the owner/operator identify and reduce or eliminate pollution sources
- Assisting others who aid the regulated community in complying with environmental regulations as outlined in the national program manager guidance (EPA 2015).

Additional compliance assistance activities or tools to improve compliance rates may include the following:

1. Web links—On DEQ's web pages, post links to tools such as compliance assistance centers and web-based support sites such as *business.gov*. Users can search for materials on regulations, pollution prevention opportunities, and voluntary programs created by EPA and other regulatory agencies.
2. File review—Conduct a DEQ office facility file review and inform the facility regarding the physical equipment or processes and reports and/or records that need to be maintained, as well as a general idea of what the required documents should contain to ensure compliance.
3. Workshops—IPDES Program staff will participate in or conduct workshops for industry or assist in developing compliance assistance materials presented at non-DEQ workshops.
4. Conferences—IPDES Program staff will attend and present at conferences to provide information, including prepared guidance, manuals, and technology transfer documents.
5. Newsletters—Publish newsletters or information guides.

6. IPDES Online Blog and Discussion Forums—IPDES Program staff will develop a web page on DEQ's website to provide updates and notifications of current events. Additionally, an online forum will provide DEQ, citizens, and the regulated community an opportunity to discuss issues related to permitting and compliance.
7. Social Media and YouTube—Use social media sites (e.g., Facebook, Twitter) and YouTube to inform citizens and the regulated community of IPDES Program requirements or initiatives.
8. Pollution Prevention—DEQ will educate and inform to encourage pollution prevention at municipal and industrial facilities during a routine inspection, as resources and opportunities allow. DEQ will consult EPA's *NPDES Compliance Inspection Manual* (EPA 2004b) and associated references for guidance.
9. Operator Training and Certification Program—The Idaho Bureau of Occupational Licenses (IBOL) will continue to administer examinations and certify wastewater system operators. DEQ collaborates with IBOL in developing training programs. Currently the DEQ Water Quality division's Wastewater Program provides training for wastewater operators. Training materials are available to operators through the IBOL website. IBOL staff is available to answer questions and provide information about training opportunities.

In the CRIPS database, DEQ will maintain a list of unpermitted facilities identified through observations, visits to the community, complaints, or other sources that might have a regulated discharge and will work with the facility operator to determine the need for a permit.

11.3 Incentives

DEQ may provide incentives to ensure compliance before applying a formal enforcement action, which that may take longer to affect an environmental outcome. DEQ may develop an incentives policy for the regulated community to promptly resolve environmental problems and expeditiously come into compliance through self-assessment, disclosure, and violation corrections.

In addition, DEQ has discretion to reduce ambient water quality monitoring as an incentive for a facility that has an excellent permit compliance record and history of meeting all of its ambient water quality criteria limits for a defensible period of time. DEQ will consult EPA's *Interim Guidance for Performance-Based Reduction of NPDES Permit Monitoring Frequencies* (EPA 1996c) when evaluating this option. As with compliance assistance, DEQ may provide compliance incentives, but the incentive is not a waiver of DEQ's authority, right, or obligation, nor does it prohibit DEQ from pursuing more formal enforcement, as necessary.

12 Enforcement (40 CFR 123.27)

DEQ's goal is for facilities to be in compliance with all requirements at all times while recognizing that facility operators desire to be in compliance. DEQ's permitting and compliance programs are designed to help achieve compliance through prompt, efficient, and cost-effective means. DEQ will contribute to an operator achieving and maintaining compliance by issuing a

clear permit with valid and understandable conditions based on state law, as well as immediate contact with permittees when noncompliance is discovered.

Where violations of the IPDES Program, IPDES permit conditions, or water quality standards are identified, DEQ will respond with the appropriate administrative or civil enforcement action in a timely and impartial manner. DEQ will pursue criminal violations that threaten human health and the environment or that undermine the integrity of environmental protection programs. DEQ will collect any economic benefit that may have been realized as a result of noncompliance through monetary penalties; all monies collected as part of a settlement or misdemeanor conviction will be forwarded to the State's General Fund. Per Idaho Code §39-108(4), no civil or administrative proceeding will be brought to recover for a violation more than 2 years after DEQ had knowledge or reasonably should have had knowledge of the violation.

12.1 Determining Appropriate Action Procedures

DEQ will consult EPA's *Enforcement Management System: National Pollutant Discharge Elimination System* (EPA 1989f) and DEQ's *IPDES Enforcement Procedures Manual* (DEQ 2017) to determine the most appropriate enforcement response. The IPDES program will follow the practices and principles outlined in the most recent version of the IPDES Enforcement Procedures Manual complemented by the Enforcement Response Guide (Appendix I, DEQ 2017) developed specifically for the IPDES Program as well as other administrative, civil, and criminal procedures outlined here. DEQ's IPDES *Enforcement Response Guide* ensures consistent use of enforcement terms and templates throughout the Water Quality Division.

DEQ intends to resolve compliance problems quickly and at the lowest appropriate level to avoid serious or prolonged violations. DEQ's approach will be an escalating response to noncompliance where actions will be fair, consistent and in proportion to the nature of the violation. For example, first-time violators that do not cause known harm to human health or the environment will be given an opportunity to rectify the situation. DEQ is prepared to pursue formal civil or criminal action for willful, repeat, and the most egregious violations.

Informal enforcement provides the permittee an opportunity to achieve compliance without penalty within a specified timeframe. Informal enforcement may take the form of compliance assistance or noncompliance letters (i.e., notice of noncompliance, notice of deficiency, notice of intent to enforce). Formal enforcement may be undertaken by administrative actions (i.e., notice of violation, compliance agreement schedule, or consent order), civil remedies (i.e., civil suit, temporary restraining order/preliminary injunction), or criminal remedies. See the *IPDES Enforcement Response Guide* (Appendix I) for a description of the various formal and informal enforcement tools.

Initial responsibility for determining enforcement response lies with the regional compliance officer during an inspection, record review, or other compliance monitoring activity. Following the principles laid out in the Enforcement Response Guide Attachment A, the regional staff person will determine whether an informal or formal enforcement action is most appropriate. If a formal enforcement action is deemed appropriate, the regional staff person would compile available documentation such as inspection reports; record reviews; date, time, and content of communication with the facility; informal enforcement action letters sent; and any other

correspondence or supporting information regarding the facility, violation(s), and applicable compliance history. This documentation becomes the enforcement referral package and is sent to the state office compliance and enforcement coordinators and the IPDES Compliance, Inspection, and Enforcement (CIE) Lead. Upon conference with the IPDES Program Lead, the deputy Attorney General assigned to the program for enforcement, and the DEQ Water Quality Division Administrator, DEQ will determine the most appropriate formal enforcement action route (i.e. administrative, civil, or criminal) to pursue.

12.2 Administrative Actions

DEQ's administrative actions will consist of enforcement tools that may be executed by DEQ outside of the judicial system. Administrative actions usually require the violator to agree to undertake actions to correct the noncompliance, and in the case of a consent order or notice of violation (NOV), to pay a stipulated penalty. DEQ may also pursue recovery of agency costs (i.e., any expense incurred through enforcement, including terminating any nuisance or source of environmental degradation that cause sickness or a health hazard). The CRIPS database, along with procedures outlined in DEQ's IPDES *Enforcement Procedures Manual* (DEQ 2017) provide methods to ensure proper tracking and efficient follow up to avoid unnecessary delays in responding to a permittee's requirement to achieve compliance. As further described in the *IPDES Enforcement Response Guide* (Appendix I), formal administrative actions include NOV, compliance agreement schedule, and consent order. A more detailed description of each enforcement tool is included in the IPDES *Enforcement Procedures Manual* (DEQ 2017) and the *IPDES Enforcement Response Guide* (Appendix I).

Idaho Code §39-108, documents various administrative actions that the agency can take including notices of violation (NOV). The NOV documents the alleged violation, specifies the provisions of the act, rule, regulation, permit or order which has been violated, and states the amount of civil penalty claimed for each violation. There is no requirement to issue an NOV every time a violation is observed. An NOV is not an order. The NOV must include an opportunity to confer with DEQ, within 20 days of receiving the notice, unless a later date is agreed to; this compliance conference will provide the violator an opportunity to explain the circumstances of the alleged violation and propose a remedy for returning to compliance. The NOV may require a written response within 15 days. NOVs may precede other formal administrative or civil/judicial enforcement actions and may include a civil penalty. An NOV is not required before filing a civil enforcement action. If a NOV is issued, however, a civil action may not be filed until the recipient has been afforded an opportunity for a compliance conference and to enter into a consent order.

Idaho Code §39-116A authorizes DEQ to issue a compliance agreement schedule for no more than 10 years. The compliance agreement schedule identifies and establishes appropriate acts and time schedules for interim actions. Cooperation from the affected party will be solicited and is an agreed upon outcome between DEQ and a regulated entity.

Under Idaho Code §39-116A, DEQ will take into account the following when granting a compliance agreement schedule (CAS):

- Protection of public health
- Protection of environment

- Ability of the person to pay for costs of compliance
- Current fiscal obligations of the person
- Other factors as determined by the department or the board

If compliance cannot be achieved within 1 year, Idaho Code §39-116A requires a schedule of annual meetings to assist DEQ with determining whether the schedule and agreement is still appropriate. If a permittee has an active administrative action (e.g., compliance agreement schedule) at the time of permit renewal, DEQ will consider incorporating some or all of those agreements into the permit's compliance schedule where circumstances allow.

DEQ may include monitoring, sampling, and reporting provisions in consent orders under Idaho Code §39-108 or in a compliance schedule agreement entered into with a permittee or facility per Idaho Code §39-116A. DEQ has the authority to impose an order unilaterally or by consent. DEQ may seek a search warrant under Idaho Code §39-108 to obtain information regarding a suspected violation of the IPDES Program requirements. In addition, if a person fails to provide information required to be produced under the IPDES rules, DEQ may seek an order in a civil action that requires producing the information and penalties for the failure to comply with the requirements of the IPDES rule.

Formal enforcement actions (NOV, compliance schedule order, CAS, and consent orders) will be signed by DEQ according to the most current delegation of authority. More detailed information on the types of enforcement actions are found in the *IPDES Enforcement Procedures Manual* (Appendix H) and *IPDES Enforcement Response Guide* (Appendix I).

When DEQ identifies potential noncompliance by a permittee that has had few or no previous violations during the previous 12 months, DEQ may use enforcement tools that are less formal and may contact the permittee by telephone or site visit, or may send a noncompliance letter (e.g., Notice of Deficiency or NOI to enforce), depending on the circumstances. These informal responses will provide an opportunity to rectify the situation for violators that have not caused known harm to human health or the environment. The *IPDES Enforcement Response Guide* (Appendix I) will be used to determine the most appropriate enforcement response. If the permittee is a repeat violator or the violations warrant a more elevated response, the most appropriate formal enforcement action will be determined through consultation with IPDES CIE staff and the AG's Office. At a minimum, the permittee will be sent a NOV to initiate the formal enforcement response. Issuing a NOV does not preclude DEQ from pursuing additional actions.

DEQ is committed to responding in a timely manner to every known noncompliance event within the IPDES program. DEQ will determine whether to respond to noncompliance events with formal or informal administrative enforcement based on the magnitude, frequency, and duration of a noncompliance event. Significant noncompliance events, those resulting in known harm to public health or the environment (e.g., nuisance conditions, public health and/or safety threat, loss of beneficial use), will always begin at the formal enforcement level. Noncompliance events not deemed significant will typically begin at the informal enforcement level. However, DEQ will initiate informal enforcement at the highest level of informal enforcement or to begin with formal enforcement in lieu of informal enforcement depending on the specifics of individual cases.

12.3 Civil and Criminal Actions

DEQ has developed an enforcement process to ensure the statute of limitations for administrative, civil, and criminal proceedings under Idaho Code is met. DEQ is not required to exhaust administrative enforcement actions prior to proceeding with a civil or criminal enforcement case. If DEQ, in consultation with the AG's Office, decides to proceed immediately to civil or criminal actions, DEQ staff will complete a referral package for the AG's Office containing pertinent documentation and information. Once the referral is in their possession, the AG's Office may file the civil or criminal case within a matter of weeks. This streamlined process allows DEQ to operate successfully within the statute of limitations provided by Idaho Code. However, it is DEQ's policy and preference to provide IPDES violators the opportunity to come back in to compliance through informal and formal administrative enforcement actions if timelines allow this opportunity.

DEQ will use civil judicial and criminal actions to address noncompliance with the IPDES Program when appropriate. DEQ will refer potential civil judicial and criminal cases to the AG's Office, as these remedies all involve filing an action in court. Types of civil judicial actions DEQ can pursue include civil suits for injunctive relief, including immediate injunctive relief (e.g., preliminary injunctions and temporary restraining orders) and permanent injunctions, civil penalties, costs, and expenses (Idaho Code §39-108(3), (5), (6), and (8)).

DEQ may bring civil or administrative proceedings against a party up to two years after DEQ has knowledge or ought reasonably to have known of the violation (Idaho Code 39-108).

Idaho Code §39-117 defines the actions that constitute criminal violations and the limitations of monetary penalties (section 12.4). Any person who willfully or negligently violates an IPDES standard or limitation, permit condition or filing requirement is guilty of a misdemeanor per Idaho Code §39-117. Per Idaho Code 19-403 prosecution for any misdemeanor must be commenced by the filing of a complaint or the finding of an indictment within one year after its occurrence.

A criminal penalty will be proposed by the AG as recommended by DEQ and assessed by the court. Proposed criminal remedies will be designed to punish (i.e., monetary penalty) and are reserved for willful and negligent violations as well as knowingly made false statements. Cases qualifying for potential criminal prosecution may be referred to EPA's Criminal Investigation Division and United States Attorney's Office.

The decision to pursue criminal or civil proceedings by Idaho or refer to EPA's Criminal Investigations Division will be made by the DEQ director in consultation with the AG's Office, division administrator, enforcement coordinator, regional administrator, and regional manager. Section 6 of DEQ's IPDES *Enforcement Procedures Manual* (DEQ 2017) includes procedures on pursuing criminal enforcement.

DEQ's RCRA and Drinking Water programs are both EPA delegated programs operating under the same statute of limitations for pursuing civil and criminal actions. The IPDES program has consulted with the enforcement coordinators for these programs during the development of the proposed civil and criminal action processes. DEQ has successfully prosecuted civil and

criminal cases within Idaho's statute of limitations for these programs, and therefore, DEQ will be able to take needed civil or criminal enforcement related to the IPDES program as well.

12.4 Penalties

Idaho Code §39-108(5) and §39-117(3) provide the authority to assess monetary penalties for violating the requirements of the IPDES Program or conditions of an IPDES permit. Such penalties may be assessed by DEQ (administrative penalty) or through the court system by the AG's Office (civil and criminal penalties). DEQ or the AG's Office can seek the following:

- A civil penalty for violating an IPDES permit condition, filing requirement, monitoring and reporting requirement, or any other requirement of the IPDES Program (e.g., unpermitted discharges)
- A criminal penalty against 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
- A criminal penalty for any person who willfully or negligently violates any Idaho NPDES standard or limit, permit condition, or filing requirement

Before going to court to recover a penalty, and with the assistance of the AG's Office, DEQ will complete the following:

- Communicate to the permittee the alleged noncompliance.
- Provide documentation outlining the noncompliance issue.
- May offer the opportunity to meet with the responsible party to discuss a settlement (e.g., CAS), notwithstanding DEQ's right to continue to seek a court-ordered penalty.

The AG's Office will ensure consistent responses to similar violations. Depending on several factors, including the monetary amount at stake and potential policy implications, the AGs' Office will consult with IPDES Program staff and the Water Quality Division administrator.

12.4.1 Supplemental Environmental Projects

DEQ may use supplemental environment projects to partially offset monetary penalties (Idaho Code §39-108(5)(b)). In doing so, DEQ will consult DEQ's *Policy Statement on Supplemental Environmental Projects* (DEQ 2015c). A supplemental environmental project is an environmentally beneficial project that the person is not otherwise required to perform and prevents pollution, reduces the amount of pollutants reaching the environment, contributes to public awareness of environmental matters, or enhances the quality of the environment. In evaluating a particular supplemental environmental project proposal, preference may be given to those projects with an environmental benefit that relate to the violation or the objectives of the underlying statute that was violated or that enhances the quality of the environment in the general geographic location where the violation occurred.

12.4.2 Calculating a Penalty

DEQ's general approach to calculating a proposed penalty will be similar to EPA's and developed consistent with the *Interim Clean Water Act Settlement Penalty Policy* (EPA 1995b).

In consultation with the AG's Office, IPDES staff will propose a penalty based on the economic benefit derived from noncompliance adjusted for gravity components and other adjustment factors as allowed under the *Interim Clean Water Act Settlement Penalty Policy* (EPA 1995b).

Examples of gravity components that may be considered include the following:

- Significance of the violation
- Threat or harm to human health or the environment
- Number of violations
- Duration of noncompliance

12.4.3 Limits to Monetary Penalties

Idaho Code §39-108(5) and §39-175E provides the maximum monetary penalty liabilities for violating any IPDES rules, permits, requirements, or orders.

Civil penalty amounts related to the IPDES Program or IPDES permit conditions are not to exceed $10,000 per violation or $5,000 for each day of a continuing violation, whichever is greater.

In addition to such civil penalties, any person found in violation is liable for any expense incurred by the state in enforcing the act, or in enforcing or terminating any nuisance, source of environmental degradation, cause of sickness, or health hazard.

Idaho Code §39-117(3) and §39-175E provides the maximum monetary fine for any person who willfully or negligently violates any IPDES standard or limit, permit condition, or filing requirement. Upon conviction of a misdemeanor, the fined amount is not to exceed $10,000 per violation or for each day of a continuing violation.

Idaho Code §39-117(3) also provides the maximum monetary fine for 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. Upon conviction of a misdemeanor, the fined amount is not to exceed $5,000 per violation or for each day of a continuing violation.

12.5 Reporting

DEQ will enter and store all noncompliance activities and enforcement actions in the CRIPS database for every IPDES facility (section 13). DEQ will enter data into CRIPS and into EPA's ICIS-NPDES (manually or batch transfer if available) so that the required reports will be produced from ICIS-NPDES on schedule and made available to the public according to 40 CFR 123.45.

DEQ will enter data into ICIS-NPDES that will then report on SNC permittees with monthly and nonmonthly effluent limit violations, noneffluent violations, and wet weather discharge violations. Examples of noneffluent violations include an unauthorized bypass, an unpermitted discharge, pass-through of pollutants, and failure to implement an approved pretreatment program. DEQ will consult the following EPA guidance:

- *Revision of NPDES Significant Noncompliance (SNC) Criteria to Address Violations of Nonmonthly Average Limits* (EPA 1995c)
- *EPA OECA Guidance on NPDES Wet Weather and CAFO Inspection Reporting Changes, Other NPDES Inspection Reporting Changes, and PCS Data Entry and Software Changes* (EPA 2006a)
- *Transmittal of Final Guidance on the Reporting of CWA NPDES Wet Weather and CAFO Inspections to PCS, Other Reporting Changes to PCS, and Changes to the 3560-3 Water Compliance Inspection Report Form, and EPA Responses to Comments Received on the Draft Guidance* (EPA 2006b)
- *Revisions to the Recently Issued Final Guidance on the Reporting of CWA NPDES Wet Weather and CAFO Inspections to PCS and Changes to 3560-3 Water Compliance Inspection Report Form* (EPA 2006c)

Additionally, IPDES Program staff will evaluate SNC for wet weather discharges by relying on the most current versions of EPA guidance:

- *Compliance and Enforcement Strategy Addressing Combined Sewer Overflows and Sanitary Sewer Overflows* (EPA 2000c)
- *Compliance and Enforcement National Priority: Clean Water Act, Wet Weather, Concentrated Animal Feeding Operations* (EPA 2004c)
- *Inspection Frequency Guidance for the Core Program and Wet Weather Sources* (EPA 2007a)
- *Interim Significant Noncompliance Policy for CWA Violations Associated with CSOs, SSOs, CAFOs, and Storm Water Point Sources (i.e. Interim Wet Weather SNC Policy)* (EPA 2007b)

12.6 Public Participation and Citizen Actions

Idaho Code §39-108(9) provides that in any civil or administrative enforcement proceeding related to the IPDES Program DEQ shall comply with the public participation requirements set forth in 40 CFR 123.27(d)(2). This requirement means:

1. DEQ shall not oppose permissive intervention by any citizen in any civil court action;
2. DEQ will investigate citizen complaints consistent with 40 CFR 123.26(b)(4) and shall provide written response to the complainant in the form of email when available consistent with §123.27(d)(2)(i); and
3. DEQ will publish notice of and provide at least 30 days for public comment on any proposed settlement of a state enforcement action. Public comment notices will be posted to DEQ's website, the major newspapers within the permittee's DEQ region, and a public comment mailing list (i.e., email) maintained by the IPDES program. If a public hearing is held for the purpose of receiving comments, DEQ will make an audio recording or hire a court reporter to record the hearing.

To further satisfy the requirements of 40 CFR 123.26(b)(4), a citizen complaint of an alleged or suspected violation of statute or regulation will be entered and tracked in DEQ's Complaint Tracker database. DEQ will accept anonymous complaints and may use the information to initiate an inquiry or investigation that could result in an enforcement action. Once DEQ's

investigation has concluded (before an enforcement action settlement) and if the complainant requested feedback, DEQ will notify the complainant of the results.

The citizen suit provisions of CWA §505 allow citizens to commence a civil action against any person who is alleged to be in violation of an effluent standard or limit or an order issued by EPA or a state with respect to such a standard or limit. The citizen suit provisions allow citizens to sue a person in violation of a state-issued NPDES permit and therefore would be available with respect to a violation of IPDES permits (Parker v. Scrap Metal Processors, Inc. [2004]).

12.7 Pretreatment Program and Sewage Sludge (Biosolids)

The enforcement strategy for violations of Pretreatment and Sewage Sludge/Biosolids Program requirements will follow the general enforcement procedures for the IPDES Program and DEQ's IPDES *Enforcement Procedures Manual* (DEQ 2017). For pretreatment, DEQ will consult the following EPA guidance, in conjunction with the AG's Office, to calculate a proposed penalty: *Penalty Calculations for POTW Failure to Implement an Approved Pretreatment Program* (EPA 1988).

DEQ will initiate enforcement actions related to pretreatment against a POTW for failure to adequately enforce against its IUs. The POTW will ensure that it provides, at least annually, public notification of SNC in a newspaper of general circulation in the municipality where the POTW is located according to 40 CFR 403.8(f)(2)(viii). Where a POTW is not the control authority, DEQ will have enforcement procedures in place for categorical and significant noncategorical IUs. DEQ will use the same compliance procedures and enforcement responses as those for direct discharges.

DEQ will initiate enforcement actions against a sewage sludge facility (generator or preparer) for failure to meet the requirements of 40 CFR 503.2–503.48 using the same compliance procedures and enforcement responses as those for direct discharges.

All pretreatment and biosolids violations will be documented and entered into the IPDES CRIPS database for follow-up actions, including administrative and other enforcement actions. The regulated entity will be notified by letter of pending follow-up actions, including additional inspections or conferences, as necessary.

13 Data Management System

DEQ proposes to use electronic data management to administer and report on all aspects of the IPDES Program. As part of this, DEQ will provide information that allows EPA to determine whether DEQ is effectively implementing the IPDES rules, CWA, and associated regulatory requirements. The state's system will provide a reliable mechanism to ensure that IPDES-permitted dischargers submit permitting and compliance monitoring information to DEQ and that DEQ can efficiently determine compliance with permit limits and conditions. DEQ's data system will facilitate compliance tracking, and program management, through online permit application/NOI filing; automated reissuance notification and online reissuance capability; online permit development; use of EPA's NetDMR submittal system; inspection process initiation and notification, and follow-up action tracking; and other functions.

The following descriptions are subject to additional implementation timelines (e.g., cross media electronic reporting rule [CROMERR]) that are outside IPDES Program control. The descriptions, however, represent DEQ's best estimate of the status of the various systems at NPDES program approval.

13.1 Compliance Reporting, Inspection, and Permitting System

The IPDES CRIPS database and online user interface will be the primary information system used to manage data for the IPDES Program. CRIPS will allow DEQ to compile, manage, and report IPDES Program permitting, compliance monitoring, and enforcement data. All department staff assigned to the IPDES Program will receive CRIPS user support, guidance, and training.

DEQ acquired the Permit and Reporting Information System (PARIS) database schema, designed and implemented by the State of Washington Department of Ecology; however, PARIS was not designed for electronic application/NOI submittal. As a result, DEQ has and will continue to modify the database as needed to effectively implement CRIPS to meet specific data management needs of the IPDES Program and comply with the 2015 Electronic Reporting Rule and ICIS-NPDES data standards. DEQ will comply with the 2015 Electronic Reporting Rule concurrently upon receiving delegated authority to implement each sector. DEQ will only be able to comply with the electronic reporting requirements in the order that each sector is implemented, and to the extent that the ICIS-NPDES data fields are developed.

DEQ is developing a data flow between EPA's ICIS-NPDES and DEQ's CRIPS that is consistent with EPA's Electronic Reporting Rule requirements. This will ensure the IPDES CRIPS database effectively and efficiently transmits data to and from EPA's ICIS-NPDES database application via the Central Data Exchange (CDX). DEQ is working with EPA and contractors to use the OpenNode2 plug-in when developing the data flow. If DEQ encounters issues with the plug-in, Windsor Solutions is available to provide limited support on behalf of EPA. DEQ will identify the specific data fields necessary on the EPA side, map the data flow between the two datasets, and create processes necessary for transfer of data to and from EPA's databases.

13.1.1 Permit Applications and Notices of Intent

DEQ's online permit application system will allow applicants to seek coverage under individual and general IPDES permits (including submitting NOIs under the storm water CGP and MSGP), seek individual permit reissuance and general permit reauthorizations, and submit other non-DMR reporting information (e.g., annual reports and noncompliance), NOTs, and other requests (e.g., waivers and variances). Permit applications and NOIs must be submitted electronically through the IPDES online interface, unless a waiver is granted. The online application system will include electronic signature and electronic payment capabilities, as well as updating information, and reducing the need for reentering previously completed application information. Alternatively, with a department-approved waiver, an applicant may submit a hard permit application or NOI.

Upon NPDES program approval, DEQ's electronic registration and identity, signature ceremony, and copy of record management will be compliant with the CROMERR standards published on

October 13, 2005. DEQ intends to use the full package of EPA-supported Shared CROMERR Services tools, which is a less expensive and more efficient method of achieving CROMERR compliance for electronic reporting. Until CROMERR approval is obtained, DEQ will require a signed, hard copy of all applications and NOIs. DEQ will seek CROMERR approval concurrent with applying for NPDES program authorization to submit an IPDES application and other information.

13.1.2 Draft Permit Development

The IPDES internal online interface will allow IPDES personnel to electronically receive, review, and process permit applications and NOIs, NOTs, waivers, and variance requests. Once IPDES personnel have determined that a permit application is complete, they will develop a draft permit using the internal online interface. The interface will be developed to allow IPDES permit writers to develop draft permits from templates; coordinate draft permit peer review and approval; issue and record public notifications; and develop correspondence with the applicants, while maintaining document and data management control.

13.2 Inspections and Compliance Tracking

DEQ's information management system will be integrated into each step of permit application and development, compliance monitoring and enforcement, and EPA reporting processes.

EPA has been updating Idaho data in the ICIS-NPDES since the data were migrated from the Permit Compliance System in 2006. DEQ will ensure that all required data on IPDES permits are uploaded to ICIS-NPDES for EPA to generate the applicable reports.

13.2.1 Individual Permits

As identified in IDAPA 58.01.25, an existing discharger must submit a complete IPDES permit application no later than 180 days before permit expiration. CRIPS will help IPDES personnel identify necessary permit renewal schedules to provide advance notices of the application due date for expiring permits to be sent to existing dischargers. Additionally, permittees will be able to view their fee assessments through the IPDES online user interface and submit electronic payments through the *AccessIdaho.org* online portal.

CRIPS will be populated with application information submitted electronically by applicants via the IPDES online interface. Department staff will manually enter application and reporting information for those applicants that have received an electronic reporting waiver from DEQ. These circumstances should be rare, though, as the IPDES Program is striving for 100% compliance with electronic applications and reporting.

Information submitted as part of a permit application or reporting requirements will be stored in CRIPS and later used to help populate permit templates that include facility-specific information, such as contact information, facility design flows, outfall locations, and other reported information. DEQ will use the application and additional information obtained during the permitting process to establish permit requirements, including permit limits, submittal schedules, and annual reports. These permit requirements will be entered into CRIPS by DEQ personnel via the IPDES online interface.

13.2.2 General Permits

An applicant seeking coverage under an IPDES general permit must submit an NOI to DEQ. NOIs and other reporting information must be submitted electronically through the IPDES online interface unless DEQ grants a waiver. In this case, hard-copy submissions would be required. Department staff will manually enter NOI and reporting information for those applicants that have received an electronic reporting waiver from DEQ. Additionally, permittees will be able to view their fee assessments through the IPDES online user interface and submit electronic payments through the *AccessIdaho.org* online portal.

Facility information and compliance history of a permittee operating under a general permit will be included in ICIS-NPDES reports.

13.3 DMR Submittals

Facilities covered under an individual or general permit will be required to submit DMRs using EPA's NetDMR according to the frequency of submittal identified in the permit. EPA's electronic reporting rule requires that all NPDES-permitted facilities submit DMR data via NetDMR by December 21, 2016. As a result, IPDES permittees will have already been using NetDMR upon DEQ implementing the IPDES Program. DEQ will acquire data from NetDMR and/or ICIS-NPDES to effectively track IPDES permit compliance.

EPA and the permittees will be responsible for quality control checks to ensure data input accuracy and retain qualifiers on analytical results. After completing DMR entry, NetDMR pushes the data to ICIS-NPDES.

Authorization under an IPDES individual or general permit will be tracked in CRIPS via DMR data flow from ICIS-NPDES. CRIPS will be used to track a permittee's compliance with a permit, including noncompliance with permit limits and conditions, inspection report results, compliance, and enforcement actions.

Although permittees must electronically submit DMRs directly to EPA's NetDMR, other reporting records (e.g., annual reports) must be submitted to DEQ, as specified in the permit. DEQ will then submit the appropriate data and records to ICIS-NPDES according to federal regulations.

13.4 ICIS-NPDES Data Exchange Flow

Upon IPDES Program approval and as permitting and compliance responsibilities transfer to DEQ as outlined in the MOA schedule (DEQ and EPA 2016), DEQ will be responsible for ensuring data are transferred to ICIS-NPDES for all IPDES-permitted facilities through an electronic data migration process. EPA will be responsible for ICIS-NPDES data for the facilities they retain permitting authority over, as outlined in the MOA schedule.

DEQ will coordinate with EPA in developing data migration processes where data entered into CRIPS are uploaded to ICIS-NPDES via EPA's Central Data Exchange (CDX) node and DEQ's eXtensible Markup Language (XML) network node. DEQ's XML network node adheres to the

Network Node Functional Specifications Version 2.1 (*http://www.exchangenetwork.net/node/dev_toolbox/index.htm*).

Data management experts will develop and implement DEQ's current XML network node through a contract in 2017–2018. Data in CRIPS will be extracted using SQL queries and loaded into an SQL staging database with native XML format. XML network node version 2.1, follows standard exchange network practices according to the Pacific Northwest Water Quality Data Exchange, Trading Partner Agreement (December 28, 2004) (*http://www.ecy.wa.gov/pnwdx/pnwdx_main.htm*) and developed in agreement with EPA regarding the specifics of the data exchange (e.g., data pull or push and frequency).

The data migration processes will include pushing permit and facility data to ICIS-NPDES (e.g., permit number; address; effective and expiration dates; contact information; outfall number, description, and location; permit limits; inspection dates; enforcement actions; and compliance schedules).

13.5 Initial Data Migration and Business Practice Development

As discussed in section 13.4, the ICIS-NPDES exchange network data flow is available for state partners with NPDES program authorization to submit their data to EPA's ICIS-NPDES system electronically. The ICIS-NPDES exchange network data flow accepts XML files containing NPDES data for permit, inspection, enforcement; DMR; and special regulatory program report data. DEQ's IPDES and IT personnel, and data management contractor will work with EPA to perform the data mapping necessary for the successful data exchanges.

DEQ recognizes that the utility of CRIPS is directly related to the quality of the data. One of DEQ's major goals in developing and implementing CRIPS is to populate the system with accurate data from ICIS-NPDES and provide for future entry of clean, consistent data. DEQ is aware of potential inconsistencies in the data for the same facilities between the CRIPS data system and ICIS-NPDES. Therefore, during CRIPS implementation, DEQ will work to identify and reconcile inconsistent data between the systems. DEQ will develop CRIPS database quality assurance procedures that include evaluating and establishing thresholds for data completeness and correctness. DEQ will work closely with EPA to verify facility- and permit-specific information to address data gaps before incorporating the information into CRIPS and updating data in ICIS-NPDES.

13.6 Data Quality Assurance

13.6.1 Data Entry Requirements

DEQ has reviewed the 2015 Electronic Reporting Rule and will comply with the data management requirements. DEQ will upload/enter all required data into CRIPS, as well as other nonrequired data. All required and applicable IPDES data will be transferred into ICIS-NPDES.

Any hard-copy data will be manually entered by IPDES personnel into CRIPS and sent to ICIS-NPDES within 30 days of receipt. The data entry will follow the quality control procedures

developed during the data reconciliation to meet or exceed the criteria for timeliness, accuracy, completeness, and consistency identified in the Electronic Reporting Rule.

Upon data migration to ICIS-NPDES, the data in CRIPS will have been subjected to the same kind and level of data quality practices and review as data entered directly to ICIS-NPDES. In addition, the IPDES data management coordinator will review exception and error reports generated by ICIS-NPDES, after data migration, and will address erroneous data in ICIS-NPDES and CRIPS, and correct any actions or processes that led to the data errors.

13.6.2 Administrative Record and Data Management

Information and documents used to develop the permit and fact sheet that make up the administrative record will be stored in the CRIPS database and DEQ's servers, or in DEQ's document management system (TRIM). This information will be searchable and viewable by the public through the IPDES online interface.

The IPDES Program will work with DEQ personnel, EPA, and contractors having ICIS-NPDES and DMR data expertise to establish business management and quality control practices to ensure the quality of data and to provide for efficient, accurate, and complete data entry into CRIPS that complies with EPA data requirements. These practices will be incorporated into the CRIPS standard operating procedures, data management manuals, and training for IPDES personnel (to be developed in 2017). DEQ will periodically conduct data audits of the information in CRIPS, make corrections, and refine the business practices, as necessary.

DEQ will maintain electronic copies of all permit applications, permits, fact sheets, public notices, facility/DEQ correspondence, inspection reports, compliance orders and enforcement actions, and other permit-related documentation. These electronic files will be available to the public for viewing and downloading through the IPDES online interface except for any confidential information, which will be filed separately. The IPDES document management system is in the early stages of development but will be integral to the full implementation CRIPS.

13.6.3 Schedule

DEQ will continue to plan and develop CRIPS in preparation for developing, issuing, and monitoring permits. DEQ intends to have CRIPS and the IPDES online interface functional by the time DEQ begins developing and issuing its first IPDES permits in July 2018.

14 Capacity Development

DEQ developed an IPDES capacity building plan (DEQ 2015a) (Appendix B) to identify staffing components, including hiring, recruitment and retention, onboarding, training and professional development, and guidance. The plan will help successfully phase-in the IPDES Program and implement the program at full build-out. This capacity building plan provides planning and performance information to EPA and DEQ personnel and provides IPDES personnel access to a comprehensive strategy that outlines the resources necessary to become fully proficient in their roles.

The capacity building plan documents specific training courses required for IPDES personnel to fulfill their respective job duties. It also outlines additional training strategies to ensure successful implementation of all IPDES Program components including, data management, developing individual and general permits (storm water, pretreatment, and sewage sludge), and CIE activities. Additional training opportunities include on-the-job training from experienced EPA, DEQ, or other NPDES state personnel; working under the PPA with EPA; job shadowing and mentoring with experienced EPA and DEQ personnel; and jointly participating in CIE activities with EPA.

DEQ will continually develop personnel knowledge, skills, experience, and available resources to fully implement the IPDES Program before and after DEQ receives NPDES authorization. By December 31 of each year, DEQ will prepare a capacity building summary for the period of July 1 through June 30 until DEQ has received full NPDES authorization (currently projected 2021). The annual capacity building summary will document program efforts, such as permits drafted by IPDES personnel, compliance and enforcement activities undertaken, DEQ-EPA partnership agreements, and personnel training. The summary will also identify recommended changes to the capacity building plan for the coming fiscal year. These proposed changes will depend on current and projected staffing, workload, resources, new information, and lessons learned. The changes will be aimed at continually adapting and improving the IPDES Program to accommodate new program opportunities and existing program challenges.

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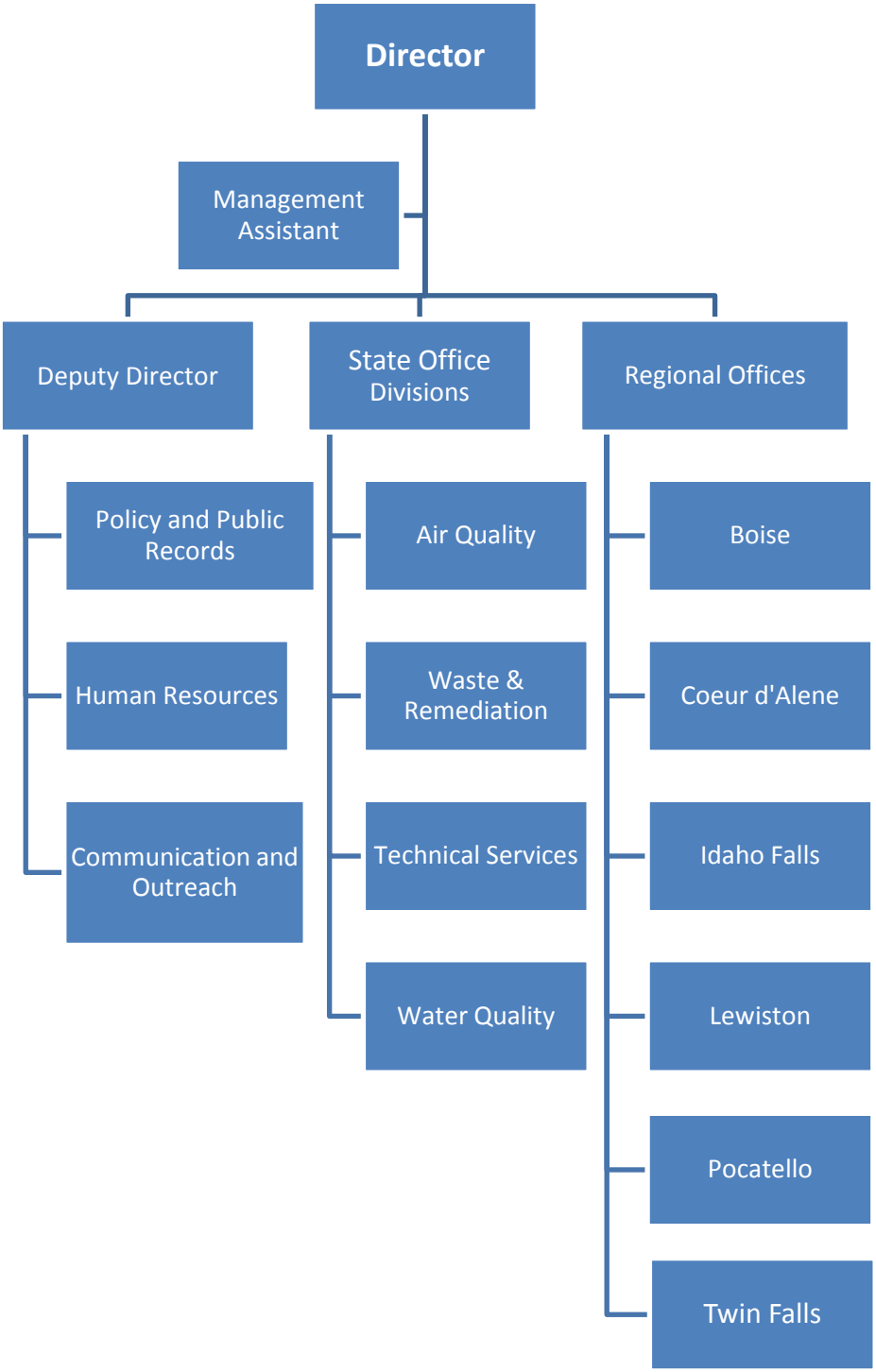
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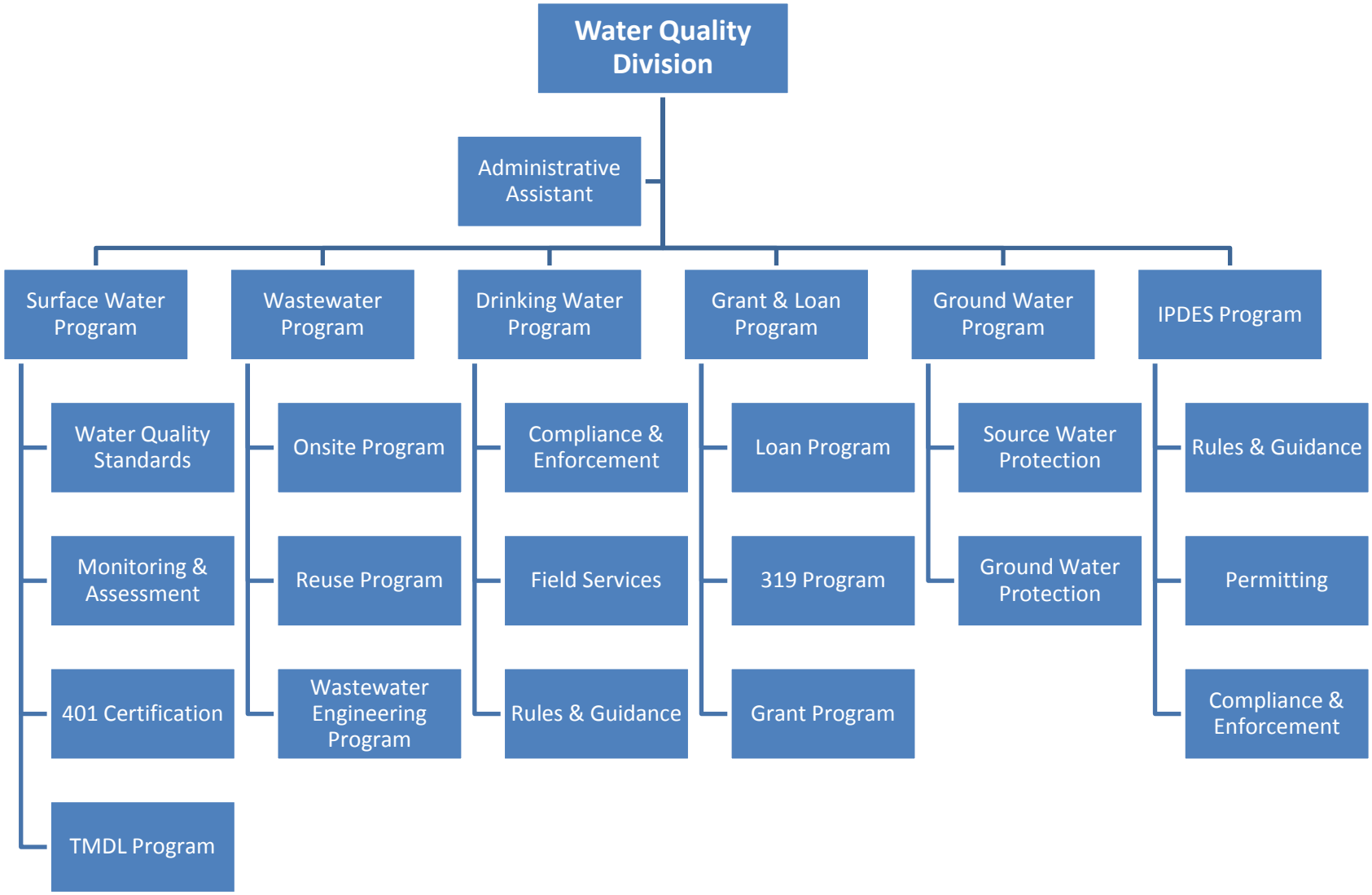
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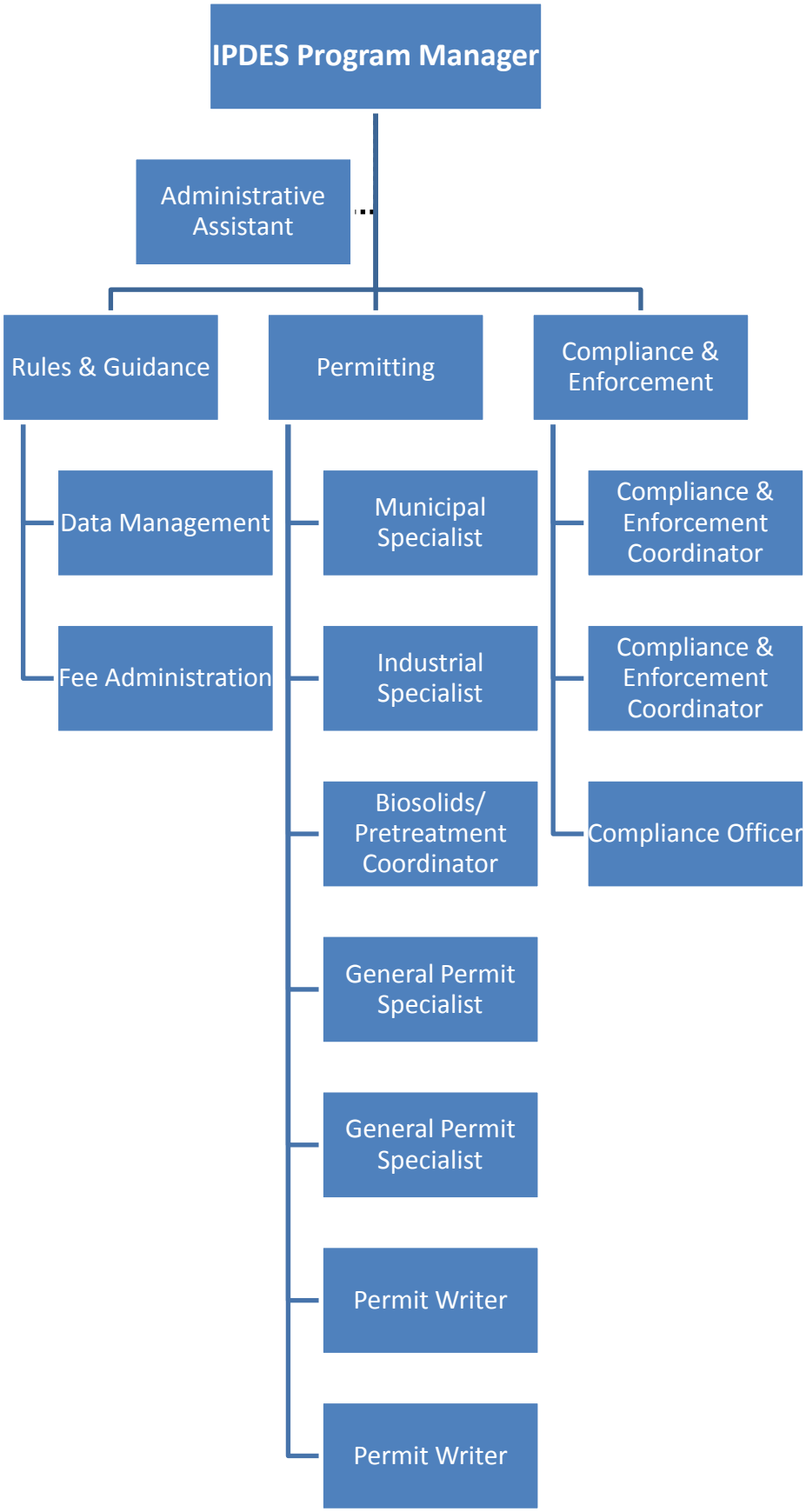
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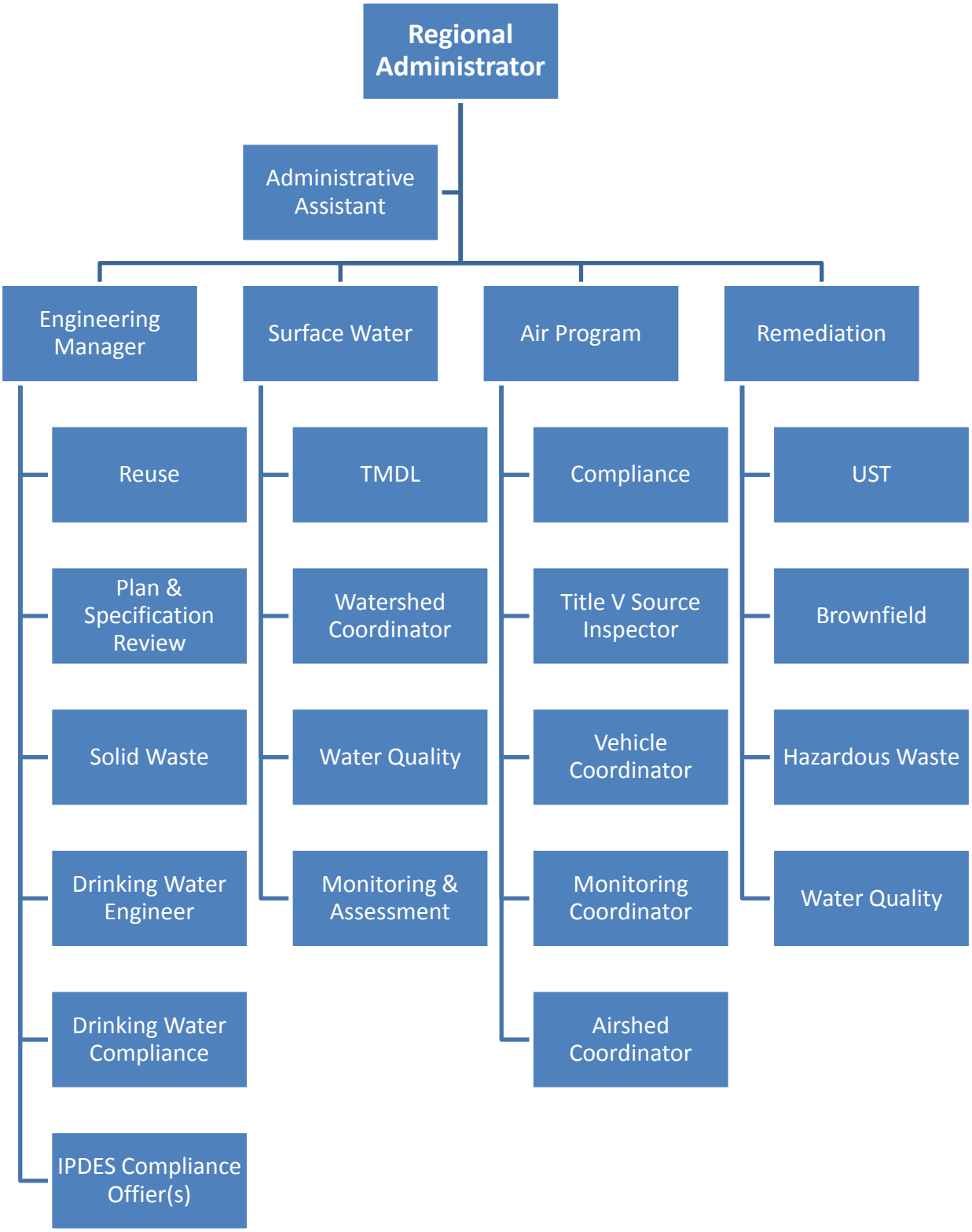
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Appendix A. Organizational Charts




Water Quality Division
Administrative Assistant
Surface Water Program
Wastewater Program
Drinking Water Program
Grant & Loan Program
Ground Water Program
IPDES Program
Water Quality Standards
Monitoring & Assessment
401 Certification
TMDL Program
Onsite Program
Reuse Program
Wastewater Engineering Program
Compliance & Enforcement
Field Services
Rules & Guidance
Loan Program
319 Program
Grant Program
Source Water Protection
Ground Water Protection
Rules & Guidance
Permitting
Compliance & Enforcement


IPDES Program Manager
Administrative Assistant
Rules & Guidance
Permitting
Compliance & Enforcement
Data Management
Fee Administration
Municipal Specialist
Industrial Specialist
Biosolids/ Pretreatment Coordinator
General Permit Specialist
General Permit Specialist
Permit Writer
Permit Writer
Compliance & Enforcement Coordinator
Compliance & Enforcement Coordinator
Compliance Officer


Regional Administrator
Administrative Assistant
Engineering Manager
Surface Water
Air Program
Remediation
Reuse
Plan & Specification Review
Solid Waste
Drinking Water Engineer
Drinking Water Compliance
IPDES Compliance Offier(s)
TMDL
Watershed Coordinator
Water Quality
Monitoring & Assessment
Compliance
Title V Source Inspector
Vehicle Coordinator
Monitoring Coordinator
Airshed Coordinator
UST
Brownfield
Hazardous Waste
Water Quality

Appendix B. IPDES Capacity Building Plan

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Capacity Building Plan for the Idaho Pollutant Discharge Elimination System Program



State of Idaho
Department of Environmental Quality

September 2015



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Capacity Building Plan for the Idaho Pollutant Discharge Elimination System Program

September 2015

Prepared by
Troy Smith
Idaho Department of Environmental Quality
IPDES Program
1410 N. Hilton
Boise, ID 83706

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Executive Summary

In 2014, through House Bill 406 and Idaho Codes §39-175A–C, the Idaho Legislature directed the Idaho Department of Environmental Quality (DEQ) to seek delegation from the US Environmental Protection Agency (EPA) of the National Pollutant Discharge Elimination System (NPDES) Program and create the Idaho Pollutant Discharge Elimination System (IPDES) Program.

As part of the IPDES Program development and implementation, DEQ created this capacity building plan to identify staffing components, including hiring, recruitment and retention, onboarding, training and professional development, and guidance to successfully achieve the following:

- Phase-in the IPDES Program implementation.
- Implement the IPDES Program at full build-out.

Capacity building is defined in this plan as actions and activities that maximize or improve upon IPDES Program implementation. The goals for the IPDES capacity building plan include achieving the following program conditions:

- Program efficiency
- Program effectiveness
- Operational scale
- Leveraging resources

Measures of capacity building success for the IPDES Program focus on developing and using resources that will result in excellent customer service for IPDES users, including DEQ personnel, IPDES permittees, and Idaho citizens. Further, the capacity building plan will help DEQ continually expand personnel knowledge, skills, experience, and available resources to fully implement the IPDES Program before and after DEQ receives NPDES authorization.

The capacity building plan is intended to be a living document that will be updated on an annual basis and to provide planning and performance information to EPA and DEQ personnel in the IPDES Program, Water Quality Division, regional offices, and senior management. By December 31 of each year, DEQ will prepare a capacity building summary for the period of July 1 through June 30 until DEQ has received full NPDES authorization (currently projected as fiscal year 2022). The planning and performance summary information will address current and projected program conditions about data management, permitting, compliance, inspection, and enforcement and will outline the resources needed by IPDES personnel to become proficient and fully engaged in their roles.

1 Introduction

1.1 IPDES Background

The Idaho Department of Environmental Quality (DEQ) is a state department created by the Idaho Environmental Protection and Health Act (Idaho Code Title 39) to ensure clean air, water, and land in the state and protect Idaho citizens from the adverse health impacts of pollution. As a regulatory agency, DEQ enforces various state environmental regulations and administers a number of federal environmental protection laws including the Clean Air Act, Clean Water Act (CWA), and Resource Conservation and Recovery Act.

In 2014, through House Bill 406 and Idaho Codes §39-175A–C, the Idaho Legislature directed DEQ to seek delegation from the US Environmental Protection Agency (EPA) of the National Pollutant Discharge Elimination System (NPDES) Program and create the Idaho Pollutant Discharge Elimination System (IPDES) Program.

DEQ began staffing and building the IPDES Program in fiscal year (FY) 2015. The projected level of staffing and funding for the full IPDES Program is expected to require 29 full-time equivalents (FTEs) and $3.03 million dollars annually (DEQ 2015a). IPDES program analysis and project planning documents, along with a forthcoming memorandum of agreement between DEQ and EPA, will further detail the IPDES Program implementation.

In 2012, Alaska was the most recent state to receive authority to administer an NPDES program. As part of the NPDES primacy process, but prior to receiving authority, they completed the Alaska Pollutant Discharge Elimination System (APDES) Capacity Building Plan (ADEC 2008).

1.2 IPDES Capacity Building Plan Scope

The IPDES capacity building plan is intended to be a living document that will be updated on an annual basis. This plan provides planning and performance information to EPA and DEQ personnel in the IPDES Program, Water Quality Division, regional offices, and senior management. The IPDES capacity building plan also provides data management, permitting, compliance, inspection, and enforcement (CIE) personnel access to a comprehensive document that outlines the resources necessary to help them become proficient and fully engaged in their roles.

1.3 IPDES Capacity Building Goals

DEQ developed this capacity building plan to identify staffing components, including hiring, recruitment and retention, onboarding, training and professional development, and guidance to successfully achieve the following:

- Phase-in the IPDES Program implementation.
- Implement the IPDES Program at full build-out.

This document defines capacity building as actions and activities that maximize or improve upon IPDES Program implementation. The goals for the IPDES capacity building plan identify the following intended conditions under which the IPDES Program will operate:

- **Program Efficiency:** Provide high-quality services to IPDES users to achieve desired outcomes in a timely manner.
- **Program Effectiveness:** Provide high-quality services to IPDES users to achieve a high rate of desired outcomes.
- **Operational Scale:** Provide expanded services to increasing numbers of IPDES users and populations.
- **Leveraging Resources:** Maximize the use of available resources and assets through capacity building activities that enhance the IPDES Program's ability to serve Idaho citizens.

Measures of capacity building success for the IPDES Program focus on developing and using important resources that will result in excellent customer service for IPDES users, including DEQ personnel, IPDES permittees, and Idaho citizens.

2 IPDES Capacity Building Objectives

The IPDES capacity building objectives are measureable and tangible actions that support attainment of the stated goals, and will help track how well the IPDES Program is meeting the overarching goals through time. It is expected that the IPDES capacity building plan will be updated annually to reflect the current and desired program implementation.

- **Staffing:** IPDES personnel will include 3 FTEs in program administration, 8 FTEs in permitting, 15 FTEs in CIE, and 3 FTE in legal administration and support.
- **Hiring, Recruitment and Retention, and Onboarding:** DEQ will use multiple strategies to develop and maintain the personnel and expertise necessary to implement the IPDES Program.
- **Training and Professional Development:** DEQ will ensure IPDES personnel have appropriate training opportunities to develop and maintain expertise in the IPDES Program. IPDES personnel will continue to expand program-related knowledge and expertise by participating in job-related training, on-the-job training, professional organizations, conferences and workshops, scientific literature, and mentoring.
  - **Data Management:** IPDES and Information Technology (IT) personnel will receive training and professional development necessary to create and maintain a high-quality data management system that will receive, store, and provide data related to IPDES permitting, inspection, and compliance.
  - **Permitting:** IPDES personnel will receive training and professional development necessary to review, draft, and issue permits for point sources regulated under the IPDES Program, which are consistent with IPDES rules and federal regulations.
  - **Compliance, Inspection, and Enforcement (CIE):** IPDES personnel will secure the necessary training, credentials, and experience for maintaining a highly competent program to identify potential noncompliance situations and activities, monitor existing noncompliance, and initiate timely, appropriate, and effective actions to help achieve and maintain compliance, and enact enforcement, when necessary.

- **Guidance, Standard Operating Procedures (SOPs), Quality Assurance Project Plans (QAPPs), and Templates:** IPDES personnel will coordinate with other DEQ personnel, EPA, NPDES-authorized states, local stakeholders, and consultants to develop guidance documents, SOPs, and templates necessary to implement all phases of the program.

Depending on each job and position description, IPDES personnel will be trained in data management, permitting, and CIE and will have collective expertise[1] in all facility types requiring IPDES permits, including but not limited to public and private municipal and industrial (including mining), silviculture, aquaculture, concentrated animal feeding operations, stormwater and other point source facilities and activities covered under individual and general permits. In addition to sector expertise, personnel may be designated to become in-house experts in writing, evaluating, and analyzing permits that address whole effluent toxicity (WET), pretreatment, mixing zones, and other training-intensive analyses.

Beginning in FY2016, DEQ may work with EPA and other NPDES-authorized states to provide direct training for personnel, temporarily share personnel, and participate in job shadowing and mentoring opportunities to provide practical NPDES permitting, compliance, inspection, enforcement, and program administration experience. IPDES personnel will complete the training required to obtain EPA-certified NPDES inspector credentials before Idaho receives full NPDES authorization. Upon receiving NPDES authority, the IPDES Program will then convert to a DEQ-issued credential system, which will be developed by the CIE lead with assistance from other IPDES, DEQ, and EPA personnel.

DEQ will also begin the process of developing an online permitting and reporting system as the primary information submittal and exchange mechanism for the IPDES Program, which will allow DEQ to efficiently and effectively compile, manage, and report on IPDES permitting and CIE activities. Once the online permitting and reporting system is developed, training IPDES personnel and external users to operate the system correctly will be a high priority. IPDES personnel will receive training individually and in groups, and user support guidance will be posted to DEQ's intranet, with periodic refresher courses made available. Data management staff must also have familiarity with EPA's Integrated Compliance Information System (ICIS)-NPDES database to ensure the required data are uploaded into EPA's database. For additional details, see the *IPDES Program Data Management Strategy* (DEQ 2015b).

3 Staffing

DEQ currently proposes to implement the IPDES Program in four phases, with the first phase beginning at the time of state authorization in FY2019 (July 2018) and full NPDES delegation occurring in FY2022 (July 2021). Most IPDES personnel are currently projected to be centralized at the DEQ State Office in Boise, but some personnel are also projected to be in the Coeur d'Alene, Lewiston, Boise, Twin Falls, Pocatello, and Idaho Falls Regional Offices. Table 1, Table 2, and Appendix A illustrate how the fully staffed IPDES Program personnel are projected to be distributed among the different job classes. Progressively filling the 29 FTEs and

[1] Expertise is defined as appropriate education, training, skills, and experience in a particular field to successfully perform work duties consistent with the state job classification and position description.

providing ongoing training and professional development will increase personnel expertise before and throughout the NPDES-authorization process.

Table 1. IPDES Program staffing projection with overview of fiscal year, number of FTEs to hire, cumulative FTEs in the program, and overall distribution of FTEs within the IPDES Program.

State Fiscal Year	FTEs to Hire	Cumulative FTEs[a]	Prg. Mgt. FTEs (Cumulative FTEs)	Permits FTEs (Cumulative FTEs)	CIE FTEs (Cumulative FTEs)	Legal, Admin & Support
2015	3	5	3		2[a]	
2016	3	8	2(5)	1		
2017	4	12		2 (3)	1 (3)	
2018	10	22		4 (7)	4 (7)	1 (1)
2019	4	26			4 (11)	2 (3)
2020	3	29			3 (14)	
2021	0	29				
Totals	**29**		**5**	**7**	**14**	**3**

a. DEQ currently has 12 certified National Pollutant Discharge System inspectors who work the equivalent of approximately 2 FTEs.
Notes: Full-time equivalent (FTE); program management (Prg. Mgt.); compliance, inspection, and enforcement (CIE)

Table 2. IPDES Program staffing projection by organizational activity.

Position Title	FTE	Activity Description
Program manager	1	IPDES Program administration and oversight
• Administrative assistant	1	IPDES clerical support and fee administration
• Permits lead	1	Permit coordination and administration
▪ Permit specialists	7	Develop individual permits and pretreatment, MSGP and CGP, MS4 general permit, and sector-specific general permits (i.e., pesticide, vessel, suction dredging, and aquaculture).
• CIE lead	1	CIE coordination and administration
▪ CIE specialists	14	Review DMRs, reporting requirements, annual reports, notifications, conduct facility inspections, BMP plans, facility QAPPs, provide compliance assistance, and initiate enforcement.
▪ Rules and guidance coordinator	1	Rules and guidance coordination and administration
▪ Data management coordinator	1	Manage the development and maintenance the IPDES data and reporting system in coordination with DEQ personnel, EPA and external users, and provide data management training to DEQ personnel and external users.
Deputy attorney general	1	IPDES legal support
Information technology specialist	1	IPDES web interface and data management support
Total	29	

Notes: Full-time equivalent (FTE); Idaho Pollutant Discharge Elimination System (IPDES); Multisector General Permit (MSGP); construction general permit (CGP); municipal separate storm sewer systems (MS4); compliance, inspection and enforcement (CIE); discharge monitoring report (DMR); best management practice (BMP); quality assurance project plan (QAPP); Idaho Department of Environmental Quality (DEQ); US Environmental Protection Agency (EPA)

4 Hiring, Recruitment and Retention, and Onboarding

4.1 Hiring Strategy

It is important for the IPDES Program to be fully staffed with trained personnel, commensurate to each phase of the program authorization (Table 3). Although state authorization of the program is anticipated for FY2019 (July 2018), DEQ will begin hiring permit specialists in the fiscal years prior to DEQ writing permits for each type of facility.

Table 3. IPDES Program staffing development by state fiscal year. Overview of FTEs and distribution among IPDES Program activities.

State Fiscal Year	IPDES Program Phase	FTE Descriptions	No. of FTEs Hired
2015	Rules and guidance development	1 program manager 1 permit lead 1 rules and guidance coordinator DEQ-certified NPDES inspectors (≈2 FTEs)[a]	3 (5)[a]
2016	Rules and guidance development	1 CIE lead 1 data management coordinator 1 permit specialist	3
2017	Submit primacy application to EPA	1 information technology specialist 2 permit specialist 1 CIE specialists	4
2018	Phase 1–Municipal Permits	1 deputy attorney general 1 clerical support for fee administration 4 permit specialists 4 CIE specialists	10
2019	Phase 2–State Authorization and Begin Industrial Permits	4 CIE specialists	4
2020	Phase 3–General Permits and NOIs	3 CIE specialists	3
2021	Phase 4–Storm Water, Federal Facilities, Sludge	—	—
2022	Idaho receives full NPDES authorization		—
Total			27 (29)[a]

a. DEQ currently has 12 certified NPDES inspectors that work the equivalent of approximately 2 FTEs.
Notes: Idaho Pollutant Discharge Elimination System (IPDES); full-time equivalent (FTE); Idaho Department of Environmental Quality (DEQ); National Pollutant Discharge Elimination System (NPDES); compliance, inspection, and enforcement (CIE); notice of intent (NOI)

Appendix A provides an organization chart for the fully staffed IPDES Program, including each position title, state job classification, and anticipated fiscal year of hire.

4.2 Recruitment and Retention Strategy

The IPDES Program will depend heavily on the performance and quality of current employees who have specialized skills and institutional knowledge and newly recruited employees who will develop these skills. Employee recruitment and retention is critical for the IPDES Program, particularly in the developing phases. During program development, an increased potential exists for high resource, financial, and productivity costs resulting from employee turnover. These costs include job posting, screening, interviewing, hiring, and training new employees (DEQ 2012). Further, poor employee recruitment and retention can negatively affect program staffing and result in substandard customer service, diminished stakeholder trust, and poor internal workgroup morale.

Although many recruitment and retention strategies are dictated by agency or state direction (e.g., salaries, leave, holidays, and benefits), the IPDES Program will use the following strategies to ensure effective recruitment and retention:

- Treat all employees respectfully and professionally.
- Provide and communicate clear program goals and objectives to all employees.
- Provide opportunities for employees to participate in intra- and interdisciplinary program development teams.
- Provide mentoring and coaching opportunities throughout all levels of the program.
- Provide training and professional development opportunities to improve technical, scientific, and communication skills.
- Provide training and professional development opportunities for managers and supervisors to ensure a positive, constructive, and engaging workplace.
- Develop succession planning, including forecasting future staffing needs in hard-to-fill areas.
- Use innovative measures and activities to distinguish new employees as growing investments and experienced employees as valuable assets.

4.3 New Employee Onboarding

Every phase of the onboarding process with new IPDES employees is important, beginning with the first day on the job, through the successful completion of the first year. By creating a welcoming atmosphere and providing the necessary guidance and tools, new hires will more easily adapt to the work environment and become fully engaged in their new roles. This process should help improve employee morale and reduce turnover resulting from poor job satisfaction. The following information was modified from the *New Employee Orientation and Onboarding: A guide for new employees and their managers* (MIT 2015).

4.3.1 New Employee's First Day

During the employee's first day, the intent is to help the employee feel welcomed and prepared to start working, and begin to understand the position and performance expectations. The supervisor should be available to greet the employee on the first day and introduce the employee to others in the workplace. The supervisor should also provide an overview of the functional area, organizational structure, and goals, review the job description, outline the duties and

expectations, and describe how the employee's job fits within the program and department. Finally, the supervisor should discuss work hours; explain overtime policies and procedures, vacation, sick time, and holidays use; and any flexible work policies or procedures. The following checklist provides basic onboarding items to discuss with the employee on the first day of work.

Equipment

- Vehicles
- Telephone
- Computer
- ID card and building access
- P-card
- Charge codes
- Business cards
- Network access
- Phone numbers
- Furniture

Personnel and Processes

- TRIM/TRIM manual
- Outlook calendar
- Administrative assistants
- Work hours/schedule
- Accruing leave and comp time
- Travel/training requests
- Open door policy
- Cell phone
- Inbox (document review and signatures)

Learning Tools

- Idaho Codes §39-175A–C
- IPDES rules and guidance documents
- 2015 DEQ *IPDES Program Strategic Plan* (DEQ 2015c)
- 2014 EPA *Water Quality Standards Handbook (EPA 2015a)*
- 2010 EPA *NPDES Permit Writers' Manual* (EPA 2010)
- 2007 DEQ *Water Quality Standards Training Course Materials* (DEQ 2007)
- Code of Federal Regulations (DEQ 2015b)

Performance

- IPDES Program objectives
- Performance expectations
- 6-month performance objectives
- Long-term performance objectives

4.3.2 New Employee's First Months

During a new employee's first few months, the supervisor should ensure the employee is cognizant of the performance expectations and objectives related to the position and ensure the employee continues to develop, learn about the position and organization, and build professional relationships. During this time, the employee should increasingly become aware of the position's roles and responsibilities, begin to work independently, and become acclimated to the work environment, both functionally and socially. The supervisor can facilitate this by scheduling and conducting regular one-on-one meetings, providing on-going feedback, eliciting feedback from the employee, and discussing performance and professional development goals. Finally, the supervisor should help ensure the new employee has attended or is signed up for new employee orientation and other necessary trainings (Appendices B–F).

4.3.3 New Employee's First 6 Months

Toward the end of the first 6 months, a new employee should be begin to take the lead on some initiatives, built relationships with peers as go-to partners, and feel confident and engaged in the new role while continuing to learn. At this time, the supervisor should conduct the 6-month performance review, discuss progress on performance goals and professional development needs and opportunities, and generally help to facilitate long-term employee success.

5 Training and Professional Development

5.1 Training for all IPDES Personnel

Specific training is required for all DEQ personnel (Karen Thiel, DEQ, personal communication with Troy Smith, DEQ, 2015), and additional training is required for all IPDES Program personnel (DEQ 2015d).

Unless new personnel have completed the trainings or equivalent as authorized by DEQ's Human Resources or the IPDES program manager, the following trainings are required for all IPDES personnel within their first year or as soon as trainings become available (Appendix B):

- **New Employee Orientation**—Review of DEQ structure and administrative policies and procedures
- **TRIM Training**—Use of DEQ's electronic document storage and filing system
- **Sexual Harassment**—Teaches employees about their role in ensuring a respectful work environment and provides an overview of what to do if employees feel they may be experiencing harassment along with DEQ's procedures on filing a complaint.
- **Americans with Disability Act As Amended**—Teaches employees about the federal antidiscrimination statute designed to remove barriers that prevent qualified individuals with disabilities from enjoying the same opportunities that are available to persons without disabilities.
- **Total Maximum Daily Load (TMDL) to NPDES Permits Training**—Three web-based training modules on topics related to TMDLs and NPDES permitting. The presentations are intended for TMDL developers and NPDES permitting staff to gain a better understanding of TMDL development and implementation through NPDES permits.

While additional courses may not be required, all IPDES personnel are encouraged to complete additional courses that provide the knowledge, skills, and ability to more efficiently and effectively carry out their assigned duties.

5.2 Training for IPDES Supervisors

Unless new supervisors have completed the trainings or equivalent as authorized by DEQ's Human Resources or the IPDES program manager, the following trainings are required for all IPDES supervisors within their first year or as soon as trainings are available (DEQ 2015e) (Appendix C):

- **Performance Management**—Offers tools for managing employee development, coaching, and providing feedback. Each of the four units has activities that can be completed online.
- **Drug/Alcohol Free Workplace**—Shows managers how to recognize the signs of drug and alcohol abuse.
- **Family Medical Leave Act (FMLA)**—Provides supervisors and managers with a general awareness of FMLA and why it is important to know how the law works.
- **Management and Leadership Skills**—Designed to help supervisors increase productivity, improve employee performance, and enhance business interactions through effective management and leadership *(This formal training is required for all new supervisors if they have not completed similar training).*

5.3 Training for IPDES Data Management Coordinator

DEQ will develop an IPDES database for storing, collecting, and disseminating data, which will be shared with EPA to meet the state's reporting requirements. The database will include a web-based interface to allow the regulated community to submit new permit applications, permit renewals, monitoring data, and other information required by DEQ. It will also allow the regulated community to update facility contact information and other pertinent information. In addition, the web-based interface application will allow the public to query current permit information.

The IPDES data management coordinator will have a solid understanding of the IPDES Program as well as database management, which can be achieved by completing the following training, or equivalent as approved by the IPDES rules and guidance coordinator (Appendix D):

- **Water Quality Standards Handbook or Academy**—Outlines provisions of the Clean Water Act and addresses how EPA and the states/tribes work together toward Clean Water Act objectives, including designated uses, water quality criteria, antidegradation policy, general flexibility policies, and EPA review.
- **NPDES Permit Writers' Web-Based Training or Formal Course** (either complete the training provided on the EPA website or complete the formal course provided by EPA and Tetra Tech)—Provides the basic regulatory framework and technical considerations that support developing wastewater discharge permits. The permit writers' manual is designed for new permit writers and highlights the process of developing, issuing, and complying with NPDES permits. The manual provides the data management coordinator with an understanding of the specific permit data needed for inclusion into the database.

- **Database Management-Specific Training**—ExecuTrain, an Idaho-based IT training company, and other companies provide a number of database management-specific courses that could be valuable training opportunities for the data management coordinator as the database is developed and becomes fully functioning.
- **Integrated Compliance Information System Training Modules**—A series of online modules that provide instruction on accessing and using the ICIS database.

Other training may be substituted for these classes if approved by the IPDES rules and guidance coordinator and Water Quality Division administrator.

5.4 Training for IPDES Permit Specialists

DEQ personnel will require training to effectively develop IPDES permits that are consistent with the IPDES rules and federal regulations (Appendix E).

The DEQ permit lead will track personnel training and certify that each permit specialist has (1) met all of the applicable training elements, or (2) successfully completed other equivalent training. Annually, the DEQ permit lead will send a report to EPA verifying the status of personnel who have completed the permit writer training requirements.

The IPDES permit lead will ensure that all IPDES permit specialists meet to the following:

- Occupy a position classified as an Analyst 3, Scientist 3, or Engineer (Staff).
- Work in a position whose position description includes permit writing duties.
- Have experience assisting in developing NPDES/IPDES permits, 401 certifications, or similar activities with DEQ, EPA, or other regulatory agencies.

IPDES permit specialists must complete the following training, or equivalent, and obtain approval from the IPDES permit lead within the first year of hire or as soon as trainings are available:

- **Idaho Water Quality Standards 101**—Outlines the Idaho Water Quality Standards and how state law and DEQ authority relate to federal law and EPA authority toward achieving Clean Water Act objectives, including designated uses, numeric and narrative water quality criteria, antidegradation policy, use attainability analyses, watershed advisory groups, TMDLs, etc.
- **NPDES Permit Writers' Course**—Provides the basic regulatory framework and technical considerations that support developing wastewater discharge permits. The course is designed for new permit writers and highlights the process of developing, issuing, and complying with NPDES permits.
- **IPDES-Specific Training**—Provides detailed information about Idaho permitting guidance and practices, including use of reasonable potential analysis methodology, data recording and management tools (e.g., Excel Workbook), and permit/fact sheet templates. Covers where to locate information and data used in permitting decisions including ambient water quality data.
- **CORMIX Mixing Zone Introductory and Advanced Classes**[2]—Includes set of four introductory classes and two advanced-level classes, each of 2-hours duration; offers interactive, online, web-based training; and addresses regulatory background, definition

of mixing zones, mixing processes, and the CORMIX mixing zone model application and use.

- **Visual Plumes**[2]—A Windows-based software application for simulating surface water jets and plumes. It assists in preparing mixing zone analyses, TMDLs, and other water quality applications.
- **Introduction to Aquatic Toxicology**—Provides participants with a strong foundation of aquatic toxicology and how these concepts are applied to managing pollutants in aquatic environments. The course covers terminology, common test designs, and endpoints such as lethality and endocrine disruption. Important legacy and emerging pollutants of concern such as heavy metals, organic pesticides, polycyclic aromatic hydrocarbons, polychlorinated biphenyls, polybrominated diphenyl ethers, pharmaceuticals, personal care products, and nanoparticles are presented. Fate and transport as it relates to bioavailability and pollutant partitioning in aquatic environments are discussed. Water quality criteria from the CWA with an emphasis on, and examples of, site-specific criteria for metals using hardness correction, water effects ratio, and biotic ligand model are also included.
- **WET Training Tools**[2]—An overview of EPA's WET test methods promulgated at 40 CFR 136. DVDs were developed so that permit writers, their permittees, and commercial laboratories can have a better understanding of the EPA WET test methods and how to properly conduct, review, and analyze them.

Other training may be substituted for these classes if approved by the IPDES permit lead and Water Quality Division administrator.

5.5 Training and Credentials for IPDES Compliance, Inspection, and Enforcement Specialists

Before NPDES authorizations, the IPDES CIE personnel will be required to obtain EPA CWA inspector credentials to conduct NPDES inspections on behalf of EPA. DEQ personnel will adhere to EPA's credentialing requirements as specified in the *Clean Water Act (CWA) §402 Training Requirements for National Pollutant Discharge Elimination System (NPDES) Program Inspectors* (EPA 2014) (Appendix G). Upon receiving NPDES authority, the IPDES Program will then convert to a DEQ-issued credential system.

The IPDES CIE lead will track personnel training and requirements necessary to obtain NPDES/IPDES inspector credentials and will certify that each inspector has (1) met all of the applicable training elements, or (2) successfully completed equivalent training. Annually, the CIE lead will send a list to EPA verifying the personnel who have completed the credential and continuing education requirements.

DEQ will develop a policy requiring all personnel, whose position descriptions include CIE as work duties, to complete the appropriate enforcement training (Appendix F). Once the prescribed training has been completed, personnel will be eligible to obtain IPDES inspector credentials.

[2] This training may not be required of all permit specialists. If required, it will be identified in the Employee Performance Plan.

5.5.1 CIE Training

The IPDES CIE lead will ensure that all IPDES Compliance Officers meet the following:

- Occupy a position classified as an Analyst 3, Scientist 3, or Engineer (Staff).
- Work in a position whose position description includes CIE work duties.
- Have job shadowing or experience conducting compliance field inspections for DEQ, EPA, or other regulatory agency.

To obtain IPDES CIE credentials, IPDES Compliance Officers must complete the following training, or equivalent, and obtain approval from the IPDES CIE lead within the first year of hire:

- **Self-Certification of Mandatory Training EPA Order 3500.1** (EPA 2014)
- **24-Hour Health and Safety or 40-Hour Health and Safety** (HAZWOPER)
- **EPA Basic Inspector CST 109 (EPA)**—Three-day enforcement course designed to explain the basic inspection and enforcement tools used by environmental regulatory agencies.
- **CWA/NPDES Computer-Based Inspector Training** (Inspector Wiki)—The course parallels the 2004 *NPDES Compliance Inspection Manual* and includes an overview of the NPDES Program, types of inspection procedures, sampling and flow measurement, and record keeping and reporting. Advanced modules include inspections for stormwater, sanitary sewer overflows, combined sewer overflows, pretreatment compliance, and biosolids, toxicity, and pollution prevention.
- **NPDES Permit Writers' Course** (web-based or classroom; EPA and Tetra Tech)—Provides the basic regulatory framework and technical considerations that support developing wastewater discharge permits. The course is designed for new permit writers and highlights the process of developing, issuing, and complying with NPDES permits.
- **Mandatory Self-Study Materials for All New IPDES** Compliance Officers
  - CWA §308—Records, Reports, and Inspections
  - *NPDES Compliance Inspection Manual* (July 2004) Chapters 1–7
  - Primer for Municipal Wastewater Treatment Systems
  - NPDES Compliance Monitoring Strategy (2007)
  - Technology fact sheets
    - Conventional gravity sewers
    - Lift station sewers
    - Force main sewers
    - Sewer cleaning and inspection
    - Screening and grit removal
    - Oxidation ditches
    - Trickling filters
    - Fine bubble aeration
    - Chlorine disinfection
    - Dechlorination
    - Ozone disinfection
    - Ultraviolet disinfection
- **Mandatory On-the-Job Training (OJT)**

  - Review a minimum of two final inspection reports, and prepare at least one final draft report.
  - Accompany an experienced CWA NPDES/IPDES compliance inspector/field investigator as determined by the inspector's supervisor, on a minimum of two CWA NPDES/IPDES inspections.
  - Conduct at least one OJT CWA NPDES/IPDES inspection while being observed by an experienced, credentialed compliance inspector/field investigator.
- **Additional Mandatory Training Courses in Specific Subprograms**
  - Stormwater (industrial, construction, and municipal separate stormwater sewer systems [MS4s])
  - Publicly owned treatment works
  - Sanitary sewer overflows
  - Combined sewer overflows
  - Pretreatment
  - Biosolids
  - Mining
  - Construction General Permits
  - Multisector General Permits
  - Concentrated animal feeding operations
  - Aquaculture
  - Vessels
  - Others

Other training may be substituted for these classes if approved by the IPDES CIE lead and Water Quality Division administrator.

After IPDES personnel have received EPA inspector credentials, DEQ will perform NPDES permit compliance inspections on behalf of EPA according to the performance partnership agreement (PPA) work plans, and other agreements, as appropriate. Upon receiving NPDES authority, the IPDES Program will then convert to a DEQ-issued credential system, which will be developed by the IPDES CIE lead.

5.5.2 CIE Credential and Renewal

To maintain NPDES or IPDES CIE credentials, personnel must meet the following minimum requirements, or equivalent, and obtain IPDES CIE lead approval:

1. Successfully complete the basic CIE training requirements.
2. Annually, complete each of the following (a through f):
   a. 8-Hour Health and Safety refresher (HAZWOPER)
   b. Complete eight modules from the Occupational Health and Safety Course to fulfill the annual health and safety refresher requirement. Inspectors should select eight modules that reflect the type of field work and anticipated hazards typical of their assignments.
   c. Complete at least one of the CWA NPDES program-specific training or self-study listed in EPA Order 3500.1 program-specific training requirements (EPA 2014). An inspector may not repeat a training course or self-study to satisfy this requirement.

d. Complete at least one refresher training course from Inspector Wiki listed under the section "Inspection Skills Refresher Training" (EPA 2014).
    i. This refresher training includes topics such as chain-of-custody, interviewing techniques, and being a witness.
    ii. To satisfy this annual requirement, an inspector may not repeat an inspection skill refresher training course until all have been completed. Upon completion of all of the listed courses, the inspector and supervisor may select other similar inspector refresher training to meet this annual requirement.
e. Continue to be familiar with the guidance and reference manuals applicable to the types of inspections an inspector performs listed under "Mandatory Self-Study for All New CWA NPDES Inspectors" *and* "Additional Mandatory Self-Study for Clean Water Act NPDES Inspectors in Specific CWA NPDES Sub-Programs" listed in EPA Order 3500.1.
f. Become familiar with any new regulations and policies applicable to the types of inspections that each IPDES inspector performs.

Additional continuing training and development opportunities may include, but are not limited to, the following:

- **Basic Environmental Investigations (Western States Project)**—Three-day course designed to give participants a basic working knowledge of the process and requirements for successful environmental crimes investigations.
- **Advanced Environmental Investigations CIT 311 (EPA)**—Eighty-hour course taught at the Federal Law Enforcement Training Center designed to teach advanced investigation techniques to environmental regulators and criminal investigators. This course is also called CIT311 Advanced Environmental Crimes Training Program.

5.5.3 Credential Tracking

The permit lead and CIE lead will coordinate to ensure that all permit and CIE specialists update and maintain all essential training and credentials necessary to meet position description requirements. The IPDES permit lead and CIE lead will respectively accomplish this by tracking each staff member's credential information, completed training, credential expiration dates, and necessary training. This tracking may be accomplished through the use of the IPDES database or a separate compliance tracking database.

5.6 Additional IPDES Program Training

IPDES personnel will be provided opportunities to successfully complete additional advanced and specialized training as courses become available, and all IPDES personnel will have a DEQ Performance Plan identifying required and optional training.

Continued and advanced training is critical to further develop expertise and subject matter experts. Continued and advanced training in leadership, communication, technical, and policy subjects will be critical to maintain and improve professional skills in all IPDES personnel. These and other trainings are periodically available from a variety of sources, including DEQ,

EPA, universities, Inspector Wiki, Western States Project, and other organizations. Appendix B provides a potential list of training courses that cover the IPDES Program components.

Examples of advanced training opportunities include, but are not limited to, the following:

- Advanced Inspector Training (Inspector Wiki)
- Water Quality Standards Academy (EPA)
- NPDES Permit Writers' Course (EPA)
- CORMIX Mixing Zone Modeling (MixZon)
- Statistical analysis methods (various)
- Database management and computer applications
- Beginning and advanced conflict management, negotiation, and facilitation training (e.g., US Geological Survey and Boise State University).
- Certified Public Manager

Examples of sector-specific training needs in permitting, CIE, and environmental policy that interact with the IPDES Program include, but are not limited to, the following:

- Domestic wastewater treatment and disposal technology
- Stormwater (including MS4, industrial, and construction)
- Pretreatment
- Mining waste and wastewater
- Concentrated animal feeding operations
- Aquaculture
- Application of effluent guidelines
- Application of TMDL wasteload allocations
- BMPs
- Data and information management and administration (e.g. Permit Compliance System, ICIS, NetDMR, and ECHO
- Supplemental environmental projects policy and implementation
- Quality assurance/quality control and QAPPs

5.7 On-the-Job Training

5.7.1 Agreements and Partnership Development

While progressing toward full NPDES authorization, DEQ may coordinate with EPA to use work sharing under existing PPAs, performance partnership grants, and informal working agreements, as appropriate. This coordination may begin in FY2017 and continue until the IPDES Program receives full NPDES authorization in FY2022.

To gain NPDES expertise, DEQ personnel will draft work products, such as permits, fact sheets, public notices, response to comments, corrective measures study/implementation, and annual reporting of enforcement actions to support EPA's process. DEQ and EPA will develop an annual list of permits that IPDES personnel will take the lead role in drafting and inspecting; other lead roles performed by IPDES personnel will also be documented. Draft work products may consider:

- A wide variety of permit types and sectors so that personnel will gain a broad range of experience.
- Permit expiration dates, expected NPDES program authorization dates, and IPDES Program phasing.
- DEQ permitting and workload priorities.

The specific focus resulting from partnership agreements may include the following:

- Working in a team setting to draft and reissue general and individual permits that will be converted to IPDES permits when NPDES authority is transferred to DEQ and the permits are reissued.
- Providing peer review of draft permits prepared by IPDES personnel.
- Providing technical assistance to ensure that state water quality standards are reflected in water quality-based effluent limits.
- Providing assistance review of permit inspections, compliance assistance, and enforcement.
- Reviewing and commenting on NPDES primacy application documents for submittal to EPA.
- Developing training sessions on topics relating to NPDES/IPDES permit writing, such as conducting a reasonable potential analysis, reviewing results of WET testing, and writing inspection reports.

5.7.2 Developing IPDES Permits and Inspections

When authority to implement the NPDES Program is delegated to DEQ and permits for discharging to surface waters are scheduled to be reissued, DEQ will reissue the permits to comply with IPDES Program and federal requirements. DEQ will incorporate water quality- and technology-based analyses and limitations when issuing IPDES permits for discharging to surface waters. DEQ will apply the same procedures when issuing new permits for facilities and activities not previously permitted under the NPDES Program. This approach will contribute to personnel expertise and IPDES Program capacity building and will allow for a smooth transition from an NPDES permit to an IPDES permit after program authorization.

Beginning in FY2017 and until full NPDES authorization is established, DEQ and EPA will identify facilities that DEQ will inspect on behalf of EPA. Facilities will be selected to provide inspectors a variety of experiences and based on areas of coverage identified by EPA.

5.7.3 Personnel from NPDES-Authorized States

DEQ may pursue opportunities to temporarily use personnel from states with authorized NPDES programs to work in Idaho for up to 1 year. These candidates will have permitting, inspection, and compliance experience with regulated sectors similar to Idaho (e.g., municipal and domestic, stormwater, and mining) and may provide assistance and expertise to draft and issue permits, inspect and provide compliance assistance to facilities, and pursue enforcement actions.

5.7.4 Job Shadowing and Mentoring

Job shadowing offers opportunities to build permitting and CIE capacity. IPDES personnel will job shadow EPA inspectors and EPA compliance and enforcement officers on compliance inspections within Idaho until full authority to implement the NPDES Program is delegated to Idaho. Currently, DEQ-certified inspectors accompany EPA inspectors on two inspections, and review and comment on the resulting inspection reports. DEQ will also continue to pursue job shadow opportunities from other states with authorized NPDES programs.

IPDES personnel may visit EPA Region 10 or other EPA regional offices to job shadow permit writers, inspectors, or compliance and enforcement officers. Similarly, much of this work may be conducted remotely via tele- and videoconferencing, e-mail, and other remote work applications (e.g., Adobe Connect). Specific permit work and discrete tasks and outcomes will be identified through the Intergovernmental Personnel Agreements, informal agreements, and DEQ performance plans.

DEQ will also promote mentoring to enhance the IPDES Program function by capitalizing on internal and external talent. Mentoring will offer personnel the opportunity to be paired with other personnel within the DEQ who can serve to mentor technical, scientific, policy, and other aspects of professional development. IPDES and other DEQ personnel have varying NPDES program-related expertise (e.g., inspections, 401 certifications, mixing zone analyses, and compliance assistance), and a mentoring program can promote the transfer of that knowledge to less experienced personnel.

5.7.5 DEQ Training

The IPDES Program will coordinate and conduct training provided by DEQ personnel. Potential in-house training opportunities may include data entry and management, WET, pretreatment requirements, mixing zone analyses, water quality standards, inspection report writing, compliance assistance, enforcement actions, and many others. As such, guidance and SOPs will be developed to assist personnel in implementing the program.

5.7.6 Conferences and Workshops

The IPDES Program personnel will distribute information about upcoming local, regional, and national conferences. When funds and work time are available to attend such conferences, personnel will be encouraged to attend and network with other conference attendees to increase their NPDES and IPDES knowledge. Conferences and workshops typical of forums that IPDES personnel may attend include, but are not limited to, the following:

- EPA National Stormwater Conference
- StormCon Workshops
- National Stormwater Coordinator Meetings
- Water Environment Research Federation Annual Technical Exhibition and Conference
- EPA Hardrock Mining Technical Conference
- ASIWPCA/EPA NPDES Manager's Meeting
- Pretreatment Program Annual Meeting
- DEQ Annual Water Quality Workshop

- DEQ Annual Water Reuse Conference
- Idaho Environmental Forum
- Pacific Northwest Clean Water Association Annual Conference and Exhibition
- Association of Clean Water Administrators Annual Conference

IPDES Program personnel will present highlights from professional conferences and workshops during staff meetings and scheduled presentations, or by e-mail to improve and enhance overall permitting and CIE knowledge throughout the IPDES Program.

5.7.7 Scientific, Professional, and Library Resources

DEQ uses the TRIM electronic document management system. TRIM facilitates the exchange of information by providing a central repository of electronic records that can be accessed by everyone inside the agency.

DEQ also subscribes to the online journal library, *Science Direct*, from which IPDES personnel can research journals pertaining to environmental regulations, wastewater treatment, and scientific/engineering advances.

DEQ's Wastewater Engineering Program has established a library that contains books for wastewater and drinking water operators in addition to engineering texts. These resources can be checked out as needed and are available to IPDES personnel.

Finally, the IPDES Program will establish a library (conventional and digital) containing scientific, technical, policy, and training materials to be a readily available resource for program personnel.

6 Guidance, Standard Operating Procedures, Quality Assurance Project Plans, and Templates

Quality data and information constitute the foundation of informed decision making. As a result, IPDES personnel will develop new and adopt existing quality management documents, including guidance, SOPs, templates, and QAPPs needed to fully implement the IPDES Program. These documents will be developed in coordination with other DEQ programs (e.g., IT, EPA, and stakeholders) and be consistent with DEQ's *Quality Management Plan* (QMP) (DEQ 2012a), which describes DEQ's quality management system to communicate and implement quality management procedures within DEQ.

The primary benefits of well-developed quality management documents include the following:

- Defensible products and decisions
- Integrity of scientific data
- Effective resource management
- Justifiable resource expenditures
- Continual process improvement
- Efficient, effective, and robust IPDES Program implementation

The primary purpose for developing these documents is to provide a framework to ensure the quality of data and information developed, received, maintained, and transmitted by the IPDES Program. Successful IPDES Program implementation depends on the ability of DEQ personnel to make informed decisions based on information generated internally, by permittees, and other IPDES users throughout the state. Additionally, developing these documents consistent with the QMP will ensure they meet federal requirements mandated by EPA.

A potential list of documents to be developed or adopted includes, but is not limited to, the following:

- *IPDES Permit Writers' Manual*/general permit development
  - Water quality trading
  - MS4s
  - Stormwater
  - Concentrated animal feeding operations
  - Concentrated aquatic animal productions/aquaculture
  - Variances (e.g., thermal)
  - BMPs
  - Reasonable potential analysis and effluent limitations development
  - Production-based effluent limits for industry
  - Production-based pretreatment standards and the combined wastestream formula
  - Discharges to waters across state boundaries
  - Watershed and bubble permitting
- Pretreatment
- Sludge (Guidance for Land Application of Municipal Biosolids [DEQ 2011]) and sludge monitoring methods from SW-846
- CIE manual
- Data management SOPs (e.g., holding, managing, and distributing third party data, including confidential business information)
- Third party data management (e.g., SOPs and QAPPs for reviewing and receiving third party data)
- *Idaho Waste Management Guidelines for Aquaculture Operations* (DEQ 1997)
- Idaho Mixing Zone Implementation Guidance
- Idaho Stormwater BMPs
- IPDES Safety plan

7 Capacity Building Assessment

DEQ will continually expand personnel knowledge, skills, experience, and available resources to fully implement the IPDES Program before and after DEQ receives NPDES authorization. The IPDES Program will develop an annual capacity building summary to document program efforts, such as permits drafted by IPDES personnel, compliance and enforcement activities undertaken, DEQ-EPA work share agreements and partnerships, and formal and informal personnel training. By December 31 of each year, DEQ will prepare a capacity building summary for the period of July 1 through June 30 until DEQ has received full NPDES authorization (currently projected as FY2021). The summary will also identify recommended changes to the capacity building plan

for the coming fiscal year. These proposed changes will depend on current and projected staffing, workload, resources, new information, and lessons learned. The changes will be aimed at continually adapting and improving the IPDES Program to accommodate new program opportunities and existing program challenges.

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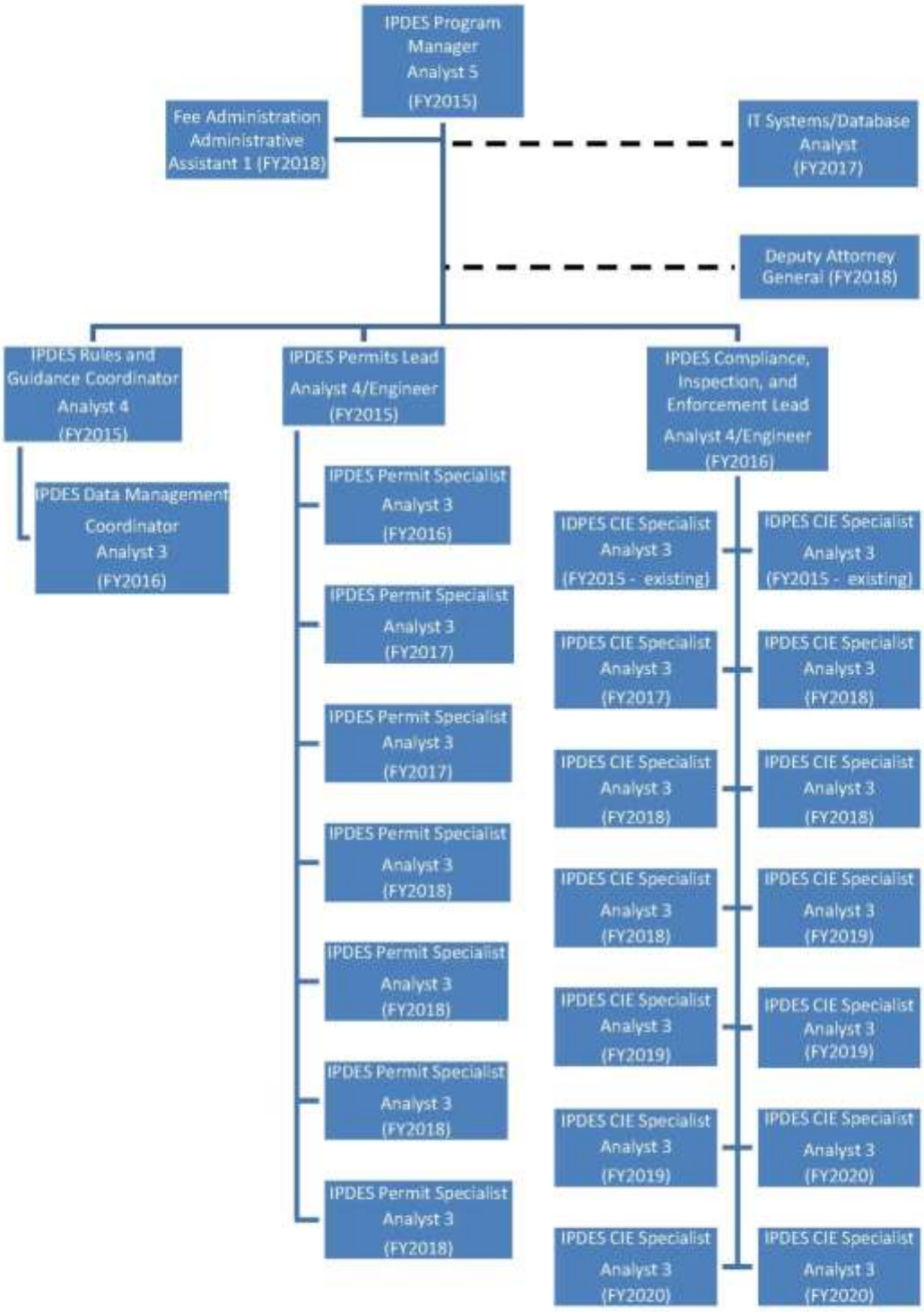
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Appendix A. IPDES Organization Chart



Appendix B. Training for All IPDES Personnel

Course Title	Course Description	Duration	Provider
Required Training (or equivalent) for all IPDES Personnel within First Year (or as soon as trainings become available)[a]			
New Employee Orientation	Review of DEQ structure and administrative policies and procedures.	1 day	DEQ
TRIM Training	DEQ electronic document storage and filing.	1 day	DEQ
Sexual Harassment	Teaches employees about their role in ensuring a respectful work environment and provides an overview of what to do if employees feel they may be experiencing harassment along with DEQ's procedures on filing a complaint.	½ to 1 hour	DEQ
Americans with Disability Act As Amended	The ADA is a federal antidiscrimination statute designed to remove barriers that prevent qualified individuals with disabilities from enjoying the same opportunities that are available to persons without disabilities.	½ hour	DEQ
Data Management Training	Using the IPDES CRIPs database in evaluating permit compliance, inspection, and enforcement.	1–3 days	DEQ
TMDL and NPDES Permits Training	Three web-based training modules on topics related to TMDLs and NPDES permitting. The presentations are intended for TMDL developers and NPDES permitting staff to gain a better understanding of TMDL implementation through NPDES permits.	Online (1–3 days) and DEQ sessions	EPA, DEQ
Continuing Professional Development Opportunities for all IPDES Personnel			
IPDES Specific Training (to be developed)	Idaho specific training on information, processes, and procedures for the IPDES Program.	1–3 days	Classroom and on the job.
Idaho Certified Public Manager	Nationally accredited management development program for public sector managers. Many states, including Idaho, offer this program. Idaho's program is administered through the Idaho's Division of Professional-Technical Education.	2 years	Idaho PTE
Leadership Development Program	A fast-paced, hands-on learning experience culminating in practical, on-the-job application. This four-part program is led by the center's instructional team consisting of proven leaders from a variety of fields who all have one thing in common—a passion for developing others.	8 days	Boise State University
Negotiation Skills for Natural Resource Professionals	Provides participants with the basic principles, skills, and techniques used in natural resource negotiation so that they can more effectively plan for and participate in these processes.	3 days	USGS
Strategies and Tactics for the Experienced Natural Resource Negotiator	Presents participants with advanced principles, skills, and techniques used in natural resource negotiation. The focus in this class is on strategy development and effective management of negotiating teams. Previous negotiating experience and training are prerequisites for this course.	3 days	USGS
Negotiation Theory and Practice	The tactics, strategies, and operations of effective and ineffective negotiation behaviors will be presented. Develop negotiator skills and knowledge leading to collaborative-based action and	1 credit	Boise State University

Course Title	Course Description	Duration	Provider
	solutions. Topics include negotiator skills in interpersonal communication and problem solving; methods for dealing with difficult people; and counter-measures for power imbalances and tricky tactics.		
Facilitating Groups in Conflict	Skills for facilitating public input processes will be discussed, as well as techniques for facilitating conflict within small- and large-group meetings. Topics include structures and ground rules that limit conflict; controlling anger and nonfunctional behavior; and group problem solving and decision making.	1 credit	Boise State University
Training Identified by IPDES Personnel and Supervisors	TBD	TBD	TBD

Notes: Idaho Department of Environmental Quality (DEQ); Americans with Disability Act as Amended (ADAAA); Idaho Pollutant Discharge Elimination System (IPDES); Compliance, Reporting, Inspection, and Permitting System (CRIPS); total maximum daily load (TMDL); National Pollutant Discharge Elimination System (NPDES); Professional-Technical Education (PTE); US Geological Survey (USGS); to be determined (TBD)

[a]Unless new personnel have already completed equivalent trainings or as authorized by DEQ's Human Resources or the IPDES program manager.

Appendix C. Training for IPDES Supervisors

Course Title	Course Description	Duration	Provider
Required Training (or equivalent) for all IPDES Supervisors within First Year (or as soon as trainings become available)[a]			
Performance Management	Offers tools for managing employee development, coaching, and providing feedback. Each of the four units has activities that can be completed online.	Online	Idaho PTE website
Drug/Alcohol Free Workplace	Shows managers how to recognize the signs of drug and alcohol abuse.	3 hours	DEQ
Family Medical Leave Act	Provides supervisors and managers with a general awareness of the FMLA law and why it is important to know how the law works. It outlines what supervisors must do when dealing with an employee's FMLA issues to help the employee and the departments stay in compliance. The training takes a proactive approach to help supervisors respond appropriately to employees' FMLA issues. Training consists of a short DVD and general overview of DEQ's application of the law.	½ to 1 hour	DEQ
Management and Leadership Skills	Designed to help supervisors increase productivity, improve employee performance, and enhance business interactions through effective management and leadership. It is applicable for new or experienced supervisors who desire to enhance their skills *(This formal training is required for all new supervisors if they have not completed similar training).*	2 days	BSU or North Idaho College
Continuing Professional Development Opportunities for IPDES Supervisors			
Training Identified by IPDES Supervisors and Program Manager	TBD	TBD	TBD

Notes: Professional-Technical Education (PTE); Family and Medical Leave Act; (FMLA); Idaho Department of Environmental Quality (DEQ); Idaho Pollutant Discharge Elimination System (IPDES); Boise State University (BSU); to be determined (TBD)

[a]Unless new personnel have already completed equivalent trainings or as authorized by DEQ's Human Resources or the IPDES program manager.

Appendix D. Training for the IPDES Data Management Coordinator

Course Title	Course Description	Duration	Provider
Required Training (or equivalent) for the IPDES Data Management Coordinator within First Year (or as soon as trainings become available)[a]			
Water Quality Standards Handbook or Academy	Outlines provisions of the Clean Water Act and addresses how EPA and the states/tribes work together toward Clean Water Act objectives, including designated uses, water quality criteria, antidegradation policy, general flexibility policies, and EPA review.	Manual is self-paced; Course is 1 week	Manual on EPA website; Course taught by EPA
NPDES Permit Writers' Web-Based or Formal Course	Provides the basic regulatory framework and technical considerations that support developing wastewater discharge permits. The permit writers' manual is designed for new permit writers, highlighting the process of developing, issuing, and complying with NPDES permits. The manual provides the data management coordinator with an understanding of the specific permit data needed for inclusion into the database *(Either complete the training provided on the EPA website or complete the formal course provided by EPA and Tetra Tech).*	Manual is self-paced; Course is 1 week	Manual on EPA website; Course taught by EPA and Tetra Tech
Database Management Specific Training	Appropriate SQL and other database management trainings can be found at http://etidaho.com/pdfs/executrain%20course%20schedule.pdf	Classroom 1–5 days	ExecuTrain or other vendors
ICIS Training Modules	The online training module to provide step-by-step instructions on accessing and using the ICIS. ICIS is a secure system only available to EPA and state users.	Various	EPA online modules
Continuing Professional Development Opportunities for the IPDES Data Management Coordinator			
Training Identified by IPDES Personnel and Supervisors	TBD	TBD	TBD

Notes: US Environmental Protection Agency (EPA); National Pollutant Discharge Elimination System (NPDES); Idaho Pollutant Discharge Elimination System (IPDES); Integrated Compliance Information System (ICIS); structured query language (SQL); to be determined (TBD)

[a]Unless new personnel have already completed equivalent trainings or as authorized by the IPDES rules and guidance coordinator.

Appendix E. Training for IPDES Permit Specialists

Course Title	Course Description	Duration	Provider
Required Training (or equivalent) for all IPDES Permit Specialists within First Year (or as soon as trainings become available)[a]			
Idaho Water Quality Standards 101	Outlines the Idaho Water Quality Standards and how state law and DEQ authority relate to federal law and EPA authority toward achieving Clean Water Act objectives, including designated uses, numeric and narrative water quality criteria, antidegradation policy, use attainability analyses, watershed advisory groups, TMDLs, etc.	1–2 days	DEQ
NPDES Permit Writers' Course	Provides the basic regulatory framework and technical considerations that support developing wastewater discharge permits. The course is designed for new permit writers, highlighting the process of developing, issuing, and complying with NPDES permits.	1 week	EPA and Tetra Tech
IPDES Specific Training	Provides detailed information about Idaho permitting guidance and practices including use of reasonable potential analysis methodology, tools (e.g., Excel Workbook), and permit and fact sheet templates. Where to locate information and data used in permitting decisions including ambient water quality data.	Classroom 3 days, mentor 1–3 permits.	Classroom, on the job, and mentors.
CORMIX Mixing Zone Introductory and Advanced Classes[b]	The set of four introductory classes and two advanced-level classes each of 2 hours duration, offers an interactive, online, web-based training and will focus on regulatory background, definition of mixing zones, mixing processes, and the CORMIX Mixing Zone model application and use. The training will also cover the advanced topics of modeling for tidal conditions and modeling desalination, brines, and sediment discharges.	1 ½ days	MixZon
Visual Plumes[b]	The Visual Plumes model system is a Windows-based software application for simulating surface water jets and plumes. It also assists in preparing mixing zone analyses, TMDLs, and other water quality applications.	Self-pace manual	EPA
Introduction to Aquatic Toxicology	Introductory course provides participants with a strong foundation of aquatic toxicology and how these concepts are applied to managing pollutants in aquatic environments. The course covers terminology, common test designs, and endpoints such as lethality and endocrine disruption. Important legacy and emerging pollutants of concern such as heavy metals, organic pesticides, PAHs, PCBs, PBDEs, pharmaceuticals, personal care products, and nanoparticles will also be presented. Fate and transport as it relates to bioavailability and pollutant partitioning in aquatic environments will be discussed. Water quality criteria from the Clean Water Act with an emphasis on, and examples of, site-specific criteria for metals using hardness correction, water effects ratio, and the biotic ligand model are also included.	2 days	NWETC
Chemistry and Basic Analytical and Lab Certification	Provide general knowledge of water and wastewater chemistry as applicable to NPDES permits. Basic information about 40 CFR 130 methods and analytical methods as relates to NPDES permitting. Lab certification requirements and process.	1–2 days	DEQ staff, Idaho Bureau of Labs
WET Training Tools[b]	Provides an overview of EPA's WET test methods promulgated at 40 CFR 136. DVDs were developed so that permit writers, their permittees, and commercial laboratories can have a better understanding of the EPA WET test methods and how to properly conduct them.	Online download	EPA

Course Title	Course Description	Duration	Provider
Continuing Professional Development Opportunities for Permit Specialists			
Orientation to Wastewater Treatment Processes: CWA106	Focuses on basic unit processes of wastewater treatment and is designed for new inspectors or inspectors transferring from other programs. Topics include wastewater characteristics, natural treatment systems, mechanical treatment systems, dual processes, basic wastewater microbiology, physical observations, wastewater flow measurement, and sampling. The course also includes a tour of an operational wastewater treatment facility.	3 days	Inspector Wiki
CESCL: Certified Erosion and Sediment Control[b]	General principles of erosion and sediment control will be covered; a variety of BMPs will be evaluated; discussion about how federal policy is reflected in state permits; and specific examples of how construction site managers are using BMPs to successfully manage their projects will be reviewed.	2 days	NWETC and IECA
Fundamental Contaminant Chemistry in Soil and Ground Water	Overview of key chemistry concepts associated with environmental contamination, provides a foundation for understanding contaminant fate and transport. The concepts discussed are essential for understanding soil and ground water contamination along with the selection of appropriate remediation approaches.	2 days	NWETC
Emerging Contaminants Workshop	Explore emerging contaminants related to soil and ground water remediation. This workshop will keep you up-to-date on the topic of emerging contaminants and gives an understanding of how US agencies such as EPA and DOE are working to develop approaches for dealing with emerging contaminants.	1 day (live and online)	NWETC
Performance Evaluations of Wastewater Treatment Facilities: CWA105	Designed for industrial and municipal wastewater treatment plant inspectors. It provides an overview of the basic treatment units, principals of operation, and key physical observations to evaluate treatment plant performance.	2–3 days	Inspector Wiki
Water Quality Standards Academy	Outlines provisions of the Clean Water Act and addresses how EPA and the states/tribes work together toward Clean Water Act objectives, including designated uses, water quality criteria, antidegradation policy, general flexibility policies, and EPA review.	1 week	EPA
Webcast Training Resources	• Combined sewer overflows • Concentrated animal feeding operations • Energy management • Green infrastructure • Pesticides • Pretreatment • Sanitary sewer overflows • Stormwater • Vessels • Joint EPA-Federal Highway Administration webcasts	Online	EPA
Training Identified by IPDES Personnel and	TBD	TBD	TBD

Course Title	Course Description	Duration	Provider
Supervisors			

Notes: National Pollutant Discharge Elimination System (NPDES); US Environmental Protection Agency (EPA); Idaho Pollutant Discharge Elimination System (IPDES); Reasonable Potential Analyses (RPA); total maximum daily load (TMDL); Northwest Environmental Training Center (NWETC); polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), polybrominated diphenyl ethers (PAH); Idaho Department of Environmental Quality (DEQ); whole effluent toxicity (WET); Certified Erosion and Sediment Control Lead (CESCL); best management practice (BMP); International Erosion Control Association (IECA); to be determined (TBD)

[a]Unless new personnel have already completed equivalent trainings or as authorized by the IPDES permit lead.

[b]This training may not be required of all permit specialists. If required, it will be identified in the Employee Performance Plan.

Appendix F. Training for IPDES CIE Specialists

Course Title	Course Description	Duration	Provider
Required Training (or equivalent) for all IPDES CIE Specialists within First Year[a]			
Self-Certification of Mandatory Training EPA Order 3500.1	Tracking document	2 pages	EPA
24-Hour Health and Safety or 40-Hour Health and Safety (HAZWOPER)	The 24-hour course covers broad issues pertaining to the hazard recognition at work sites. The 40-hour course is specifically designed for workers who are involved in clean-up operations, voluntary clean-up operations, emergency response operations, and storage, disposal, or treatment of hazardous substances or uncontrolled hazardous waste sites. Note, if a newly-hired employee has documented completion the 24/40 hour course, then the 8 hour refresher would be substituted.	24 or 48 hours	Various
Basic Inspector Course: CST109	Designed for new federal, state, local, and tribal environmental inspectors and meets the training requirement under EPA Order 3500.1. The course provides an overview of all aspects of inspection preparation, conduct, and follow-up. The course also introduces various federal environmental laws and regulations.	3.5 days	Inspector Wiki
CWA/NPDES Computer-Based Inspector Training	The course parallels the 2003 NPDES Compliance Inspection Manual and includes an overview of the NPDES Program, types of inspection procedures, sampling and flow measurement, and record keeping and reporting. Advanced modules include inspections for stormwater, sanitary sewer overflows, combined sewer overflows, pretreatment compliance, and biosolids, toxicity, and pollution prevention.	10 hours	Inspector Wiki
NPDES Permit Writers' Course	Provides the basic regulatory framework and technical considerations that support developing wastewater discharge permits. The course is designed for new permit writers, highlighting the process of developing, issuing, and complying with NPDES permits.	1 week	EPA and Tetra Tech
Self-Study Materials	• CWA §308 - Records, Reports, and Inspections • NPDES Compliance Inspection Manual (July 2004) Chapters 1–7 • Primer for Municipal Wastewater Treatment Systems • NPDES Compliance Monitoring Strategy (2007) ▪ Technology fact sheets: ▪ Conventional gravity sewers ▪ Lift station sewers ▪ Force main sewers ▪ Sewer Cleaning and inspection ▪ Screening and grit removal ▪ Oxidation ditches	Various	EPA

Course Title	Course Description	Duration	Provider
	▪ Trickling filters ▪ Fine bubble aeration ▪ Chlorine disinfection ▪ Dechlorination ▪ Ozone disinfection ▪ Ultraviolet disinfection		
Additional Training	• Review a minimum of two final inspection reports, and prepare at least one final draft report. • Accompany an experienced Clean Water Act NPDES Compliance Inspector/Field Investigator as determined by the inspector's supervisor, on a minimum of five CWA NPDES inspections. • Conduct at least one on-the-job CWA NPDES inspection while being observed by an experienced credentialed compliance inspector/field investigator.	Various	On-the-job training
Additional Mandatory Training Courses for Clean Water Act IPDES Inspectors in Specific Subprograms	• Stormwater (industrial, construction, and municipal separate stormwater sewer systems [MS4s]) • Sanitary sewer overflows • Combined sewer overflows • Pretreatment • Biosolids • Concentrated animal feeding operations • Vessels	Various	EPA
Continuing Professional Development Opportunities for CIE Specialists			
8-Hour Health and Safety Refresher (HAZWOPER)	The 8-hour refresher course meets the requirements outlined in OSHA 29 CFR 1910.120 for 8 hours of annual refresher training for workers at hazardous waste sites. This course is designed for general site workers who remove hazardous waste or who are exposed or potentially exposed to hazardous substances or health hazards.	8 hours	Various
Advanced Environmental Crimes Training Program: CIT311	Designed to teach advanced investigation techniques to environmental regulators and criminal investigators.	80 Hours	Federal Law Enforcement Training Center
Performance Evaluations of Wastewater Treatment Facilities: CWA105	Designed for industrial and municipal wastewater treatment plant inspectors. It provides an overview of the basic treatment units, principals of operation, and key physical observations to evaluate treatment plant performance.	2–3 days	Inspector Wiki

Course Title	Course Description	Duration	Provider
Orientation to Wastewater Treatment Processes: CWA106	Focuses on basic unit processes of wastewater treatment and is designed for new inspectors or inspectors transferring from other programs. Topics include wastewater characteristics, natural treatment systems, mechanical treatment systems, dual processes, basic wastewater microbiology, physical observations, wastewater flow measurement, and sampling. The course also includes a tour of an operational wastewater treatment facility.	3 days	Inspector Wiki
Enforcement Teamwork: Regulations to Resolutions: CST208	Provides overview of basic procedures and issues surrounding all aspects of the enforcement program, focusing on teamwork, case development, field work, and case resolutions. Course will refine the understanding and coordination skills of students and will support many existing courses by borrowing a small piece of each and building a vision for how various components of enforcement work together.	5 days	Inspector Wiki
Field Investigators Course: CST209	Designed for experienced investigators and regulatory personnel. Through practical exercises, the participants work in multidisciplinary teams to investigate and develop cases around seven scenarios involving environmental crimes.	3 days	Inspector Wiki
Advanced Inspector Training: CST309	Designed for inspectors with at least 3 years of experience, provides discussion, demonstrations, and practice in specific skills, such as information research, digital camera usage, vulnerability assessment, interviewing, report writing, lab fraud, and program enhancements.	3 days	Inspector Wiki
CWA/NPDES Inspector Train-the-Trainer Course CWA306	Provides instructor training to experienced NPDES inspectors. As a train-the-trainer participant, you will be provided instructional and facilitator skills, and receive content materials and instructional aids necessary to instruct other inspectors interested in the CWA/NPDES program and inspector activities.	3 days	Inspector Wiki
CESCL: Certified Erosion and Sediment Control Lead	General principles of erosion and sediment control will be covered; a variety of BMPs will be evaluated; discussion about how federal policy is reflected in state permits; and specific examples of how construction site managers are using BMPs to successfully manage their projects will be reviewed.	2 days	NWETC and IECA
Webcast Training Resources	• Combined sewer overflows • Concentrated animal feeding operations • Energy management • Green infrastructure • Pesticides • Pretreatment • Sanitary sewer overflows • Stormwater • Vessels • Joint EPA-Federal Highway Administration webcasts	Online	EPA

Course Title	Course Description	Duration	Provider
Introduction to Environmental Enforcement Course	Focuses on the process of enforcement within the regulatory system.	3 days	Western States
Complex Case Development	Advanced course designed to allow teams of regulators, investigators, prosecutors, and civil attorney to work as a task force through a practical exercise toward both a civil and criminal court proceeding.	3–5 days	Western States
Training Identified by IPDES Personnel and Supervisors	TBD	TBD	TBD

Notes: US Environmental Protection Agency (EPA); Occupational Safety and Health Administration (OSHA); Code of Federal Regulations (CFR); National Pollutant Discharge Elimination System (NPDES); on-the-job training (OJT); Clean Water Act (CWA); Northwest Environmental Training Center (NWETC); Certified Erosion and Sediment Control Lead (CESCL); best management practice (BMP); International Erosion Control Association (IECA); to be determined (TBD)

[a]Unless new personnel have already completed equivalent trainings or as authorized by the IPDES CIE lead.

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Appendix G. EPA Order 3500.1 Program-Specific Training Requirements

EPA ORDER 3500.1 PROGRAM-SPECIFIC TRAINING REQUIREMENTS

CLEAN WATER ACT (CWA) §402
TRAINING REQUIREMENTS FOR NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PROGRAM INSPECTORS

EPA Order 3500.1 establishes minimum and consistent Agency-wide training and development programs for employees conducting, participating in, or assisting with environmental compliance inspections/field investigations. EPA's training program consists of three parts:

1) Occupational Health and Safety Course
   a. EPA Employees
   b. Non-EPA Employees: Course Registration Launch Course
2) Basic Inspector Training (BIT) Curriculum Course Registration Launch Course
3) Program-Specific Curriculum

The Occupational Health and Safety Curriculum consists of a mandatory Health & Safety Training specified by the HQ or Regional Health & Safety Officer. The Basic Inspector Curriculum consists of the Basic Inspector Training (BIT) offered by the National Enforcement Training Institute (NETI). The Program-Specific Curriculum establishes the mandatory and recommended training in legal, programmatic, and technical subjects for each major media program or specific program compliance inspection/field investigation activity. This document sets out the program-specific curriculum for the CWA NPDES Program and required refresher training.

You must complete the Occupational Health & Safety, BIT, and CWA NPDES Program-specific training to become a credentialed Compliance Inspector/Field Investigator in the CWA NPDES Program. Once you have completed both the Occupational Health and Safety Curriculum and the Basic Inspector Curriculum, you may request an "Inspector-In-Training" credential. This credential allows you to participate in field activities, including on-the-job training, in the company of a CWA NPDES Lead Compliance Inspector/Field Investigator.

If you are not yet a CWA NPDES credentialed Compliance Inspector/Field Investigator (for example, if you are a newly hired inspector, a Compliance Inspector/Field Investigator in a program other than the CWA NPDES Program, or a previously credentialed Compliance Inspector/Field Investigator that has allowed your credentials to lapse for greater than a year) and want to become one, you must complete and document that you meet all mandatory requirements for new CWA NPDES inspectors in the section below entitled "Requirements for New CWA NPDES Program Inspectors."

In order to obtain Compliance Inspector/Field Investigator credentials you and your supervisor are required to document, certify, and submit to your Regional or headquarters credentials contact, documentation of completion of the Occupational Health and Safety training, BIT, and CWA §402 program-specific training. Once you and your supervisor have certified that you have completed all required training and you have obtained your credentials, you are a credentialed Compliance Inspector/Field Investigator and can conduct, participate, in, or assist with CWA NPDES inspections. Records of your training must be tracked and be available upon request. Beginning in 2014, the Talent Management System (TMS) will be piloted in a number of regions. The TMS will be the Agency's official repository for tracking all employees' training. If your region is not part of the pilot, you may track your inspector training in an equivalent database until the TMS is implemented in your region.

As a credentialed Compliance Inspector/Field Investigator in the CWA NPDES Program, you must annually complete the mandatory refresher requirements for currently credentialed CWA NPDES

EPA ORDER 3500.1 PROGRAM-SPECIFIC TRAINING REQUIREMENTS

Program inspectors in the section below entitled "Mandatory Requirements for Currently Credentialed CWA NPDES Program Inspectors" to maintain your credentials. These mandatory annual training requirements include: the Occupational Health and Safety refresher training; CWA NPDES Program-specific refresher training; and Inspection Skills Refresher Training.

These requirements will be updated from time-to-time. Inspectors and supervisors should verify that they have the most recent version of these requirements by checking the Inspector Wiki. During the current and future "re-credentialing" process, inspectors and supervisors must ensure that they have met all of the requirements that applied at the time the inspector obtained their original Compliance Inspector/Field Investigator credentials, in addition to each year's most recent mandatory refresher training. If an individual has commenced program-specific training to obtain new Compliance Inspector/Field Investigator credentials, and that program-specific training is updated before that person has obtained their credentials, they may choose to complete the training that existed at the time they commenced their program-specific training or they may start over with the new and most recent program-specific training. The requirements listed below are minimum requirements and a supervisor may, at any time, require additional training, as necessary.

Notes:

These requirements establish the baseline requirements for CWA NPDES Program inspectors only. These requirements do not apply to inspectors conducting inspections under either CWA §404 Wetlands or CWA §311 (OPA/SPCC) programs. Requirements for inspectors conducting inspections under either CWA §404 Wetlands or CWA §311 (OPA/SPCC) programs can be found in separate program-specific requirements elsewhere in EPA Order 3500.1. In this set of requirements, some requirements apply to all CWA NPDES inspectors, while others apply only to those inspectors who will perform inspections in a specific CWA NPDES Sub-Program. Additional requirements are required for inspectors in the following CWA NPDES Sub-Programs:

- *Stormwater (Industrial, Construction, and Municipal Separate Stormwater Sewer Systems (MS4s))*
- *Sanitary Sewer Overflows (SSOs)*
- *Combined Sewer Overflows (CSOs)*
- *Pretreatment*
- *Biosolids*
- *Concentrated Animal Feeding Operations (CAFOs)*
- *Vessels*

Requirements for New CWA NPDES Program Inspectors

Mandatory Training Courses for All New CWA NPDES Inspectors

The following training courses are required by all New CWA NPDES inspectors. Inspectors that will conduct inspections in specific sub-programs must complete these requirements along with the "Mandatory Training Courses for CWA NPDES Inspectors in Specific CWA NPDES Sub-Programs" below.

- CWA NPDES Basic Inspector Course
  Course Registration Launch Course

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- Web-Based NPDES Permit Writers' Training (approx. 9 hours)
  Inspectors may substitute the NPDES Permit Writers' Training classroom course for the web-based version. The five-day classroom training is offered on a regular basis by EPA's Office of Water.

Additional Mandatory Training Courses for CWA NPDES Inspectors in Specific CWA NPDES Sub-Programs

New CWA NPDES Inspectors that will conduct inspections in specific sub-programs must complete the following training requirements in addition to the requirements in "Mandatory Training Courses for All CWA NPDES Program Inspectors" above.

Stormwater (Industrial, Construction, and Municipal Separate Stormwater Sewer Systems (MS4s))

- CWA NPDES Advanced Inspector Training - Stormwater
  Course Registration Launch Course

Sanitary Sewer Overflows (SSOs)

- CWA NPDES Advanced Inspector Training – Sanitary Sewer Overflows (SSOs)
  Course Registration Launch Course

Combined Sewer Overflows (CSOs)

- CWA NPDES Advanced Inspector Training – Combined Sewer Overflows (CSOs)
  Course Registration Launch Course

Pretreatment

- CWA NPDES Advanced Inspector Training - Pretreatment
  Course Registration Launch Course

Biosolids

- CWA NPDES Advanced Inspector Training - Biosolids
  Course Registration Launch Course

Concentrated Animal Feeding Operations (CAFOs)

- CAFO Technical Fundamentals for Inspectors
  Course Registration Launch Course

- CAFO Field Visit—Inspector must participate in a field visit to a CAFO to observe and learn how CAFO facilities are designed and operated with a person knowledgeable in CAFO operations. This field visit would not substitute for any of the requirements in the Mandatory On-The-Job Training (OJT) required below. This requirement may be met in a number of different ways including, but not limited to, the following:
  - External educational opportunities such as attending a field tour of a livestock operation sponsored by a university extension office.

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- Internal educational opportunities such as accompanying a senior CAFO inspector knowledgeable in CAFO operations on a field visit or CAFO inspection with the intended purpose of observing and learning about how CAFO facilities are designed and operated.

Mandatory Self-Study for All New CWA NPDES Inspectors

All new CWA NPDES inspectors must read and/or familiarize themselves with the following self-study materials. When the requirement says to "read," the inspector should read and know the material. The inspector will be tested to ensure a minimum knowledge level. When the requirement says to "be familiar," the inspector should read through the material to gain appropriate familiarity with the scope and organization of the information should they need to access it expeditiously in the future. Inspectors that will conduct inspections in specific sub-programs must complete these requirements along with the "Mandatory Self-study for CWA NPDES Inspectors in Specific CWA NPDES Sub-Programs" below.

1) *Read the following:*

- Clean Water Act Section 308—Records, Reports, and Inspections
  Self-study Registration Launch Self-study
- NPDES Compliance Inspection Manual (2004), Chapters 1-7 - includes information on 40 CFR 2: Public Information, Subpart B: Confidentiality of Business Information (CBI)
  Self-study Registration Launch Self-study
- Primer for Municipal Wastewater Treatment Systems
  Self-study Registration Launch Self-study

2) *Be familiar with the following guidance/reference materials:*

- NPDES Compliance Monitoring Strategy (CMS) (2007)
- Technology Fact Sheets
  - Conventional gravity sewers
  - Lift station sewers
  - Force main sewers
  - Sewer cleaning and inspection
  - Screening and grit removal
  - Oxidation ditches
  - Trickling filters
  - Fine bubble aeration
  - Chlorine disinfection
  - Dechlorination
  - Ozone disinfection
  - UV disinfection

Additional Mandatory Self-Study for New CWA NPDES Inspectors in Specific CWA NPDES Sub-Programs

New CWA NPDES inspectors that will conduct inspections in specific sub-programs must read and/or familiarize themselves with the following self-study materials. The inspectors must complete the following self-study requirements in addition to the requirements in "Mandatory Self-study for All CWA

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NPDES Inspectors" above.

Stormwater (Industrial, Construction, and Municipal Separate Stormwater Sewer Systems (MS4s))

1) Read the following:

- NPDES Compliance Inspection Manual (2004), Chapter 11
  Self-study Registration Launch Self-study

2) Be familiar with the following guidance/reference materials:

- 40 CFR Part 122.26 (a) & (b) – Storm Water Discharges (Applicable to State NPDES Programs)

Sanitary Sewer Overflows (SSOs)

1) Read the following:

- NPDES Compliance Inspection Manual (2004), Chapter 13 - Sanitary Sewer Overflows
  Self-study Registration Launch Self-study

2) Be familiar with the following guidance/reference materials:

- 40 CFR 122.41 (d) and (e) – Duty to Mitigate and Proper operation and maintenance (Standard conditions in a Permit)
- Sanitary Sewer Overflows and Peak Flows Webpage FAQs and one Featured Case Study

Combined Sewer Overflows (CSOs)

1) Read the following:

- NPDES Compliance Inspection Manual (2004), Chapter12—Combine Sewer Overflow
  Self-study Registration Launch Self-study

- 1994 CSO Control Policy
  Self-study Registration Launch Self-study

2) Be familiar with the following guidance/reference materials:

- Clean Water Act Section 402(q)—Congress amended the CWA in 2001, adding Section 402(q) to require all permits, orders, and decrees issued to control CSOs, to conform to EPA's 1994 CSO Control Policy.

Pretreatment

1) Read the following:

- NPDES Compliance Inspection Manual (2004), Chapter 9-Pretreatment
  Self-study Registration Launch Self-study

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2) Be familiar with the following guidance/reference materials:

- 40 CFR 403.1 to 403.6, 403.8, and 403.12
- Introduction to the National Pretreatment Program, (June 2011)

Biosolids

1) Read the following:

- NPDES Compliance Inspection Manual (2004), Chapter 10: Sewage Sludge
  Self-study Registration Launch Self-study

- Environmental Regulations and Technology, Control of Pathogens and Vector Attraction in Sewage Sludge, Chapters One and Three
  Self-study Registration Launch Self-study

2) Be familiar with the following guidance/reference materials:

- 40 CFR 503— General Provisions, Parts 503.1 to 503.9.
- Frequently Asked Questions on Biosolids
- Plain English Guide to the EPA Part 503 Biosolids Rule, Chapter 1 – Use of Disposal Sewage Sludge Biosolids

Concentrated Animal Feeding Operations (CAFOs)

1) Read the following:

- Routine Biosecurity Procedures for EPA Personnel Visiting Farms, Ranches, Slaughterhouses and other Facilities with Livestock and Poultry, December 2001
  Self-study Registration Launch Self-study

2) Be familiar with the following guidance/reference materials:

- 40 CFR 122.42(e)--Additional Conditions Applicable To Specified Categories of NPDES Permits, CAFOs
- 40 CFR 412 Concentrated Animal Feeding Operation (CAFO) Point Source Category:
  - 40 CFR 412.2, General definitions
  - 40 CFR 412.4, Best management practices (BMPs) for land application of manure, litter, and process wastewater
  - 40 CFR 412.31 Effluent limitations attainable by the application of the best practicable control technology (BPT) currently available
  - 40 CFR 412.37 Additional measures
  - 40 CFR 412.46 New source performance standards (NSPS)
- Producers' Compliance Guide for CAFOs
- NPDES Permit Writers' Manual for Concentrated Animal Feeding Operations

Vessels

1) Read the following:

EPA ORDER 3500.1 PROGRAM-SPECIFIC TRAINING REQUIREMENTS

- Vessel General Permit (VGP)
  Self-study Registration Launch Self-study

2) *Be familiar with the following guidance/reference materials:*

- EPA's Vessel General Permit Website
- Fact Sheet on the Vessel General Permit
- VGP Webcast
- Memorandum of understanding Between the U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance and the U.S. Coast Guard, Office Of Marine Safety, Security And Stewardship for Collaboration on Compliance Assistance, Compliance Monitoring, And Enforcement of Vessel General Permit Requirements on Vessels (February 2011)
- US Coast Guard Policy Letter and Job Aid

Mandatory On-the-Job Training (OJT)

OJT includes inspection preparation procedures, the inspection, and post inspection procedures. You must complete 1), 2), and 3):

1) Read the following NPDES inspection reports:

   Inspectors must review a minimum of two (2) final inspection reports. These can include final inspection reports for inspections they participated in as part of their on-the-job training (OJT) requirements below. The new inspector's supervisor may require the review of more than two (2) final reports, if deemed necessary. In addition, the inspector must prepare at least one (1) final draft report in a timely manner for one of the required OJT inspections required below. The final draft report must be reviewed by an experienced credentialed Compliance Inspector/Field Investigator and any observations provided to the inspectors supervisor.

2) Accompany an experienced credentialed CWA NPDES Compliance Inspector/Field Investigator, as determined by the inspector's supervisor, on two (2) CWA NPDES inspections.

   An experienced Inspector should be a credentialed inspector with the appropriate level of knowledge and experience in conducting inspections in the CWA NPDES Program, as determined by the supervisor of the inspector seeking the credential. In determining whether a credentialed Compliance Inspector/Field Investigator is "experienced," the supervisor should consider the number of years and frequency of inspections for that individual. Generally, 2-5 years experience or 25 documented inspections conducted in the CWA NPDES Program would be an indication that the person is an experienced credentialed Compliance Inspector/Field Investigator.

3) Conduct at least one (1) OJT CWA NPDES inspection while being observed by an experienced credentialed Compliance Inspector/Field Investigator as described above.

   Observations from the experienced credentialed Compliance Inspector/Field Investigator should be documented, kept on file, and be used by the inspector's supervisor to determine readiness to conduct, participate in, or assist with inspections. An inspector's supervisor may require more OJT inspections, based on the supervisor's assessment of readiness, as appropriate.

EPA ORDER 3500.1 PROGRAM-SPECIFIC TRAINING REQUIREMENTS

The OJT inspections conducted must be comprehensive CWA NPDES Program inspections, e.g., Compliance Evaluation Inspections (CEIs), Compliance Sampling Inspections (CSIs), etc. NPDES Reconnaissance inspections would not count toward meeting the OJT requirement. For inspectors that will conduct inspections in CWA NPDES sub-programs, the supervisor should carefully evaluate whether an inspector has adequately developed the skills needed to lead the inspections. For example, if an inspector will conduct inspections at CAFOs, the supervisor should evaluate whether the inspector has adequately developed the skills and ability to evaluate compliance with nutrient management plans before approving the inspector for CAFO inspections.

If the region determines the inspector will conduct inspections in CWA NPDES sub-programs other than the NPDES sub-programs where the initial three (3) OJT inspections were conducted and approved, the supervisor must determine the number of OJT inspections needed before the inspector can be certified to conduct inspections in the additional NPDES sub-programs. Two (2) OJT inspections should be considered as a minimum number for each additional NPDES sub-program. A supervisor may approve less than two (2) OJT inspections, if the inspector is fully knowledgeable and experienced in those CWA NPDES subprograms.

Recommended Reference Materials for CWA NPDES Program Inspectors

All CWA Inspectors should consider reading and familiarizing themselves with the following reference materials and training.

Recommended Reference Materials for All CWA NPDES Program Inspectors

- Field Manual for Performance Evaluation and Troubleshooting at Municipal Waste Water Treatment Systems, January 1978
- Emerging Technologies for Wastewater Treatment and In-plant Wet Weather Management, March 2013
- Water Environmental Federation -- Purpose and Fundamentals of Wastewater Treatment -- This training course provides information on the importance of wastewater treatment, the characteristics of wastewater, and the role of an operator in treating wastewater.
- College or University courses on Wastewater Treatment and Hydraulics
- Training through state or regional programs. For example:
  - Operation of Waste Water Treatment Plants (Volumes I and II), Sacramento State
  - New England Interstate Water Pollution Control Commission Training Center offers a variety of wastewater and collection system courses

Recommended Reference Materials for CWA NPDES Inspectors in Specific Sub-Program

Stormwater (Industrial, Construction , and Municipal Separate Stormwater Sewer Systems (MS4s))

- Stormwater 101: The Basics (Webinar)
- EPA's New Industrial Stormwater Permit: What You Need to Know about the MSGP 2008 (Webinar)
- EPA Multi-Sector General Permit

EPA ORDER 3500.1 PROGRAM-SPECIFIC TRAINING REQUIREMENTS

Sanitary Sewer Overflows (SSOs)

- Guide for Evaluating Capacity, Maintenance and Operation Management (CMOM)

Combined Sewer Overflows (CSOs)

- Report to Congress on Impacts and Control of Combined Sewer Overflows (CSO) and Sanitary Sewer Overflows (SSO) (December 2003)
- Report to Congress: Implementation and Enforcement of the Combined Sewer Overflow Control Policy (December 2001)

Pretreatment

- Webcast: 2010 Effluent Guidelines Program Plan: Update for State and Regional Pretreatment Coordinators (90 minutes)
- Introduction to National Pretreatment Program
- Pretreatment Streamlining Rule Fact Sheet Series
- Guidance Manual for Conducting a Pretreatment Compliance Inspection (September 1991)
- Industrial User Inspection and Sampling Manual for POTWs

Concentrated Animal Feeding Operations (CAFOs)

- Ag 101 - For inspectors without a background in animal agriculture--provides a brief overview of American agriculture and terminology.
- CAFO Rule History

Mandatory Requirements for Currently Credentialed CWA NPDES Program Inspectors

Annually complete each of the numbered Items 1) through 5) below:

1. Inspectors should complete 8 modules from the Occupational Health and Safety Course to fulfill their annual health and safety refresher requirement. Inspectors should select 8 modules that reflect the type of field work and anticipated hazards typical of their assignments.

   Occupational Health and Safety Refresher (8 hours annually)
   EPA Employees
   Non-EPA Employees: Course Registration Launch Course

2. At least one of the following CWA NPDES program-specific training or self-study listed below. An inspector may not repeat a training course or self-study to satisfy this requirement.

   - As a currently credentialed CWA NPDES Program Inspector who received credentials under previous versions of the EPA 3500.1 training requirements, complete any untaken training courses listed under "Mandatory Training Courses for All New CWA NPDES Inspectors" or "Additional Mandatory Training Courses for CWA NPDES Inspectors in Specific CWA NPDES Sub-Programs," as applicable; OR

EPA ORDER 3500.1 PROGRAM-SPECIFIC TRAINING REQUIREMENTS

- As a currently credentialed CWA NPDES Program Inspector who received credentials under previous version of the EPA 3500.1 training requirements, complete any uncompleted self-study listed under the "Mandatory Self-Study for All New CWA NPDES Inspectors" or "Additional Mandatory Self-Study for CWA NPDES Inspectors in Specific CWA NPDES Sub-Programs," as applicable; OR

- Complete at least one of the recommended reference materials listed under "Recommended Reference Materials for CWA NPDES Program Inspectors," as applicable; OR

- Attend the Office of Compliance's CWA/NPDES National Technical Inspector Workshop held on a periodic basis. For more information contact the OECA's Office of Compliance, Monitoring, Assistance and Media Programs Division; OR

- The inspector, in consultation with his/her supervisor may select other CWA NPDES trainings, inspector workshops, or self-study materials to meet this requirement.

3. At least one refresher training course from the Inspector Wiki listed under the section entitled "Inspection Skills Refresher Training." This refresher training includes topics such as "Chain of Custody," "Interviewing Techniques," and "Being a Witness." This training can be found by navigating to the Inspector WIKI, selecting "Training – Credentials," then selecting "Take Refresher Training to Maintain Existing Federal Inspector Credentials," then scrolling down to "Inspection Skills Refresher Training." To satisfy this annual requirement, an inspector may not repeat an Inspection Skill Refresher Training Course until all have been completed. Upon completion of all of the listed courses, the inspector and supervisor may select other similar inspector refresher training to meet this annual requirement.

4. Continue to be familiar with the guidance/reference manuals applicable to the types of inspections the currently credentialed CWA NPDES inspector performs listed above under "Mandatory Self-Study for All New CWA NPDES Inspectors" and "Additional Mandatory Self-Study for CWA NPDES Inspectors in Specific CWA NPDES Sub-Programs."

5. Become familiar with any new regulations and policies applicable to the types of inspections the currently credentialed CWA NPDES inspector performs as they are issued.

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Appendix C. IPDES Program Analysis

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1Introduction

1.1Background

As Idaho seeks to gain delegated authority for National Pollutant Discharge Elimination System (NPDES) program elements, overall program structure and budget must be determined. Building a program from the ground up means numerous opportunities to craft a structure that is both responsive and efficient. However, to do this, an accurate understanding of the NPDES workload in the state and the effort necessary to staff a full program is required. Several decision analysis reports written over the last 14 years were used in the final decision to seek NPDES authorization. These reports built a foundation for budgeting but are now outdated.

1.2Purpose and Scope

This appendix provides the final results from the national resource model. Previous versions of this were shared with the stakeholder committee in January 2015 and May 2015. This final draft provides updated numbers and estimates of workload based on permit numbers and inspections estimated from a data query run in April 2016. This updated version provides the best final estimates available based on current data and predictions of workload. The estimates provided here will describe the needs of the Idaho Pollutant Discharge Elimination System (IPDES) program with regards to both staffing and cost and present a final program budget estimate based on projected workload.

1.3 Summary

This report details projected programmatic workload both in personnel and budget for a fully functional IPDES program. The estimations reported here include staffing at 29 full-time equivalents (FTEs) and a budget of $3.0 million. The proposed IPDES program organization uses three section: (1) program management; (2) permitting; and (3) compliance, inspection, and enforcement (CIE).

Currently, it is projected that the 29 positions will be split into the three sections as follows:

- Eight positions in program management, including a program manager, three section leads, a data management system coordinator, a web design/database administrator, an attorney, and an administrative assistant;
- Seven positions in permitting; and
- Fourteen positions in CIE.

The previous reports provided a different number of staff necessary and different distributions of those staff among the three sections. A comparison of the various results from the different decision analysis reports is found in Table C-1. As IPDES program personnel have gained a better understanding of how the resources, both human and fiscal, will be best employed, these estimates and distributions have changed. DEQ believes the results described in this appendix to be the most accurate estimate based on the current data available to describe both the universe of NPDES permittees in Idaho and the effort needed to support a mature IPDES program.

Table C-1. Comparison of FTEs and cost of program from different analysis reports.

Year of Report	Total FTEs	Total Program Cost ($)
2000	31	1,955,687
2002	21	1,890,867
2005	23	1,124,091
2015	26	2,761,670
2016 (this appendix)	29	3,034,500

2Methods

2.1Resource Model (Version 5.1)

EPA Region 10 provided the Idaho Department of Environmental Quality (DEQ) with a copy of the State Water Quality Management Resource Model version 5.1 in October 2014. This model was developed by a focus group consisting of state representatives, EPA staff, and other concerned stakeholders. The purpose of developing the model was to provide states with a flexible, accurate, and user-friendly tool to estimate resource needs and document budget requests.

2.2Model Assumptions

Default values (see Table C-2) for many components are provided in the model and represent the best estimates of the focus group participants for an *average* or *typical* state. The model forecasts programmatic needs for 5 years based on the input and default values. The calculation of a FTE uses 1,784 hours per FTE. Although there are 2,080 hours available in a year, hours allowed for sick, holiday, and vacation leave reduce the total time available per FTE to complete work.

Basic information required to run the model includes the overall number of individual NPDES-permitted facilities and the number of entities requesting coverage under a general permit. Individual permitted facilities are categorized as either major or minor to estimate the resources required to write permits but not further categorized as industrial or municipal. In Idaho, 37 individual permits have been written for major dischargers (29 for major municipal and 8 for major industrial) and 102 permits for minor dischargers (80 minor municipal and 22 minor industrial).

Table C-2. Default values supplied with resource model and used in calculating staffing resource needs.

Item	Default Value (hours)
Complex individual permit development	400
Simple individual permit development	200
Complex general permit	3600
Simple general permit	400
DMR review	0.5
Permit Appeal	40-240
Inspections (average)	5-160
Complaint Investigation	16
Violation Response	4-40
Administrative Orders	160
Assistance activities	10% of total hours
Training	2% of total hours
Emergency Response	5% of total hours

2.2.1Program Management

Program management encompasses the overall development of rules, guidance, and policy for the IPDES program. In the current programmatic strategy, this area also includes the data management, fee administration, and quality assurance system. The workload required for program management and oversight includes establishing and implementing division policies, developing and updating the state's short- and long-term point source control strategies, and planning legislative actions. Program management and oversight reflects the resource needs of all aspects of the point source control program (including oversight of the pretreatment program and consultation with a deputy attorney general).

For this component of the IPDES program, the model uses a default value of 6,000 hours for program planning, management, and oversight. Additionally, a default of 3,200 hours for rule and guidance development, review and revisions, and 3,600 hours for administration of the fee program are used. These default values were identified by the focus group during model development as those most likely needed for this program component for a typical state.

Data management is identified in a separate module of the model and includes data management for all water quality programs (e.g., ambient monitoring, Integrated Report needs, and total maximum daily loads [TMDLs]) into a single computation. Therefore, using the model to identify needs for the data management component specific to the IPDES program is less straightforward than other components such as management, permitting, and compliance.

2.2.2Permitting

Permitting encompasses the overall development of individual and general for the IPDES program. In the current programmatic strategy, this area also includes approving applications for coverage under general permits. The workload required for permitting includes engineering plan review; application mailing; pre-permit conference; application receipt, log in, and completeness

review; application review; site visit and inspection report review; permit modeling and re-modeling; development or revision of permit limits and other conditions; drafting permit and fact sheet; public notice of permit issuance or renewal; public hearing; receipt, log in, and response to comments; permit finalization; filing NOIs/registrations; and permit maintenance.

The model requires that both major and minor individual permits were placed into one of three categories (simple, complex, and very complex) based on their technical complexity and political sensitivity. This allocation was completed by assigning appropriate percentages of each permit type into each of the three categories as shown in Table C-3.

Table C-3. Summary of values used to calculate effort necessary for permit appeals.

	"Simple"	"Complex"	"Very Complex"
Distribution of permits			
NPDES permits for major facilities	**30%**	**40%**	**30%**
NPDES permits for minor facilities	**50%**	**30%**	**20%**
Frequency of Appeals (%)			
NPDES permits for major facilities	**10.0%**	**5.0%**	**5.0%**
NPDES permits for minor facilities	**5.0%**	**2.0%**	**2.0%**
Hours / Appeal			
NPDES permits for major facilities	**40 hrs**	**120 hrs**	**240 hrs**
NPDES permits for minor facilities	**40 hrs**	**120 hrs**	**240 hrs**

2.2.3Compliance, Inspection, and Enforcement

The compliance, inspection, and enforcement component covers aspects of permit maintenance such as reviewing discharge monitoring reports, inspecting facilities according to the compliance monitoring strategy, reporting on compliance issues, and enforcing permit conditions. DEQ works with EPA currently in the CIE component of IPDES by inspecting facilities and reporting those findings to EPA staff in the Office of Enforcement and Compliance Assurance.

States must review discharge monitoring reports (DMRs) submitted by all regulated facilities. The number of DMRs submitted by a particular facility varies according to facility size, whether it is a municipal or industrial facility and the expected nature of pollutants. Table C-6 describes the expected average number of DMRs per facility class used in the model.

Many states provide substantial assistance to regulated and unregulated facilities to enhance the ability of these facilities to comply with regulations and protect public health. Typical assistance activities include compliance assistance (e.g., permit development guidance and data submittal assistance); technical assistance (e.g., on-site assistance and troubleshooting, assistance to non-NPDES facilities, CWA §104(g), award program, outreach to technical and professional organizations, and operator certification and continuing education); financial assistance (e.g., assistance with financial management and loan applications); and capacity assurance. The model

applies a percentage add-on to all point source control activities (i.e., permitting, compliance, enforcement, and septage) for this line item: add-on for assistance activities, 10.0%. This add-on is shown as a line item in Table C-11.

2.3Model Inputs

This section describes the three main components of the IPDES program, describes the assumptions that went into the model development, compares the model outputs with the current resources used by EPA and DEQ to provide a projected workload estimate, and compares various staffing options for each of the program components.

2.3.1Program Management

There were no inputs to use for the program management component of the model other than default values. However, DEQ's evaluation of the default values provided with the model suggests that these values are likely higher than necessary given the structure of the IPDES program. The projected workload for this component of the IPDES program was determined based on best professional judgment using programmatic structures from other DEQ water quality programs within DEQ. Table C-8 shows the projected number of hours allocated to each position within the program management component.

2.3.2Permitting

For modelling purposes, current numbers and types of dischargers were identified as shown in Table C-4. The number and type of general permits written for and effective in Idaho are shown in Table C-5.

To calculate programmatic resource needs for the pretreatment program, the model requires identifying the total number of municipal dischargers and the number of those with pretreatment programs. Additionally, if DEQ will be taking over the responsibility for regulating Categorical Industrial Users (CIUs) and Significant Industrial Users (SIUs), the total number of these in the state that will be regulated should be identified and added to the model input values.

Because sanitary sewer overflows (SSOs) add an additional burden to the program, the model requires input of municipalities that have SSOs. Also, combined sewer overflows (CSOs) require additional time. Currently, Idaho does not have any CSO facilities.

Finally, the model requires the input of the number of facilities that are covered under the various types of general permits. For Idaho, 94 facilities are covered under the aquaculture general permit, 100 under the pesticide general permit, 80 under the recreational dredging permit, 8 under the ground water remediation general permit, 278 under the construction general permit (GCP), 7 under the multisector general permit (MSGP), and 16 under the municipal separate storm sewer system (MS4) general permit. The workload associated in the permitting section for this includes review and authorization of the notice of intent (NOI) for coverage.

Table C-4. Permitted facilities in Idaho, 2014.

NPDES Program	Current Number
Major facilities with individual NPDES permits (includes POTWs)	37
Minor facilities with individual NPDES permits (includes POTWs)	122
Clean Water Act (CWA) §316 Program	
Power plants that require CWA §316 reviews	0
Publicly Owned Treatment Works (POTWs)	
All POTWs (with or without pretreatment programs)	109
POTWs with pretreatment programs	12
POTWs with pretreatment programs and with authority to regulate CIUs and SIUs	12
CIUs and SIUs regulated directly by state for pretreatment	0
Wet Weather Dischargers Inventory	
Combined sewer overflows	0
Municipalities with sanitary sewer overflows	109
General Permit Programs (facilities regulated under a general permit)	
Concentrated animal feeding operations	0
Storm water dischargers	1,235
Aquaculture dischargers	94
Other facilities	316

Notes: CIU = Categorical Industrial User; SIU = Significant Industrial Users

For the purposes of planning and to estimate projected workload, a proposed schedule of issuing general permits was drafted as shown in Table C-5. Typically a general permit will be written when the current EPA-generated permit expires. This proposed schedule is for planning purposes only and does not represent the actual timing for writing these permits.

The three storm water-related general permits are CGP, industrial MSGP, and MS4. For planning purposes, these are proposed to be written one per year for the first 3 years after that phase is authorized. The aquaculture general permit is actually a series of three permits; one for discharges to impaired waters, one for discharges to unimpaired waters, and one for fish processors. Other general permits include:

- Concentrated animal feeding operations,
- Pesticide general permit,
- Drinking water treatment facility
- Vessel general permit,
- Ground water remediation, and
- Recreational suction dredging.

Table C-5. Proposed schedule for renewal of state general permits.

State General Permits	Previously Issued Permits	Anticipated Schedule for Issuing New General Permits				
		2020	2021	2022	2023	2024
Concentrated animal feeding operations	1	0	0	1	0	0
Storm water	3	0	0	1	1	1
Aquaculture	3	3	0	0	0	0
Other	6	0	2	1	2	1

2.3.3Compliance, Inspection, and Enforcement

Discharge monitoring reports are submitted on a regular basis depending on the type of covered facility. Table C-6 describes the default values used in calculating the workload associated with the review of discharge monitoring reports.

Table C-6. Discharge monitoring reports by facility.

Type of Facility	Average Number of DMRs per Facility per Year
Major facility with individual NPDES permit	12.0
Minor facility with individual NPDES permit	12.0
Combined sewer overflows and sanitary sewer overflows	0.0
Non storm water general permittee	12.0
Aquaculture general permittee	12.0
Storm water general permittee	1.0

Based on an evaluation of the total number of facilities in each of the major NPDES sectors and both the national and Idaho specific Compliance Monitoring Strategies, DEQ developed an estimated number of inspections that would be required each year when the program is fully operational. These are listed in Table C-7.

Table C-7. Total inspections per year.

IPDES Permit Type	Comprehensive Inspection Frequency by Year or Percentage	Number of Facilities in Idaho	Total Facilities to be Inspected in a Given Year
Major	1 inspection every 2 years	29 POTW 8 industrial	18
Minor	At least 1 inspection every 5 years and 5% per year	80 POTW 22 industrial	25
Pretreatment	2 inspections every 5 years	12	5
Sewage sludge/biosolids	1 inspection every 5 years for permitted facility	118	24
CSS/SSS	5% of permittees inspected when treatment works is inspected	109	6
MS4	1 inspection every 5 years for compliance monitoring activity	30	Approximately 6
Industrial storm water	10% per year	Approximately 275[a]	Approximately 28
No exposure	10% per year	Approximately 200	Approximately 20
Construction storm water	10% per year	Approximately 640[b]	Approximately 64
Low erosivity waiver	10% per year	Approximately 120	Approximately 12
Large/medium CAFO	1 inspection every 5 years for permitted facility	0	—
Medium/small CAFO	As needed based on a citizen tip or complaint	0	—
Pesticide	Complaint driven	130	Unknown
Vessel	Complaint driven	6 (varies annually)	Unknown
CAAP	1 inspection every 2 years for major (including processors) 1 inspection every 5 years for minor	81 minor 18 major	17 minor 9 major
DWGP	5% of permittees	7	2
Small suction dredge	5% of permittees	162(varies annually)	8
Ground water remediation	5% of permittees	6	1
		Total Annual Inspections	Approximately 246

a. Estimates are based on conversations between T. Smith of DEQ and K. Burgess of EPA, February 2016
b. Estimate was extrapolated from information provided by EPA, February 2016 for calendar year 2015 active construction storm water permitted activities.
Notes: publicly owned treatment work (POTW); combined sewer system (CSS); sanitary sewer system (SSS); Municipal Stormwater General Permit (MSGP); municipal separate sewer systems (MS4s); Construction General Permit (CGP); concentrated animal feeding operation (CAFO); concentrated aquatic animal production (CAAP); Drinking Water General Permit (DWGP)

3Results

3.1Program Management

DEQ's current strategy for program management includes a program manager; rules and guidance coordinator; permits lead; and CIE lead. Allocating hours to the projected workload for various activities within the program management component was done as follows:

- Program management
  - Program manager: 100% (1,784 hours)
  - Permits lead: 70% (1,249 hours)
  - CIE lead: 70% (1,249 hours)
- Rules and guidance development
  - Rules and guidance coordinator: 100% (1,784 hours)
  - Permits lead: 30% (535 hours)
  - CIE lead: 30% (535 hours)
- Program administration and support
  - Data management coordinator: 100% (1,784 hours)
  - Database/Web design support: 100% (1,784 hours)
  - Deputy attorney general: 100% (1,784 hours)
  - Administrative assistant for fee administration: 90% (1,566 hours)
  - Administrative assistant for program support: 25% (450 hours)

To estimate the projected workload, program fee administration is assumed to be similar to the drinking water program. Roughly three-quarters of the time for the administrative assistant assigned to support that program is used for sending invoices, providing public assistance, updating address information, reporting, and managing the invoice information. Based on fiscal year (FY) 2014, the drinking water administrative assistant spent 1,366 hours in fee administration. Additionally, DEQ's fiscal office used approximately 200 hours in fee administration to assist with invoicing. Administrative support for the program management section would require 450 hours.

For ease of planning the projected workload estimates shown in Table C-8 allocate all the hours associated with a deputy attorney general to the program management component. However, it is more likely that this individual's time will be spent in all three of the IPDES program components (program management, permit appeals, and enforcement).

Table C-8. Hours estimated for program management.

Activity	Projected Workload (hours)
Program Management	
Program manager	1,784
Permits lead	714
CIE lead	714
Subtotal	3,212
Rules and Guidance Development	
Rules and guidance coordinator	1,784
Permits lead	535
CIE lead	535
Subtotal	2,854
Program Administration and Support	
Data management	1,784
Fee administration	1,566
Deputy attorney general	1,784
Administrative support	450
Subtotal	5,584
Total	11,650 (7 FTE)

Notes: CIE = compliance, inspection, and enforcement ; FTE = full-time equivalent

Values in Table C-9 show the hours needed for data management in the IPDES program based on the model inputs. DEQ has an EPA Exchange Network (EN) grant to help defray the costs of developing the infrastructure (database configuration and website application design) for the program. Therefore, the cost of developing a 120-day plan for a one-stop reporting program will be covered under the EN grant.

Default values for data management were supplied with the model; however, these values were calculated for an entire water quality program including TMDL, monitoring, reporting, nonpoint source, grants, loans, wetlands, coastal programs, water quality standards, and regional initiatives. Additional costs for start-up of a geographic information system (GIS) were also incorporated into the model. DEQ already has a relatively robust GIS system in place with 2.5 FTE support staff working on GIS implementation. Therefore, for GIS workload estimation, the model was reduced from a default value of 10,800 hours for development to 0. Maintenance and improvement hours should be minimal, roughly 200–400 per year. Data retrieval will not be the responsibility of the GIS staff.

Table C-9. Model outputs for data management component of IPDES program.

Activity	Model Estimation (hours)
General Data Management Activities	
Data processing	
• Integrated Compliance Information System (or equivalent)	1,050
System maintenance and administration	
• User support	1,290
Data System Improvement and Integration	
Develop objectives and strategies	446
Implement system update	446
Geographic Information Systems	
Maintenance and improvement	200
Website Design, Development, and Maintenance	1,040
Total	4,472 (2.5 FTE)

3.2Permitting

The EPA model predicts need for 13,868 hours or 7.8 FTEs in the permitting component. A breakdown of the various responsibilities is shown in Table C-10 and uses a percentage value to determine the overall number of permits or facilities that are affected in each of the categories. Since most permits are valid for 5 years, theoretically one-fifth or 20% of all permits in that category should be up for renewal during any given year. Other percentage values used in Table C-9 are default values established by the focus group that created this model.

While attempting to determine an average annual cost for the IPDES program, it is difficult to address one-time costs such as general permits which occur once every 5 years. EPA's model estimates these needs by applying a percentage of the one-time permit writing and permit renewal for all the general permits a state would anticipate writing. Overall, there will be roughly 2 general permits per year that will need to be written, although some years will see a heavier burden than others.

Table C-10. Model estimations for time required in permitting component.

Activity	Percentage (%) of Permits/Facilities Affected	Number of Permits/Facilities Affected	Required Effort (hours/permit or facility	Total Hours Required Effort for Line Item
Permit Issuance				
Individual permit issuance or renewal[a]				
• NPDES permits for major facilities	20%	7.4	400	2,960
• NPDES permits for minor facilities	20%	24.0	200	4,800
General permits[b]				
• Initial permit development				
▪ Concentrated animal feeding operations	One time only	0.20	3,600	720
▪ Stormwater	One time only	0.6	3,600	2,160
▪ Aquaculture	One time only	0.40	400	160
▪ Other	One time only	1.00	400	400
• Permit renewal				
▪ Concentrated animal feeding operations	20%	0.20	1,800	360
▪ Stormwater	20%	0.60	1,800	1,080
▪ Aquaculture	20%	1.60	200	320
▪ Other	20%	0.80	200	160
• Authorization for coverage under general permit	20%	329	2	658
Permit Appeals				
Individual permits[c]				
• NPDES permits issued for major facilities				
▪ Simple	10%	0.22	40	9
▪ Complex	5%	0.15	120	18
▪ Very complex	5%	0.11	240	27
• NPDES permits issued for minor facilities				
▪ Simple	5%	0.60	40	24
▪ Complex	2%	0.11	120	18
▪ Very complex	2%	0.10	240	27
General permits				
• Concentrated animal feeding operations	1%	0.00	240	0
• Storm water	1%	0.02	240	4
• Aquaculture	1%	0.01	240	4

• Other	1%	0.02	240	4
Extraordinary permits (e.g., CWA §301(h) permit)	NA	0.0	1,500	0
Total annual workload for permitting activities				13,868
Total FTE:				**7.8**

a. The estimate for the effort associated with individual permit issuance reflects the time associated with the following activities: engineering plan review; application mailing; pre-permit conference; application receipt, log in, and completeness review; application review; site visit and inspection report review; permit modeling and re-modeling; development or revision of permit limits and other conditions; drafting permit and fact sheet; public notice of permit issuance or renewal; public hearing; receipt, log in, and response to comments; permit finalization; and permit maintenance. The estimate for permit issuance includes the consideration of pretreatment requirements. Aquaculture facilities and ballast discharges are typically regulated under the NPDES program; therefore, they are included as minor NPDES permits.
b. The estimate for the effort associated with general permit issuance reflects the time associated with the following activities: development or revision of permit limits and other conditions; drafting permit and fact sheet; public notice of permit issuance or renewal; public hearing; receipt, log in, and response to comments; permit finalization; filing notices of intent/registrations; and permit maintenance.
c. For the purposes of the model, both major and minor individual permits are placed into one of three categories (simple, complex, and very complex) based on their technical complexity and political sensitivity. This allocation was completed by accepting the following default percentages of each permit type in each of the three categories: 30% simple major, 40% complex major, 30% very complex major. For minor discharge permits, the default values are 50% simple, 30% complex, and 20% very complex.

Notes: CWA = Clean Water Act; NA = not applicable; FTE = full-time equivalent

3.3Compliance, Inspection, and Enforcement

The EPA model predicts need for 24,968 hours, or 14 FTEs, in the CIE component. A breakdown of the various responsibilities is shown in Table C-11.

Table C-11. Model estimations for time required in compliance, inspection, and enforcement section.

Activity	Number of DMRs	Required Effort (FTE hours/DMR)	Total Required Effort for Line Item (FTE hours)
Discharge Monitoring			
Review discharge monitoring reports (DMRs)	8,063	0.5	4,032

Activity	Percent of Facilities Affected	Number of Facilities Affected	Required Effort (FTE hrs/facility)	Total Required Effort for Line-Item (FTE hrs)
Inspections				
Routine Compliance Inspections				
Major facilities with individual NPDES permits				
• Inspection	50%	19	24	456
• Sampling with inspection	50%	9	8	72

Activity	Percent of Facilities Affected	Number of Facilities Affected	Required Effort (FTE hrs/facility)	Total Required Effort for Line-Item (FTE hrs)
Minor facilities with individual NPDES permits				
• Inspection	20%	24	32	390
• Sampling with inspection	50%	12	8	98
Performance compliance inspections (PCIs)				
• POTW w/own PT program	40%	5	24	120
• PT performance audit	10%	1	80	80
CSOs/SSOs2				
• Inspection	20%	6	16	96
• Sampling with inspection	50%	3	8	24
General permittees				
Inspection				
• CAFOs	20%	0	6	0
• Storm water (SW)	10%	124	6	741
• Aquaculture general permittees	28%	21	20	420
• Other general permittees	20%	20	6	120
Sampling with inspection				
• CAFOs	50%	0	2	0
• Storm water	50%	15	2	30
• Aquaculture general permittees	50%	13	2	26
• Other general permittees	50%	19	2	38
Performance Audit Inspections (PAIs)	2%	1	24	24
Diagnostic Inspections	10%	11	160	1,744
Biosolids				
Report Review				
• Annual Biosolids report		111	2	222
• Other reports		11	1	11
• Annual land application reports		222	3	666
Inspection of application sites				
• Field inspection	30%	17	10	167
• In-office review	70%	39	2	78

Activity	Percent of Facilities Affected	Number of Facilities Affected	Required Effort (FTE hrs/facility)	Total Required Effort for Line-Item (FTE hrs)
• Compliance inspections	20%	44	8	355
Assistance Activities[a] (add-on)	Not Applicable; see footnote a			3,623
Total annual workload for compliance and inspection activities				13,633
Total compliance and inspection FTEs				**7.6**

Activity	Percentage (%) of Facilities Affected	Number of Facilities Affected	Required Effort (FTE hours/facility)	Total Required Effort for Line Item (FTE hours)
Enforcement				
Complaint Investigation				
Individual permittees				
• Major facilities with individual NPDES permits	10%	3.7	16	59
• Minor facilities with individual NPDES permits	50%	61	16	976
General permittees				
• CAFOs regulated by general permit	20%	0	16	0
• Stormwater dischargers regulated by general permit	10%	124	16	1,976
• Aquaculture dischargers regulated by general permit	5%	5	16	90
• Other facilities regulated by general permit	5%	16	16	256
Non-permitted facilities[b]	NA[a]	200	16	3,200
Emergency response actions[c]	NA[b]	NA	NA	327
Violation Response				
Initial response				
• Individual permittees				
▪ Major facilities with individual NPDES permits	50%	19	4	76
▪ Minor facilities with individual NPDES permits	50%	61	4	244
• General permittees				
▪ CAFOs regulated by general permit	20%	0	4	0
▪ Storm water dischargers regulated by general permit	5%	57	4	228

▪ Aquaculture dischargers regulated by general permit	5%	5	4	20
▪ Other facilities regulated by general permit	5%	16	4	64
Follow-up response (e.g., conference)				
• Individual permittees				
▪ Major facilities with individual NPDES permits	20%	4	40	160
▪ Minor facilities with individual NPDES permits	20%	12	32	390
• General permittees				
▪ CAFOs regulated by general permit	50%	0	40	0
▪ Storm water dischargers regulated by general permit	40%	25	32	790
▪ Aquaculture dischargers regulated by general permit	50%	2	32	64
▪ Other facilities regulated by general permit	50%	8	32	256
Administrative orders (with the possibility of a penalty)				
• Individual permittees				
▪ Major facilities with individual NPDES permits	5%	0.2	160	32
▪ Minor facilities with individual NPDES permits	50%	6	160	976
• General permittees				
▪ CAFOs regulated by general permit	20%	0.00	160	0
▪ Storm water dischargers regulated by general permit	20%	5	160	800
▪ Aquaculture dischargers regulated by general permit	20%	0.5	160	80
▪ Other facilities regulated by general permit	20%	1.5	160	240
Civil and criminal referral				
• Individual permittees				
▪ Major facilities with individual NPDES permits	0.50%	0.001	1,000	1
▪ Minor facilities with individual NPDES permits	0.25%	0.02	1,000	15
• General permittees				
▪ CAFOs regulated by general permit	0.25%	0.00	1,000	0

▪ Storm water dischargers regulated by general permit	0.05%	0.00	1,000	2
▪ Aquaculture dischargers regulated by general permit	0.25%	0.00	1,000	1
▪ Other facilities regulated by general permit	0.25%	0.00	1,000	4
Post-referral follow-up				
• Individual permittees				
▪ Major facilities with individual NPDES permits	75%	0.00	480	0
▪ Minor facilities with individual NPDES permits	75%	0.001	480	5
▪ CIUs and SIUs regulated directly by state for pretreatment	75%	0.00	480	0
• General permittees				
▪ CAFOs regulated by general permit	75%	0.00	480	0
▪ Storm water dischargers regulated by general permit	75%	0.00	480	1
▪ Aquaculture dischargers regulated by general permit	75%	0.00	480	1
▪ Other facilities regulated by general permit	75%	0.00	480	1
Total annual workload for enforcement activities				11,335
Total enforcement FTEs				**6.4**

a. Many states provide substantial assistance to regulated and unregulated facilities to enhance the ability of these facilities to comply with regulations and protect public health. Typical assistance activities include compliance assistance (e.g., permit development guidance and data submittal assistance); technical assistance (e.g., on-site assistance and troubleshooting, assistance to non-NPDES facilities, award program, outreach to technical and professional organizations, and operator certification and continuing education); financial assistance (e.g., assistance with financial management and loan applications); and capacity assurance. The focus group recommended applying a 10% add-on to all point source control activities (i.e., permitting, compliance, enforcement and septage) for this line item.

b. Based on the experience of participating states, it was assumed that the number of complaint investigations for nonpermitted facilities would be approximately equal to three times the number of complaint investigations for permitted facilities.

c. To ensure the ability to respond to emergency situations such as natural disasters, algal blooms, or spills that impact water quality, States must maintain an emergency response staff. For the purposes of the model, it is assumed that the size of this staff will be equal to 5% of all FTEs dedicated to complaint investigations.

Notes: POTWs = Publicly Owned Treatment Works; CIU = Categorical Industrial User; SIU = Significant Industrial Users; CAFO = concentrated animal feeding operation; FTE = full-time equivalent

The model estimates that the CIE component for the IPDES program will need 24,968 hours (14 FTEs) to fully support the program.

3.4Fiscal Resources

3.4.1Final Budget Predictions

Using the estimates for total number of full time equivalents, the IPDES program budget will be roughly $3.0 million annually. Table C-12 provides a line item description of the various budget elements.

The state has agreed to provide $2.0 million annually in support of the program. The remainder of the monies necessary to implement the program will come mostly from fees associated with various permit types; municipal POTW, individual industrial, and storm water. Fee negotiations were carried out with the stakeholder committee during the rulemaking, and the final

Table C-12. IPDES program cost estimation.

Fiscal Year	2019	2020	2021	2022	2023
			($)		
Personnel	2,540,300	2,839,400	2,839,400	2,839,400	2,839,400
Travel	37,000	37,000	28,000	28,000	28,000
Contractual[a]	140,100	140,100	140,100	140,100	140,100
Supplies	23,300	22,100	14,000	14,000	14,000
Equipment	13,000	13,000	13,000	13,000	13,000
Total cost	2,753,700	3,051,600	3,034,500	3,034,500	3,034,500

a. Includes operating dollars to cover cost of deputy AG contracted from the state's Office of the Attorney General.

3.4.2Training and Other Program Needs

Staff in the IPDES program will need a significant amount of training to properly complete their job responsibilities, including the week-long EPA-sponsored Water Quality Standards and Permit Writer's Training. Additional state-specific training will include water quality standards 101 from the Surface Water Program, a state-specific permit writer's training (to be developed) and DEQ-specific employee training (e.g., TRIM document management, purchasing, Pcard, and new employee orientation). Compliance officers in the IPDES program will need EPA inspector training until DEQ can provide a similar level of training and credentials for inspections. Permit writers will need training in the various modeling programs necessary for calculating water quality such as AquaTox and CORMIX. Additional operating costs will include equipment associated with inspection monitoring and software licenses for permit writers as detailed below.

For the permitting staff, access to modeling software will be necessary for determining water quality based effluent limits. While AquaTox is a software program provided at no cost by EPA, CORMIX requires a software license. DEQ currently maintains a license with support for seven users at a cost of $2,698 per year. A detailed description of the projected training needs will be outlined in the capacity development plan.

For the inspection and compliance section, staff will need cameras with a global positioning system (GPS) and date stamping capability on each digital picture. This equipment is critical for completing inspections and documenting violations that may end up in court. A Ricoh WG-4

GPS costs $420 and meets all needs for this purpose. Portable composite samplers cost about $1,750 each. Portable dissolved oxygen, pH, conductivity, and turbidity monitors can be purchased for about $600 each. A rugged tablet for data collection costs $3,750. Six tablets would cost $22,500. Initial startup costs for equipment in the CIE section would be $39,120. Yearly maintenance costs, assuming a replacement schedule one of each per year on a 6-year rotation would be $6,520.

EPA's resource model estimated $37,570 per year associated with sampling for inspections. This number was incorporated into the overall program budget by subtracting the identified costs ($3,120) for sampling equipment (camera, samplers, meters, and tablets) from the overall $37,575. The remainder, $31,055, was then identified as laboratory and contracting costs associated with sampling for inspections.

4Discussion

4.1Staffing

As required by 40 CFR 123.22, the following subsections describe the DEQ staff who will carry out the IPDES program, including the number, occupation (staff title), and general duties. This is not a complete job description of every employee carrying out the state program, but does provide a summary of the key job responsibilities for those whose main role will be working in the IPDES program.

4.1.1Program Management

#	Staff Title	General Duties
1	Program Manager	• Provide day to day leadership, management, over-site, and supervision for the IPDES Program staff. • Develop the IPDES funding strategy with assistance from stakeholders under a negotiated rulemaking process. • Meet with stakeholders individually to understand stakeholder permitting efforts, number of permittees and permittee perspectives on funding. • Develop the IPDES Program Rules under a negotiated rulemaking process. • Guide guidance development by facilitating stakeholder discussions. • Develop the state office IPDES Program budget, including technical services work requests, and negotiated the budget priorities with the regional offices. • Participate in final budget rollup prioritization. • Track performance measures for state and regional offices.
1	Rules & Guidance Coordinator	• Promulgate new state rules as required following the APA and using the established negotiated rulemaking process. Rulemaking involves developing and submitting a Proposed Administrative Rules Form and related analyses, writing and reviewing rule text, organizing and conducting negotiated rulemaking meetings, public hearings, participating in stakeholder meetings, developing briefing materials, responding to public comments and presenting to the DEQ Board and may include presenting to the Idaho Legislature. • Perform program primacy activities associated with adopting Clean Water Act NPDES Regulations as required. Activities include reviewing, researching and commenting on proposed federal rules; analyzing statewide impacts; and assisting in developing briefing materials. • Assist the IPDES Program Manager in preparation of the IPDES rule portion of the primacy package for EPA review and approval. • Develop policies and procedures to ensure statewide consistency and coordination of IPDES rules. Set priorities to ensure statewide consistency and coordination of rule implementation. • Develop tools, guidance, policies, templates, training and other necessary materials for rule implementation. Follow rule versus guidance memo in preparation of guidance packages. Develop guidance associated with reasonable potential to exceed analyses; water quality based effluent limits; whole effluent toxicity testing; compliance schedule reporting and discharge monitoring reports (DMRs). Assist with guidance development and refinement of IPDES program guidance implementing the water quality standards, such as mixing zone guidance, antidegradation guidance, and human health criteria. • Prepare and provide program information to senior management, the IPDES stakeholders, state and local officials, and other interest groups as needed. • Assist the IPDES Program Manager in preparation of the IPDES guidance portion of the primacy package for EPA review and approval. • Participate in and assist with IPDES budget activities, work plans, and

		program performance reviews. • Coordinate with IPDES program manager and IPDES permit lead to establish and track program goals and strategic planning activities. • Coordinate with staff to ensure compliance database functions and rule activities are compatible. Monitor database reports to ensure IPDES program implementation is on track with rules. • Coordinate with staff that is assigned to interface with laboratory reporting for the IPDES program. Coordination includes ensuring the database is current with registered laboratories, reporting and following up on laboratory issues. • Provide first-line supervision to assigned staff. • Prepare annual performance plans and performance evaluations. • Coordinate with other programs and state agencies.
1	Data Management Coordinator	• Update IPDES data management strategy on a regular basis • Coordinate with IPDES program staff to identify areas of improvement in data management • Provide recommendations for compliance with EPA's electronic reporting rule • Coordinate with IT staff on data management, web-based applications, and exchange issues • Develop and implement training in various applications for DEQ staff and external clients such as wastewater operators • Identify funding sources and grant opportunities to expand or update current data management technologies • Write and manage grants and contracts associated with the development of data management software applications • Research, compile and format data requested in Public Records Requests; • Participate in ongoing discussions to improve customer service in the IPDES program; and • Act as a Quality Assurance Officer for project plans.
1	Administrative Assistant	• Provide clerical support to IPDES program staff • Prepare and mail annual invoices for dischargers • Import, enter, and maintain electronic documents using document management system • Prepare mass mailing distributions for IPDES programs when needed • Assist program staff in the preparation of flyers, information packets, and educational outreach brochures • Prepare letters for signature • Operate, troubleshoot and provide basic maintenance of the office equipment (e.g., copiers and printers) • Organize filing systems • Process incoming and outgoing mail, date stamp and distribute, prepare envelopes and packages for mailing • Provide customer service by referring customers to appropriate staff and respond to public inquiries and complaints
1	Deputy Attorney	• Coordinate with IPDES CIE Lead in the development of formal

	General	enforcement response actions • Coordinate with IPDES Permit Lead in the development of permit and fact sheet templates • Provide legal review of permit and fact sheet templates, formal enforcement responses, and administrative orders • Coordinate with IPDES program manager and rules/guidance coordinator during negotiated rulemakings to ensure consistent and appropriate legal review of draft rules • Provide authoritative legal advice to IPDES staff related to both technical and administrative issues • Draft proposed legislation and department rules • Negotiate with state and federal agencies regarding IPDES issues • Negotiate with private individuals and organization in nonlitigation situations
1	Web Design/Database Administrator	• Provide database support to IPDES program including design, development, and updating IPDES database schema • Assist Data Management Coordinator with running queries against database to ensure quality controls • Assist Data Management Coordinator with development of web-based applications for electronic entry of data by external clients • Provide support for the exchange of IPDES data via the CDX to EPA's ICIS-NPDES database

4.1.2 Centralized Permitting Structure

#	Staff Title	General Duties
1	Permit Lead	• Develop IPDES permitting expertise. • Assist the IPDES Program Manager in preparation of the IPDES permitting portion of the primacy package for EPA review and approval. • Draft IPDES fact sheets as a type of staff analysis report using rules and guidance documents. Review draft fact sheets prepared by permit writers. Draft IPDES permits. Review draft IPDES permits. Work with surface water quality staff and AG's office on draft permit language to ensure compliance with water quality standards; ensure permits are using approved TMDL wasteload allocations; and that draft permits include language on pollutant trading. • Share draft fact sheet and draft IPDES permit with EPA contacts for programmatic review. Review and revise fact sheet and draft permit if appropriate based on EPA review. • Issue draft fact sheets and draft IPDES permit to applicant for preliminary review prior to public comment. Review and revise fact sheet and draft permit if appropriate based on applicant review. • Issue draft fact sheet and draft IPDES permit for public comment. Respond to public comment by preparing the response to public comment document. Revise draft fact sheet and draft permit if appropriate based on public comment. • Share draft fact sheet and draft IPDES permit with EPA contacts for programmatic review. Review and revise fact sheet and draft permit if appropriate based on EPA review. (This is an intentional second opportunity for EPA to review the preliminary-final permits prior to issuance.) • Prepare response documents for any permit appeals. • Work with AGs office in preparation of permit appeal responses. • As requested by the AG's office present permit appeal responses to hearing officer or DEQ Board. • Track IPDES Program permitting performance measures and identify performance trends. • Assist Program Manager and rules/guidance coordinator with development of rules and guidance documents. Support rule and guidance coordinator in defining specific fee structures, implementation policies and procedures. • Participate in and assist with IPDES Program budget permitting activities, work plans, and program performance reviews, and Performance Partnership Agreement (PPA) development. • In conjunction with IPDES Program rules and guidance coordinator, identify needs for training, guidance and policy development. • Coordinate with IPDES Program compliance, monitoring and enforcement coordinator to oversee and ensure consistent regulatory application on new and ongoing IPDES enforcement actions. • Coordinate operator certification and licensing tasks with Loan and Wastewater Program staff, and IBOL staff. • Prepare and provide program information to senior management, the IPDES stakeholders, state and local officials, and other interest groups as needed. • Manage the overall IPDES permit workload.

		• Supervise IPDES permit writers by ensuring work products are timely and meet or exceed quality standards; establish individual staff permit workloads, set staff permit priorities, and assign permit and fact sheet development tasks. • Prepare annual performance plans and performance evaluations. • Train and mentor permit writers. • Develop IPDES permit writer training modules. • Identify training needs for permit writers. • Coordinate with IPDES program manager and IPDES rules and guidance coordinator to establish and track program goals and strategic planning activities. • Coordinate with other programs and state agencies.
1	Municipal Specialist	• Draft IPDES permits and fact sheets for major and minor municipalities; • Coordinate with IPDES Permits Lead to develop permit writers guidance manual • Coordinate with IPDES Permits Lead to identify top priorities for municipal permit issuance and reissuance • Respond to public comments on permits and fact sheets • Work with AG's office on permit appeals as they come up • Coordinate, as needed, with IPDES compliance, inspections and enforcement staff on enforcement actions • Work with IPDES Permits Lead to develop training for IPDES permit writers • Coordinate with wastewater and surface water program staff on municipal permit issues • Answer permitting related questions from staff in regional offices and external clients; • Researching, compiling, and formatting data requested from Public Records Requests (this does not include generating new records, documents, or lists); • Participate in ongoing discussions to improve customer service in the IPDES program; and • Act as a Quality Assurance Officer for project plans
1	Industrial Specialist	• Draft IPDES Industrial permits and fact sheets for major and minor industrial facilities; • Coordinate with IPDES Permits Lead to develop permit writers guidance manual, including templates for permits and fact sheets; • Coordinate with IPDES Permits Lead to prioritize industrial permit issuance and re-issuance; • Respond to public comments on permits and fact sheets; • Work with AG's office on permit appeals as they arise; • Coordinate, as needed, with IPDES Compliance, Inspection, and Enforcement section on enforcement actions; and • Work with IPDES Permits Lead to develop training for IPDES Permit Writers • Coordinate with wastewater and surface water program staff on industrial permit issues; • Answer industrial permitting related questions from staff in regional

		offices and external clients; • Researching, compiling, and formatting data requested from Public Records Requests (this does not include generating new records, documents, or lists); • Participate in ongoing discussions to improve customer service in the IPDES program; and • Act as a Quality Assurance Officer for project plans
1	Pretreatment/ Biosolids Coordinator	• Coordinate IPDES Biosolids program; including development and review of procedures, protocols and requirements that municipalities and facilities treating domestic sewage sludge will need to follow to comply with Idaho rules and federal regulations found in 40 CFR 503; • Track biosolids application sites and review annual reports associated with facilities submitting biosolids information; • Coordinate IPDES Pretreatment Program; including development and review of procedures, protocols, and requirements that municipalities will have to develop when they submit an application for a Pretreatment Program authorization; • Support Municipal Permit Writers to compose permits that adequately and appropriately address municipal pretreatment programs; • Coordinate with IPDES Permits Lead to develop permit writers guidance manual; • Coordinate, as needed, with IPDES Compliance, Inspection, and Enforcement (CIE) section on enforcement actions associated with Municipal Pretreatment Programs; • Answer pretreatment program related questions from CIE staff in regional offices; • Work with IPDES Permits Lead to develop training for IPDES Permit Writers • Coordinate with wastewater program staff on municipal pretreatment and biosolids programs issues; • Research, compile, and format data requested from Public Records Requests (this does not include generating new records, documents, or lists); • Participate in ongoing discussions to improve customer service in the IPDES program; and • Act as a Quality Assurance Officer for project plans.
4	Permit Writer	• Review permit applications for completeness • Draft IPDES permits and fact sheets including development of effluent limits, mixing zones, and other testing and reporting requirements • Review submittals of NOI for coverage under a general permit and issue authorizations when appropriate • Coordinate with IPDES Permits Lead to update permit writers guidance manual • Coordinate with IPDES Permits Lead to prioritize permit issuance and re-issuance; • Respond to public comments on permits and fact sheets; • Work with AG's office on permit appeals as they arise; • Coordinate, as needed, with IPDES Compliance, Inspection, and Enforcement section on enforcement actions;

	• Coordinate with wastewater and surface water program staff on permit issues; • Answer permitting related questions from staff in regional offices and external clients; • Research, compile, and format data requested from Public Records Requests (this does not include generating new records, documents, or lists); • Participate in ongoing discussions to improve customer service in the IPDES program; • Act as a Quality Assurance Officer for project plans

4.1.3Hybrid Compliance, Inspection, and Enforcement Structure

# Staff	Staff Title	General Duties
1	CIE Lead	• Principal lead for coordinating compliance, inspection, and enforcement for federal and state issued permits according to section 402 of the Clean Water Act. • Develop Compliance, Inspection, and Enforcement program; • Assist the IPDES Program Manager in preparation of the IPDES compliance and enforcement portion of the primacy package for EPA review and approval; • Track inspections, compliance activities, and enforcement actions for reporting purposes and to identify performance measures and trends; • Coordinate technical assistance outreach with Permit Lead and Regional Engineering Managers; • Prepare response documents for any compliance and enforcement actions; • Work with AGs office in preparation of compliance and enforcement responses; • As requested by the AG's office present compliance and enforcement responses to hearing officer, Appeals Board, Director, or DEQ Board; • Assist Program Manager and rules/guidance coordinator with development of rules and guidance documents. Support rule and guidance coordinator in defining implementation policies and procedures; • Participate in and assist with IPDES Program planning for inspection activities, work plans, and program performance reviews, and Performance Partnership Agreement (PPA) development. • In conjunction with IPDES Program rules and guidance coordinator, identify needs for training, guidance and policy development; • Coordinate with IPDES Program Manager to oversee and ensure consistent regulatory application on new and ongoing IPDES enforcement actions; • Coordinate IPDES inspector certification with EPA staff; • Prepare and provide program information to senior management, the IPDES stakeholders, state and local officials, and other interest groups as needed. • Manage the overall IPDES inspection workload. • Supervise IPDES compliance officers by ensuring work products are timely and meet or exceed quality standards; establish individual compliance officer workloads, set compliance and inspection priorities; • Prepare annual performance plans and performance evaluations; • Train and mentor IPDES compliance officers; • Develop IPDES inspector training modules. • Identify training needs for compliance officers. • Coordinate with IPDES program manager and IPDES rules and guidance coordinator to establish and track program goals and strategic planning activities. • Coordinate with other programs and state agencies. • Coordinate with wastewater and surface water program staff on compliance and enforcement issues; • Answer compliance and enforcement related questions from staff in

		regional offices and external clients; • Research, compile and format data requested in Public Records Requests; • Participate in ongoing discussions to improve customer service in the IPDES program; and • Act as a Quality Assurance Officer for project plans.
2	Compliance & Enforcement Coordinator	• Assist the agency with commitments made regarding NPDES inspections. • Track inspections, compliance activities, and enforcement actions for reporting purposes and identify performance measures and trends; • Assist the IPDES Compliance, Inspection, and Enforcement (CIE) Lead in preparation of the IPDES compliance and enforcement portion of the primacy application package for EPA review and approval; • Assist the IPDES CIE Lead with the development of guidance, implementation policies, and procedures as they relate to compliance assistance and enforcement. • Prepare enforcement documents and correspondence in coordination with field staff, managers, the attorney general's office, the CIE Lead, and the program manager as necessary; • Maintain working knowledge of the IPDES rules and coordinate with rules and guidance coordinator as necessary; • Provide timely updates and status reports to the IPDES CIE Lead and program manager, • Coordinate compliance assistance outreach with IPDES CIE Lead, Permit Lead and Regional Engineering Managers; • In conjunction with IPDES Compliance, Inspection, and Enforcement Lead, identify training, guidance and policy development needs. • Coordinate with wastewater and surface water program staff on compliance and enforcement issues; • Answer compliance and enforcement related questions from staff in regional offices and external clients; • Research, compile and format data requested in Public Records Requests; • Participate in ongoing discussions to improve customer service in the IPDES program; and • Act as a Quality Assurance Officer for project plans.
11	Compliance Officer	• Conduct compliance evaluations (e.g., DMR and file review) • Perform facility inspections to determine compliance • Review on-site records and inspect facility sampling points, effluent and discharge locations • If necessary, develop enforcement case referral package and forward to compliance officer, • Provide compliance assistance as appropriate • Review preliminary draft permits as assigned • Research, compile and format data requested in Public Records Requests; • Participate in ongoing discussions to improve customer service in the IPDES program; and

- Act as a Quality Assurance Officer for project plans.

4.1.4DEQ Support Staff

In addition to the staff identified in the previous sections, DEQ has support staff whose main job responsibilities are not specific to the IPDES program but who provide administrative and technical support to those working in the IPDES program. These include the following:

- Human Resources specialist
- Fiscal officer
- Grants and contract officer
- GIS specialist
- Network administrator
- IT Information Systems Technician
- Technical Records Specialist
- Attorney General's Office Rules and Guidance Coordinator
- Technical Engineer
- Technical Writer
- Modeler

Those listed above are not considered part of the 29 FTEs identified in the resource model for the IPDES program. However, these roles are important to the continued success of the IPDES program and DEQ in general. Increases to the workload associated with these positions or the need to hire additional staff to cover these roles and responsibilities is part of the indirect rate associated with any programmatic budget and was accounted for during the development of the overall IPDES budget.

4.2Fee Administration

4.2.1Application versus Annual Fees

There are multiple ways of distributing fees among the various dischargers from relying solely on application fees to solely on annual fees. Depending on the discharger, one method may be preferable to another.

Over the long term for a discharger that operates over the course of multiple permit cycles, a reliance on annual fees over application fees may be preferable for budgeting reasons. DEQ also favors an annual fee in these cases to alleviate the variability that is inherent with building a budget reliant upon application fees. In some years, there may be many application fees paid whereas in other years there may be fewer. Annual fees provide stability in the funding and in budgeting.

For dischargers that operate on the short term (typically construction projects), an application fee may be preferred. A single application fee for a NOI for coverage would then free the discharger from concerns over being invoiced in successive years when the project is no longer in operation. For some facilities that operate on an intermittent basis, it might be more convenient for a single application fee to be paid that will cover the facility when it is under operation. When not

operating, the owner may terminate coverage without concerns about unpaid annual fees. However, upon starting operation again, the owner would need to apply for and pay another application fee for the facility.

The proposed fee schedule tool is based on a hybrid of these two approaches. DEQ recommends the hybrid approach be used to create a fee schedule that is responsive to the dischargers within a category. That is, for municipal and industrial individual dischargers, more reliance on the annual fee is recommended, while for construction general permits more emphasis is placed on the application fee.

4.2.2Fee Assessment

Fee assessment is the evaluation and determination of the fee due and when that fee should be paid. Because the fees for publicly and privately owned treatment works will be based on equivalent dwelling units, DEQ is requesting that each treatment works provide an estimate of the EDUs they serve as part of the annual reporting process. This report will then be used to calculate the relevant fee for the treatment works.

Application fees are anticipated to be submitted when the owner of a permitted activity needs permit coverage for that activity. Activities anticipated to last longer than the initial application year are also subject to an annual fee.

For annual fees, there are many different options available such as calendar year, state fiscal year, or federal fiscal year. Discussions about the possible format for determining the annual cycle fees included looking at when the annual reports from permittees were due, what the possible budgeting cycle for the various dischargers might be, and how best to integrate these components. It was determined that setting an October 1 fee deadline would best incorporate these various components, allowing municipalities to plan and budget for the upcoming year and storm water permittees to finish up summer construction projects.

DEQ proposes that annual fees be assessed for new dischargers beginning the first October following the application for coverage under a general permit. For example, if a discharger applies for coverage in April of 2019, they would pay the application fee. Then for projects that extend into the next application year, an annual fee will be applied to the discharger for the time the permit is active between October of 2019 and September of 2020.

4.2.3Fee Receipts

4.2.3.1Municipal Fees: $653,043

An analysis of the number of municipalities in Idaho with NPDES permits for their treatment works shows that the total population served by these facilities was just over 1 million people. Using the average number of persons per household from the 2010 census (2.68/household) gives 375,312 total EDUs in Idaho. At a rate of $1.74/EDU the total fees estimated from municipalities is $653,043.

Table C-13. Municipal population served by NPDES and nonNPDES treatment works.

	Population served	EDUs	Total Fees

NPDES Permit	1,005,836	375,312	$653,043
No NPDES Permit	561,746	209,607	

The previous reports estimated fee receipts to be $675,080. This estimate was higher than the current amount predicted because it included municipalities that have since been identified as being on tribal lands. EPA will retain authority for these permits; therefore they have been removed from the overall calculation of fee receipts. Additionally, the previous estimate of municipal fee receipts was calculated based on 2013 estimated population. This current estimate is based on 2010 census population for cities served.

Fees for municipal dischargers were evaluated based on flow and on EDUs. DEQ felt that basing fees on flow would be less equitable to smaller communities than basing the fee on the overall number of connections. Since DEQ did not have easily accessible, accurate, and up-to-date information on the number of connections within each wastewater collection system, the method of calculating EDUs was done as follows.

Accessing information available on the US Census Bureau website, DEQ downloaded current census data for all cities identified in Idaho. The list of cities and 2010 population estimates was then compared against the list of cities in Idaho with NPDES permits. The final number of persons served by a municipality with an NPDES permit is 1,005,836 (Table C-13). Based on the Census Bureau's number of persons per household, the number of EDUs in cities with municipalities is 375,312 (population divided by persons per household).

4.2.3.2Individual Industrial Fees: $247,991

Individual industrial fees are invoiced on an annual basis. There is no application fee for these permits. As shown in Table C-14, there are currently 8 major and 36 minor industrial permits. The total annual fee receipts for individual industrial permits are $247,991.

Table C-14. Individual industrial permits.

Facility Type	Number of Facilities	Annual Fee	Total Receipts
Major	8	$13,000	$104,001
Minor	36	$4,000	$143,990

4.2.3.3Industrial Storm Water Fees: $289,322

Data downloaded from EPA's eNOI website (*https://ofmpub.epa.gov/apex/aps/f?p=MSGP_2008:HOME*::::::) for the 2008-2013 MSGP are summarized in Table C-15. These data were used to calculate an annual average application fee and annual fee for industrial storm water fee receipts. On average, DEQ anticipates receiving $289,322 in receipts from industrial storm water permits and waivers (certificate of no exposure). DEQ used data from the 2008 MSGP because it represented a full permit cycle for the MSGP. Currently there are minimal data available for the 2015 MSGP which do not reflect a full permit cycle or the total number of facilities likely to be covered under the MSGP.

Table C-15. Number of facilities by federal fiscal year (Oct-Sept) covered by the 2008 MSGP

	# Facilities			
FY	New NOI	Total NOI	New NOEC	Total NOEC
2009	135	135	57	64
2010	32	167	15	79
2011	36	203	10	89
2012	47	250	8	97
2013	27	277	18	115

Table C- 16. Annual receipts by federal fiscal year for industrial storm water permits.

	NOI		NOEC	
FY	App Fee	annual fee	app fee	annual fee
2009	$202,500	$135,000	$14,250	$6,400
2010	$48,000	$167,000	$3,750	$7,900
2011	$54,000	$203,000	$2,500	$8,900
2012	$70,500	$250,000	$2,000	$9,700
2013	$40,500	$277,000	$4,500	$11,500
Average	$69,250	$206,400	$4,792	$8,880

4.2.3.4Construction Storm Water Fees: $177,868

Similar to the industrial storm water general permit, data was downloaded from EPA's eNOI system to evaluate the number of construction storm water permits and waivers expected. The data collected was evaluated by federal fiscal year and by size. Table C-17 provides details on the average number of projects expected each year, the average length of each project, and the anticipated fee receipts from projects covered under the construction storm water permit.

Table C-17. Summary of construction storm water projects and anticipated fee receipts.

Project Bin	Ave. # Projects	Ave. length in months	Application Fee	Annual Fee	Receipts from application fees	Receipts from annual fees

0-1	94	6.2	$0	$0	$0	$0
1-10	317	8.9	$200	$0	$63,440	$0
10-50	136	11.9	$400	$75	$54,560	$10,016
50-100	15	26.3	$750	$100	$11,100	$3,543
100-500	9	34.8	$1,000	$400	$9,400	$12,145
500+	2	69.6	$1,250	$400	$1,250	$1,507
Waiver	87	3.3	$125	$0	$10,906	$0
Total	660				$150,656	$27,212

4.3Billing and Payment

DEQ chooses to model 58.01.25.110 after the current drinking water rules (IDAPA 58.01.08) and proposes invoicing permittees by July 1 of the year in which annual fees are dues. This allows ample opportunity for the permittee to budget the cost of permit and creates continuity across programs within the agency.

In some cases it may prove advantageous for a treatment works to split payments into monthly or quarterly installments. DEQ recognizes this and provides in this section the opportunity for the permittee to request such an installment plan.

4.4Delinquency, Suspension of Services and Reinstatement

In the event a permittee does not submit payment of annual fees within a timely manner, DEQ will take the following steps. For the first 90 days a payment is late, DEQ will withhold technical assistance such as compliance assistance. If the permittee allows more than 180 days to elapse before paying the annual fee, DEQ will consider the permittee to be in non-compliance with the conditions of the permit and will begin proceedings according to Section 500 Enforcement of IDAPA 58.01.25.

Once a permittee has paid the fee in full, the permit will be considered to be in compliance with regard to annual fee payment. Any suspended technical services will be reinstated.

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Appendix D. IPDES Fact Sheet Template

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Fact Sheet for IPDES Permit No. IDXXXXXXX

Insert date of this draft fact sheet when issued for public notice or final fact sheet

Idaho Department of Environmental Quality (DEQ) Proposes to Re/Issue an Idaho Pollutant Discharge Elimination System (IPDES) Permit to Discharge Pollutants Pursuant to the Provisions of IDAPA 58.01.25 to:

Insert Facility Name

Public Comment Start Date:	insert MM/DD/YYYY
Public Comment Expiration Date:	insert MM/DD/YYYY
Technical Contact:	Insert Permit Writer's Name, Phone #, Email

Purpose of this Fact Sheet

This fact sheet explains and documents the decisions the Idaho Department of Environmental Quality (DEQ) made in drafting the proposed Idaho Pollutant Discharge Elimination System (IPDES) permit for insert facility name.

This fact sheet complies with IDAPA 58.01.25.108.02 of the Idaho Administrative Code, which requires DEQ to prepare a draft permit and accompanying fact sheet for public evaluation before issuing an NPDES permit.

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Acronyms

1Q10	1 day, 10 year low flow
7Q10	7 day, 10 year low flow
30B3	Biologically-based design flow intended to ensure an excursion frequency of less than once every three years, for a 30-day average flow.
30Q10	30 day, 10 year low flow
ACR	Acute-to-Chronic Ratio
AML	Average Monthly Limit
AWL	Average Weekly Limit
BA	Biological Assessment
BAT	Best Available Technology economically achievable
BCT	Best Conventional pollutant control Technology
BE	Biological Evaluation
BO or BiOp	Biological Opinion
BOD_5	Biochemical oxygen demand, five-day
BMP	Best Management Practices
BPT	Best Practicable control Technology currently available
°C	Degrees Celsius
$CBOD_5$	Carbonaceous Biochemical Oxygen Demand, five-day
CFR	Code of Federal Regulations
CFS	Cubic Feet per Second
COD	Chemical Oxygen Demand
CV	Coefficient of Variation
CWA	Clean Water Act
DMR	Discharge Monitoring Report
DO	Dissolved Oxygen
EA	Environmental Assessment
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
FDF	Fundamentally Different Factor
gpd	Gallons per day

IC	Inhibition Concentration
ICIS	Integrated Compliance Information System
DEQ	Idaho Department of Environmental Quality
I/I	Inflow and Infiltration
IPDES	Idaho Pollutant Discharge Elimination System
LA	Load Allocation
lbs/day	Pounds per day
LC	Lethal Concentration
LC_{50}	Concentration at which 50% of test organisms die in a specified time period
LD_{50}	Dose at which 50% of test organisms die in a specified time period
LOEC	Lowest Observed Effect Concentration
LTA	Long Term Average
LTCP	Long Term Control Plan
MDL	Maximum Daily Limit or Method Detection Limit
mgd	Million gallons per day
mg/L	Milligrams per liter
ml	Milliliters
ML	Minimum Level
MPN	Most Probable Number
N	Nitrogen
NEPA	National Environmental Policy Act
NOEC	No Observable Effect Concentration
NOI	Notice of Intent
NSPS	New Source Performance Standards
O&M	Operations and maintenance
POTW	Publicly Owned Treatment Works
PSES	Pretreatment Standards for Existing Sources
PSNS	Pretreatment Standards for New Sources
QAPP	Quality Assurance Project Plan
RP	Reasonable Potential
RPM	Reasonable Potential Multiplier
RWC	Receiving Water Concentration

SIC	Standard Industrial Classification
SPCC	Spill Prevention, Control, and Countermeasure
SS	Suspended Solids
SSO	Sanitary Sewer Overflow
s.u.	Standard Units
TKN	Total Kjeldahl Nitrogen
TMDL	Total Maximum Daily Load
TOC	Total Organic Carbon
TRC	Total Residual Chlorine
TRE	Toxicity Reduction Evaluation
TSD	Technical Support Document for Water Quality-based Toxics Control (EPA/505/2-90-001)
TSS	Total suspended solids
TU_a	Toxic Units, Acute
TU_c	Toxic Units, Chronic
UV	Ultraviolet
WET	Whole Effluent Toxicity
WLA	Wasteload allocation
WQBEL	Water quality-based effluent limit
WQS	Water Quality Standards
WWTP	Wastewater treatment plant

1 Introduction

This fact sheet explains and documents the decisions the Idaho Department of Environmental Quality (DEQ) made in drafting the proposed Idaho Pollutant Discharge Elimination System (IPDES) permit for Insert Name. This fact sheet complies with the Rules Regulating the Idaho Pollutant Discharge Elimination System Program (IDAPA 58.01.25), which requires DEQ to prepare a draft permit and accompanying fact sheet for public evaluation before issuing an IPDES permit.

DEQ proposes to select one: Issue/Reissue/Modify/Revoke and Reissue the IPDES permit for Insert Facility Name or Municipality Name and Treatment Works. The draft permit places conditions on the discharge of pollutants from the wastewater treatment plant to waters of the United States. In order to ensure protection of water quality and human health, the permit places limits on the types and amounts of pollutants that can be discharged from the facility.

This Fact Sheet includes:

- a map and description of the discharge location;
- a listing of proposed effluent limits and other conditions the facility must comply with;
- documentation supporting the proposed effluent limits;
- technical material supporting the conditions in the permit; and
- information on public comment, public hearing, and appeal procedures.

Terms used in this fact sheet are defined in Section 5, Definitions, of the permit.

Public Comment

The permit application, draft permit, and fact sheet describing the terms and conditions applicable to the permit are available for public review and comment during a public comment period. The public is provided at least 30 days to review, compose comments, and provide them to DEQ. Persons wishing to request a Public Hearing for this facility's draft permit must do so in writing within the first 14 days of the public comment period. Requests for extending a public comment period must be provided to DEQ in writing before the last day of the comment period. For more details on preparing and filing comments about these documents, please see the IPDES guidance *Public Participation in the Permitting Process*. For more information, please contact the permit writer insert name, phone, email.

After the close of the public comment period, DEQ considers information provided by the public, prepares a document summarizing the public comments received, and may make changes to the draft permit in response to the public comments. DEQ will include the summary and responses to comments in the final fact sheet D. After the public comment period and prior to issuing the final permit decision, DEQ will give the applicant an opportunity to provide additional information to respond to public comments. DEQ may request more information from the applicant in order to respond to public comments (IDAPA 58.01.25.109.02.h.).

DEQ will assess the public comment in conjunction with any additional information received from the applicant and develop a proposed permit. EPA may take up to 90 days to develop and document specific grounds for objections to a proposed permit. If EPA objects to a proposed permit DEQ must satisfactorily address the objections within the time period specified in the

memorandum of agreement between EPA and DEQ (40 CFR §123.44). Otherwise, EPA may issue a permit that rectifies their objections. If EPA issues the permit any state, interstate agency, or interested person may request EPA hold a public hearing regarding the objection.

Permit Issuance

Following the public comment period(s) on a draft permit, and after receipt of any comments on the proposed permit from EPA, DEQ will issue a final permit decision, the final permit, and the fact sheet. A final permit decision means a final decision addressing permit action to issue, deny, modify, revoke and reissue, or terminate a permit (IDAPA 58.01.25.107.04.). The final permit, response to comments, final fact sheet, and associated permit documents will be posted on the DEQ webpage.

The public has access to a permit appeals process (IDAPA 58.01.25.204). Appeal of a final IPDES permit decision begins by filing a petition for review with DEQ's hearing coordinator within 28 days after DEQ serves notice of the final permit decision. Only a person who is aggrieved by the final permit decision (i.e., the permit holder or applicant and any person or entity who filed comments or who participated in the public meeting on the draft permit) may file a petition for review. Ultimately, any person aggrieved by a final department action or determination has a right to judicial review by filing a petition for review (IDAPA 58.01.25.204.26).

Documents are Available for Review

The draft IPDES permit and related documents can be reviewed or obtained by visiting or contacting the DEQ State office between 8:00 a.m. and 5:00 p.m., Monday through Friday at the address below. The draft permit, fact sheet, and other information can also be found by visiting the DEQ website at "http://www.deq.idaho.gov/news-public-comments-events/."

DEQ
1410 N. Hilton
Boise, ID 83706
208-373-0502

The fact sheet and draft permits are also available at the applicable Regional Office:

Insert Regional Office
Insert Street address
City, ID 83XXX

Insert another location

2 Background Information

2.1 Facility Description

This fact sheet provides information on the draft IPDES permit for the following entity:

Table 1. Facility information.

Idaho NPDES Permit #	
Applicant	
Facility Name and Address	
Facility Contact	Name: Telephone number:
Responsible Official	Name: Title: Address: Telephone number: FAX number:
Type of Treatment	
Facility Location	Latitude: Longitude:
Receiving Water Name	
Outfall Location	Latitude: Longitude
Permit Status	
Issuance or Renewal	
Application Submittal Date	
Date Application Deemed Complete	
Inspection Status	
Date of Last Sampling Inspection	
Date of Last Non- Sampling Inspection	

Insert Owner owns and operates the Insert POTW Name (POTW) located in Insert City, Insert State. The collection system has no combined sewers. The facility serves a resident population of insert population. There are insert no or number of major industries discharging to the facility.

Insert Owner/Operator owns/operates the Insert Facility Name located at Insert Address, discharges to Name of Receiving Water at Latitude/Longitude of Outfall.

2.1.1 History

Insert facility history here

2.1.2 Collection System Status

Insert collection system information here

2.1.3 Treatment Process

The design flow of the facility is insert number mgd. The treatment process consists of provide unit processes used to treat domestic wastewater. Details about the wastewater treatment process and a map showing the location of the treatment facility and discharge are included in Appendix E. Because of fill in reasons, the facility is considered a major/minor facility.

Insert Treatment Process information here

2.1.4 Solid wastes/Residual Solids

The treatment facilities remove solids during the treatment of the wastewater at the headworks (grit and screenings), and at the primary and secondary clarifiers, in addition to incidental solids (rags, scum, and other debris) removed as part of the routine maintenance of the equipment. Insert Name drains grit, rags, scum, and screenings and disposes this solid waste at the local landfill. Solids removed from the primary and secondary clarifiers are treated insert process used and land applied under a permit from the Insert Health District.

2.1.5 Outfall Description

Insert outfall description

2.2 Description of Receiving Water

Insert facility name discharges to insert receiving water body in insert City, Town or County, Idaho. The outfall is located insert upstream / downstream of insert identifying place/landmark, township and range, river mile, etc. Other nearby point source outfalls include list facility outfalls and locations. Nearby non-point sources of pollutants include list sources. Nearby drinking water intakes include insert drinking water intakes located at insert location. Section 3.3 of this fact sheet describes any receiving waterbody impairments.

The ambient background data used for this permit includes the following from insert source(s).

Table 2. Ambient background data.

Parameter	Value used
Insert parameter	Insert Value and Units

2.3 Wastewater Influent Characterization

Insert applicable items. Insert Facility Name reported the concentration of influent pollutants in DMRs and results are characterized in Table 3. The tabulated data represents the quality of the wastewater effluent discharged from Insert date range.

Table 3. Wastewater influent characterization.

Parameter	Units	# of Samples	Average Value	Maximum Value	Data Source
Insert	Insert	Insert	Insert	Insert	Insert

2.4 Wastewater Effluent Characterization

Insert applicable items.

Insert Facility Name reported the concentration of influent pollutants in DMRs and results are characterized in Table 4. The tabulated data represents the quality of the wastewater effluent discharged from Insert date range.

Table 4. Wastewater effluent characterization.

Parameter	Units	# of Samples	Average Values	Maximum Values	Data Source
Insert	Insert	Insert	Insert	Insert	Insert
Parameter	**Units**	**# of Samples**	**Maximum Monthly Geometric Mean**	**Maximum Weekly Geometric Mean**	
E. Coli					
Parameter	**Units**	**# of Samples**	**Minimum Value**	**Maximum Value**	
pH	standard units				

2.5 Identify Pollutants of Concern

In order to determine pollutants of concern for further analysis, DEQ evaluated the application form, additional discharge data, and the nature of the discharge. Based on this analysis, pollutants of concern are as follows:

- Insert pollutant

Pollutant concentrations in the discharge which were reported in either the IPDES application or DMRs were used in determining reasonable potential for several parameters (see Appendix C).

2.6 Compliance History

Insert text here

Table 5. Effluent limit violations.

Parameter	Limit	Units	Number of Instances
Insert	Insert	Insert	Insert

DEQ conducted an inspection of the facility in insert month and year. The inspection encompassed the wastewater treatment process, records review, operation and maintenance, and the collection system. Overall, the results of the inspection were fill in results.

3 Proposed Permit Limits

Federal and state regulations require that effluent limits in an NPDES permit must be either technology or water quality-based.

Technology-based limits are based upon the treatment methods available to treat specific pollutants. Technology-based limits are set by the EPA and published as a regulation, or DEQ develops the limit on a case-by-case basis (40 CFR 125.3 and IDAPA 58.01.02).

Water quality-based limits are calculated so that the effluent will comply with the Surface Water Quality Standards (IDAPA 58.1.02) or the National Toxics Rule (40 CFR 131.36).

DEQ must apply the most stringent of these limits to each parameter of concern. These limits are described below.

3.1 Technology-Based Effluent Limits

Federal and state regulations define technology-based effluent limits for insert domestic wastewater treatment plants or industrial facilities. These effluent limits are given in IDAPA 58.01.25.302, and select either 40 CFR Part 133 or 40 CFR Parts 401-471 .

Table 6. Secondary treatment effluent limits (40 CFR 133.102).

Parameter	30-day average	7-day average
BOD_5	30 mg/L	45 mg/L
$cBOD_5$	25 mg/L	40 mg/L
TSS	30 mg/L	45 mg/L
Removal for BOD_5 and TSS (concentration)	85% (minimum)	---
pH	within the limits of 6.0 - 9.0 s.u.	

Both the federal and state regulations allow alternate limits for waste stabilization ponds (lagoons), trickling filters, and facilities with less concentrated influent wastewater.

Table 7. Equivalent to secondary treatment effluent limits (40 CFR 133.105).

Parameter	30-day average	7-day average
BOD_5	45 mg/L	65 mg/L
$cBOD_5$	40 mg/L	60 mg/L
TSS	45 mg/L	65 mg/L
Removal for BOD_5/$cBOD_5$ and TSS (concentration)	65% (minimum)	---
pH	within the limits of 6.0 - 9.0 s.u.	

Insert text starting here

3.2 Water Quality-Based Effluent Limits

The DEQ water quality standards (IDAPA 58.01.02) are designed to protect existing water quality and preserve the beneficial uses of Idaho's surface waters. Waste discharge permits must include conditions that ensure the discharge will meet the water quality standards (IDAPA 58.01.25.302.06). Water quality-based effluent limits may be based on an individual waste load

allocation or on a waste load allocation developed during a basin wide total maximum daily load study (TMDL).

Idaho's water quality standards are comprised of three parts: designated uses, numeric and/or narrative water quality criteria and an antidegradation policy.

3.2.1 Beneficial Uses

Idaho's WQS (IDAPA 58.01.02.100) describes designated beneficial uses and the use categories that may be applied in Idaho. Specifically, these are by category (aquatic life, recreation, or water supply) and subcategory (for example, cold water aquatic life or primary contact recreation):

- Aquatic Life—salmonid spawning, cold water, seasonal cold water, or warm water
- Recreation—primary contact or secondary contact
- Water Supply—domestic, agricultural, or industrial

In addition, aesthetic and wildlife uses apply to all waters.

This facility discharges to the Insert Receiving Water in the Insert Assessment Unit. At the point of discharge, the Insert Receiving Water is protected for the following beneficial uses (IDAPA 58.01.02.Insert Appropriate Basin Subsection #):

- Insert beneficial use
- Insert beneficial use
- Insert beneficial use
- Insert beneficial use

Insert text here

3.2.2 Criteria

There are two types of criteria; narrative, and numeric.

3.2.2.1 Narrative criteria

Narrative water quality criteria (e.g., IDAPA 58.01.02.200) limit the toxic, radioactive, or other deleterious material concentrations that the facility may discharge. Surface waters of the state shall be free from:

- hazardous materials;
- toxic substances in concentrations that impair designated beneficial uses;
- deleterious materials;
- radioactive materials;
- floating, suspended, or submerged matter of any kind in concentrations causing nuisance or objectionable conditions or that may impair designated beneficial uses;
- excess nutrients that can cause visible slime growths or other nuisance aquatic growths impairing designated beneficial uses;
- oxygen demanding materials in concentrations that would result in an anaerobic water condition; and

- sediment in quantities that impair designated beneficial uses.

Narrative criteria protect the specific designated uses of all fresh waters

3.2.2.2 Numeric Criteria for Toxics

Idaho Water Quality Standards (IDAPA 58.01.02.210) provide the numeric criteria for toxic substances for waters designated for aquatic life, recreation, or domestic water supply use. Monitoring of the effluent has shown that the following toxic pollutants have been present at detectable levels in the effluent:

Insert toxic pollutants present in effluent

3.2.2.3 Numeric Criteria to protect Aquatic Life Uses

pH: Within the range of 6.5 to 9.0

Total Dissolved Gas: <110% saturation at atm. pressure.

Dissolved Oxygen: Exceed 6 mg/L at all times.

Temperature: Water temperatures of 22°C or less with a maximum daily average of no greater than 19°C.

Ammonia: criteria are based on a formula which relies on the pH and temperature of the receiving water, because the fraction of ammonia present as the toxic, un-ionized form increases with increasing pH and temperature. Therefore, the criteria become more stringent as pH and temperature increase. The equations used to determine water quality criteria for ammonia can be found in Appendix C.

Insert collecting entity has collected pH data in the insert name of receiving water upstream and downstream of the facility from insert dates. Temperature data were collected upstream of the facility from insert dates. These data were used to determine the appropriate pH and temperature values to calculate the ammonia criteria.

As with any natural water body the pH and temperature of the water will vary over time. Therefore, to protect water quality criteria it is important to develop the criteria based on pH and temperature values that will be protective of aquatic life at all times. DEQ used the insert 95th percentile or maximum of the pH and temperature data for the calculations, which were calculated to be insert pH 95th percentile or maximum and insert temperature 95th percentile or maximum.

Turbidity: Turbidity below any applicable mixing zone set by the Department shall not exceed background turbidity by more than 50 NTU instantaneously or more than 25 NTU for more than ten (10) consecutive days.

Salmonid spawning: Waters designated for salmonid spawning are to exhibit the following characteristics during the spawning period and incubation for the particular species inhabiting those waters:

Water temperatures of 13°C or less with a maximum daily average no greater than 9°C.

3.2.2.4 Numeric Criteria to protect Recreational Uses

Geometric Mean Criterion. Waters designated for primary or secondary contact recreation are not to contain E. coli in concentrations exceeding a geometric mean of 126 cfu/100 ml based on a minimum of 5 samples taken every 3 to 7 days over a 30 day period.

Use of Single Sample Values: This section states that that a water sample that exceeds certain "single sample maximum" values indicates a likely exceedance of the geometric mean criterion, although it is not, in and of itself, a violation of water quality standards. For waters designated for primary contact recreation, the "single sample maximum" value is 406 cfu/100 ml (IDAPA 58.01.02.251.01.b.ii.) for primary contact recreation and 576 cfu/100 ml for secondary contact recreation.

3.2.3 Antidegradation

DEQ's antidegradation policy provides three levels of protection from degradation of existing water quality.

- Tier I of antidegradation protection applies to all water bodies under the CWA and requires that existing uses and the water quality necessary to protect those uses be maintained and protected.
- Tier II protection applies to any water bodies considered to be high quality waters (where the water quality exceeds levels necessary to support propagation of fish, shellfish, wildlife, and recreation in and on the water) and provides that water quality will be maintained and protected unless allowing for lower water quality is deemed by the state as necessary to accommodate important economic or social development in the area. In allowing any lowering of water quality DEQ must ensure adequate water quality to protect existing uses fully and must assure that there will be achieved the highest statutory and regulatory requirements for all new and existing point sources.
- Tier III protection applies to water bodies that have been designated by DEQ as outstanding national resource waters and provides that water quality is to be maintained and protected.

DEQ employs a water body by water body approach to implementing Idaho's antidegradation policy. This approach means that any water body fully supporting its beneficial uses will be considered high quality (IDAPA 58.01.02.052.05.a). Any water body not fully supporting its beneficial uses will be provided Tier 1 protection for that use, unless specific circumstances warranting Tier 2 protection are met (IDAPA 58.01.02.052.05.c). The most recent federally approved Integrated Report and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

As noted above, a Tier I review is performed for all new or reissued permits, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. In order to protect and maintain the designated insert uses here and existing insert uses here uses for insert receiving water body, the effluent limits and associated requirements in

this permit are set at levels that ensure compliance with the narrative and numeric water quality standards.

To determine whether degradation may occur, DEQ evaluated how the effluent limits proposed in this permit affect water quality for each pollutant that is relevant to insert aquatic life use here and insert recreation use here. These include insert pollutants here.

Insert tier II analysis starting here

3.2.4 Clean Water Act §402(o)(3)

DEQ compared the effluent limits proposed in this permit with the Insert previous permit issued OR permit modified on _____

Table 8. Comparison of previous and proposed effluent limits.

		Previous Effluent Limits: Outfall # 001		Proposed Effluent Limits: Outfall # 001	
Parameter	Basis of Limit	Average Monthly	Average Weekly	Average Monthly	Average Weekly
Insert parameter					

Insert text to describe rationale for effluent limit changes

3.2.5 Mixing zones

A mixing zone is the defined area in the receiving water surrounding the discharge where wastewater mixes with receiving water. Within mixing zones the pollutant concentrations may exceed water quality numeric standards, so long as the discharge doesn't interfere with designated uses of the receiving water body (for example, recreation, water supply, and aquatic life and wildlife habitat, etc.) The pollutant concentrations outside of the mixing zones must meet water quality numeric standards.

DEQ has not authorized a mixing zone in the permit.

DEQ has authorized a mixing zone in the permit. Pollutants in an effluent may affect the aquatic environment near the point of discharge (zone of initial dilution), but not past the boundary of the authorized mixing zone. Insert text here

Table 9. Dilution factors.

Criteria	Acute	Chronic
Aquatic Life	Insert	Insert
Human Health, Carcinogen	Insert	Insert
Human Health, Non-carcinogen	Insert	Insert

3.3 Water Quality Impairments

Water bodies not supporting existing or designated beneficial uses must be identified as water quality limited, and a total maximum daily load (TMDL) must be prepared for those pollutants causing impairment. A central purpose of TMDLs is to establish wasteload allocations for point source discharges, which are set at levels designed to help restore the water body to a condition that supports existing and designated beneficial uses. Discharge permits must contain limitations that are consistent with wasteload allocations in the approved TMDL.

The EPA-approved insert appropriate TMDL name (date of TMDL) establishes wasteload allocations for insert pollutants with wasteload allocations. These wasteload allocations are designed to ensure the insert receiving water body name will achieve the water quality necessary to support its existing and designated aquatic life beneficial uses and comply with the applicable numeric and narrative criteria. The effluent limitations and associated requirements contained in the insert name of facility permit are set at levels that comply with these wasteload allocations.

Insert text here

DEQ has not documented any water quality impairments in the receiving water in the vicinity of the outfall.

Insert receiving water name is listed on the current 303(d) and is impaired for insert pollutant. DEQ is currently conducting a Total Maximum Daily Load (TMDL)…… OR DEQ has completed a Total Maximum Daily Load (TMDL)……..

3.4 Evaluation of Water Quality-Based Effluent Limits for Narrative Criteria

DEQ must consider the narrative criteria described in IDAPA 58.01.02.200 when it determines permit limits and conditions. Narrative water quality criteria limit the toxic, radioactive, or other deleterious material concentrations that the facility may discharge which have the potential to adversely affect designated uses, cause acute or chronic toxicity to biota, impair aesthetic values, or adversely affect human health. DEQ considers the toxicity of the wastewater discharge by requiring whole effluent toxicity (WET) testing when it receives information indicating that toxicity may be present in this effluent. If WET testing results indicate toxicity, effluent limits are necessary.

Insert text here

3.5 Evaluation of Water Quality-Based Effluent Limits for Numeric Criteria

A water quality-based effluent limit is designed to ensure that the water quality standards applicable to a waterbody are being met and may be more stringent than technology-based effluent limits. The calculations for the effluent limits proposed in the draft permit are provided in Appendix C.

Insert text here

3.5.1 Low Flow Design Conditions

The low flow conditions of a water body are used to determine water quality-based effluent limits. In general, Idaho's water quality standards require criteria be evaluated at the following low flow design conditions (See IDAPA 58.01.02.210.03) as defined in Table 10.

Table 10. Low flow design conditions.

Criteria	Flow Condition
Acute aquatic life	1Q10 or 1B3
Chronic aquatic life	7Q10 or 4B3
Non-carcinogenic human health criteria	30Q5
Carcinogenic human health criteria	harmonic mean flow
Ammonia	30B3 or 30Q10

1. The 1Q10 represents the lowest one day flow with an average recurrence frequency of once in 10 years.
2. The 1B3 is biologically based and indicates an allowable exceedance of once every 3 years.
3. The 7Q10 represents lowest average 7 consecutive day flow with an average recurrence frequency of once in 10 years.
4. The 4B3 is biologically based and indicates an allowable exceedance for 4 consecutive days once every 3 years.
5. The 30Q5 represents the lowest average 30 consecutive day flow with an average recurrence frequency of once in 5 years.
6. The 30Q10 represents the lowest average 30 consecutive day flow with an average recurrence frequency of once in 10 years.
7. The harmonic mean is a long-term mean flow value calculated by dividing the number of daily flow measurements by the sum of the reciprocals of the flows.

DEQ determined critical low flows upstream of the discharge from the insert USGS Station or other source. The estimated low flows for the station are presented in Table 11. Estimated low flows for insert receiving water can be found in Table 11.

Table 11. Estimated low flows for insert receiving water.

Flows	cfs
1Q10	
7Q10	
30B3	
30Q5	
Harmonic Mean	

Insert text here

4 Monitoring Requirements

Idaho regulations IDAPA 58.01.02 and 58.01.25 require that monitoring be included in permits to determine compliance with effluent limitation. Monitoring may also be required to gather data to assess the need for future effluent limitations or to monitor effluent impacts on receiving water quality. Permittees are responsible for conducting the monitoring and reporting the results to EPA and/or IDEQ on monthly DMRs and in annual reports.

4.1 Effluent Monitoring

Monitoring frequencies are based on the nature and effect of the pollutant, as well as a determination of the minimum sampling necessary to adequately monitor the facility's performance. Permittees have the option of taking more frequent samples than are required under the permit. These samples must be used for averaging if they are conducted using the EPA-approved test methods (generally found in 40 CFR 136) or as specified in the permit.

Table 12 presents the proposed effluent monitoring requirements in the draft permit. The sampling location must be after the last treatment unit and prior to discharge to the receiving water. The samples must be representative of the volume and nature of the monitored discharge. If no discharge occurs during the reporting period, "no discharge" shall be reported on the DMR.

Table 12. Effluent monitoring requirements.

Parameter	Units	Minimum Frequency	Sample Type	Sample Location	Report
Insert	Insert	Insert	Insert	Insert	Insert

As a pretreatment publicly owned treatment works (POTW), the City of Insert name or municipality is required to sample influent, primary clarifier effluent, final effluent, and sludge for toxic pollutants in order to characterize the industrial input. Sampling is also done to determine if pollutants interfere with the treatment process or pass-through the plant to the sludge or the receiving water. The Insert name of municipality will use the monitoring data to develop local limits which commercial and industrial users must meet.

4.1.1 Monitoring Changes from the Previous Permit

Monitoring insert type of change for insert parameters has/have been changed relative to the previous permit. Changes in monitoring are based on insert rationale. Table 13, below, summarizes the changes that were made based on insert rationale.

Table 13. Changes in monitoring frequency from previous permit.

Parameter	Permit Expiring Insert Date	New Permit
Insert	Insert	Insert

Insert text

4.2 Receiving Water Monitoring

Insert Text to describe receiving water monitoring

Table 14 presents the proposed receiving water monitoring requirements for the draft permit. **Insert permittee name** should continue receiving water monitoring at the established locations. Receiving water monitoring results must be submitted with the DMR.

Table 14. Receiving water monitoring requirements.

Parameter	Units	Frequency	Sample Type	Report
Insert	Insert	Insert	Insert	Insert

5 Special Conditions

5.1 Compliance Schedule

The proposed permit includes a compliance schedule Insert necessary additional text……

5.2 Facility Planning

Insert Text to describe reasoning behind an updated facility plan.

5.3 Nondomestic Waste Management

The permittee has nonsignificant, nondomestic (industrial / commercial) users, which are not subject to the pretreatment standards in 40 CFR 405 through 471, and therefore DEQ does not require an authorized pretreatment program. The permittee must ensure that pollutants from nondomestic wastes discharged to their system do not negatively impact system operation or pass through the facility. The Permittee must not authorize discharges of pollutants that would inhibit, interfere, or otherwise be incompatible with operation of the treatment works, including *interference* with the use or disposal of municipal sludge.

Insert Text to describe nondomestic users or other information.

5.4 Pretreatment

If legal authority needs to be established, include the following if you require the permittee to develop a municipal code. Work with the pretreatment coordinator and the IDEQ regional office WW engineer to determine if you should include in the permit. Edit text to work for your situation. List all identified SIUs.

Any SIU discharging to a POTW requires the POTW to develop a pretreatment program. The following are SIUs which contribute:

Insert Company Name, Address

Special Condition insert pretreatment special condition section requires that the Permittee develop legal authority enforceable in Federal, State or local courts which authorizes or enables the POTW to apply and to enforce the requirement of sections 307 (b) and (c) and 402(b)(8) of the Clean Water Act, as described in 40 CFR 403.8(f)(1). The legal authority must be adopted and enforced by the POTW. The EPA has a Model Pretreatment Ordinance for use by municipalities operating POTWs that are required to develop pretreatment programs to regulate industrial discharges to their systems (EPA, 2007).

Insert name must develop a pretreatment program to provide more direct and effective control of pollutants discharged to the sanitary sewer, as required under 40 CFR Part 403 . The program must detect and enforce against violations of categorical pretreatment standards promulgated under the federal Clean Water Act.

DEQ will provide technical assistance to Insert name in fulfilling these joint obligations. In particular, it will assist with developing an adequate sewer use ordinance, notification procedures, enforcement guidelines, and developing local limits and inspection procedures.

DEQ delegated authority to Insert permittee name for permitting, monitoring, and enforcement over industrial users discharging to their treatment system to provide more direct and effective control of pollutants. DEQ oversees the delegated Industrial Pretreatment Program to assure compliance with federal pretreatment regulations (40 CFR Part 403) and categorical standards.

As sufficient data becomes available, Insert name must, in consultation with DEQ, reevaluate its local limits in order to prevent pass-through or interference. If any pollutant causes pass-through or interference, or exceeds established sludge standards, Insert name must establish new local limits or revise existing local limits as required by 40 CFR 403.5. In addition, DEQ may require revision or establishment of local limits for any pollutant that causes a violation of water quality standards or established effluent limits, or that causes whole effluent toxicity.

5.5 Plans

5.5.1 Spill Plan

The permittee shall update/develop and implement a plan for Insert Purpose and rationale for the plan.

5.5.2 Quality Assurance Plan

In accordance with IDAPA 58.01.25.300.05, permittees are required to develop procedures to ensure that the monitoring data submitted is accurate and explain data anomalies if they occur. The permittee is required to update/develop and implement a plan for Insert Purpose and rationale for the plan. The quality assurance plan shall consist of standard operating procedures for collecting, handling, storing and shipping samples, laboratory analysis, and data reporting. The plan shall be retained on site and made available to DEQ upon request.

5.5.3 Operation and Maintenance

The permit requires insert permittee name to properly operate and maintain all facilities and systems of treatment and control. Proper operation and maintenance is essential to meeting discharge limits, monitoring requirements, and all other permit requirements at all times. The permittee is required to develop or update and implement an operation and maintenance plan for their facility by insert date. The plan must be retained on site and made available to DEQ upon request.

5.5.4 Emergency Response Plan

The proposed permit requires/does not require this facility to update/develop and implement a plan for Insert Purpose and rationale for the plan.

5.5.5 Best Management Practices Plan

DEQ may specify in a permit the terms and conditions under which waste material may be disposed of. This permit requires/does not require the permittee to update/develop and implement a plan for Insert Purpose and rationale for the plan in order to prevent or minimize the potential for the release of pollutants to waters of the U.S. in Idaho through plant site runoff, spillage or leaks, or erosion. The draft permit contains certain BMP conditions which must be included in the BMP plan. The draft permit requires the permittee to develop a BMP plan within insert plan interval of the effective date of the final permit and implement the plan within insert bmp imp interval of the effective date of the final permit. The plan must be kept on site and made available to the Department upon request.

5.5.6 Phosphorus Management Plan

The proposed permit requires/does not require this facility to update/develop and implement a plan for Insert Purpose and rationale for the plan.

5.5.7 Mercury Minimization Plan

The proposed permit requires/does not require this facility to update/develop and implement a plan for Insert Purpose and rationale for the plan.

5.5.8 Methylmercury Fish Tissue Monitoring Plan

The proposed permit requires/does not require this facility to update/develop and implement a plan for Insert Purpose and rationale for the plan.

5.5.9 Storm Water Management Plan

The proposed permit requires/does not require this facility to update/develop and implement a plan for Insert Purpose and rationale for the plan.

5.6 Sludge / Biosolids

DEQ separates wastewater and sludge permitting. Idaho will obtain authority to issue sludge-only permits in July 2021 (beginning of the state's fiscal year 2022) for the purposes of regulating biosolids. DEQ may issue a sludge-only permit to each facility at a later date, as appropriate.

Until future issuance of a sludge-only permit, sludge management and disposal activities at each facility continue to be subject to the national sewage sludge standards at 40 CFR Part 503 and the requirements of Idaho's Wastewater Rules (IDAPA 58.01.16.480 and 650). The Part 503 regulations are self-implementing, which means that facilities must comply with them whether or not a permit has been issued. Idaho's Wastewater Rules requires a POTW to have the capability

to process sludge accumulated on-site in preparation for final disposal or reuse. Operations of these sludge processing, storage, and disposal activities must comply with the facility's sludge management plan.

Insert POTW specific text.

Insert Industrial specific text.

5.7 Municipal Lagoon Seepage Testing

Insert rationale for seepage testing.

5.8 Inflow and Infiltration Evaluation

Insert rationale for inflow and infiltration (I/I) evaluation.

5.9 Water Quality Trading

Insert details of the water quality trading options for this facility.

5.10 Decision Rationale for Variances/Waivers

Insert decision rationale for variance or waiver.

6 General Conditions

Sections 4 of the draft permit contains standard regulatory language that must be included in all IPDES permits. DEQ bases the standardized General Conditions on state and federal law and regulations. Because they are based on federal regulations, they cannot be challenged in the context of an individual NPDES permit action. The standard regulatory language covers requirements such as monitoring, recording, and reporting requirements, compliance responsibilities, and other general requirements.

7 Permit Issuance Procedures

This proposed permit meets all statutory requirements for DEQ to authorize a wastewater discharge. The permit includes limits and conditions to protect human health and aquatic life, and the beneficial uses of waters of the state of Idaho. DEQ proposes to issue this permit for a term of 5 years.

Insert alternate text if aligning with a reuse permit cycle.

7.1 Permit Modifications

DEQ may modify a permit before its expiration date only for causes specified in IDAPA58.01.25.201. A modification other than a *minor modification* requires preparing a draft permit that incorporates the proposed changes, preparing a fact sheet, and conducting a public review period. Only the permit conditions subject to the modification will be reopened when a permit is modified. All other conditions of the existing permit will remain in effect. Modifying a permit does not change the expiration date of the original permit.

8 References for Text and Appendices

EPA. 1991. *Technical Support Document for Water Quality-based Toxics Control.* US Environmental Protection Agency, Office of Water, EPA/505/2-90-001.

Water Pollution Control Federation. Subcommittee on Chlorination of Wastewater. *Chlorination of Wastewater.* Water Pollution Control Federation. Washington, D.C. 1976.

EPA. 2010. *NPDES Permit Writers' Manual.* Environmental Protection Agency, Office of Wastewater Management, EPA-833-K-10-001.

DEQ. 2016. *Public Participation in the Permitting Process* – needs additional DEQ citation info

EPA, 2007. *EPA Model Pretreatment Ordinance*, Office of Wastewater Management/Permits Division, January 2007.

EPA, 1993. *Guidance Document on Dynamic Modeling and Translators*

Appendix A. Public Involvement Information

[attach printed copy of the Public Notice]

Appendix B. Your Right to Appeal

You have a right to appeal this permit to the Board of Environmental Quality within 28 days of the date of receipt of the final permit. A Petition for Review must be filed with the Department's Hearing Coordinator within twenty eight (28) days after the Department serves notice of the final permit decision under Section 107 (Decision Process). A petition is filed when it is received by the Department's Hearing Coordinator at the address specified in Subsection 204.13.
All documents concerning actions governed by these rules must be filed with the Hearing Coordinator at the following address: Hearing Coordinator, Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255. Documents may also be filed by FAX at FAX No. (208) 373-0481 or may be filed electronically. The originating party is responsible for retaining proof of filing by FAX. The documents are deemed to be filed on the date received by the Hearing Coordinator. Upon receipt of the filed document, the Hearing Coordinator will provide a conformed copy to the originating party.

Appendix C. Technical Calculations

A. Technology-Based Effluent Limits

Insert appropriate introductory text here.

Mass-Based Limits

The federal regulation at 40 CFR 122.45(f) requires that effluent limits be expressed in terms of mass, except under certain conditions. The regulation at 40 CFR 122.45(b) requires that effluent limitations for POTWs be calculated based on the design flow of the facility. The mass based limits are expressed in pounds per day and are calculated as follows:

Mass based limit (lb/day) = concentration limit (mg/L) × design flow (mgd) × 8.341[1]

Since the design flow for this facility is _____ mgd, the technology based mass limits for BOD_5 and TSS are calculated as follows:

Average Monthly Limit = 30 mg/L × ___ mgd × 8.34 = _____ lbs/day

Average Weekly Limit = 45 mg/L × ____ mgd × 8.34 = _____ lbs/day

The concentration and removal rate limits for BOD_5 and TSS are the technology-based effluent limits of 40 CFR 133.102. As explained below, EPA has determined that more-stringent water quality-based effluent limits are necessary for pH, as well as E. coli, TRC, and phosphorus, in order to ensure compliance with water quality standards

B. Reasonable Potential and Water Quality-Based Effluent Limit Calculations

DEQ uses the process described in the *Technical Support Document for Water Quality-based Toxics Control* (EPA, 1991) to determine reasonable potential. To determine if there is reasonable potential for the discharge to cause or contribute to an exceedance of water quality criteria for a given pollutant, DEQ compares the maximum projected receiving water concentration to the water quality criteria for that pollutant. If the projected receiving water concentration exceeds the criteria, there is reasonable potential, and a water quality-based effluent limit must be included in the permit. This following section discusses how the maximum projected receiving water concentration is determined

Mass Balance

For discharges to flowing water bodies, the maximum projected receiving water concentration is determined using the following mass balance equation:

$$C_dQ_d = C_eQ_e + C_uQ_u \qquad \text{Equation 1}$$

where,

C_d = Receiving water concentration downstream of the effluent discharge (that is, the

[1] 8.34 is a conversion factor with units (lb ×L)/(mg × gallon×10^6)

concentration at the edge of the mixing zone)
C_e = Maximum projected effluent concentration
C_u = 95th percentile measured receiving water upstream concentration
Q_d = Receiving water flow rate downstream of the effluent discharge = Q_e+Q_u
Q_e = Effluent flow rate (set equal to the design flow of the WWTP)
Q_u = Receiving water low flow rate upstream of the discharge (1Q10, 7Q10 or 30B3)

When the mass balance equation is solved for C_d, it becomes:

$$C_d = \frac{C_e \times Q_e + C_u \times Q_u}{Q_e + Q_u} \qquad \text{Equation 2}$$

The above form of the equation is based on the assumption that the discharge is rapidly and completely mixed with 100% of the receiving stream.

If the mixing zone is based on less than complete mixing with the receiving water, the equation becomes:

$$C_d = \frac{C_e \times Q_e + C_u \times (Q_u \times \%MZ)}{Q_e + (Q_u \times \%MZ)} \qquad \text{Equation 3}$$

Where:

% MZ = the percentage of the receiving water flow available for mixing.

If a mixing zone is not allowed, dilution is not considered when projecting the receiving water concentration and,

$$C_d = C_e \qquad \text{Equation 4}$$

A dilution factor (D) can be introduced to describe the allowable mixing. Where the dilution factor is expressed as:

$$D = \frac{Q_e + Q_u \times \%MZ}{Q_e} \qquad \text{Equation 5}$$

After the dilution factor simplification, the mass balance equation becomes:

$$C_d = \frac{C_e - C_u}{D} + C_u \qquad \text{Equation 6}$$

If the criterion is expressed as dissolved metal, the effluent concentrations are measured in total recoverable metal and must be converted to dissolved metal as follows:

$$C_d = \frac{CF \times C_e - C_u}{D} + C_u \qquad \text{Equation 7}$$

Where C_e is expressed as total recoverable metal, C_u and C_d are expressed as dissolved metal, and CF is a conversion factor used to convert between dissolved and total recoverable metal.

The above equations for C_d are the forms of the mass balance equation which were used to determine reasonable potential and calculate wasteload allocations.

Maximum Projected Effluent Concentration

When determining the projected receiving water concentration downstream of the effluent discharge, the EPA's Technical Support Document for Water Quality-based Toxics Controls (TSD, 1991) recommends using the maximum projected effluent concentration (Ce) in the mass balance calculation (see equation 3). To determine the maximum projected effluent concentration (Ce) the EPA has developed a statistical approach to better characterize the effects of effluent variability. The approach combines knowledge of effluent variability as estimated by a coefficient of variation (CV) with the uncertainty due to a limited number of data to project an estimated maximum concentration for the effluent. Once the CV for each pollutant parameter has been calculated, the reasonable potential multiplier (RPM) used to derive the maximum projected effluent concentration (Ce) can be calculated using the following equations:

First, the percentile represented by the highest reported concentration is calculated.

$$p_n = (1 - \text{confidence level})^{1/n} \qquad \text{Equation 8}$$

where,

p_n = the percentile represented by the highest reported concentration
n = the number of samples
confidence level = 99% = 0.99

and

$$RPM = \frac{C_{99}}{C_{P_n}} = \frac{e^{Z_{99} \times \sigma - 0.5 \times \sigma^2}}{e^{Z_{P_n} \times \sigma - 0.5 \times \sigma^2}} \qquad \text{Equation 9}$$

Where,

σ^2 = $\ln(CV^2 + 1)$
Z_{99} = 2.326 (z-score for the 99th percentile)
Z_{Pn} = z-score for the P_n percentile (inverse of the normal cumulative distribution function at a given percentile)
CV = coefficient of variation (standard deviation ÷ mean)

The maximum projected effluent concentration is determined by simply multiplying the maximum reported effluent concentration by the RPM:

$$C_e = (RPM)(MRC) \qquad \text{Equation 10}$$

where MRC = Maximum Reported Concentration

Maximum Projected Effluent Concentration at the Mixing Zone Boundary
Once the maximum projected effluent concentration is calculated, the maximum projected effluent concentration at the mixing zone boundary is calculated using the mass balance equations presented previously.

Reasonable Potential
The discharge has reasonable potential to cause or contribute to an exceedance of water quality criteria if the maximum projected concentration of the pollutant at the mixing zone boundary exceeds the most stringent criterion for that pollutant.

Results of Reasonable Potential Calculations
Insert text describing the results of the RPA.

C. WQBEL Calculations
The following calculations demonstrate how the water quality-based effluent limits (WQBELs) in the draft permit were calculated. The draft permit includes WQBELs for insert name of parameters. The following discussion presents the general equations used to calculate the water quality-based effluent limits. The calculations for all WQBELs are summarized in Table ___.

Calculate the Wasteload Allocations (WLAs)
Wasteload allocations (WLAs) are calculated using the same mass balance equations used to calculate the concentration of the pollutant at the mixing zone boundary in the reasonable potential analysis (Equations ___ and ___). To calculate the wasteload allocations, C_d is set equal to the appropriate criterion and the equation is solved for C_e. The calculated C_e is the WLA. Equation ___ is rearranged to solve for the WLA, becoming:

$$C_e = WLA = D \times (C_d - C_u) + C_u \qquad \text{Equation 11}$$

Idaho's water quality criteria for some metals are expressed as the dissolved fraction, but the Federal regulation at 40 CFR 122.45(c) requires that effluent limits be expressed as total recoverable metal. Therefore, the EPA must calculate a wasteload allocation in total recoverable metal that will be protective of the dissolved criterion. This is accomplished by dividing the WLA expressed as dissolved by the criteria translator, as discussed in *Guidance Document on Dynamic Modeling and Translators*, referenced in Section 8, the criteria translator (CT) is equal to the conversion factor, because site-specific translators are not available for this discharge.

$$C_e = WLA = \frac{D \times (C_d - C_u) + C_u}{CT} \qquad \text{Equation 12}$$

The next step is to compute the "long term average" concentrations which will be protective of the WLAs. This is done using the following equations from the EPA's *Technical Support Document for Water Quality-based Toxics Control* (TSD):

$$LTA_a = WLA_a \times e^{(0.5\sigma^2 - z\sigma)} \quad \text{Equation 13}$$

$$LTA_c = WLA_c \times e^{(0.5\sigma_4^2 - z\sigma_4)} \quad \text{Equation 14}$$

where,

σ^2 = $\ln(CV^2 + 1)$
Z_{99} = 2.326 (z-score for the 99th percentile probability basis)
CV = coefficient of variation (standard deviation ÷ mean)
σ_4^2 = $\ln(CV^2/4 + 1)$

For ammonia, because the chronic criterion is based on a 30-day averaging period, the Chronic Long Term Average (LTAc) is calculated as follows:

$$LTA_c = WLA_c \times e^{(0.5\sigma_{30}^2 - z\sigma_{30})} \quad \text{Equation 15}$$

where,

σ_{30}^2 = $\ln(CV^2/30 + 1)$

The LTAs are compared and the more stringent is used to develop the daily maximum and monthly average permit limits as shown below.

Derive the Maximum Daily and Average Monthly Effluent Limits
Using the TSD equations, the MDL and AML effluent limits are calculated as follows:

$$MDL = LTA \times e^{(z_m\sigma - 0.5\sigma^2)} \quad \text{Equation 16}$$

$$AML = LTA \times e^{(z_a\sigma_n - 0.5\sigma_n^2)} \quad \text{Equation 17}$$

where σ, and σ^2 are defined as they are for the LTA equations above, and,

σ_n^2 = $\ln(CV^2/n + 1)$
z_a = 1.645 (z-score for the 95th percentile probability basis)
z_m = 2.326 (z-score for the 99th percentile probability basis)
n = number of sampling events required per month. With the exception of ammonia, if the AML is based on the LTA_c, i.e., $LTA_{minimum} = LTA_c$), the value of "n" should is set at a minimum of 4. For ammonia, In the case of ammonia, if the AML is based on the LTA_c, i.e., $LTA_{minimum} = LTA_c$), the value of "n" should is set at a minimum of 30.

Table __, below, details the calculations for water quality-based effluent limits.

EXAMPLE TABLE; replace with appropriate spreadsheet

Pollutant			AMMONIA, Criteria as Total NH3	CHLORINE (Total Residual)
Effluent Data	# of Samples (n)		11	60
	Coefficient of Variation (Cv)		0.6	0.6
	Effluent Concentration, µg/L (Max. or 95th Percentile)		100	75
	Calculated 50th percentile Effluent Conc. (when n>10)			
Mixing Zone Used	Aquatic Life - Acute		1.5	1.5
	Aquatic Life - Chronic			2.1
	Ammonia		2.1	
	Human Health - Non-Carcinogen			5.3
	Human Health - carcinogen			7.5
Receiving Water Data	90th Percentile Conc., µg/L		300.0	0
	Geo Mean, µg/L			
Water Quality Criteria	Aquatic Life Criteria, µg/L	Acute	1,395	19
		Chronic	273	11
	Human Health Water and Organism, µg/L		-	-
	Human Health, Organism Only, µg/L		-	-
	Metal Criteria Translator, decimal	Acute	-	-
		Chronic	-	-
	Carcinogen?		N	N

Aquatic Life Reasonable Potential

σ	σ2=ln(CV^2+1)		0.555	0.555
Pn	=(1-confidence level)$^{1/n}$	99%	0.658	0.926
Multiplier	=exp(2.3262σ-0.5σ^2)/exp(invnorm(P$_N$)σ-0.5σ^2)	99%	2.9	1.6
	Max. conc.(ug/L) at edge of...	Acute	293	79.3
		Chronic	295	58.8
Reasonable Potential? Limit Required?			**YES**	**YES**

Aquatic Life Limit Calculation

n = # samples assumed to calculate AML			30	20
# of Compliance Samples Expected per month			**30**	**20**
LTA Coeff. Var. (CV), decimal	default = 0.6 or calculate from data		0.6	0.6
Permit Limit CV, decimal			0.6	0.6
Waste Load Allocations, ug/L	$C_d=(C_r x MZ_a)-C_{sa} x (MZ_a-1)$	Acute	1,985.0	29.23
	$C_d=(C_r x MZ_c)-C_{sc}*(MZ_c-1)$	Chronic	243.9	22.85
Long Term Averages, ug/L	WLAc x exp(0.5σ^2-2.326σ)	Acute	637.3	9.39
	WLAa x exp(0.5σ^2-2.326σ); ammonia n=30	Chronic	190.3	12.05
Limiting LTA, ug/L	used as basis for limits calculation		190.3	9.39
Metal Translator or 1?			1.00	1.00
Average Monthly Limit (AML), ug/L		**95%**	**226**	**12**
Maximum Daily Limit (MDL), ug/L		**99%**	593	**29**
Average Monthly Limit (AML), mg/L			**0.2**	0.012

Maximum Daily Limit (MDL), mgL	**0.6**	0.029
Average Monthly Limit (AML), lb/day	**1**	**0.03**
Maximum Daily Limit (MDL), lb/day	**1**	**0.1**

D. Effluent Limit Calculations for pH

Include this section if the permit includes a mixing zone for pH. The following is just an example.

The following tables demonstrate how appropriate effluent limitations were determined for pH. The pH at the edge of the mixing zone is a function of effluent and ambient pH, temperature, and alkalinity. The critical alkalinity is the minimum for the ambient water and the maximum for the effluent. The critical pHs for the upper pH limit are the maximum effluent pH limit and the 95th percentile ambient pH. The critical pHs for the lower pH limit are the minimum effluent pH limit and the 5th percentile ambient pH. DEQ adjusted the effluent pH in 0.1 standard unit intervals until the pH at the edge of the mixing zone was between 6.5 and 9.0 standard units, as required by the water quality standards. DEQ did not evaluate effluent pHs above 9.0 standard units or below 6.0 standard units, because this is the range of the technology-based effluent limits for pH.

EXAMPLE TABLE; replace with appropriate information

Table __ summarizes the source of input for the calculations:

Input	Source of Input
1. Dilution Factor at Mixing Zone Boundary	
2. Ambient/Upstream/Background Conditions	
Temperature (deg C):	
pH:	
Alkalinity (mg $CaCO_3$/L):	
3. Effluent Characteristics	
Temperature (deg C):	
pH:	
Alkalinity (mg CaCO3/L):	

Calculation of pH of a Mixture of Two Flows

Based on the procedure in the EPA's DESCON program (EPA, 1988. Technical Guidance on Supplementary Stream Design Conditions for Steady State Modeling. US EPA Office of Water, Washington D.C.)

	Yr. Around Basis	
INPUT	**Min Limit**	**Max Limit**
1. Dilution Factor at Mixing Zone Boundary		
2. Ambient/Upstream/Background Conditions		
Temperature (deg C):		
pH:		
Alkalinity (mg $CaCO_3$/L):		
3. Effluent Characteristics		
Temperature (deg C):		
pH:		
Alkalinity (mg CaCO3/L):		
OUTPUT		
1. Ionization Constants		
Upstream/Background pKa:		
Effluent pKa:		
2. Ionization Fractions		
Upstream/Background Ionization Fraction:		
Effluent Ionization Fraction:		
3. Total Inorganic Carbon		
Upstream/Background Total Inorganic Carbon (mg CaCO3/L):		
Effluent Total Inorganic Carbon (mg CaCO3/L):		
4. Conditions at Mixing Zone Boundary		
Temperature (deg C):		
Alkalinity (mg CaCO3/L):		
Total Inorganic Carbon (mg CaCO3/L):		
pKa:		
RESULTS		
pH at Mixing Zone Boundary:		

Appendix D. Public Comments and Response to Comments

[DEQ will complete this section after the public notice of draft period.]

Appendix E. Facility Maps / Process Schematics

Insert map, diagram, or schematic here.

Appendix E. Publicly Owned Treatment Works with Pretreatment Programs

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NPDES ID	FACILITY NAME	STATUS	STATE WATER BODY	ORIGINAL DATE	ISSUE DATE	EFFECTIVE DATE	EXPIRATION DATE
ID0021261	CITY OF IDAHO FALLS WWTP	EFF	SNAKE RIVER	10/18/1974	9/20/2012	11/1/2012	10/31/2017
ID0021784	CITY OF POCATELLO WATER POLLUTION CONTROL FACILITY (WPCF)	EFF	PORTNEUF RIVER	08/02/1974	7/27/2012	9/1/2012	8/31/2017
ID0022063	CITY OF NAMPA WWTP	ADC	INDIAN CREEK	12/29/1998	12/29/1998	2/1/1999	2/2/2004
ID0023817	CITY OF REXBURG WWTP	EXP	TETON RIVER, REXBURG CANAL	11/08/1974	8/9/2001	9/11/2001	9/11/2006
ID0021504	CITY OF CALDWELL WWTP	ADC	BOISE RIVER & INDIAN CREEK	12/29/1998	12/29/1998	2/1/1999	2/2/2004
ID0022055	CITY OF LEWISTON WWTP	ADC	CLEARWATER, ARM OF-GRANITE DAM POOL	12/18/1974	11/26/2001	12/31/2001	1/2/2007
ID0023981	CITY OF WEST BOISE WWTP	EFF	BOISE RIVER (RIVER MILE 45.1)	11/08/1974	3/15/2012	8/1/2012	7/31/2017
ID0020095	CITY OF BURLEY WWTP	ADC	SNAKE RIVER	12/31/1974	11/29/2001	1/7/2002	1/8/2007
ID0022853	CITY OF COEUR D'ALENE WWTP	EFF	SPOKANE RIVER	09/30/1999	9/30/2014	12/1/2014	11/30/2019
ID0020044	CITY OF BLACKFOOT WWTP	EFF	SNAKE RIVER	07/27/1977	6/26/2013	9/1/2013	8/31/2018
ID0020842	CITY OF SANDPOINT WWTP	ADC	PEND OREILLE RIVER	06/14/1974	11/30/2001	1/5/2002	1/5/2007
ID0021270	CITY OF TWIN FALLS WWTP	ADC	SNAKE RIVER RM 608.5	03/28/1974	9/22/2009	11/1/2009	10/31/2014

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Appendix F. Memorandum of Understanding between DEQ and ISDA

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1 Objective

The objectives of the Memorandum of Understanding (hereafter, MOU) are:

1) to define roles of the Idaho Department of Environmental Quality (hereafter, DEQ) and the Idaho State Department of Agriculture (hereafter, ISDA) relating to the administration of the Idaho Pollutant Discharge Elimination System (IPDES) program and

2) to develop an IPDES concentrated animal feeding operation (CAFO) program that is as efficient and effective as possible and which avoids a duplication of effort.

DEQ and ISDA propose to help ensure an efficient and effective program and minimize duplication by having employees of ISDA conduct IPDES inspections on behalf of DEQ and thereby utilize the expertise of ISDA and take advantage of ISDA's existing presence on certain animal feeding operations (AFOs) and dairy farms as part of ISDA's existing regulatory programs.

This MOU is intended solely to assist DEQ in implementing the IPDES program for certain AFOs and CAFOs within Idaho. Nothing in this MOU creates or implies duties, rights, benefits, substantive or procedural, for third parties or others. This MOU will become effective January 2020 and will remain effective until such time as both ISDA and DEQ choose to revoke or revise the terms outlined herein.

2 Background and Authorities

1. This MOU is entered into pursuant to the following described authorities. Idaho Code §§39-175A through 39 -175E authorizes DEQ to take those actions necessary to obtain approval of and to implement a state national pollutant discharge elimination system (NPDES) program under the Clean Water Act. (This program is hereinafter referred to as the IPDES program.)

2. Pursuant to the authority provided in Idaho Code §§39-175A et seq., DEQ has adopted IPDES rules, IDAPA 58.01.25, that include requirements for CAFOs.

3. ISDA regulates AFOs, CAFOs and dairy farms pursuant to the Beef Cattle Environmental Control Act, Idaho Code §§22-4901 through 22-4910, the Dairy Environmental Control Act, Idaho Code §§37-601 through 37-609, the Poultry Environmental Act, Idaho Code §§25-4001 through 25-4014, and rules adopted under the authority of these Acts.

4. DEQ regulates swine CAFOs pursuant to Idaho Code §§39-104A, 39-7901 through 39-7916, and rules adopted under the authority of these sections.

5. DEQ has the sole authority with respect to implementing the IPDES program. However, Idaho Code §39-175C(5) provides that the Director of DEQ shall, as appropriate, establish agreements with other state agencies with expertise to administer the IPDES

program. Similar authority to establish an agreement regarding the administration of the IPDES program exists in the Beef Cattle Environmental Control Act and the Dairy Environmental Control Act. In addition, Idaho Code §67-2510 provides that all Idaho departments shall cooperate with each other in the employment of services and the use of quarters and equipment, and provides that the Director of a department may empower employees of other departments to perform duties required of his own subordinates. Departments are also directed to assist other departments in the inspection, examination, or securing of data or information.

6. Pursuant to the authorities listed above, ISDA reviews and approves plans and specifications and nutrient management plans for certain AFOs, CAFOs and dairy farms, and conducts inspections of operations and farms to ensure compliance with state law. As a result, ISDA has an existing expertise with respect to AFOs, CAFOs and dairy farms and conducts inspections multiple times a year. This MOU is intended to take advantage of this expertise and the fact that ISDA already conducts inspections on these facilities.

3 General Program Understanding

The intent of this section is to identify guiding principles not specific to the permitting process for CAFOs on which DEQ and ISDA agree and will follow during the effective dates of this MOU.

3.1 Rules, Standards, Technical Policies, Guidelines, and General Enforcement Philosophy

Recognizing the need for collaboration and cooperation in the implementation of the IPDES CAFO program, DEQ and ISDA agree to:

1. work cooperatively in the preparation of rules, standards, technical policies, or guidelines with regards to AFOs and CAFOs that have obtained a permit or may be required to obtain a permit;

2. notify each other of all public meetings and hearings pertaining to rules associated with the IPDES CAFO program;

3. provide each other with draft copies of the documents related to rules associated with the IPDES CAFO program for a 30 day review and comment period prior to the initiation of any formal negotiated rule making; and

4. coordinate prior to any designation of an animal feeding operation as a CAFO or requiring an AFO to apply for an IPDES individual permit or coverage under a general permit.

3.2 Consultations, Technical Assistance, and Training

DEQ and ISDA agree to, within resource limitations, provide consultation, training, and technical assistance to the other when requested. ISDA inspectors certified by DEQ as IPDES inspectors for CAFO related issues will use that certification only in the manner specified by DEQ to assist with fulfilling DEQ's obligations under state and federal environmental statutes.

DEQ will provide to ISDA staff identified as certified inspectors training in IPDES CAFO inspections and opportunities for continuing education credits. DEQ will rely on EPA's NPDES Compliance Inspection Manual (until such time as DEQ has developed an equivalent state specific guidance) to describe the details and requirements of a CAFO inspection.

Procedures for Certifying CAFO inspectors

1. ISDA will provide to DEQ a list of individual inspectors who should be certified by DEQ.
2. DEQ will provide to those identified individuals a list of required training courses that must be completed prior to certification. This training will include 3 basic parts:
    a. EPA's Basic Inspector Training,
    b. Occupational Health and Safety Training, and
    c. IPDES program specific training. IPDES program specific training will include a mandatory reading list, self-study, on-the-job training, review of inspection reports/files, and mandatory refresher training.
3. The inspector's supervisor will certify and provide documentation to the DEQ compliance, inspection, and enforcement lead that the training has been completed. Verification and documentation should be provided prior to or when the inspector submits a request for certification.

3.3 Sharing and Dissemination of Information

DEQ and ISDA agree that efficient and effective management of an IPDES CAFO program relies heavily on seamless transmittal of information from one to the other. To this end, DEQ will work with ISDA to ensure that there is an efficient means of transferring data relating to permitting, compliance, inspection, and enforcement for all aspects of the IPDES CAFO program.

DEQ and ISDA will share information regarding records pertinent to the IPDES CAFO program in electronic form to the maximum extent possible, unless the records are deemed confidential. DEQ will develop an online application process for CAFOs seeking coverage under an individual or general permit.

3.4 Coordination of Programs

DEQ and ISDA will coordinate efforts to the maximum extent possible. This effort will include annual coordination meetings between the IPDES program and ISDA staff

- to inform each agency of any upcoming IPDES enforcement actions,
- to identify inspection needs,
- to set an inspection schedule for IPDES permitted CAFOs,
- to inform ISDA regarding any planned DEQ inspections of IPDES CAFO facilities,
- to inform DEQ regarding the number of non-IPDES CAFO inspections and
- to coordinate training of ISDA and DEQ staff.

DEQ and ISDA will also hold quarterly conference calls, unless deemed unnecessary, to deal with any urgent or outstanding issues regarding IPDES permitted or non-permitted CAFOs and exchange information about inspection results.

4 Roles and Responsibilities for Specific Components of the IPDES CAFO program

4.1 Permitting

DEQ is responsible for IPDES permitting of CAFOs in Idaho. ISDA will provide general technical assistance with regards to the review of permits and nutrient management plans. Once DEQ receives authorization to implement the CAFO component of the IPDES program, any CAFO covered under an EPA CAFO general permit will automatically transition to a DEQ IPDES permit. A CAFO not covered under the EPA CAFO general (or individual) permit but who wishes to seek coverage under the IPDES CAFO general (or individual) permit will need to submit an application for coverage (or NOI). ISDA and DEQ will then review the NMP that the CAFO is using to determine if it meets the requirements of the Clean Water Act. If the NMP meets Clean Water Act requirements, the NMP can be scheduled for public comment. If the NMP does not meet Clean Water Act requirements, even if it has been previously approved by ISDA, DEQ will work with ISDA and the applicant to determine what additional components are necessary in order to provide coverage under a general or individual CAFO permit.

4.1.1 General IPDES Permit for CAFOs

DEQ will:

1. Draft a general CAFO permit pursuant to the IPDES program rules and following the guidance identified in EPA's Permit Writer's Manual for CAFOs.
2. Provide ISDA with a working copy of the draft general IPDES CAFO permit for comment prior to providing a public comment period to allow ISDA staff an opportunity to provide comments and suggestions regarding the draft general permit.
3. Provide notice of a public comment period for the draft general permit and collect public comments on the draft general permit as required under the IPDES program rules.
4. Provide a preliminary draft response to public comments to ISDA staff for review.

5. Follow the process and procedures for issuing a general permit as outlined in IDAPA 58.01.25 and the IPDES User's Guide.
6. Issue final IPDES general permit for CAFOs.
7. Determine if an applicant qualifies for coverage under the general permit.
8. Evaluate the recommendation from ISDA regarding the adequacy of a NMP in meeting Clean Water Act requirements submitted as part of an application for coverage under an IPDES permit.
8. Provide notice of a public comment period for NOIs and NMPs submitted by CAFOs for coverage under the general permit, collect public comments on the NOI and NMP, and otherwise comply with public participation requirements.
9. Provide a preliminary draft response to public comments on the NOI and NMP to ISDA staff for review.
10. Make final determination of approval or disapproval of applicant for coverage under the IPDES CAFO general permit. In the case of approval, DEQ will include the NMP in an appendix to the general permit as conditions specific to that CAFO.

ISDA will:

1. Review and provide comments on the draft IPDES CAFO general permit within 30 days of receiving the draft copy.
2. Review and provide comments and edits on the preliminary draft response to public comments within 30 days of receiving the draft response to public comments.
3. Review and provide recommendations to DEQ and applicant within 30 days of receiving the NMP regarding the adequacy of a NMP in meeting Clean Water Act requirements submitted as part of an NOI for coverage under the general permit.
4. Review and provide comments on the preliminary draft response to public comments on an NOI and NMP submitted for coverage under the IPDES CAFO general permit within 30 days of receiving the preliminary draft.

4.1.2 Individual permits for CAFOs

DEQ will:

1. Draft an individual CAFO permit pursuant to the IPDES program rules and following the guidance identified in EPA's Permit Writer's Manual for CAFOs.
2. Provide ISDA with a copy of the application for an individual IPDES CAFO permit including the NMP for a 30-day review.
3. Provide ISDA with a working copy of the draft individual permit for comment prior to providing a public comment period to allow ISDA staff an opportunity to provide comments and suggestions regarding the draft individual permit.
4. Follow the process and procedures for issuing an individual permit as outlined in IDAPA 58.01.25 and the IPDES User's Guide.
5. Provide notice of a public comment period regarding the individual permit and associated NMP and collect public comments on the draft individual permit and otherwise comply with the public participation requirements.
6. Provide a preliminary draft response to public comments to ISDA staff for a 30-day review.

7. Make final permitting decision regarding the IPDES permit. If DEQ determines to issue a permit, DEQ will include the NMP in the individual permit as conditions specific to that CAFO.

ISDA will:

1. Review and provide comments to DEQ on the adequacy of applicant's NMP in meeting Clean Water Act requirements within 30 days of receiving the copy of the application with NMP.
2. Review and provide comments on the draft individual IPDES permit within 30 days of receiving the preliminary draft individual permit.
3. Review and provide comments and edits on the preliminary draft response to public comments within 30 days of receiving the draft response to public comments.

4.2 IPDES Inspections and Complaints

DEQ is authorized to conduct investigations, inspections, and enter upon private property to collect information in order to determine compliance with the IPDES program requirements (Idaho Code §§39-175E and 39-108). DEQ is also authorized to enter into an agreement with ISDA relating to the administration of the IPDES program to ensure the IPDES program and the ISDA state programs are coordinated and consistent. To the extent provided in this section, ISDA agrees to conduct inspections on behalf of DEQ in order to assist DEQ in the implementation of the IPDES program. To the maximum extent practicable, ISDA and DEQ will coordinate inspection efforts to ensure the efficient and effective implementation of the program and reduce duplicative efforts by sister agencies.

Pursuant to DEQ's Compliance Monitoring Strategy and consistent with national policy, large and medium CAFOs covered by an IPDES permit should be inspected using procedures consistent with EPA's Compliance Inspection Manual once every 5 years to evaluate compliance with the IPDES permit. These inspections should be carried out by a certified inspector for the purpose of evaluating compliance of the permitted CAFO with conditions identified in the permit.

ISDA inspects, according to the rules regulating their jurisdiction and in keeping with the purpose of ISDA, all CAFOs in Idaho annually regardless of IPDES permit coverage. ISDA inspectors certified by DEQ to conduct IPDES inspections will be able to evaluate practices associated with the land application of manure, litter, and process wastewater to determine if all land application discharges may be classified as exempt agricultural storm water. Information regarding CAFOs with potential to discharge to a surface water should be transmitted to DEQ according to the process laid out below. It is DEQ's sole authority to determine if an unpermitted discharge needs to be permitted.

DEQ will:

1. Reserve all of its inspection and investigation authorities, and may, as it deems appropriate, inspect any animal feeding operation (AFO) or CAFO for compliance with requirements of the IPDES program. DEQ will, in general, inform ISDA and the facility at least 7 days before conducting an inspection of a CAFO, unless DEQ deems there to be

an immediate threat to public health or the environment presented from the discharge of pollutants to Waters of the United States (WOTUS).

2. Select IPDES permitted CAFOs for inspection in accordance with DEQ's Compliance Monitoring Strategy.
3. Coordinate any planned inspections with ISDA staff during the annual meeting.
4. Inform ISDA of the results of any inspections conducted by DEQ staff within 30 days of the inspection.
5. Forward to ISDA within 30 days any complaints received along with a record of the action(s) taken, if any, regarding a discharge of pollutants to surface water from a CAFO.
6. Forward to ISDA within 10 days any complaints received regarding a CAFO that does not relate to the IPDES program requirements.
7. Upon receipt of information from ISDA regarding a discharge to surface waters of the state from a non-IPDES permitted CAFO, be responsible for determining whether such a CAFO is required to obtain an IPDES permit.
8. Upon receipt of information from ISDA regarding a discharge to surface waters of the state from an AFO, be responsible for determining whether such a facility should be designated a CAFO, and whether it is required to obtain an IPDES permit.
9. Upon receipt of information from an inspection of an IPDES permitted CAFO, determine whether follow-up enforcement action is warranted.

ISDA will:

1. Perform inspections of non-IPDES permitted CAFOs at a frequency stipulated in ISDA rule and policy. ISDA and DEQ shall inform DEQ of the number of planned inspections of such facilities during the annual meeting. During an ISDA inspection, the inspector will evaluate the CAFO for the potential to discharge to surface waters of the state.
2. Inform the DEQ IPDES Program Manager and Compliance, Inspection, and Enforcement Lead via email of any non-IPDES permitted AFO or CAFOs with a potential to discharge to a surface water of the state. This information should be provided no later than 30 days after the inspection identifying the discharge. Upon request from DEQ, provide DEQ access to any available information necessary for DEQ to determine whether an IPDES permit is required.
3. Forward to DEQ via email any complaints received regarding a non-IPDES permitted CAFO discharging pollutants to surface waters of the state along with the record of any actions taken regarding the complaint. Upon request from DEQ, provide DEQ access to any available information necessary for DEQ to determine whether an IPDES permit is required.
4. Perform inspections of IPDES permitted CAFOs in order to determine compliance with IPDES permit requirements according to a schedule agreed to with DEQ at the annual meeting. Such inspections shall be conducted in accordance with EPA's Compliance Inspection Manual.
5. Forward to DEQ in an electronic format the results of inspections on IPDES permitted CAFOs carried out by certified ISDA inspectors.
6. In the event an ISDA inspector is denied access to any facility or information related to the IPDES program requirements, he or she shall notify DEQ. It shall be DEQ's responsibility to follow up with appropriate action in response to the denial.
7. ISDA inspectors shall be available as witnesses and to provide support in a DEQ IPDES program enforcement action related to an inspection conducted by the ISDA inspector.

8. An inspection by ISDA is the gathering of evidence and the physical observation of certain conditions and is not a determination of compliance with IPDES program requirements.

4.3 Enforcement Actions

DEQ retains all enforcement authority for any violations of the IPDES program requirements. ISDA and DEQ shall coordinate and consult with respect to enforcement for actions that violate both IPDES program requirements and the requirements of the ISDA programs.

5 Dispute Resolution

In the event of a dispute regarding implementation of this MOU, the parties shall make all reasonable efforts to resolve the dispute at the lowest staff level. Directors of both ISDA and DEQ will be notified of all disputes arising under this MOU. The parties may request the assistance of a mutually agreed upon facilitator at any time. If a facilitator is engaged, the timelines will be adjusted according to a mutually agreed upon schedule. Unresolved disputes will be settled in the following hierarchical process;

1. Disputes that cannot be resolved between the immediate staff involved should be documented as to timing, issue, background, attempts for resolution and any other relevant facts. A request for resolution will be presented to the immediate supervisors.
2. If the dispute cannot be resolved at the immediate supervisors' level within 20 days, this step should be documented and the entire packet sent to the DEQ Water Quality Division Administrator and ISDA Animal Industries Division Administrator.
3. If the dispute cannot be resolved at the administrator level within 20 days, this step should be documented and the entire packet sent to the Deputy Directors of both agencies for resolution.

6 Alterations and Amendments

This MOU may be amended by mutual agreement of the parties. Such amendments will be documented in writing and signed by the MOU signatories, or their designees. If representatives of either agency encounter a situation where deviation from the above outlined processes and agreements is necessary and warranted, they should notify the other party as soon as possible, but no later than 10 days after the situation occurs, and begin a cooperative dialogue to reach an agreeable solution. The parties shall modify this agreement as needed to ensure proper program implementation and to maintain IPDES AFO/CAFO delegation from EPA.

7 Signature Page

John H. Tippets Director, Department of Environmental Quality	Celia R. Gould Director, Idaho State Department of Agriculture
Date	Date

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Appendix G. IPDES Compliance Monitoring Strategy

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Idaho Pollution Discharge Elimination System Compliance Monitoring Strategy

FINAL

State of Idaho
Department of Environmental Quality
Water Quality Division
1410 N. Hilton
Boise, Idaho 83706

July 2016
Revised July 2017



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Acronyms, Abbreviations, and Symbols

AFO	animal feeding operation
API	annual plan for inspections
BMP	best management practice
CAAP	concentrated aquatic animal production
CAFO	concentrated animal feeding operation
CFR	Code of Federal Regulations
CGP	Construction General Permit
CMS	compliance monitoring strategy
CSO	combined sewer overflow
CSS	combined sewer system
CWA	Clean Water Act
DEQ	Idaho Department of Environmental Quality
DMR	discharge monitoring report
DWGP	Drinking Water General Permit
ECHO	Enforcement and Compliance History Online
EPA	US Environmental Protection Agency
ICIS	Integrated Compliance Information System
IDAPA	Idaho Administrative Procedure Act (numbering designation)
IPDES	Idaho Pollutant Discharge Elimination System
ISDA	Idaho State Department of Agriculture
ITM	Inspection Targeting Model
IU	industrial user
MGD	million gallons per day
MS4	Municipal Separate Storm Sewer System
MSGP	Municipal Storm Water General Permit
NPDES	National Pollutant Discharge Elimination System

OECA	EPA Office of Enforcement and Compliance Assurance
POTW	publicly owned treatment works
QA	quality assurance
QAPP	quality assurance project plan
QC	quality control
SIU	significant industrial user
SNC	significant noncompliance
SSS	sanitary sewer system
SWPPP	storm water pollution prevention plan
TMDL	total maximum daily load
VGP	Vessel General Permit

1 Introduction

Compliance monitoring is a fundamental component of the Idaho Pollutant Discharge Elimination System (IPDES) program. The primary goal of the IPDES compliance monitoring program is to ensure and document whether entities regulated under the IPDES and pretreatment programs are complying with the IPDES rules and statutory provisions that implement the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) program.

The IPDES compliance monitoring program strives to accurately identify and document noncompliance, support the enforcement process, monitor compliance with enforcement orders, establish a presence in the regulated community, deter noncompliance, support the permitting process, and further broaden the Idaho Department of Environmental Quality (DEQ) Water Quality Division's watershed protection and restoration goals. This compliance monitoring strategy (CMS) provides the framework for meeting national recommendations and minimum frequencies for compliance monitoring activities by tailoring the national NPDES CMS (EPA 2014) for Idaho.

The IPDES CMS addresses inspections for major and traditional nonmajor permittees, pretreatment, biosolids, wet weather sources (combined sewer systems [CSSs], sanitary sewer systems [SSSs], municipal separate storm water systems [MS4s], and industrial and construction storm water), and concentrated animal feeding operations (CAFOs) and is organized into the following sections:

- Section 2—Provides a brief background of changes to US Environmental Protection Agency's (EPA's) NPDES CMS.
- Section 3—Describes CMS implementation and the collaboration between DEQ and EPA Region 10.
- Section 4—Details national goals for compliance monitoring frequency based on the type of IPDES discharger.
- Section 4.9.2—Details compliance monitoring strategies for sources with no currently established national goal.
- Section 5—Details compliance monitoring frequency goals for unique sector-specific IPDES sources.
- Section 6—Describes the different types of monitoring activities that an inspector may perform at any given facility.
- Section 6.1—Summarizes sections 4 through 5 in tabular format.

In addition, this CMS addresses compliance monitoring of pesticide operators and vessels that are regulated under the IPDES program (section 4.9). After implementing this CMS, DEQ will work with EPA to assess the need for additional tools and guidance, such as forms or checklists, and to determine what constitutes a focused inspection and an off-site desk audit.

2 Background

Regulations found at 40 CFR 123.26 outline the requirements for compliance evaluation programs for states with NPDES program authorization. This IPDES CMS addresses the following sections of 40 CFR 123.26:

> (b) State programs shall have inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or noncompliance with applicable program requirements. The State shall implement and maintain:
>
> (1) An automated, computerized system which is capable of identifying and tracking all facilities and activities subject to the State Director's authority and any instances of noncompliance with permit or other program requirements (e.g., identifying noncompliance with an automated, computerized program to compare permit limits to reported measurements). State programs must maintain a management information system which supports the compliance evaluation activities of this part (e.g., source inventories; compliance determinations based upon discharge monitoring reports, other submitted reports, and determinations of noncompliance made from inspection or document reviews; and subsequent violation notices, enforcement actions, orders, and penalties) and complies with 40 CFR part 3 (Cross-Media Electronic Reporting Regulation) and 40 CFR part 127 (NPDES Electronic Reporting Requirements). State programs may use EPA's national NPDES data system for their automated, computerized system;
>
> (2) A program for periodic inspections of the facilities and activities subject to regulation. These inspections shall be conducted in a manner designed to:
>
> i) Determine compliance or non-compliance with issued permit conditions and other permit requirements
>
> ii) Verify the accuracy of information submitted by permittees and other regulated persons in reporting forms and other forms supplying monitoring data;
>
> iii) Verify the accuracy of sampling, monitoring and other methods used by permittees and other regulated persons to develop that information; and
>
> iv) Protect surface waters and public health;
>
> (3) A program for investigating information obtained regarding violations of applicable program and permit requirements;

and

> (e) State NPDES compliance evaluation programs shall have procedures and ability for:
>
> (1) Maintaining an automated, computerized system which is capable of managing the comprehensive electronic inventory of all sources covered by NPDES permits and generating an electronic schedule of reports required to be submitted by permittees to the State agency. (Note: State programs may use EPA's national NPDES data system for their automated, computerized system.);
>
> (2) Initial screening (i.e., pre-enforcement evaluation) of all permit or grant-related compliance information to identify violations and to establish priorities for further substantive technical evaluation;
>
> (3) When warranted, conducting a substantive technical evaluation following the initial screening of all permit or grant-related compliance information to determine the appropriate agency response;
>
> (4) Maintaining a management information system which supports the compliance evaluation activities of this part; and
>
> (5) Inspecting the facilities of all major dischargers at least annually.

Analogous regulations for the pretreatment program are set forth in 40 CFR 403.10(f)(2).

Compliance monitoring programs are challenged by tightened budgets at all levels of government and the growing concern of the effects of wet weather dischargers on public health and the environment. Nationwide, implementing the 2007 NPDES CMS deterred noncompliance in the most significant environmental areas by increasing effort in NPDES program areas that impact water quality in priority watersheds and water segments.

In 2013, EPA engaged in a national dialogue on expanding compliance monitoring. As a result of that dialogue, in 2014 EPA's Office of Enforcement and Compliance Assurance (OECA) again revised the NPDES CMS to draw on important compliance monitoring activities integral to the program today and to better encompass the planning process needed to ensure consistent national implementation according to EPA goals and priorities.

The 2014 NPDES CMS provides circumstances where the IPDES program may use *focused compliance inspections* and *off-site desk audits* in addition and complementary to traditional comprehensive inspections. This change expands the flexibilities from the 2007 NPDES CMS, which did not provide for off-site desk audits or focused inspections, to count toward any of the national goals. OECA made these changes to allow agencies greater flexibility to focus and efficiently deploy their resources on their most significant environmental concerns and pollution problems through an alternative CMS plan.

The IPDES CMS reflects EPA's 2014 CMS key concepts of next generation compliance, including electronic reporting, increased transparency and technological advances, and offers additional flexibilities to DEQ in determining the most effective use of limited compliance monitoring resources. For example, implementing this policy will facilitate increased use of next generation targeting tools, such as the CWA Inspection Targeting Model, on-line compliance user interface, and EPA's Pollutant Loading Tool (available through Enforcement and Compliance History Online [ECHO]). Using the ECHO state dashboard for Idaho and e-reporting to better manage IPDES compliance monitoring activities across the state will improve program transparency.

3 IPDES Compliance Monitoring Strategy Implementation

Every year DEQ and EPA Region 10 prepare a performance partnership agreement and state inspection work plan regarding various water program commitments and potential resource leveraging. The national goals in the 2014 NPDES CMS policy, many of which have built-in flexibilities, are a starting point for negotiations. The IPDES program will use flexibilities in the national policy to tailor inspection frequency goals that target compliance monitoring resources on facilities posing the greatest threat to water quality. For example, DEQ may reduce the inspection frequency of those facilities demonstrating compliance while shifting resources to increase follow-up inspections of facilities with previously identified reoccurring or numerous noncompliance issues.

This CMS focuses DEQ inspection resources; it is not intended to allocate resources away from other IPDES program areas. DEQ will work closely with EPA Region 10 to plan compliance monitoring activities for all NPDES sources covered by this policy and to ensure an effective

inspection presence in each direct implementation program area. The process to implement the compliance monitoring goals articulated in this CMS balances coverage across IPDES programs by considering factors such as noncompliance trends, water quality considerations of the state, and state resources.

This planning process, guided by the criteria and goals articulated in this policy, provides an opportunity to identify state-specific circumstances and encourage both, inter/intra-agency dialogue on the approaches the state expects to implement. The outcome of the annual planning process will then be documented in the annual plan for inspections (API). Examples of state-specific circumstances include risks to water quality by a particular pollutant, permitted sector, and geographic area or watershed. DEQ's API provides consistent implementation of both state and national CMS goals.

The API will be updated on an annual basis including estimates and annual commitments for every applicable metric covered by the CMS policy. This CMS establishes goals for only those sources DEQ is committed to regulate (e.g., DEQ does not issue permits for dredge and fill activities). The majority of national recommended minimum inspection frequencies in the 2014 NPDES CMS are multiyear goals (e.g., inspect all traditional nonmajor facilities at least once every 5 years). This means DEQ will look across multiple years to evaluate whether the commitments for a given year indicate that the state is on track to meet the national goals. To set inspection commitments that meet the goals in this policy, the API will reflect the number of facilities to be inspected by IPDES personnel.

EPA and state compliance monitoring planning will rely on compliance data obtained from the Integrated Compliance Information System (ICIS)-NPDES; IPDES database; compliance monitoring activities in at least the most recent prior year; field reconnaissance; institutional knowledge; and citizen tips and complaints. To support water quality attainment goals, the compliance monitoring planning process will increasingly be influenced by information on water quality impairments to which facilities may be contributing (pursuant to listings under CWA §303(d)) and other relevant water quality data.

As discussed in sections 4.1 and 4.2, Idaho will use the CWA Inspection Targeting Model, and/or the Discharge Monitoring Report (DMR) Pollutant Loading Tool to preliminary screen, identify inspection targets, and develop a compliance monitoring plan. DEQ expects to actively engage with EPA in developing future CMS commitments and accounting for end-of-year reports on actual activities.

3.1 Alternative CMS

An alternative CMS is one that includes one or more compliance monitoring commitments that deviate from the national goals by incorporating flexibilities set forth in Part 2 of the 2014 NPDES CMS. As compared to the national goals, an alternative CMS could include modified frequency of comprehensive inspections, modified compliance monitoring activities (e.g., off-site desk audit), or a combination of the two. Until the IPDES program has a better understanding of the ability to meet or exceed the national goals, DEQ will adopt a traditional approach to compliance monitoring by implementing established national frequency goals;

however, an alternative CMS may be considered. The process for developing an alternative CMS is described in section 7.

3.2 Performance Measurement and Reporting

DEQ will use existing procedures to assess performance. In addition, DEQ may periodically compare state commitments to actual compliance monitoring activities transferred from CRIPS into ICIS-NPDES and/or end-of-year API reports. The goals of any performance assessment are to identify strengths and address weaknesses in the state's compliance monitoring programs, develop mutual commitments with EPA to achieve ongoing program improvement, increase program transparency, and promote statewide consistency.

DEQ will develop an annual end-of-year report summarizing the prior year's plan implementation, regardless of whether it was a traditional or alternative plan. The API and end-of-year reports will include appropriate data to enable DEQ to compare actual compliance monitoring activities against the annual commitments. The IPDES program will upload all actual compliance monitoring activities from CRIPS into ICIS-NPDES so that the end-of-year reports can be generated through standard ICIS-NPDES reports that correspond to the CMS metrics.

Several data entry activities are relevant to implementing this IPDES CMS:

1. DEQ may choose to enter annual compliance monitoring commitments into ICIS-NPDES by using the *planned inspection indicator* to tag facilities DEQ plans to inspect that year. OECA will aggregate commitment information available in ICIS-NPDES and use it on the ECHO dashboards to display state performance related to CMS commitments. Facility-specific information about a state's inspection plans will not be made publicly available.
2. State compliance monitoring activities conducted pursuant to this CMS will be reported from CRIPS into ICIS-NPDES (through the CDX National Environmental Information Exchange Network) according to all applicable data entry requirements, which includes any future regulations that establish data requirements and reporting time frames.
3. DEQ will update ICIS-NPDES from CRIPS with data about focused inspections or off-site desk audits conducted pursuant to an alternative CMS according to expectations described in this CMS.

3.3 Oversight

If a DEQ office demonstrates long-standing problems with significant aspects of their enforcement activities, the compliance inspection and enforcement supervisor may initiate direct enforcement actions to ensure a fair and level playing field. Instances that may warrant action include the following:

1. An office has exhibited a widespread and long-standing failure to identify serious violations and initiate enforcement actions with penalties sufficient to
    a. Achieve compliance
    b. Deter others from violating the law
    c. Make it more expensive to violate permit conditions than to comply.

2. An office has regularly failed to take actions to protect water quality or to act in particular regulated sectors that have a significant impact on water quality (e.g., storm water construction).
3. An enforcement program review has identified significant issues that an office has not remedied within a quarterly review cycle, indicating an overall inability to maintain the integrity of the NPDES program.

The IPDES program will focus oversight resources to the most pressing performance problems. To address the performance issues listed above, the following actions will work toward demonstrably improving state programmatic performance:

- **Targeting** will identify the most serious sources of pollution and the most serious violations. Targeting will drive API development to ensure the most significant facilities are inspected and monitored. The API will be shared with EPA to ensure there is no unintended or unnecessary duplication of effort.
- **Routine and regular meetings will be held between staff to discuss progress** towards meeting the annual commitments, and how the state is performing overall in the IPDES program. At a minimum, these meetings (or conference calls) will include annual planning with a review of end-of-year results and a midyear check-in, although more frequent communications are encouraged. These meetings will include a holistic discussion of annual water quality attainment, permitting, and enforcement goals and expectations.
- **Regular reviews of state performance** may be done to ensure fair and consistent protection of human health and the environment. Results of current permit quality and enforcement reviews will be aligned and considered together to ensure that permits are protective and enforceable and that violations of permits are addressed in an appropriate manner.

These actions will allow the IPDES program to address the most serious pollution sources and violations and hold staff accountable for their performance. Shared accountability for the environment and human health implemented through these steps will result in stronger collaboration throughout the state. These short-term actions will test the direction of the program and will provide lessons to DEQ moving forward.

DEQ will also consider the following when conducting oversight activities: (1) significant changes in program structure or personnel; (2) a new regulatory structure is being implemented; (3) an office reports low violation identification or inspection coverage rates; or (4) irregular patterns in tips/complaints from citizens.

4 IPDES Sources with National Monitoring Frequency Goals

The national recommended minimum frequencies and activity types differ across the metrics to account for the differences among the various permit sectors covered by the IPDES program, including numbers of regulated entities, complexities in compliance monitoring, regulatory requirements, and the history and status of compliance. Under certain circumstances more frequent compliance monitoring is warranted. For example, sources located near sensitive areas (i.e., drinking water intakes) and/or designated high quality waters may need to be monitored

more frequently than the recommended minimum goals in the metrics described in this section. An API that is consistent with the minimum goals and flexibilities in each of the following metrics is considered a *traditional plan*, not an *alternative plan*.

All compliance monitoring and evaluation activities will be undertaken in a manner that leads to timely, appropriate, and effective follow-up response to an identified noncompliance (e.g., informal response or formal enforcement action consistent with the IPDES Enforcement Response Guide (DEQ 2016a). On-site inspections will be conducted by an authorized inspector. Inspectors conducting evaluations will comply with DEQ's inspection policies and processes. Inspectors conducting inspections for DEQ will receive DEQ-led training before being authorized by DEQ.

The following sections describe the monitoring frequency and type for each metric. Section 6 provides a guide to the acceptable ICIS-NPDES compliance monitoring types and their corresponding codes, which will be used for to enter data for activities conducted pursuant to the national recommended frequency goals described below.

4.1 Major Permittees Metrics

Major NPDES permits cover discharges from publicly owned treatment works (POTW) facilities with designed discharge flows of greater than 1 million gallons per day (MGD), or facilities that serve a population of 10,000 or more or cause significant water quality impacts. NPDES permits covering active major industrial facilities scoring more than 80 for the six factors on the IPDES Permit Rating Work Sheet (DEQ 2016b) are also considered major permittees.

According to the 2014 NPDES CMS, OECA's goal for state inspection of major permittees is a minimum frequency of at least one comprehensive inspection every 2 years. Inspections of major POTWs may be conducted with inspections of SSSs and their satellites, and CSSs that are connected to the POTW. Currently, information on the percentage of Idaho major permittees that have received a comprehensive inspection within the most recent two completed federal fiscal years is publicly displayed on the ECHO state performance dashboards at *https://echo.epa.gov/trends/comparative-maps-dashboards/state-water-dashboard?view=activity&state=ID.*

The national policy includes an alternative approach for inspecting major NPDES permittees; DEQ will implement this approach using the CWA Inspection Targeting Model (ITM). ITM is used to distinguish between facilities that have strong records of compliance and those who have records indicating compliance problems, particularly effluent violations for pollutants that may be contributing to water quality impairments reflected in CWA §303(d) listings. Under this available alternative, DEQ may use ITM, or a comparable targeting methodology, to adjust the inspection frequency to one comprehensive inspection every 3 years for NPDES major facilities that are in compliance, not subject to any credible citizen tips or complaints, and are not contributing to CWA §303(d)-impaired waters listings based on the most current data available when developing the API. DEQ will implement this flexible approach according to future guidance about how to use the ITM and/or revisions to the ITM methodology. Facilities that do not meet these criteria will remain subject to a minimum comprehensive inspection frequency of

once every 2 years. An API that uses this approach for decreasing inspection frequency of some major permittees is still considered part of a traditional CMS.

4.2 Traditional Nonmajor Permittees Metrics

Traditional nonmajor NPDES permits cover POTW facilities with designed discharge flows of less than 1 MGD and serving populations of less than 10,000 persons or active nonmajor industrial facilities (i.e., facilities scoring less than 80 for the six factors on the IPDES Permit Rating Work Sheet) that have not been designated as a discretionary major permittee by DEQ. This metric does not include concentrated aquatic animal production (section 5.1). The minimum inspection frequency goals recommended in section 4.2.1 and section 4.2.2 are intended to apply to traditional nonmajor facilities covered by both individual and general permits.

Compliance monitoring goals for nonmajor facilities in the wet weather program areas are articulated under separate metrics in this CMS.

OECA's minimum compliance monitoring goals for each traditional nonmajor facility are once in every 5 years. The type of inspection conducted during that time may vary depending on factors listed in the following sections. Inspections of traditional nonmajor POTWs may be conducted with inspections of SSSs (and their satellites) and CSSs that are connected to the POTW facilities. The screening process for selecting nonmajor facilities to be inspected should be attentive to facilities that do not appear, based on available data, to have been inspected in more than 5 years or that have histories of noncompliance; are the subject of citizen tips or complaints; and/or may be contributing to violations of water quality standards.

DEQ may use the ITM sorting tool for preliminary screening and to identify inspection targets for traditional nonmajor facilities under this metric. The sorting tool does not use weightings due to concerns about the current completeness of data for traditional nonmajor facilities and how that might affect the results obtained from a weighted model. DEQ may analyze the data in a spreadsheet and include additional state data (beyond what is available in ICIS-NPDES) that would increase the rigor of the analysis. The sorting tool allows DEQ to sort facilities based on factors that include water quality impairments; associated pollutants that may be discharged by the permittee; significant noncompliance (SNC) within the most recent 2 years; unresolved single-event violations; days since last comprehensive inspection; days since last inspection (all types); and current enforcement actions. DEQ may also elect to use the DMR Pollutant Loading Tool (*http://cfpub.epa.gov/dmr/*) to look at pollutant loadings that exceed permit limits to focus on the biggest polluters.

4.2.1 No Contribution to CWA §303(d)-Listed Impairments

The minimum inspection frequency goal is to inspect each traditional nonmajor facility that is not contributing to CWA §303(d) impairments at least once every 5 years. In addition to the comprehensive inspection types[1], the following inspection types will count toward this metric: focused, reconnaissance, enforcement follow-up, oversight, and sludge/biosolids. These noncomprehensive inspections will be counted under this metric because these facilities are not discharging pollutants that contribute to listed impairments.

4.2.2 Discharge One or More Pollutants Relevant to an Impairment on CWA §303(d) List

Traditional nonmajor facilities permitted to discharge pollutants of concern corresponding to the CWA §303(d)-listing parameter should undergo a comprehensive inspection at least once every 5 years. Of the traditional nonmajor permittees that discharge to CWA §303(d)-listed waters, OECA expects that due to the nature of their discharges, some are not contributing to the water quality conditions that have resulted in the listed impairment. Such facilities on impaired waters that are not contributing to the impairment may be inspected with a less comprehensive inspection (e.g., a reconnaissance inspection) under the metric in section 4.2.1.

During the annual planning process, DEQ will determine which traditional nonmajor facilities to comprehensively inspect by carefully reviewing available information on the permittees, such as noncompliance information and complete and current ambient monitoring information for the receiving waters to which the permittees discharge. Where information indicates patterns of noncompliance or uncertainty about the status of receiving waters, strong consideration will be given to using a comprehensive inspection. To ensure a minimum level playing field, DEQ will conduct a comprehensive inspection of at least 5% of all traditional nonmajor facilities each year even if more facilities qualify for noncomprehensive inspection under the metric in section 4.2.1.

4.3 Pretreatment Program Metrics

Routine compliance monitoring activities for the pretreatment program include audits and inspections of POTWs with approved pretreatment programs; review of all POTW pretreatment program annual reports; inspections of industrial users (UIs); and oversight of state pretreatment programs that are implemented pursuant to 40 CFR 403.10(e) (i.e., where DEQ functions as the control authority in lieu of approved local pretreatment programs). In addition to the specific pretreatment program compliance monitoring activities outlined under the metrics below, DEQ (as the approval authority responsible for approving local pretreatment programs) will track the POTW annual reports submitted pursuant to 40 CFR 403.12(i) and review 100% of all submissions to determine if the POTW is properly implementing its approved pretreatment program, including, as appropriate, oversight and enforcement of significant industrial users (SIUs). Inspections of nonsignificant IUs will generally be dictated by problem facilities or those issued a consent order by DEQ or the control authority. Inspections of IUs suspected of or documented to have compliance problems may be incorporated into a pretreatment compliance inspection or pretreatment audit.

4.3.1 Pretreatment Audits

As a pretreatment approval authority, DEQ will conduct at least one audit every 5 years of each POTW with an approved pretreatment program, generally corresponding to an annual audit rate of 20% of active approved programs. DEQ will audit two or three programs annually.

A pretreatment audit includes an oversight review of at least two IUs discharging to the POTW. DEQ will select the appropriate IUs for oversight reviews based on the *Guidance for Conducting a Pretreatment Compliance Inspection* (EPA 1991). IU oversight reviews are included as part of a pretreatment audit so the auditor can (1) verify that the IU permit/control mechanism correctly

reflects the physical and operational conditions of the facility; (2) validate whether the POTW has correctly evaluated compliance (including appropriate sampling methods); and (3) assess the POTW's IU inspection procedures.

When conducting audits of POTWs with approved pretreatment programs, DEQ will ensure that the POTW is following its enforcement response plan when the POTW identifies IU noncompliance.

4.3.2 Pretreatment Compliance Inspections

As a pretreatment approval authority, DEQ will conduct at least two pretreatment compliance inspections of each POTW with an active approved pretreatment program every 5 years. These inspections are in addition to the audit that will be conducted every 5 years, as described under the metric in section 4.3.1.

When inspecting POTWs with approved pretreatment programs, DEQ will ensure that the POTW is following its enforcement response plan when the POTW identifies IU noncompliance. Pretreatment compliance inspections will be conducted according to the *Guidance for Conducting a Pretreatment Compliance Inspection* (EPA 1991).

4.3.3 Significant Industrial User Inspections

For SIUs discharging to POTWs without approved pretreatment programs, DEQ will act as the control authority and track and review SIU semiannual reports submitted pursuant to 40 CFR 403.12(e) and (h).

General pretreatment regulations require approved POTWs and states that implement the POTW pretreatment program (40 CFR 403.10(e)) to "inspect and sample the effluent from each significant industrial user at least once a year" (40 CFR 403.8(f)(2)). *As required by the regulations for industrial pretreatment programs, 100% of SIUs permitted by approved POTWs or DEQ must be inspected and sampled annually*. The approved POTW or DEQ may conduct additional inspections as necessary, for example, when required semiannual self-monitoring reports from SIUs show noncompliance, or based on reconnaissance, or tips or complaints received by DEQ, EPA, or approved POTW.

Per IDAPA 58.01.25.003.02.x, the annual inspection and sampling requirement may be reduced to once every 2 years for SIUs designated with a reduced monitoring and inspection frequency according to provisions under 40 CFR 403.12(e)(3) and 40 CFR 403.8(f)(2)(v)(c). Given the regulatory requirement for annual sampling inspections of all SIUs, the state's alternative CMS cannot include an off-site desk audit in lieu of an annual SIU sampling inspection.

4.4 Sludge and Biosolids Metrics

A sewage sludge/biosolids inspection assesses facilities engaged in a regulated sludge or biosolids activity and evaluates compliance with applicable regulatory provisions, including sludge monitoring, recordkeeping and reporting, treatment operations, sampling and laboratory quality assurance, and use or disposal practices. Sludge/biosolids inspections may be conducted

with compliance inspections at major and nonmajor POTWs. Inspections may also be conducted to respond to citizen tips or complaints.

The recommended inspection frequency goal is at least one sludge/biosolids inspection of each major POTW every 5 years. Biosolids use and disposal operations, including incineration and surface application, should receive at least one sludge/biosolids inspection every 5 years. However, DEQ may substitute an off-site desk audit for sludge/biosolids generation, use, and disposal sites that meet the following criteria:

1. Are not currently subject to enforcement actions or compliance schedules that are the result of concluded enforcement actions.
2. Have not been reported in SNC within the previous four quarters.
3. Have no unresolved single-event violation identified in prior inspections.
4. Do not discharge to CWA §303(d)-listed waters for pollutants contributing to the listing.
5. Have no known potential to impact drinking water supplies.

A CMS that uses this approach for conducting off-site desk audits in lieu of sludge/biosolids inspections is still considered a *traditional CMS*.

4.5 Combined Sewer Systems Metrics

CSS inspections are conducted to comprehensively evaluate compliance with the CWA and combined sewer overflow (CSO) control policy (*http://www.epa.gov/npdes/pubs/owm0111.pdf*) requirements as written in the NPDES permit, an order, or another enforceable document. The inspector will verify whether the permittee is preventing CSOs during dry weather; implementing the nine minimum controls; adhering to a schedule for developing, submitting, and implementing a long-term CSO control plan; eliminating or relocating overflows to sensitive areas; adhering to effluent limitations; and implementing a post construction compliance monitoring program.

As of July 2016, no known CSO communities need to develop and implement a long-term CSO control plan. The national minimum inspection frequency goal for all major and nonmajor CSSs is conducting at least one comprehensive inspection every 5 years. If a CSS is identified, then CSO inspections will be conducted with compliance inspections at major and nonmajor POTWs. More frequent inspections, including CSO inspections, may be conducted to promptly evaluate known or suspected recurring sewer overflows. An inspector conducts a CSO inspection in response to information received about a known or suspected CSO event to evaluate compliance with CSO provisions present in the IPDES permit, an enforcement order, a consent decree, or another enforceable document. A CSO inspection will be scheduled based on information about sewer overflow occurrences received directly by DEQ or EPA, or from other governmental organizations, citizens groups, or nongovernmental organizations.

4.6 Sanitary Sewer Systems Metrics

Inspections of sanitary sewer collection systems comprehensively evaluate compliance with IPDES permit terms and conditions for system design, operation, and maintenance; permit reporting requirements; an enforcement order; or another enforceable document. The inspector collects information to verify that the permittee is complying with the IPDES permit conditions

(duty to mitigate and proper operation and maintenance) and the required notification procedures. The inspector also determines whether there have been any unpermitted discharges, or discharges from a location other than the discharge point specified in the permit, to waters of the United States. When preparing to inspect an SSS, the inspector may consult OECA's *Guide for Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems* (EPA 2005) and may consult with the regional office engineering manager for the latest approved plans and specifications of the sanitary sewer collection system.

The minimum inspection coverage goal for SSSs is to conduct comprehensive inspections of at least 5% of SSSs each year. Facilities subject to this coverage goal is the number of POTW permits in the state that include one or more sanitary sewer collection systems. Where a permit covers satellite collection systems, to allow the inspector to evaluate overall collection system compliance, the SSS inspection will review satellite systems that together comprise a substantial percentage of the total flow to the treatment plant. Inspection priority will be given to SSSs with chronic sewer overflows and/or pump station backups.

More frequent inspections, including SSO inspections, may be necessary for some systems to promptly evaluate known or suspected recurring sewer overflows. An inspector conducts an SSO inspection in response to information received about a known or suspected sewer overflow event. In many cases, SSO inspections will be scheduled based on information about sewer overflow occurrences received directly by DEQ or EPA, or from other governmental organizations, citizens groups, or nongovernmental organizations. SSO inspections, as well as broader inspections of SSSs and their satellites, may be conducted with compliance inspections at major and nonmajor POTWs.

4.7 Storm Water Metrics

4.7.1 Municipal Separate Storm Sewer Systems

A strong need exists for DEQ to assess the quality of MS4 storm water management programs. On-site MS4 audits (evaluating all aspects of the MS4 storm water management program), on-site inspections, and off-site desk audits are valuable tools for evaluating whether the MS4s comply with permit requirements. All MS4 compliance monitoring programs will include a review of the storm water management plan elements to provide a representative picture of overall MS4 performance.

DEQ's minimum compliance monitoring goal for MS4s is to determine compliance of each MS4 permittee and co-permittee at least once every 5 years by conducting one or more of the following compliance monitoring activities: on-site audit, MS4 inspection, or off-site desk audit. Off-site desk audits should not be conducted for any MS4 permittee that has not previously been subject to an on-site inspection or audit that has documented a compliance baseline for the MS4. *As part of this goal, each MS4 permittee and co-permittee should receive an on-site audit or inspection at least once every 7 years.* DEQ has the flexibility to extend the 7-year goal for on-site inspections/audits to every 10 years for a co-permittee that contributes a minimal volume of the total flow to the MS4. More frequent on-site audits, inspections, or off-site desk audits may be necessary for certain MS4s based on noncompliance (including noncompliance at underlying

construction sites and industrial storm water facilities), failure to implement a storm water management plan, citizen tips or complaints, referrals from other governmental organizations, and follow-up on activities mandated by an enforcement order.

This goal provides DEQ with the flexibility to determine the most appropriate approach to assess compliance within MS4s without developing an alternative CMS pursuant to section 7 of this policy. Priority should be given to auditing or inspecting MS4s located in priority watersheds that contribute to CWA §303(d) listings and those located near waters that the state has designated for higher levels of protection. Furthermore, the scope of any inspection will be determined based on the highest priority minimum measures for that MS4, as determined by a review of the MS4's compliance history, water quality concerns, permit revisions, noncompliance at construction sites and industrial facilities within its jurisdiction, and other local factors.

Monitoring activities on the construction oversight programs of MS4s should be closely coordinated with monitoring activities at individual construction sites (section 4.7.3). Likewise, monitoring activities on industrial oversight elements of Phase I MS4s, and where they exist as part of Phase II MS4s (e.g., illicit discharge detection and elimination programs), should be closely coordinated with monitoring activities at individual industrial storm water dischargers (section 4.7.2).

Idaho currently has one Phase I MS4 permit. EPA cautions that many Phase I MS4s may technically qualify as *major permittees* per the IPDES Permit Rating Sheet. The inspection frequency goal for major permittees under the metric in section 4.1does not apply to Phase I MS4s.

4.7.2 Industrial Storm Water

Industrial storm water inspections ensure that regulated facilities have an IPDES permit for storm water discharge and a storm water pollution prevention plan (SWPPP). These inspections also ensure the facility complies with the permit and is implementing the SWPPP so that technology and water quality based requirements are met. During the inspection, the inspector reviews the permit and SWPPP; reviews self-inspection reports and other records to verify that the facility is complying with its permit and is implementing the SWPPP; and walks the site to verify that the SWPPP is accurate and best management practices (BMPs) are in place and functioning properly.

The inspection goal for industrial storm water permittees is to inspect at least 10% of the facilities each year. DEQ will also conduct compliance monitoring activities to locate industrial facilities that have failed to obtain permit coverage or file a *no exposure certification* under 40 CFR 122.26(g). Inspections of unpermitted industrial storm water facilities, including those with no exposure certification, will count toward the annual industrial storm water coverage goal of 10%.

Priority will be given to inspecting permittees of environmental concern and those located in priority watersheds that may discharge a pollutant that contributes to CWA §303(d) listings, and permittees located near high quality waters that the state has designated for higher levels of protection to prevent degradation.

To conserve resources, DEQ will consider conducting a facility's industrial storm water inspection with the IPDES compliance inspection for permitted major and nonmajor industrial facilities. Consideration will also be given to coordinating industrial storm water inspections with oversight of MS4 industrial storm water programs in the Phase I MS4 community and where such elements exist as part of Phase II MS4s.

4.7.3 Construction Storm Water Sites

Storm water inspections ensure that regulated facilities have an IPDES permit for storm water discharge, a SWPPP, and are following the specifications in each. During the inspection, the inspector reviews the permit and SWPPP and determines whether the SWPPP meets the requirements set forth in the permit. The inspector also reviews records, such as self-inspection reports, to verify that the facility is complying with its permit and SWPPP and walks the site to verify that the SWPPP is accurate and BMPs are in place and functioning properly.

This compliance monitoring metric applies to construction storm water sites of equal to or greater than 1 acre of disturbed area (i.e., all regulated Phase I and Phase II construction sites). *The minimum recommended inspection frequency for this metric is to inspect at least 10% of the regulated construction sites annually.* To determine the applicable sites at the inspection planning stage, the 10% goal will be applied to the estimated number of active regulated construction sites in the state in the coming year. As part of this goal, DEQ will follow up on tips and complaints about potentially unpermitted construction sites. Inspections of unpermitted construction sites and sites with a low erosivity waiver will count toward the annual construction storm water coverage goal of 10%.

Priority will be given to sites located near CWA §303(d)-listed waters that are impaired for construction-associated pollutants (e.g., sediment), and at larger, long-term sites located near high quality waters that the state has designated for higher levels of protection to prevent degradation.

For estimating joint EPA and state progress relative to the joint annual goal, DEQ will include in the API annual report the total number of IPDES construction storm water inspections that have been conducted by the state during that reporting year.

4.8 Concentrated Animal Feeding Operations

CAFO inspections are conducted to verify that CAFOs are not illegally discharging to waters of the United States and that permitted CAFOs are complying with their IPDES permits. DEQ and the Idaho State Department of Agriculture (ISDA) will work together when evaluating CAFOs and permit- or complaint-based inspections will be conducted by ISDA. As the primary agency working with CAFOs throughout the state, ISDA routinely conducts inspections every year of all CAFOs to ensure compliance with state law. DEQ will use ISDA's experience and history of working with the agricultural industry when evaluating the potential for a CAFO to discharge to waters of the United States. Data gathered from IPDES inspections performed by ISDA at permitted and unpermitted CAFOs will be transferred to DEQ and entered into CRIPS. CRIPS will transfer all inspection and compliance monitoring data related to permitted and unpermitted CAFOs to ICIS-NPDES.

4.8.1 Large and Medium CAFOs with IPDES Permits

EPA recommends that the state conduct a comprehensive inspection of IPDES-permitted CAFOs at least once every 5 years to evaluate compliance with the permit, including terms of the nutrient management plan, reporting and recordkeeping. Currently, Idaho does not have any IPDES-permitted CAFO facilities. If CAFO facilities become permitted and receive complaints or experience problems with wastewater, then more frequent inspections may be appropriate for CAFOs that meet the following conditions:

- Exceptionally large livestock and poultry operation.
- History of noncompliance.
- Significant site-specific environmental concerns, including operations located on an impaired water body and subject to total maximum daily load (TMDL) wasteload allocations.
- Permit includes a voluntary alternative performance standard pursuant to the CAFO Effluent Limitations Guideline in 40 CFR 412.
- State requirements apply to specific areas of the operation (e.g., ISDA sanitary inspections of dairy farms).

4.8.2 Large CAFOs without IPDES Permits

All large CAFOs not covered by an IPDES permit will be inspected annually by ISDA. In addition to the areas that ISDA inspects, this inspection will evaluate the potential for a facility to discharge to waters of the United States, and ISDA will share this information with DEQ. The ISDA inspector will document the following:

1. Pollutants are discharged to a water of the United States through a manmade ditch, flushing system, or other similar manmade device, or
2. Pollutants are discharged directly into water of the United States that passes over, across, or through the facility, or otherwise comes into direct contact with the animals confined in the operation.

Inspections of unpermitted CAFOs will evaluate practices associated with the land application of manure, litter, and process wastewater to determine if all land application discharges may be classified as exempt agricultural storm water. DEQ will meet regularly with ISDA inspectors or their representative to determine which facilities have cause for concern regarding compliance with the CAFO general permit.

4.8.3 Medium Animal Feeding Operations without IPDES Permits

Working with ISDA, DEQ will initially assess all medium-sized animal feeding operations (AFOs) to determine whether the facility is a medium CAFO and whether the facility discharges to waters of the United States. Assessments will evaluate whether the facility meets the definition of a medium CAFO due to the number of animals confined and one of the two criteria:

1. Pollutants are discharged to a water of the United States through a manmade ditch, flushing system, or other similar manmade device.
2. Pollutants are discharged directly into water of the United States that passes over, across, or through the facility or otherwise comes into direct contact with the animals confined in the operation.

Priority for on-site assessments will be based on priority watersheds, nutrient impairments, complaints, or other information. The state may make a determination about certain facilities, such as those that are not near a water of the United States, by discussing the facility with the ISDA inspector. An assessment of a medium AFO will likely involve a discussion with the ISDA inspector and a review of maps, aerial images, and any agency or public records about the operation.

After the initial assessment, if the facility is not a medium CAFO, the state will coordinate with ISDA on follow up on-site inspections as needed based on available information, such as citizen tips or complaints, and designate the AFO as a CAFO if the facility is a significant contributor of pollutants to a water of the United States. If the facility is a medium CAFO with a discharge to waters of the United States, then an IPDES permit is required, and the inspector will coordinate with the IPDES permit writer and inspect the CAFO according to section 4.8.1 of this policy.

4.8.4 Small Animal Feeding Operations

DEQ will coordinate with ISDA and may conduct an on-site inspection of small AFOs as needed based on a citizen tip or complaint or other information to determine whether the AFO should be designated as a CAFO. In Idaho, CAFO designations regulated under the IPDES program may be made by the DEQ director. DEQ intends to make CAFO determinations in consultation with ISDA. The EPA Region 10 administrator (regional administrator) may also designate CAFOs in authorized states but only when the regional administrator has determined that one or more pollutants in the AFO's discharge contributes to an impairment in a downstream or adjacent state, or to Indian reservation water that is impaired for that pollutant.

DEQ may designate an AFO as a CAFO upon determining that it is a significant contributor of pollutants to waters of the United States. DEQ will consider the following factors in making a designation:

1. Size of the AFO and amount of waste reaching waters of the United States.
2. Location of the AFO relative to waters of the United States.
3. Means of conveying animal wastes and process wastewaters into waters of the United States.
4. Slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal waste manure and process wastewaters into waters of the United States.

No designation by either DEQ's director or EPA regional administrator may be made unless pollutants are discharged into a water of the United States due to either (1) a manmade ditch, flushing system, or other similar manmade device, or (2) a water of the United States that passes over, across or through the facility, or otherwise comes into direct contact with animals confined at the operation.[1]

[1] 40 CFR 122.23(c)(3)

4.9 IPDES Sources with Complaint-Driven Frequency Goals

4.9.1 Pesticides

As a result of a US Sixth Circuit Court of Appeals decision in *National Cotton Council, et al. v. EPA*, as of October 31, 2011, point source discharges of biological pesticides and chemical pesticides that leave a residue, into waters of the United States are required to comply with NPDES requirements. The EPA finalized a rule on June 21, 2013, to remove the exemption for pesticide discharges from the NPDES regulations. EPA and the states currently regulate pesticide discharges to waters of the United States primarily through the Federal Insecticide, Fungicide, and Rodenticide Act and NPDES general permits.

There is no set national compliance monitoring frequency goal for pesticide operators subject to the IPDES program. DEQ will conduct compliance monitoring activities in response to tips and complaints and other available information relevant to compliance.

4.9.2 Vessels

EPA currently regulates discharges incidental to the normal operation of commercial vessels greater than 79 feet in length and operating as a means of transportation primarily through the Vessel General Permit (VGP). The first VGP was issued in 2008 and was effective until December 19, 2013. On March 28, 2013, EPA reissued the VGP for another 5 years. A brief overview of the 2013 VGP is available at *http://www.epa.gov/npdes/pubs/vgp_overview2013.pdf*.

Recreational vessels as defined in CWA §502(25) are not subject to the 2013 VGP. Likewise, except for ballast water discharges, NPDES permits are not required for any discharges incidental to normal operation of commercial fishing vessels and other nonrecreational vessels less than 79 feet. However, Congress extended the moratorium from the requirement to obtain permit coverage for incidental discharges from these vessels, which expires December 18, 2017. Anticipating the end of the moratorium, EPA published a draft small VSP in 2013 to provide for permit coverage for these incidental discharges and finalized the permit during 2014 (*https://www.epa.gov/npdes/vessels-incidental-discharge-permitting-4*).

There is no set compliance monitoring frequency goal for vessels subject to the NPDES program. DEQ will conduct compliance monitoring activities in response to tips and complaints and other available information relevant to compliance.

5 Other IPDES Sources

EPA's national policy regarding compliance monitoring does not specifically address concentrated aquatic animal production, drinking water treatment facilities, small suction dredge activities, or ground water remediation. Instead it classifies these various sectors as either major or nonmajor permitted activities. In the interest of providing clarity regarding the monitoring frequency goals for DEQ, this section of the IPDES CMS addresses these specific sectors with frequency goals consistent with the national policy.

5.1 Concentrated Aquatic Animal Production (Majors, Nonmajors, Processors)

DEQ will conduct compliance monitoring activities in response to tips and complaints and other available information relevant to compliance. *DEQ's goal is to conduct a comprehensive inspection of those facilities classified as majors once every 2 years and all other regulated entities once every 5 years.*

5.2 Drinking Water Treatment Facilities, Small Suction Dredge, and Ground Water Remediation

DEQ will conduct compliance monitoring activities in response to tips and complaints and other available information relevant to compliance. DEQ's goal is to *inspect at least 5% of this group of regulated entities annually.*

6 Compliance Monitoring Activity Descriptions

Detailed descriptions of each monitoring activity performed by IPDES compliance personnel are provided in this section. Compliance personnel will choose the type of compliance monitoring activity to conduct based on the compliance status and history of the facility, the information needed from the facility, the type of facility involved, and data about the quality of receiving waters. The type of inspection selected will determine the activities conducted on site, and the additional information the inspector will gather or verify during the inspection.

Where feasible, compliance personnel will perform background and record reviews before going on site to streamline on-site activities and use resources more efficiently. Some types of IPDES inspections may encompass several elements from multiple inspection types (e.g., a storm water inspection may encompass elements from both a compliance sampling inspection and a performance audit inspection). DEQ will use the results of these activities to develop subsequent permits, provide compliance assistance, and where appropriate, provide evidence for enforcement proceedings.

Quality assurance and quality control (QA/QC) policies for all inspections that include sampling will be in place to ensure that DEQ's field tests and collection and transport of samples to an analytical laboratory are conducted according to DEQ's *Quality Management Plan* (DEQ 2012) and site-specific quality assurance project plans (QAPPs). Compliance with QAPP requirements will be coordinated through DEQ's QA officer. Sample integrity will be protected by properly using of chain-of-custody procedures.

6.1 IPDES Compliance Monitoring Goals Summary

Table 1 provides a summary of IPDES compliance monitoring goals and serves as a reference tool for developing an API. All of the information in the table corresponds to the goals and flexibilities outlined in sections 3 and 4 of this CMS. For an alternative CMS, Table 1 is the starting point and can be tailored for any metrics of an alternative plan where the compliance monitoring commitments deviate from the national CMS goals.

Table 1. Inspection frequency by permitted sector.

IPDES Permit Type	Comprehensive Inspection Frequency by Year or Percentage	Number of Facilities in Idaho	Total Facilities to be Inspected in a Given Year
Major	1 inspection every 2 years	29 POTW 8 industrial	19
Nonmajor	At least 1 inspection every 5 years and 5% per year	80 POTW/TWTDS 22 industrial	25
Pretreatment	2 inspections every 5 years	12	5
Sewage sludge/biosolids	1 inspection every 5 years for permitted facility	118	24
CSS/SSS	5% of permittees inspected when treatment works is inspected	109	6
MS4	1 or more compliance monitoring activity every 5 years	30	Approximately 6
Industrial storm water	10% per year	Approximately 275[a]	Approximately 28
No exposure	10% per year	Approximately 200	Approximately 20
Construction storm water	10% per year	Approximately 640[b]	Approximately 64
Low erosivity waiver	10% per year	Approximately 120	Approximately 12
Large/medium CAFO	1 inspection every 5 years for permitted facility	0	—
Medium/small CAFO	As needed based on a citizen tip or complaint	0	—
Pesticide	Complaint driven	130	Unknown
Vessel	Complaint driven	6 (varies annually)	Unknown
CAAP	1 inspection every 2 years for major (including processors)	18 major	9 major
	1 inspection every 5 years for nonmajor	81 nonmajor	17 nonmajor
DWGP	5% of permittees	7	2
Small suction dredge	5% of permittees	162 (varies annually)	8
Ground water remediation	5% of permittees	6	1
		Total Annual Inspections	Approximately 246

a. Estimates are based on conversations between T. Smith of DEQ and K. Burgess of EPA, February 2016
b. Estimate was extrapolated from information provided by EPA, February 2016 and based on average annual (2013-2015) active construction storm water permitted activities.
Notes: publicly owned treatment work (POTW); combined sewer system (CSS); sanitary sewer system (SSS); Municipal Storm water General Permit (MSGP); municipal separate sewer systems (MS4s); Construction General Permit (CGP); concentrated animal feeding operation (CAFO); concentrated aquatic animal production (CAAP); Drinking Water General Permit (DWGP)

6.2 Comprehensive Inspection Types

Compliance Biomonitoring Inspection—The on-site inspection of an IPDES direct discharger includes the same objectives and tasks as a compliance sampling inspection. A compliance biomonitoring inspection reviews a permittee's toxicity bioassay techniques and records

maintenance to evaluate compliance with the biomonitoring terms of the IPDES permit and to determine whether the permittee's effluent is toxic. During this inspection, the inspector collects effluent samples to conduct acute and chronic toxicity testing that evaluates the biological effect of a permittee's effluent discharges on test organisms. The state will have the ability to conduct biomonitoring inspections or have an equivalent program in place to independently verify a discharger's compliance with whole effluent toxicity permit requirements.

Compliance Evaluation Inspection—The compliance evaluation inspection is an on-site nonsampling inspection of an IPDES direct discharger that verifies permittee compliance with applicable permit self-monitoring requirements, effluent limits, and compliance schedules. Before initiating the on-site inspection, the inspector will review past and ongoing noncompliance from the permittee's reporting or from a previous inspection. Inspectors will interview the operator, review records, make visual observations, and evaluate treatment facilities (including operations, processes, and equipment), laboratories, effluents (content and appearance), outfall location, and upstream/downstream receiving waters. Inspectors will identify potential single-event violations and document findings on standard forms with supporting photographic and video records. During this inspection, the inspector will examine both chemical and biological self-monitoring, which forms the basis for all other inspection types except the reconnaissance inspection.

Compliance Sampling Inspection—The compliance sampling inspection of an IPDES direct discharger includes the same objectives and tasks as a compliance evaluation inspection. In addition, inspectors must collect representative wastewater effluent samples or ambient water or sediment samples that might also include collecting *split samples* with the operator to compare sample results and document a permittee's laboratory techniques. Inspectors then review the permittee's sampling and laboratory procedures; verify the accuracy of reports through chemical and bacteriological analysis and the permittee's self-monitoring program, including operator certifications; evaluate compliance with discharge limitations; determine the quantity and quality of effluents; and provide evidence for enforcement proceedings where appropriate.

Concentrated Animal Feeding Operation Inspection—The objective of this inspection is to evaluate a CAFO's compliance with permit requirements, permit conditions, applicable regulations, and other requirements. To evaluate compliance with IPDES program requirements and regulations, an ISDA inspector conducting a CAFO inspection will review facility documents and records, such as the facility's permit, nutrient management plan, animal inventory, and all associated records. The on-site inspection also includes assessing the facility's structural integrity, maintenance condition, and storage availability. For CAFOs that land-apply manure, litter, or process wastewater, the CAFO inspection will include review of in-field and edge-of-field conservation practices, land application protocols, and all other factors relevant to determining whether the CAFO has nonagricultural storm water discharges from land application areas. Where appropriate, CAFO inspections may include sampling of manure, litter, wastewater and/or soil. A CAFO inspection may also require collecting information necessary to establish whether the receiving water of any CAFO discharge is a water of the United States.

Municipal Separate Storm Sewer System Audit—An MS4 audit evaluates overall MS4 storm water management program implementation and identifies problems the local government may have in implementing the program. MS4 audits involve an on-site visit and comprehensive

review of the local government's MS4 storm water management program elements including, where applicable:

1. Structural and source control measures
2. Detection and removal of illicit discharges and improper disposal into storm sewers
3. monitoring and controlling pollutants in storm water discharges
4. Implementing and maintaining structural and nonstructural BMPs
5. Implementation schedules and assignment of appropriate individuals
6. Inspection and enforcement program for covered industrial facilities and construction sites
7. Dry weather screening program

The auditor will determine whether controls are in place and in good working order, and whether facilities have schedules for constructing structural control measures. When preparing for an MS4 audit or inspection, the evaluator will consider the *MS4 Program Evaluation Guidance* (EPA 2007).

Municipal Separate Storm Sewer System (MS4) Inspection—An MS4 inspection is an on-site inspection that involves reviewing some, but not all, elements of the MS4 storm water management program to evaluate whether the MS4 is implementing an adequate program in the selected program elements. The program elements will be selected by DEQ after reviewing the MS4 permit and other relevant information. See the MS4 audit definition for program elements.

Performance Audit Inspection—The inspector conducts an on-site performance audit inspection of an IPDES direct discharger to evaluate the permittee's self-monitoring program. As with a compliance evaluation inspection, the performance audit inspection verifies the permittee's reported data and compliance through a records check. The performance audit inspection provides a more resource-intensive review of the permittee's self-monitoring program including the QAPP. This inspection evaluates the permittee's procedures for sample collection, flow measurement, chain-of-custody procedures, laboratory analyses, data compilation, reporting, and other areas related to the self-monitoring program.

In a compliance evaluation inspection, the inspector makes a cursory visual observation of the treatment facility, laboratory, effluents, and receiving waters. In a performance audit inspection, the inspector observes the permittee performing the self-monitoring process from sample collection and flow measurement through laboratory analyses, data workup, and reporting. The performance audit inspection does not include sample collection by the inspector; however, the inspector may require the permittee to analyze performance samples for laboratory evaluation purposes.

Pretreatment Audit—A pretreatment audit involves an on-site visit and a comprehensive evaluation of all aspects of the local POTW control authority's program. The primary goals of the audit are to assess the local program's compliance with the regulatory requirements under the IPDES direct discharge permit, note areas of the control authority's program that need to be modified to bring the program into compliance with the regulations, and to identify circumstances that might warrant enforcement actions against the control authority. In the course of conducting a pretreatment audit, DEQ will ensure that the POTW is following its enforcement response plan when the POTW identifies IU noncompliance. Ultimately, the pretreatment audit will help DEQ identify areas for improvement and make recommendations to increase the

effectiveness of the control authority's program. A pretreatment audit includes oversight reviews of at least two IUs that discharge to the POTW and may include sampling.

The pretreatment audit is further defined and discussed in the *Control Authority Pretreatment Audit Checklist and Instructions* (EPA 2010), which includes sections for evaluating environmental indicators and investigating the control authority's use of pollution prevention techniques, annual inspections, and sampling events of all significant IUs subject to pretreatment regulatory requirements. Audits evaluate all aspects of a program while inspections concern one element or site of the program. Problems found in an audit or inspection will trigger more frequent audits in the future.

Pretreatment Compliance Inspection—The on-site pretreatment compliance inspection is a tool for DEQ to determine the control authority's compliance with and enforcement of its approved pretreatment program during the years between audits. This inspection evaluates the POTW's implementation of its approved pretreatment program. It includes a review of the POTW's records on monitoring, inspections, and enforcement activities for its IUs. In the course of conducting this inspection, DEQ will ensure that the POTW is following its enforcement response plan when the POTW identifies IU noncompliance. This inspection will include an appropriate number of IU evaluations or site visits to evaluate the control authority oversight procedures and to assess accurate application of categorical pretreatment standards. The inspection may include IU sampling, depending on the reason for the inspection. For example, samples may be collected and analyzed to verify the IU's self-monitoring program. Inspectors may prefer to conduct this inspection concurrently with an NPDES inspection of the POTW. When preparing for a pretreatment compliance inspection, the inspector will consider EPA's *Pretreatment Compliance Inspection and Audit Manual for Approval Authorities* (EPA 1986), *Guidance for Conducting a Pretreatment Compliance Inspection* (EPA 1991), and *Control Authority Pretreatment Checklist and Instructions* (EPA 1992).

Sanitary Sewer Overflow Inspection—The inspector conducts an on-site inspection in response to information received regarding a known or suspected SSO event. An SSO inspection evaluates compliance with IPDES permit terms and conditions for system design; operation and maintenance; permit reporting requirements; an enforcement order; a consent decree; or another enforceable document. The inspector collects information to verify that the permittee is complying with the IPDES standard permit conditions (duty to mitigate and proper operation and maintenance) and the required notification procedures. The inspector also determines whether there have been any additional unpermitted discharges, or discharges from a location other than the discharge point specified in the permit, to waters of the United States. When preparing for an SSO inspection, the inspector will consider OECA's *Guide for Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems* (EPA 2005) and coordinate with the regional office engineering manager.

Significant Industrial User Inspection—For purposes of this CMS, the SIU inspection of an indirect discharger is performed when DEQ is acting as the pretreatment control authority pursuant to 40 CFR 403.10, or where the state is otherwise performing oversight. The SIU inspection is an on-site activity that closely reviews the indirect discharge permit and the SIU's compliance, recordkeeping, and reporting since the last inspection. The pretreatment regulations provide that state and local control authorities must conduct sampling inspections of all SIUs at

least annually to evaluate compliance with applicable pretreatment standards independent of the IU's self-monitoring reports.

Storm Water Inspection—Storm water inspections at industrial facilities and construction sites are designed to evaluate compliance with IPDES permits for storm water discharge. A storm water inspection may also evaluate whether an industrial facility or construction site has obtained IPDES permit coverage if required or qualifies for a no exposure exemption or low erosivity waiver, respectively. SWPPP documents how the facility intends to comply with the terms and conditions of the permit, including effluent limitations. During the on-site inspection, the inspector reviews the permit and measures described in the SWPPP to evaluate whether the facility is following its plan for complying with the permit. The inspector also reviews records, such as self-inspection reports, to verify that the facility is complying with its permit and following the SWPPP, and walks the site to verify that the SWPPP is accurate and BMPs are in place and functioning properly. When preparing for a storm water inspection, the inspector will consider the *Storm Water Compliance and Enforcement Strategy* (EPA 2003) and comply with EPA's most current national program guidance.

Technical Assistance Inspection—This inspection is similar to EPA's diagnostic inspection. It is an on-site activity that primarily focuses on POTWs that have not achieved permit compliance. POTWs having difficulty diagnosing their problems are targeted. The technical assistance inspection is used to identify the causes of noncompliance, suggest immediate remedies to the POTW that will achieve compliance, and support current or future enforcement action. This inspection is typically conducted after noncompliance events have been formally documented and cited by DEQ. Once the cause of noncompliance is defined, an administrative order is usually issued that requires the permittee to conduct a detailed analysis and develop a composite correction plan.

Toxics Sampling Inspection—This on-site inspection of an IPDES direct discharger has the same objectives as a conventional compliance sampling inspection; however, increased emphasis is placed on toxic substances regulated by the IPDES permit. The toxic sampling inspection covers priority pollutants other than heavy metals, phenols, and cyanide, which are typically included in a compliance sampling inspection (if regulated by the IPDES permit). This type of inspection uses more resources than a compliance sampling inspection because sophisticated techniques are required to sample and analyze toxic pollutants. A toxic sampling inspection may also evaluate raw materials, process operations, and treatment facilities to identify toxic substances requiring controls.

6.3 Noncomprehensive Inspection Types

Combined Sewer Overflow Inspection—During a CSO inspection, the inspector conducts an on-site inspection in response to information received about a known or suspected overflow event. A CSO inspection evaluates compliance with CWA and CSO requirements as written in the IPDES permit, an enforcement order, or another enforceable document. The inspector will verify whether the permittee is preventing CSOs during dry weather; implementing the nine minimum controls; adhering to a schedule for developing, submitting, and implementing a long-term CSO control plan; eliminating or relocating overflows to sensitive areas; adhering to effluent limitations; and implementing a post construction compliance monitoring program.

Focused Compliance Inspection—A focused compliance inspection is more detailed than a reconnaissance inspection but is not as comprehensive as compliance evaluation, compliance sampling, diagnostic, or pretreatment compliance inspections. This focused compliance inspection evaluates compliance for one or more specific portions of a facility (e.g., specific operation or process stream), permit, or program (e.g., a pretreatment control authority's oversight of IUs).

A fact-driven analysis will determine whether a comprehensive inspection[1] or a focused compliance inspection is appropriate for the particular facility. Some industries that typically require full process-based inspections may not qualify for a focused compliance inspection. The scope of a focused compliance inspection should be based on the facility's compliance history, recent changes in the facility's operation, and other data that indicate a portion of the program or facility is more likely to have noncompliance issues. While the scope is narrower, the level of detail should be comparable to the level of detail required of that portion of a comprehensive inspection.

For a focused compliance inspection (referred to in the national CMS policy as a focused inspection) to count toward implementation of an approved alternative CMS, all applicable conditions outlined in section 7 must be met.

Follow-up Inspection—The follow-up inspection is a resource intensive site inspection conducted when a compliance problem is identified as a result of a routine inspection or complaint. For this inspection, the appropriate resources are assembled to deal effectively with a specific enforcement problem.

Off-Site Desk Audit—This audit is a comprehensive off-site compliance evaluation of information, data, records, and facility reports used to make a facility- or program-level (for pretreatment and MS4s) compliance determination. Routine off-site compliance monitoring activities, such as reviewing self-monitoring reports or records of phone calls with the facility, are not enough to be considered an off-site desk audit. An audit may include review of agency-gathered testing; sampling and ambient monitoring data; responses to CWA §308 requests; compliance deliverables submitted pursuant to permits or enforcement orders; remote sensing; aerial or satellite images; DMRs; annual reports; conversations with facilities; and tips and complaints. For an off-site desk audit to count toward implementation of an approved alternative CMS, all applicable conditions outlined in section 7 must be met.

For an off-site desk audit, DEQ may use videoconferencing with facility personnel to gather additional information as they conduct their evaluation. This audit will be performed by an authorized inspector (consistent with state authority) or other credible regulator (i.e., an individual designated by EPA or DEQ with sufficient knowledge, training, or experience to assess compliance). DEQ will select the candidate for the off-site desk audit based on personal knowledge of the facility, information from DMRs, other reports, and prior on-site inspections, and with this facility information will make a compliance determination.

Reconnaissance Inspection—A reconnaissance inspection, which only requires a preliminary overview of a permittee's compliance program and brief inspection of the facility, does not qualify as a focused compliance inspection. It is an on-site inspection that can be conducted with or without sampling. The inspector performs a brief visual inspection of the permittee's treatment

facility, effluents, and receiving waters. The reconnaissance inspection uses the inspector's experience and judgment to quickly summarize any potential compliance problems. One objective of this inspection is to expand inspection coverage without increasing inspection resources; it may also be used to verify that a facility is no longer discharging to waters of the United States and does not require an IPDES permit. The reconnaissance inspection is the briefest and least resource intensive of all CWA inspections.

Sewage Sludge/Biosolids Inspection—This inspection assesses facilities engaged in regulated sludge or biosolids activities (40 CFR 503) and evaluates compliance with applicable regulatory provisions, including sludge monitoring; recordkeeping and reporting; treatment operations; sampling and laboratory quality assurance; and use or disposal practices (e.g., land application). Sewage sludge/biosolids inspections are on-site activities that may be conducted with compliance inspections at major and nonmajor POTWs. The pretreatment compliance, compliance evaluation, and performance audit inspections are the most likely vehicles for evaluating compliance with sludge/biosolids requirements.

7 Alternative CMS Development

As stated in section 3.1, DEQ may deviate from the national goals by incorporating flexibilities set forth in Part 2 of the 2014 NPDES CMS. An alternative CMS may include modified frequency of comprehensive inspections, modified compliance monitoring activities (e.g., off-site desk audit), or a combination of the two. It will include adequate detail for EPA and the regulated community to understand (1) the overall approach proposed, including the rationale for any deviations and adjustments; (2) a description of the affected regulated entities; and (3) an explanation of how DEQ determined that the resulting reduced/modified attention for certain entities will not have negative public health or environmental impacts.

Any monitoring commitments incorporated into an alternate CMS that includes focused inspections and/or off-site desk audits will meet the following minimum conditions:

1. The compliance monitoring activity will be conducted to make a compliance determination. When conducting a focused inspection pursuant to the provisions of this policy, DEQ may make a compliance determination at the process level (e.g., belt press and sludge handling procedures of a treatment works) relative to the scope of the focused inspection.

2. The activity will be conducted by appropriate personnel, as specified in the definitions of each alternative activity (section 6).

3. The supporting API will document DEQ's evaluation of the five facility-specific questions below.

4. The compliance monitoring activity will be reported to ICIS-NPDES through EPA's central data exchange to ensure transparency, accountability, and appropriate follow-up. Reporting includes entry of facility-specific information, compliance actions, and results of the activity (e.g., any noted violations and SNC).

In addition, annual inspection plans developed under an alternative CMS may include the expectations of the alternative CMS if not specifically addressed in the alternative CMS. For example, the plan may list those facilities subject to each CMS metric and the associated number/type of compliance monitoring activities. When developing an API consistent with an alternative CMS, DEQ will consider the following facility-specific questions before proposing a focused compliance inspection and/or off-site desk audit:

1. Is the facility currently subject to an enforcement action or a compliance schedule resulting from an enforcement action?
2. Has the facility been reported in SNC within the previous four quarters?
3. Does the facility have any unresolved single-event violations identified in prior inspections?
4. Does the facility discharge listed pollutants to impaired waters?
5. Does the facility have any known potential to impact drinking water supplies?

If the answer to any of the above questions is "yes," DEQ will further scrutinize whether a focused inspection or off-site desk audit of the facility is adequate to assess compliance and protect water quality. For each year that an API includes focused inspections and/or off-site desk audits, DEQ staff will reevaluate these questions on a facility-specific basis to address changing circumstances (e.g., impaired waters listings and compliance status). For any facility that is a viable candidate for a focused inspection or off-site desk audit, the API will consider the amount of time since the last comprehensive inspection to ensure that all facilities are subject to periodic comprehensive inspections.[2]

Alternative CMS Review

DEQ will consult EPA and submit for review any alternative CMS as early in the planning process as possible. DEQ will contact the appropriate EPA staff to discuss an appropriate review schedule. The goal is to work efficiently and effectively so an API is in place at or near the beginning of the year covered by each plan (e.g., the first day of the calendar year, January 1). Approving and documenting the IPDES alternative CMS and subsequent APIs may be included in existing timetables and processes EPA uses in the §106 grant process, grant work plans, performance partnership agreements, or through the state review framework process.

The following are alternative CMS scenarios that DEQ may consider when implementing this policy:

A. For major facilities that have been evaluated under the five alternative API considerations described above, DEQ may propose the following alternative approach: every 5 years

[2] Throughout this document, when used without qualification, *comprehensive inspection* includes any of the following types of inspections: compliance evaluation, compliance sampling, concentrated animal feeding operation, performance audit, compliance biomonitoring, MS4 audit or inspection, sanitary sewer overflow, significant industrial user, storm water, technical assistance, toxics sampling, and pretreatment program audit or inspection.

conduct at least one comprehensive on-site inspection, one focused compliance inspection, and one off-site desk audit (i.e., two on-site inspections in 5 years).

B. DEQ may propose inspections of nonmajor facilities on a watershed basis or by a particular pollutant. The watershed approach would allow DEQ to focus resources on areas of the state where beneficial use impairment is directly correlated with the pollutants being discharged. Inspections based on a particular pollutant may be a useful approach where the state has identified a particular pollutant causing impairment to waters of the United States within Idaho.

C. DEQ may encounter a situation where MS4s are not performing well in their role of overseeing active construction sites and industrial storm water dischargers. In exchange for reduced comprehensive inspection coverage in industrial and construction storm water sectors, DEQ may increase the number of comprehensive inspections for MS4s to ensure that the MS4s are conducting critical local oversight of construction and industrial storm water discharges. For example, DEQ may commit to conducting inspections at 5% of industrial storm water facilities and off-site desk audits at an additional 5% of the facilities. In this scenario, the compliance improvement benefit would presumably accrue through higher compliance in the future at the facilities under the MS4's jurisdiction, versus increased compliance at just a few individually inspected facilities.

D. DEQ may propose fewer inspections in a particular area, such as industrial storm water, for a limited time (e.g., up to 2 years) to use those resources to explore or ground-truth innovative compliance monitoring approaches and techniques. Such a trade-off in an alternative CMS requires justifying the innovative approach by including a description of the expected results (i.e., how and when expected results will be documented and how the results could enhance the state, regional, and/or national program).

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Appendix H. IPDES Enforcement Procedures Manual

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IPDES Enforcement Procedures Manual



State of Idaho
Department of Environmental Quality

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IPDES Enforcement Procedures Manual



Prepared by
Idaho Department of Environmental Quality
State Office
1410 North Hilton
Boise, ID 83706

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List of Acronyms

APA	Idaho Administrative Procedures Act
CAFO	Combined Animal Feeding Operation
CAS	Compliance Agreement Schedule
CID	United States Environmental Protections Agency, Criminal Investigation Division
CO	Consent Order
CS	Compliance Schedule
CSO	Combined Sewer Overflow
CWA	Clean Water Act
DA	Division Administrator
DAG	Deputy Attorney General
DEQ	Department of Environmental Quality
EPA	Environmental Protection Agency
EPHA	Idaho Environmental Protection and Health Act of 1972
IPDES	Idaho Pollutant Discharge Elimination System
IRAC	Issues, Rules, Analysis, and Conclusion
NONFA	Notice of No Further Action
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
POTW	Publicly Owned Treatment Works
RA	Regional Administrator
RO	Regional Office
SEP	Supplemental Environmental Project
SNC	Significant Noncompliance
SO	State Office
SSO	Sanitary Sewer Overflow
SV	Secondary Violators
VCO	Voluntary Consent Order

Executive Summary

This manual has been prepared for use by the staff and management in the IPDES program of the Idaho Department of Environmental Quality.

The goals of this manual are to:

1) Provide a training tool for new staff,
2) Provide a reference tool for existing staff, and,
3) Document established enforcement policies and procedures for the activities routinely carried out by staff and enforcement management.

The information set forth in this manual is intended solely as guidance for use by the IPDES staff of the Idaho Department of Environmental Quality. The contents of this manual are not intended to constitute a rulemaking by the Idaho Department of Environmental Quality. Furthermore, the content of this manual does not create any rights or benefits, substantive or procedural, enforceable at law or in equity, by any person. Nothing in this manual shall be construed to constitute a valid defense by regulated parties in violation of any state or federal environmental statute, regulation or permit. The Idaho Department of Environmental Quality reserves the right to be at variance with the contents of this manual and to change the contents at any time without public notice.

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Introduction

The Idaho Department of Environmental Quality (DEQ) is the state agency charged with ensuring clean air, water, and land within the state and protecting Idaho citizens from the adverse health impacts of pollution. As a regulatory agency, DEQ enforces various state environmental regulations and administers a number of federal environmental protection laws including the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act. DEQ manages a broad range of activities including:

- Assessment of environmental problems;
- Oversight of facilities that generate air, water, and hazardous waste pollution;
- Monitoring of air and water quality;
- Cleanup of contaminated sites; and
- Education, outreach, and technical assistance to businesses, local government agencies, and interested citizens.

The Water Quality Division assures that the state's surface water resources are protected from point source discharged by issuing wastewater discharge permits and performing compliance monitoring, inspection, and enforcement of the permits issued.

The IPDES Program is responsible for permitting, compliance, inspections, and enforcement of the following:

- Both individual and general permits for discharges to waters of the United States from facilities or activities, including industrial (e.g., commercial, mining, oil and gas, and silviculture discharges; animal feeding operations; and aquatic animal production facilities) and municipal wastewater treatment facilities (e.g., publicly and privately owned treatment works)
- Discharges to waters of the United States from federal facilities
- Storm water discharges, including municipal storm sewer systems (combined and separate); construction and industrial storm water general permits; and individual permits for storm water discharges
- Sewage sludge (biosolids)
- NPDES pretreatment program

The *IPDES Enforcement Procedures Manual* serves as a training tool for new staff and a reference document for current staff, and defines standard compliance and enforcement policy and procedures. In addition, this document is available to the public under the Public Records Act and may be used by the regulated community and public as an educational tool for understanding the authorities under which DEQ operates its compliance and enforcement programs.

The manual describes the statutory authorities under which the compliance and enforcement components are implemented, and the policies and procedures used to achieve compliance. By employing the procedures presented in this manual, staff will be able to successfully conduct professional investigations, and develop technically accurate and legally defensible enforcement actions. Adherence to the procedures in this document will promote agency credibility by

establishing successful compliance/enforcement programs that are consistent, equitable, and accountable.

How to use this manual

This manual is intended as a dynamic document subject to revision as circumstances or policies change. The manual is divided into seven main sections, a reference section, and appendices.

Section 1 defines the regulatory framework and authorities which are the foundation for the compliance and enforcement efforts implemented by the IPDES program.

Section 2 describes the process of writing inspections reports, to include: responsibilities, contents of a complete report, and appropriate format for documenting recommendations.

Section 3 describes information collection practices, violation determination, and violation citation.

Section 4 discusses the administrative enforcement process, outlines the various procedures through the use of flow diagrams, and provides an example of each type of enforcement action.

Section 5 describes the civil enforcement process, defines the judicial referral process, and briefly describes the respective roles of the Compliance Officer and Office of the Attorney General during a civil enforcement action.

Section 6 discusses the criteria for initiating a criminal enforcement action and identifies the procedure for referring a case for criminal prosecution.

The manual also contains a list of the reference documents used in developing this manual. The list of references provides a wealth of compliance and enforcement information and is recommended as supplemental reading.

Reference material is included in the appendices. Documents in the appendices were included for quick and easy reference to existing policies, procedures and guidance documents.

1 Regulatory Framework/Authorities

This section outlines the statutory basis of DEQ's enforcement authority for the IPDES program, and provides an overview of the sections of Idaho Code relevant to the IPDES program.

1.1 Statutes

Statutes are laws enacted by the legislature. According to the State of Idaho, Administrative Rules Manual 1994, "statutes establish most of the powers and functions of administrative agencies." The Idaho Environmental Protection and Health Act of 1972 (EPHA), found in Idaho Code, Title 39, Chapter 1, declares that it is the policy of the state to provide for the protection of the environment and the promotion of personal health and to thereby protect and promote the health, safety and general welfare of the people of the state. Idaho Code §39-102A(4) states that the Department of Environmental Quality (DEQ), shall "carry out programs to protect human health and the environment, to enforce environmental laws and develop pollution prevention, compliance assistance and other environmental incentive programs." The EPHA grants DEQ the powers and duties to protect the environment through use of enforcement authorities.

1.2 Powers and Duties of the Director

The executive and administrative power of DEQ is vested in the Director. The Director's powers and duties include formulating and recommending to the Board of Environmental Quality (Board) rules, regulations, codes, and standards, as may be necessary to deal with problems related to certain specific environmental concerns. The Director, under the rules, regulations, codes or standards adopted by the Board, supervises the promotion and protection of the environment and health of the people of this state. The powers and duties of the Director specific to the IPDES program include, but are not limited to, the following:

- Issuance of permits as prescribed by law and the rules and regulations of the Board;
- Supervision and administration of a system to safeguard the quality of the waters of this state, including but not limited to the permitting and enforcement of standards relating to the discharge of effluent into the waters of this state which may cause or contribute to water pollution;
- Supervision and administration of administrative units whose responsibility shall be to assist and encourage counties, cities, other governmental units, and industries in the control and/or abatement of environmental and health problems; and
- Enforcement of all laws, rules, regulations, codes and standards relating to environmental protection and health.

1.3 The Board of Environmental Quality

The Board of Environmental Quality consists of seven members appointed to four-year terms by the governor, with the advice and consent of the senate. Members may be removed by the governor for cause. Each member must be a citizen of the United States, a resident of the state of Idaho and a qualified elector. Not more than four of the board members may be from any one political party. All members are chosen with due regard to their knowledge and interest in

environmental protection and health. Each year the Board elects a chairman, vice-chairman and a secretary.

The Board generally meets 3-4 times per year. By affirmative vote of four of its members, the board may adopt, amend or repeal the rules, codes, and standards of DEQ that are necessary and feasible in order to carry out the purposes and provisions of the EPHA and to enforce the laws of this state. The rules so adopted and established have the force and effect of law and may deal with any matters deemed necessary and feasible for protecting the environment or the health of the state. In general, rules adopted by the Board become final and effective at the conclusion of the legislative session at which the rule was submitted to the legislature for review, unless a later date is provided in the rule. In specific circumstances, the Board may adopt temporary rules, which become effective immediately; however, a temporary rule will not remain in effect beyond the conclusion of the next succeeding regular session of the legislature unless the rule is approved by concurrent resolution.

1.4 Enforcement Powers and Duties Authorized by the EPHA

The majority of DEQ's enforcement authorities are derived from the EPHA. These and other Idaho statutes give authority to all program-specific rules, regulations, standards, plans, licenses, permits, certificates or orders promulgated thereunder. It is important to look at the framework of authorities outlined in the EPHA.

The following summaries provide generic descriptions of the authorities found in the EPHA relevant to the IPDES program. These descriptions are provided to help the IPDES inspector understand the general authority provided under the EPHA but are not to be relied on as the final authority. The IPDES Compliance Officer should refer to the actual language in the EPHA when referencing the act for any regulatory purpose.

- Section 39-108 of the EPHA provides DEQ with the authority to investigate, obtain access, inspect, and proceed with administrative or civil enforcement actions based upon the receipt of information concerning an alleged violation of the act or of any rule, regulation, permit or order promulgated pursuant to the act.

- Section 39-108 also gives DEQ authority to continually observe and periodically inspect actual or potential health hazards and water pollution sources. If DEQ determines any person is in violation of any provision of the act or any rule, regulation, permit or order issued or promulgated pursuant to the act, DEQ has the authority to commence administrative or civil enforcement action. This section outlines the civil penalty framework, cost recovery of the state's expenses incurred by enforcing the act, and the procedure for commencing civil enforcement action when imminent and substantial danger exists to public health or the environment. The specifics of the administrative and civil enforcement processes implemented by DEQ are discussed in Sections 4 and 5 of this manual.

- Section 39-108(4) provides that *No civil or administrative proceeding may be brought to recover for a violation of any provision of this chapter or a violation of any rule, regulation, permit or order issued or promulgated pursuant to this chapter, more than*

two (2) years after the Director had knowledge or ought reasonably to have had knowledge of the violation. In other words, a two-year statute of limitations applies to violations of any provision of this chapter or any rule, regulation, permit or order issued or promulgated pursuant to this chapter (see Section 1.9 of this manual).

- Section 39-109 gives the Board or Director the authority to request the Attorney General's office to commence civil or criminal enforcement action.
- Section 39-111 provides for the confidential treatment of certain production, sales figures or process/production information provided by water pollution sources to DEQ subject to Chapter 1, title 74, Idaho Code, the Public Records Act.
- Section 39-116 provides DEQ the authority to issue compliance schedules to any person who is the source of any health hazard or water pollution for which regulatory standards have been established to assure timely compliance with those standards.
- Section 39-116A provides DEQ the authority to enter into a compliance agreement schedule with any person that may include an enforceable schedule for actions necessary for the person to come into or maintain compliance as expeditiously as practicable with such statutes and rules if appropriate.
- Section 39-117 establishes the criteria for criminal misdemeanor charges and penalties for any person who willfully or negligently violates the provisions of the public health or environmental protection laws.
- Section 39-175C authorizes DEQ to pursue approval of a national pollutant discharge elimination system (NPDES) program along with the negotiation or rules and other actions that are necessary to obtain approval of a state NPDES program by the United States environmental protection agency including the authorization to collect reasonable fees for processing and implementing an NPDES permit program.
- Section 39-175E establishes that all investigation, inspection and enforcement authorities and requirements set forth in the environmental protection and health act shall be available to DEQ and shall apply with respect to the Idaho pollutant discharge elimination system program and that DEQ is authorized to enforce pretreatment standards, including local limits, developed and adopted by publicly owned treatment works.

For additional information, refer to the EPHA, found at Idaho Code, Sections 39-101 through 130 and 171 through 175E.

1.5 Statute of Limitations

Pursuant to Idaho Code Sections 39-108 of the EPHA no civil or administrative proceeding may be brought to recover for a violation of either the act or any permit, standard, regulation, condition, requirement or order issued or promulgated pursuant to the act more than two (2) years after the Director (or an officer of DEQ) had knowledge or ought to reasonably have had knowledge of the violation. This concept is commonly referred to as the "statute of limitations."

In actual practice, if DEQ desires to pursue an administrative or civil action against a person for committing a violation, then it must do so within two years from the day the violation was observed, discovered, documented, or otherwise brought to the attention of the Director or any officer of DEQ. A violation may be a continuing violation, whereupon each day starts a new two-year time period. It is generally a legal determination whether a violation is continuing or is a discrete violation.

Refer to Section 3 of this manual for more information regarding discrete versus continuing violations.

1.6 Permit Termination

DEQ's Rules Regulating the IPDES Program (IDAPA 58.01.25) allows for the Department to terminate a permit for cause or to deny a permit renewal application due to (IDAPA 58.01.25.203.03):

- Noncompliance by the permittee with any condition of the permit,
- The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time,
- A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination, or
- A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit.

If DEQ decides to terminate a permit for causes identified in IDAPA 58.01.25.203.03, the DEQ will issue a notice of intent to terminate, make the notice available for public comment, and provide notice of an opportunity for public meetings as specified in IDAPA 58.01.25.109 (IDAPA 58.01.25.203.02). DEQ may follow an expedited termination process by delivering a termination notice to the permittee if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW (IDAPA 58.01.25.203.04). The termination notice shall be effective thirty days after notice is sent unless the permittee objects within that timeframe (IDAPA 58.01.25.203.04.a). If a permittee objects to expedited termination DEQ shall follow the procedures for termination in IDAPA 58.01.25.203.02. Expedited permit termination procedures are not available to permittees that are subject to pending state and/or federal enforcement actions including citizen suits brought under federal law (IDAPA 58.01.25.203.04.c).

1.7 Rules, Regulations, and the Rulemaking Process

Rules govern what the public may or may not do in a manner consistent with the statute's purpose. In the Idaho Administrative Procedures Act (APA) Idaho Code §§67-5201 et seq., administrative rules are defined as *rules*. Internal agency procedures, interpretations and guidelines are referred to as *policy or policies*. For example, this document sets forth policy and procedures to be followed by IPDES staff in carrying out the intent of the Legislature. Idaho

refers to federal rules as *regulations*. Federal regulations become rules only if adopted under the APA as rules.

Rules authorize DEQ to undertake the actions and activities used as enforcement tools. For example, the conditions placed in permits allow DEQ to use permit regulation authority to require the permittee to consent to inspections or require permittees to submit specific monitoring information to DEQ.

There are 25 chapters of specific rules governing the activities of the Department of Environmental Quality. When these rules or standards are cited, they are cited by reference to IDAPA 58.01. The acronym *IDAPA* does not stand for the *Idaho Administrative Procedures Act*; it simply designates the numbering system for the rules promulgated under the APA. The number 58 following IDAPA denotes that these are the rules specific to the Department of Environmental Quality; the 01 designates the Title number; and the various Chapter numbers (01-25) follow to designate the specific environmental rule or standard.

The rule-making process includes publishing proposed rules, modifications, changes, etc. in the Idaho Administrative Bulletin, which is published on a monthly basis. Rule-making activities are codified annually in the Idaho Administrative Code.

The APA provides that a rule adopted by an agency under the rulemaking process is a pending rule subject to legislative review before becoming final and effective. Unless provided otherwise in the rule, the pending rule becomes final and effective upon the conclusion of the legislative session to which the rule was submitted for review, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Idaho Code §§67- 5224 and 67-5291.

The APA also provides that any pending rule imposing a fee or charge shall not become final and effective until the rule has been approved, amended or modified by concurrent resolution.

The APA specifies that an agency cannot adopt a temporary rule unless the governor first finds that the temporary rule meets one of the following conditions listed at Idaho Code §67-5226. The rule must be:

a. Reasonably necessary to protect the public health, safety, or welfare;
b. Necessary for compliance with deadlines in amendments to governing law or federal programs; or
c. Conferring a benefit.

Once adopted by an agency, a temporary rule may not remain in effect beyond the conclusion of the next succeeding legislative session unless the rule is approved, amended or modified by concurrent resolution.

Pursuant to Idaho Code §67-5205, a copy of the administrative rules must be maintained in designated repositories in each region of the state. At DEQ, a copy is maintained in the in-house Attorney General's office. The paralegal within the AG's office is responsible for sending to each division of DEQ a monthly update from the Idaho Administrative Bulletin that lists any rule-making activities relevant to DEQ.

The following is a list of DEQ rules promulgated under the APA relevant to the IPDES program. The administrative rules can be found in the IDAPA 58, Title 01.

Chapter 2 Idaho Water Quality Standards

Chapter 9 Rules Regulating Swine Facilities

Chapter 16 Wastewater Rules

Chapter 17 Recycled Water Rules

Chapter 21 Rules Governing the Protection and Disclosure of Records in the Possession of DEQ

Chapter 23 Rules of Administrative Procedure Before the Board of Environmental Quality

Chapter 25 Rules Regulating the Idaho Pollutant Discharge Elimination System Program

1.8 Federal Programs Administered by the State

Many federal environmental programs are administered and implemented by DEQ. When the state administers the program in lieu of the federal government, it is often referred to as the state having *primacy*, *authorization,* or *delegation*. This means the state has applied to and received the approval, or been mandated by the federal government, to administer and implement a program. In order to implement a federal program on the state level, the rule-making process as described above is needed to adopt the federal regulations into state rules, or a state-specific set of program rules must be drafted and adopted.

To protect the surface waters of the state, statutes provide DEQ with the authority to regulate several activities, including wastewater land application, construction of waste treatment or disposal facilities, and issuance and maintenance of permits for facilities or activities for which a person is required by Idaho Code and the Clean Water Act (CWA) to obtain authorization to discharge pollutants to waters of the United States. When there is no specific federal authority related to these activities, the state program operates under the mandates of the federal CWA. The permitting, compliance and enforcement of facilities which are subject to the statutes and rules below are performed by the IPDES program of DEQ.

These authorities are provided under Idaho Code, Sections:

- 39-1 Environmental Quality – Health;
- 39-175A through 39-175E Idaho Pollutant Discharge Elimination System Program;
- 39-36 Water Quality; and
- The general authorities provided under IDAPA 58.01.25 Rules Regulating the Idaho Pollutant Discharge Elimination System Program.

2 Writing the Inspection Report

2.1 Introduction to Inspection

This section of the manual focuses on the process of writing an inspection report. It outlines the Compliance Officer's responsibilities, the necessary steps in developing an inspection report, the key elements to be included in the report and the importance of supporting documents.

Inspections are conducted either as agreed to in a work plan approved by EPA, or in response to citizen complaints. The authority for conducting inspections is provided in Idaho Code §39-108. A Compliance Officer's routine duties include:

- Conducting inspections at reasonable times;
- Requesting consent to enter and inspect the premises;
- Requesting a search warrant if consent has been denied and documented;
- Providing split-samples if requested (as applicable); and
- Obtaining and/or copying records or other evidence.

Key components of performing a facility inspection include:

- Pre-inspection file review;
- Site entry/access;
- Opening conference or in-briefing;
- Visual inspection of the facility operations and physical premises;
- Review of facility documents and recordkeeping practices;
- Determining compliance with applicable rules, regulations, standards and permit requirements;
- Sampling;
- Photographing;
- Other evidence collection activities;
- Completing checklists or compliance determination documents for the facility's records;
- Conducting a closing conference or debriefing (out-briefing);
- Follow-up activities including database searches, sample analysis, interviews, and additional inspections, if necessary.

Detailed instructions on how to perform these activities will not be provided in this manual since DEQ provides significant training to inspection personnel. Reference to the following inspection training resources is recommended:

- *NPDES Compliance Inspection Manual,* Compliance Policy and Planning Branch, Office of Enforcement and Compliance Monitoring, U.S. Environmental Protection Agency, January, 2017 and
- EPA's National Enforcement Training Institute (NETI) eLearning Center found at https://www.epa.gov/compliance/national-enforcement-training-institute-neti-elearning-center.

2.2 Inspection Report Preparation Process and Key Components

Typically, Compliance Officers compile field notes and document findings on inspection checklists. This documentation may include their observations, field data collected, statements made by facility representatives, and observations based on their review of the facility and facility records. Field notes may be contained in a specific bound field notebook designated solely for inspection-related notes for one or more facilities as long as notes for each facility are clearly separated. Pages should be numbered and dated. All field notes must be kept and maintained as part of the official DEQ file. Compliance Officers should not keep personal inspection files. All documents generated by a DEQ employee shall be stored in the relevant agency file, as stated in the Policy Memorandum: Policy for Records Management. (See Appendix A)

2.3 Writing the Inspection Report

Once the facility inspection has been completed, it is the Compliance Officer's primary responsibility to write an inspection report which documents all observations made and information obtained during the inspection. The primary purpose for the written inspection report is to document the facility's compliance or noncompliance with permits and/or specific environmental laws. The inspection report is used to support or refute allegations of noncompliance which may result in a recommendation for administrative, civil, or criminal enforcement action. The inspection report is usually the first step of the enforcement process. Without it, enforcement may be delayed. Inspections are sometimes performed by more than one Compliance Officer. Typically, a lead or primary Compliance Officer is assigned to plan and ensure completion of the inspection and to be the designated agency contact person for the facility. Generally, it is the responsibility of the lead Compliance Officer to draft the inspection report, or to otherwise ensure its successful completion.

The first objective in the process of writing an inspection report is to review all the information collected during the inspection to identify any potential incomplete or missing information. If it is determined that information is missing, the Compliance Officer should immediately contact the appropriate facility representative to explain the situation, and then make a verbal and written request for the missing information.

The second step in the report-writing process is to organize the information obtained from the inspection into a usable format. Written reports should be:

- Accurate - All information must be factual and based on sound inspection practices; observations should be the verifiable results of first-hand knowledge and must be objective and factual.
- Relevant - Information in an inspection report should be pertinent to the subject of the report; irrelevant data clutter a report and can reduce its clarity and usefulness.
- Comprehensive - The subject of a report (e.g., suspected violations) should be substantiated by as much factual, relevant information as possible. The more comprehensive the evidence is the better and easier the case development process becomes.

- Coordinated - All information pertinent to the subject should be combined into a complete and well-organized package. Documentary support (photographs, photocopies, statements, sample analyses, checklists, etc.) accompanying the report should be clearly referenced so that any interested party reading the report gets a complete and clear overview of the subject.
- Objective - Reports should be free of unsubstantiated or inconclusive statements or any other potential indicators of Compliance Officer bias.

The third step is to choose a format for the inspection report. The narrative report format is one preferred style because of the use of full sentences to describe, explain or discuss observations in detail as they pertain to compliance. Other formats, such as form reports, outlines, file notes or chronologies, are also recognized as acceptable formats for reporting. Often, attorneys and courts prefer the IRAC format, denoting the Issues, Rules, Analysis, and Conclusion (IRAC). Regardless of the format chosen, at a minimum the report should always be able to answer the five W's: *who, what, when, where,* and *why* of the case. It doesn't hurt to add the *how* as well, if the information is available. Comprehensive and appropriate checklists are used to contain the majority of the inspection information, provided the narrative report deals with the facts and supporting information for violations.

The fourth and final step of the report writing process begins with the transcription of field notes into complete representations using full sentences. The narrative portion of an inspection report should include a comprehensive expansion of the Compliance Officer's field notes and any corresponding checklists, with reference made to any supporting documents. Hence, a Compliance Officer should take great care when performing the inspection to record in the field notes only factual observations, information and statements. The Compliance Officer must be careful not to omit any information identified in the field notes. Such omissions could potentially be detrimental should the case move into litigation. Any discrepancies between field notes and final reports open the door for a defense attorney to attempt to discredit the Compliance Officer by pointing out omissions and inconsistencies. Compliance Officers should never include assumptions or form or express personal opinions when performing an inspection, or afterwards when compiling the inspection report. The inspection should be performed in an objective and unbiased manner, which should be reflected in the field notes and the subsequent final report.

When drafting an inspection report it is important to consider who the potential audience may be. Since nearly every document generated by a DEQ employee becomes a public record, it is conceivable that the report may be read by the general public, the regulated community, reporters, legislators, etc. It is also important to assume that any inspection may result in enforcement action or litigation, in which case attorneys, judges, expert witnesses, jurors, etc. may also review the report. The report must be factually correct, unbiased, and sound, both from a scientific and regulatory perspective. It is critical that reports and files be prepared in a manner that will be useful in future case development, inspections and other activities.

The California Air Resources Board Training Manual summarizes eloquently the objective of a well-written report:

> The more thorough and intelligent the form of the report is, the more believable will be its substance. The goal of the inspector's report should be the same as the lawyer's court documents; written not so that

persons reading in good faith will understand it, but so that persons reading in bad faith will not misunderstand it.

2.4 Supporting Documents

An inspection checklist is a tool that keeps the inspection focused on specific facility permit requirements or environmental rules. If there are portions of a checklist that do not apply they should be identified as *N/A* or *Not Applicable*. Areas where a requirement was identified on the checklist as being in noncompliance should be explained in greater detail in the inspection report. Finally, the checklist should be included as an attachment to the final inspection report and appropriately referred to within.

Often evidence is collected during inspections. Evidence can take many shapes and forms, such as photographs, videotapes, audiotapes, samples, field monitoring results, readings from facility monitoring equipment and copies of facility documents. All of these forms of evidence may be crucial to support findings of compliance or to demonstrate noncompliance. All evidence collected should be described in the field notes of the Compliance Officer who collected the evidence, and then discussed in greater detail in the comment section of the form report or in the narrative inspection report. For example, photographs should be referenced in the inspection report when discussing the subject of the photograph. A record of all evidence collected should be included as an attachment to the final inspection report and properly referenced within.

When photographs are taken during an inspection, some basic considerations generally apply. Use cross references to a photo log to identify photographs. The following information should accompany each photograph:

- Photographer's name (if different from the report writer);
- Date and time photograph was taken (even if photo has a date imprint);
- Facility name;
- Facility location;
- Facility database number, if appropriate (e.g., IPDES permit number);
- Description of photo subject (i.e., clarifier, outfall, etc.);
- Direction from which the photo was taken (i.e., viewing southeast, looking to the northwest);
- Numbering (each photo should be numbered with the same number that is assigned to the corresponding photo label or log).

Any photos of the facility that are not included with the inspection report (e.g., blurry ones, or extras of the same shot, etc.) must be retained in the unaltered archival photo record.

When recording devices are used by a facility under inspection, be aware that all statements are being recorded, so professionalism is of the utmost importance. Video recording devices should not be used by IPDES Compliance Officers. If another party is recording the inspection proceedings, comments provided by IPDES Compliance Officers should be limited to the Compliance Officer's observations and statements of fact. Do not include personal opinions or unnecessary comments which could be damaging at a later date should this evidence be used in a future enforcement proceeding.

When samples are collected, great care should be taken by the Compliance Officer to describe in the field notes all the conditions relevant to the field sampling activities (i.e., weather conditions, sampling methods and procedures, chain of custody, etc.). These too, should be discussed in greater detail in the inspection report.

Sample collection and analytical activities must follow proper chain of custody procedures as described in EPA Order CIO 2105.0 (formerly 5360.1), which is EPA's policy and program requirements for the agency-wide quality system. The Chain-of-Custody requirements can also be found in *American Society for Testing and Materials (ASTM) Methods, Standard Methods for Water and Wastewater* (ASTM 2010). Chain-of-custody documentation should also be included as an attachment to the inspection report, and be part of the source file.

Upon receipt of the analytical results from the laboratory performing the analyses, the data and all associated documentation on quality assurance should be included as an attachment to the inspection report and should be described and referenced within the final report. In short, all evidence collected should be included as an attachment to the final inspection report, when possible, and referenced appropriately within.

Another source of information to be included in the inspection report is pertinent statements made by facility representatives, whether taken from the Compliance Officer's field notes, a tape recording device, or written correspondence provided by a facility representative. This information should be properly referenced in the inspection report. When summarizing statements, indicate their author in the text of the report—for example, Mr. Smith of Company X replied that...; or According to Mr. Smith, ...; or Mr. Smith stated...; etc. Quotation marks are used only if the statement being quoted is exactly what was said by the individual. Otherwise, the use of quotation marks is inappropriate and can damage the credibility of the report.

It is good practice when performing an inspection to request beforehand from the facility a facility diagram, map, plot plan or drawing representing the area of investigation for inclusion into the final inspection report. If the facility is unable to provide such, then the Compliance Officer may make his or her own facility diagram. It is important to include any diagram/drawing as an attachment to the final inspection report, and to reference it whenever it is relevant within the narrative text. It is also important to describe any changes made to the diagram, and to identify by whom the changes were made, and whether the drawing was to scale. Including a facility diagram as part of the final inspection report is an excellent way for the reader of the report to visualize the facility layout, operations and processes. If collected and utilized appropriately, visual aids such as diagrams, photographs or videotapes can enhance and clarify issues during enforcement negotiations or litigation.

Documents obtained from a facility should be described in the relevant portions of the final inspection report, referenced, and included as an attachment to the final report. It is important to note that documents, even those later determined to be irrelevant to the inspection outcome, should still be made an attachment to the final inspection report and/or included in the agency source file.

2.5 Time Frames for Inspection Report Completion

Compliance Officers should make every attempt to complete final inspection reports as expeditiously as possible after the inspection has been completed. Details begin to fade with time, and questions can arise regarding locations, events, observations etc.

Completing inspection reports in a timely manner increases the agency's ability to work promptly with the responsible party to compel a return to compliance. Timely completion of inspection reports also enhances DEQ's ability to:

1. Increase the options/alternatives available for resolution,
2. Return the facility to compliance in a manner which decreases the imminent or potential for harm to human health and the environment,
3. Halt activities which result in continuing violations, and
4. Decrease the perception of government inefficiency.

Failure to complete timely inspection reports may lead to a backlog of work and can delay timely violation determinations and associated enforcement processes. Unnecessarily extending the enforcement process may decrease opportunities for resolving the violations and may even bring the 2-year statute of limitations into play.

Certain extenuating circumstances may delay completion of inspection reports:

- Resource reallocation,
- Late or incomplete laboratory results, or
- Failure to obtain requested information in a timely manner, etc.

Typically in these cases, the IPDES Compliance, Inspection, and Enforcement Lead and/or Compliance and Enforcement Coordinator(s) will assist the Compliance Officer to help minimize the delay.

2.6 Inspection Report Review and Finalization Process

Once the draft inspection report has been completed by the Compliance Officer, they should proofread the report for technical and grammatical accuracy as well as completeness. The Compliance Officer should ensure the report answers the basic questions: who, what, when, where, why and how. If not, the Compliance Officer must continue to revise the draft report until all these questions are adequately answered and supported by factual evidence. If more than one Compliance Officer participated in an inspection, then they should also have an opportunity to review and comment on the draft final inspection report to ensure technical accuracy prior to its release.

Once the draft report has been reviewed in its entirety by the lead Compliance Officer, the report will then be forwarded to the Regional Office (RO) Supervisor or an appropriate designee for review. The RO Supervisor will review the report and provide written comments, if any, and then send the draft back to the lead Compliance Officer for necessary revisions. The Compliance Officer will then revise the inspection report by researching, discussing and resolving any outstanding concerns the RO Supervisor may have, and subsequently finalize the inspection report. The original copy of the final inspection report will then be signed and dated by the

Compliance Officer(s) and entered into DEQ's record management system (TRIM) according to the IPDES TRIM filing index standard operating procedures. A copy of the final report will be sent to the facility. Once finalized, all draft copies of the inspection report will be destroyed in accordance with the DEQ Policy Memorandum: Policy for Records Management (Appendix A). If enforcement action is warranted, a copy of the inspection report should also be forwarded to the IPDES Compliance, Inspection, and Enforcement Lead as an attachment to the Enforcement Referral Package.

2.7 Enforcement Recommendation/Justification Process

Upon finalization of the inspection report, the lead Compliance Officer is responsible for recommending to the Regional Office Manager the enforcement status of the facility based on their evaluation of the information collected through the inspection process. The lead Compliance Officer will identify the violation(s); describe the factual evidence supporting the violation(s); and recommend appropriate enforcement action (i.e., informal or formal notification). Informal enforcement actions are handled and issued by the lead Compliance Officer. If formal enforcement is agreed upon, the Regional Office Compliance Officer is then responsible for summarizing all violations, documenting the compliance status of the facility, and providing a recommendation for enforcement in a separate memorandum to the IPDES Compliance, Inspection, and Enforcement Lead, or their designee. This process will be discussed further in Section 4 of this manual.

3 Violation Determination, Compliance Status Evaluation, and Referral Processes

3.1 Introduction: From Inspection to Determination

This section of the manual discusses how to collect and evaluate information needed to make a violation determination, define the types of violations, prepare an enforcement referral package, and calculate penalties.

Routine inspections are those scheduled in an EPA-approved work plan. Inspections may also be performed in response to complaints from citizens. While complaint response is not in itself an enforcement action, it may subject the facility to enforcement actions depending on the findings of the Compliance Officer. When a complaint is investigated and indicates the possibility of violations, the investigation, determination, and referral are handled in the same ways detailed in this chapter.

Once the inspection is completed and the results are documented in a final inspection report, determining the compliance status of the facility is the next logical step. The determination as to whether a violation(s) exists is based on the observations and information collected by the Compliance Officer. The Compliance Officer should utilize the following steps in determining the compliance status of the facility.

3.2 Collection of Background Information

The first step involves the collection of accurate, complete, and verifiable information. Prior to the inspection being performed, the Compliance Officer should have obtained preliminary information from the DEQ program source files to review the facility's compliance history.

The Compliance Officer should also consult with appropriate DEQ State Program and Regional Office personnel to seek additional information perhaps not contained in the facility file.

To gain a broader perspective, Compliance Officers should also consider contacting other relevant local, state and federal agencies, (e.g., Health Districts, Idaho Department of Water Resources, EPA, etc.) to discuss and obtain any pertinent background information from their files.

Compliance Officers should also review facility records contained in the facility file (record reviews or compliance reviews). These records include documents from a facility required to submit information as a result of a permit condition, consent order condition, or similar reporting requirement. The identification of a discrepancy may alert the Compliance Officer to potential violation(s). A facility is often required to submit information or reports on a scheduled basis (i.e., biannually, annually, semi-annually, quarterly, or monthly). The information submitted can include, but is not limited to, financial, monitoring, operating, or monitoring data.

3.3 Collection of Information During the Inspection

The most critical step of the violation determination process begins while the inspection or record/compliance review is being performed. During an inspection, the Compliance Officer is making observations, some of which may immediately alert him/her to a discrepancy or potential violation. Based upon these observations, the Compliance Officer must then take extra care to gather supporting evidence to confirm that a discrepancy or potential violation actually exists.

This can be accomplished by interviewing facility representatives and employees to obtain crucial information that may not exist elsewhere (e.g., a long-time employee's historical perspective). The Compliance Officer must document the name of the individual interviewed, their job title or position, and the employee's responsibilities. Additionally, the Compliance Officer should query the individual as to the type of training he/she received, to attempt to evaluate his/her understanding of the requirements as they pertain to the activities for which he/she is responsible. In instances where it appears there is noncompliance, meticulous and accurate field notes of the Compliance Officer's observations and any statements made to the Compliance Officer by facility employees may be a key to the case during enforcement negotiations or litigation.

Often, interviewing more than one individual is necessary to get a broader perspective. A pitfall to this approach is that it can often lead to the gathering of conflicting information, which may then require the collection of still more evidence to clarify new issues and arrive at an accurate record. When interviewing individuals at a facility it is crucial for the Compliance Officer to determine whether he/she is talking to the person who has the most knowledge of or is responsible for the areas for which the information is being solicited.

After the physical inspection of the facility, the next logical step in the process is to review the relevant facility documents and records to substantiate the Compliance Officer's direct observations and statements made by employees. If a gap or an inconsistency in the information collected is identified, the Compliance Officer should contact the appropriate facility representative and make a verbal and written request for the information necessary to accurately characterize the situation in question. Failure to request additional information or seek clarification of existing information can result in a Compliance Officer making an inaccurate determination. A Compliance Officer should never make assumptions or inferences regarding potential noncompliance. Every precaution should be taken to obtain the additional supporting information necessary to verify a finding. In order to obtain complete and accurate information it is critical to request copies of all data that support the findings of (non)compliance, for reference purposes, and for possible attachment to the final report.

3.4 Extenuating Circumstances

Determining whether extenuating circumstances exist at the time of the inspection or record review may have a significant effect on a Compliance Officer's ability to collect complete and accurate information, which in turn can affect the violation determination. Extenuating circumstances can include:

1. The facility being shut down or non-operational due to annual maintenance activities;
2. The unavailability of a responsible company official to answer questions during the inspection;
3. Equipment malfunction; or
4. The facility being in the process of modifying a permit condition, or awaiting a review or response from DEQ on a technical or regulatory issue.

Many other extenuating circumstances may arise, and it is important to take these into consideration when performing the inspection and to adjust the focus of the inspection accordingly, when possible. In any event, the Compliance Officer should obtain as much relevant information as can reasonably be collected before concluding the inspection.

A general rule of thumb to keep in mind: Collect documentation proportionate to the potential seriousness of the deficiency or violation observed. The agency will be more likely to pursue formal enforcement based on more serious violations; therefore, additional supporting information is necessary in determining compliance.

3.5 Violation Determination

Often the most difficult step of the process is evaluating all the information collected to determine the compliance status of the facility. This process begins by assessing whether any exemptions to the regulatory requirements might apply. If so, the final written record must state that applicable exemptions, if any, were taken into consideration as part of the evaluation.

The fundamental approach to determining violations involves using the language in a rule and/or permit condition (regulatory requirement) as a guide to determine whether the information collected demonstrates that a violation has occurred. The Compliance Officer should have a clear understanding of the regulation violated. An explanation of the operations observed or

documents reviewed that failed to comply with the regulation is required in the final inspection report. A record of visual observations and other evidence collected to demonstrate noncompliance with the regulatory requirement also must be included in the report. Once all collected evidence is properly documented, the Compliance Officer should be able to identify the apparent cause of the violation.

3.5.1 Types of Violations

Compliance determinations must be based solely on the factual information collected. DEQ policies and procedures should be relied on whenever possible as guidance in the violation determination process. This helps to avoid any perception that decisions are made in an arbitrary or capricious manner. Each violation must be reviewed on its own merits, with case-specific considerations taken into account. In making the determination, remember to take any extenuating circumstances into consideration as well. While it is important to identify the specifics of a case, it is equally important to assure program consistency by performing a comparison of each violation with other similar violations cited in past program actions.

Significant Non-Compliance (SNCs) are those facilities alleged to have violations as identified by DEQ, using its enforcement discretion and applying best professional judgment and the criteria described in EPA's December 12, 1996 guidance document *General Design for SNC Redefinition Enhancement in PCS*; guidance document *Interim Significant Noncompliance Policy for Clean Water Act Violations Associated with CSOs, SSOs, CAFOs, and Storm Water Point Sources,* the September 27, 1989 memorandum *"FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation Requirements"* and the September 21, 1995, memorandum "*Revision of NPDES Significant Noncompliance (SNC) Criteria to Address Violations of Non-Monthly Average Limits*."

The following criteria will be used to assess for traditional (i.e., non-wet-weather) IPDES SNC:

- Effluent violations of monthly and non-monthly average limits or any other effluent violation that causes or has the potential to cause a water quality or human health problem;
- Non-effluent violations including any unauthorized bypass, unpermitted discharge, or pass through of pollutants which causes or has the potential to cause a water quality problem or health problems, and failure to implement or enforce an approved pretreatment program;
- Permit schedule violations relating to failure to start construction, end construction, attain final compliance, or meet pretreatment-related milestones by 90 days or more;
- Permit reporting violations relating to discharge monitoring reports, POTW pretreatment performance reports, and compliance schedule final report of progress that are not submitted at all or are submitted 30 or more days late; or
- Any violation of a judicial enforcement order or any violation of an effluent limit, unauthorized bypass, unpermitted discharge or pass-through of pollutants which cause or has the potential to cause a water quality or human health problem, schedule or reporting violations, or any violation of narrative requirements or any other violation of concern to the Director related to an administrative enforcement order.

- For Significant Industrial Users discharging to a POTW, those criteria found at 40 CFR 403.8(f)(2). Additionally, SNC criteria defined in *FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation Requirements* (EPA, 1989) for significant industrial users will be applied to an approved pretreatment program where DEQ is the approval authority and to significant industrial users where DEQ is the control authority (i.e., the POTW does not have an approved pretreatment program).

The following SNC determination criteria will be used for wet-weather IPDES SNC:

- Combined Sewer Overflows
  - Multiple significant unauthorized discharges or multiple unauthorized significant overflows;
  - Substantial failure to implement the nine minimum controls as required in a permit or in an administrative or judicial order;
  - Failure to report unauthorized overflows or discharges as required;
  - Failure to submit an approvable long term control plan, as required in a permit or in an administrative or judicial order, or the submittal is late by 90 days or more;
  - Failure to meet the major milestones required in an administrative or judicial order or in a permit by 90 days or more; or
  - Failure to submit required report or report is late by 30 days or more.
- Sanitary Sewer Overflows
  - Multiple significant unauthorized discharges, or multiple significant overflows;
  - Failure to report overflows or discharge events as required;
  - Failure to meet the major milestones required in an administrative or judicial order or in a permit by 90 days or more; or
  - Failure to submit required report or report is late by 30 days or more.
- Storm Water Point Sources
  - A significant unauthorized discharge;
  - Any significant unauthorized discharge at a site with a small construction waiver or conditional exclusion for no exposure;
  - Significant violations of permit requirements;
  - Failure to obtain permit coverage as required where there is a discharge;
  - Failure to meet the major milestones required in an administrative or judicial order or in a permit by 90 days or more; or
  - Failure to submit required report, or report is late by 90 days or more.
- Concentrated Animal Feeding Operation
  - Any significant unauthorized discharge;
  - No nutrient management plan when one is required;
  - Multiple discharges without an NPDES permit and/or multiple violations of permit requirements;
  - Failure to meet the major milestones required in an administrative or judicial order or in a permit by 90 days or more; or
  - Failure to submit annual report or other required report, or report is late by 90 days or more.

- Discretionary Wet Weather SNC - DEQ reserves the right to use its discretion to designate any alleged wet weather violation of concern as SNC.

Secondary Violators (SVs) are those violators which do not meet the criteria listed above for SNCs. Secondary Violators are typically first-time violators and/or violators who's violation poses little or no threat to human health or the environment. SVs should not have a history of recalcitrant or non-compliant conduct. Noncompliance associated with an SV should be amenable to swift correction and prompt return to compliance with all applicable rules and regulations. DEQ reserves the right to use any and all remedies available to obtain compliance from a SV.

The final step of the violation determination process includes determining or estimating the period of noncompliance. This is not possible in all cases, but an effort to make this determination should be made regardless. In determining if a violation is to be defined as discrete or continuing, one factor to consider is the responsible party's ability to fix the problem and the timeliness of such resolution. Violations can be categorized into four distinct groups, defined as follows:

1. Discrete - refers to a violation that has been observed to have occurred as the result of an individual, distinct or separate circumstance. It is a *one-time* occurrence. It is not observed or documented to be ongoing. In many cases, a discrete violation is one which was observed to have occurred during the window of time covered by the inspection.

   For example, a facility cannot produce an on-hand copy of an operation and maintenance manual during the inspection, even though the facility has a standard operating procedure which provides for the manual to be on-site and has instructed employees as to this procedure. Additionally, the facility corrects the on-site availability of the operation and maintenance manual during the course of the inspection.

2. Continuing - refers to a violation that has been observed or documented to have occurred as the result of an *on-going*, persistent or enduring circumstance or situation. Continuing violations are generally observed or documented as on-going occurrences over an extended period of time, which can be further substantiated by records.

   An example of a continuing violation may be one in which a facility or operator fails to obtain construction general permit coverage required prior to commencing construction. The facility or operator commences construction activities without permit coverage and continues to do so until required by the permitting authority, thus remaining in a continuing state of demonstrated noncompliance until the permit coverage requirement is met.

   Other examples of continuing violations may include: exceeding the same effluent limit over two or more discharge monitoring reports may also be another example of a continuing violation: or failing to submit a report required by a specific date in the permit until the permit requirement has been met.

3. Recalcitrant - refers to a violation which has been noted during a previous recent inspection or review. The violation might be characterized as recalcitrant based on the Compliance Officer's knowledge of identical violations identified during a previous

inspection or review of the facility. A recalcitrant violation can be either discrete or continuing, but clearly is one which has been repeatedly identified and brought to the attention of the facility.

For example, a violation has been previously brought to the attention of facility representatives, with the intent being that it would promptly be resolved, yet little or no action was taken to resolve the violation. Upon re-inspection of the facility, the same violation is again identified.

4. Criminal - refers to a facility having knowingly or intentionally violated environmental laws. In the event it appears criminal violations exist, DEQ will refer the enforcement action to the Attorney General's office for prosecution of misdemeanor charges, or to EPA for further criminal investigation and/or prosecution of the violation under federal statutes. In both cases, the IPDES Program will remain involved to the extent requested.

3.5.2 Appropriate Enforcement Recommendation

Once the Compliance Officer has determined that a violation has occurred, the next step is to determine the appropriate course of action to recommend. The Compliance Officer should refer to the *Enforcement Response Guide* when making this determination. The choices include:

1. Pursue an informal response;
2. Pursue a formal response such as an NOV;
3. Refer the case to the Attorney General's Office for civil or criminal enforcement; or
4. Refer the case to other relevant local, state or federal enforcement agencies for enforcement consideration.

An important factor to consider in making a determination is the magnitude or seriousness of the violation(s), based on their impact on human health and/or the environment, individually and then collectively. The seriousness or magnitude of a violation is often referred to as the *gravity* of the violation. Gravity considerations include:

1. Weighing the severity of individual violations based on their actual or potential for harm to human health and the environment;
2. The degree to which the violation deviates from the regulatory requirement; and
3. The significance of compliance with the requirement in achieving the goal of the statute or regulation.

To weigh the gravity of violations, for example, certain terms have been assigned to identify violation categories:

- MAJOR: Major violations deviate substantially from the regulatory requirement, and create imminent or potential danger to human health or the environment. Major violations usually result in larger penalties.
- MODERATE: Moderate violations occur when the responsible party deviates significantly from most but not all of the regulatory requirements, thereby resulting in a less significant potential for danger to human health or the environment. Moderate violations usually result in smaller penalties.

- MINOR: Minor violations occur when the responsible party deviates only somewhat from the regulatory requirements. Little or no potential danger exists to human health and the environment as a result of minor violations and the minimum penalty is imposed.

Other factors to consider when determining the appropriate enforcement recommendation include:

1. The amount and toxicity of the pollutant or substance that was released, discharged, treated, disposed, or improperly managed;
2. The sensitivity of the environment impacted or potentially impacted by the release, discharge, treatment, disposal or improper management;
3. The responsible party's compliance with other safety and environmental requirements;
4. The compliance history of the responsible party and their responsiveness to correcting previous violations;
5. The responsiveness and/or cooperation exhibited by the responsible party in correcting discrepancies during the inspection or shortly thereafter, constituting a good faith effort to comply;
6. Whether circumstances beyond the control of the responsible party exist, such as unpredictable accidents or acts of God;
7. The degree of care exhibited by the responsible party;
8. The economic benefit realized by the responsible party while operating in noncompliance with the requirement, thus resulting in an unfair advantage over competitors; or
9. The degree of support for, commitment to, and implementation of environmental programs by the owner/operator/management of the facility (i.e., training opportunities, designated environmental staff, required resources available, environmental programs in place, good housekeeping, and good recordkeeping systems).

3.6 Preparation of the Enforcement Referral Package

Once the draft inspection report is final the Compliance Officer is responsible for putting together a referral package, also known as the referral recommendation. The referral package contains the Compliance Officer's recommendation to the appropriate personnel as to whether formal administrative enforcement action, civil, or criminal referrals are warranted. An enforcement referral template is available in TRIM under record number 2015AGC221 and in Appendix D.

The referral package should be conspicuously labeled *Enforcement Confidential* and may be treated as a confidential attorney-client communication during a pending enforcement action. In the event of a public records request, consult with Attorney General's Office for assistance in determining whether a referral package is or is not exempt from disclosure.

Essential documentation to include within a referral package is:

1. The inspection report;
2. A list of violations alleged, along with evidence & correspondence pertinent to the case; and
3. The Compliance Officer's recommendation as to what type of further enforcement action, if any, is warranted.

The referral package should contain a complete narrative summary as outlined in the template including, among other things, the following information:

- Date of inspection,
- Names of all persons (agency and facility) involved in the inspection,
- Background information and/or a chronology of events,
- Discussion of complex technical or regulatory issues,
- Discussion of any extenuating circumstances,
- Previous compliance history,
- The degree of cooperativeness exhibited by the facility,
- Compliance Officer's statement as to the overall compliance status of the facility, and
- Any other relevant information which supports the Compliance Officer's overall recommendation.

The referral package also contains a narrative summary of the violation(s) which may be alleged in a noncompliance letter or Notice of Violation (NOV). The narrative must state the factual evidence needed to support the alleged violation(s). This section should also include the Compliance Officer's determination, along with supporting facts, of whether this is a one-time, continuing or recalcitrant violation.

The primary purpose of the referral package is to document the Compliance Officer's findings and recommendation for initiating the appropriate enforcement response. In the referral package memorandum (Figure 1) numerous options are listed; the Compliance Officer selects the appropriate box with the recommended action, and follows with a brief narrative justification for the recommendation.

The referral package may include any necessary documents as attachments, including inspection reports and associated evidence, penalty calculations, justifications, written correspondence, phone logs, e-mails, memoranda, etc., which were generated as part of the enforcement case development process. The compliance assistance record shall be registered into TRIM according the TRIM standard operating procedures and marked confidential. The Compliance Officer should complete the referral recommendation package within the time frame specified by the timelines outlined in the IPDES Enforcement Response Guide.

Date

ENFORCEMENT CONFIDENTIAL

MEMORANDUM

TO: Name, Program Administrator

THROUGH: Name, Enforcement Coordinator

FROM: Name, Science Officer/Compliance Analyst (Inspector)

RE: **Enforcement Referral for** [Facility Name, location]

Summary of Inspection Report:

Brief narrative summary should include the following information:

- Date of the inspection or compliance review;
- Names, titles, and affiliation of persons involved;
- Type of inspection [complaint, site inspection, compliance review, visible emission observation, sampling, multi-media, etc.];
- Brief chronology of events;
- Identification and discussion of complex technical or regulatory issues;
- Identification and discussion of extenuating circumstances;
- Discussion of previous compliance history of the facility;
- General statement of the overall compliance status of the facility;
- General statement as to the degree of cooperation exhibited by facility;
- Recommendation and/or justification for enforcement action;
- Any other relevant information (e.g., penalty calculation and justification information).

List of Alleged Violations/Assessment of Compliance Status:

Based on observations identified in the [date of completed inspection report] inspection report, the alleged violations are as follows:

1.a. Cite permit condition, rule, regulation or statute violated.

1.b. Narrative of factual evidence to support the alleged violation including reference to the inspection report or attachments as needed.

1.c. State whether this is a one-time, continuing or a recalcitrant violation. Repeat the above format for all alleged violations. [Use the format and proposed language that would routinely be used in the NOV so that the language can be transcribed directly into the draft NOV.]

Based on the above, I recommend the following appropriate action:

[ ] Compliance Notification Letter be issued, therefore no action be initiated, or notify of resolution to previous enforcement action [Optional]
[ ] Issuance of a Warning Letter
[ ] Issuance of a Notice of Violation
[ ] Initiation of a Consent Order without prior NOV issuance
[ ] Initiation of a Voluntary Consent Order without prior issuance of an NOV
[ ] Referral to Attorney General's Office for Civil Action
[ ] Referral for Criminal Action
[ ] Referral to U.S. Environmental Protection Agency for appropriate action
[ ] Referral to other local, state, federal agency for appropriate action
[ ] Other

Additional justification: **[optional]**

cc: Enforcement-Confidential section of DEQ facility/source file

Figure 1: Referral Package Memorandum, Standard Format

3.7 Referrals to/from Other Enforcement Agencies

Information relating to potential violations at a facility may also arrive in the form of referrals from other local, state or federal agencies, such as Health Districts, the Idaho Department of Fish and Game, the Occupational Safety and Health Administration, and EPA. Likewise, it is important that DEQ personnel understand other agencies' authorities in order to coordinate with or refer cases to them. The following is a partial list of agencies with environmental responsibilities that may need to be informed of DEQ activities. Cases may also be referred to them for further action under their authorities.

LOCAL AGENCIES (City and County):

Rural Fire Districts
Fire Marshall/Inspector
Planning and Zoning Commissions
Owners/Operators of Solid Waste Landfills
Commissioners
City Officials/Managers
Law Enforcement Officials Prosecutors
Local Emergency Response Commission (LERC)

STATE AGENCIES:

Dept. of Agriculture
Dept. of Fish and Game
Dept. of Law Enforcement
Dept. of Transportation

Dept. of Lands
Dept. of Parks & Recreation
Dept. of Water Resources
Dept. of Labor and Industrial Services
Office of the Attorney General
Health Districts

FEDERAL:

U.S. Environmental Protection Agency (EPA), including the Idaho Operations Office located in Boise, Idaho.
U.S. Forest Service
U.S. Bureau of Land Management
U.S. Dept. of Agriculture
U.S. Department of Energy
U.S. Corp of Engineers
U.S. Bureau of Reclamation
U.S. Dept. of Transportation
U.S. Dept. of Justice
U.S. Geological Survey
Farm Home Administration (FHA)
Occupational Safety and Health Administration
Mine Safety and Health Administration

OTHER:

Idaho Indian Tribes

3.8 Penalty Determination

Determination of penalties is perhaps one of the most challenging and time-consuming activities in the development of an enforcement action. To assist Compliance and Enforcement Coordinators in the penalty calculation and assessment process, the IPDES Program uses the *Water Quality Administrative Penalty Guidance* Document to categorize violations and assess penalties (see Appendix B). The IPDES Program also uses an addendum to the Water Quality Program Administrative Penalty Guidance for determining penalty amounts for violations within the program (see Appendix C).

The basic philosophy of penalty assessment in these documents derives from EPA's 1984 Policy on Civil Penalties (EPA 1984), and can be summarized as follows. The goals of penalty assessment are:

1) Deterrence: The penalty assessed must not only recover any economic benefit gained by the violator, but also impose an additional monetary or other burden commensurate with the gravity of the violation(s).

2) Fair and Equitable Treatment of the Regulated Community: Extenuating or aggravating circumstances must be taken into account. Thus adjustments may be made to the penalty for such

factors as degree of willfulness, history of (non)compliance, degree of cooperation, ability to pay, etc.

3) Swift Resolution of Environmental Problems: This goal is pursued by retaining the flexibility to reduce penalties when the violator has remedied or begun to remedy the problem(s), thus providing incentives for swift remediation. Conversely, disincentives to delaying the resolution process can be provided in the form of per-day fines for continuing violations.

The statutory authority which allows DEQ to seek administrative, civil, or criminal remedies for violations of the IDPES Program and other water quality laws is contained in the Idaho EPHA, Idaho Code §§ 39-101 et seq. Section 39-108 provides a framework for administrative enforcement and authorizes DEQ to assess and collect civil penalties of up to $10,000 per violation, or $5,000 for each day of a continuing violation (whichever is greater), related to the IPDES Program. Section 39-117 authorizes criminal fines of up to $10,000 per violation or per day of a continuing violation for willful or negligent violations of certain IPDES rules, standards, and limitations. In addition, section 39-117 authorizes criminal fines up to $5,000 per violation or per day of a continuing violation for knowingly making certain false statements or rendering inaccurate any required monitoring device or method.

3.9 Penalty Justifications

If calculating penalties for environmental violations the Compliance, Inspection, and Enforcement Lead, or their designee, must document the rationale for the determination of the assessed penalty amount. This documentation may be recorded directly on the penalty calculation worksheet.

Typically, it is the responsibility of the Compliance and Enforcement Coordinator(s) in the state office program to develop a draft penalty assessment and to ensure that the proposed penalty is appropriate, fair and consistent with penalties assessed for violations at other facilities with similar circumstances; or, that the penalty assessment is fully justified based on the supporting information for the violations. The draft penalty assessment documentation is to be provided to the Compliance, Inspection, and Enforcement Lead for review and justification verification.

If penalties are adjusted, typically downward following enforcement negotiations and settlement, a justification for the adjustment should be documented and included in the DEQ facility file.

4 Administrative Enforcement Action

4.1 Introduction: Purpose of Administrative Enforcement Action

Whenever the Director or the Director's designee determines that a permittee is in violation of any provision of the EPHA, or rules, permits, or orders issued or promulgated pursuant to the EPHA, they may commence either an administrative or civil enforcement action. The legislative intent of the administrative enforcement process is to avoid costly litigation, in terms of both money and resources and for both the regulated community and DEQ.

By implementing the administrative enforcement process, DEQ is able to maintain some control of the settlement negotiations, such as deadlines, parameters on negotiations, penalty amounts, etc. Since the courts can be unfamiliar with environmental issues and considerations, another advantage to avoiding the civil process is saving significant resources to educate the courts. DEQ and the responsible party (defendants) further benefit by being able to exchange reasonable proposals for resolution, rather than having the court impose directives for resolution. This allows for quicker settlements with a shorter process and less cost.

An additional benefit to both parties is the opportunity to meet face-to-face allowing the issues to be put on the table. This can encourage free-flowing dialogue and an exchange of ideas, as well as clarifying each party's needs. This can often expedite and increase the likelihood of an effective negotiation and resolution.

4.2 Factors that Distinguish Administrative Enforcement from Civil and Criminal Enforcement

The administrative enforcement process is more informal and therefore typically less costly in terms of technical staff and attorney resources invested. Compared to a civil lawsuit or criminal prosecution, an administrative resolution can often be reached quicker and with greater control over the outcome. Negotiations can be more technically than legally driven, thus demanding less attorney involvement. Information is likely to be obtained more easily from both parties during free-flowing dialogue. The administrative process allows DEQ to use its regulatory flexibility which can result in negotiated settlements with lower penalties.

Civil enforcement, on the other hand, is a more formal process. All parties are bound to the rules of the courts, including the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence. The parties have less direct control over the outcome and negotiations tend to involve attorneys to a greater degree than technical staff. The formal route through the courts leads to the accumulation of additional costs to both parties, and the defendant typically incurs attorney fees as well as higher penalties.

The criminal enforcement process is even more complex in terms of adhering to the rules of the court and hence can be more costly to all parties involved. The Idaho Rules of Criminal Procedure and Idaho Rules of Evidence apply, and the defendant is entitled to a variety of Constitutional protections that do not necessarily apply to civil or administrative enforcement proceedings.

In general, the more formal the process the more time, money and resources must be committed by all parties to resolve the issues. Hence, it is often beneficial for the parties to negotiate through the more informal administrative enforcement process to achieve successful resolution, before other options are considered.

The general components of the administrative enforcement process include issuance of noncompliance letters, Notices of Violation, and negotiation of Consent Orders. The process and implementation of each of these components is illustrated in Figure 2.

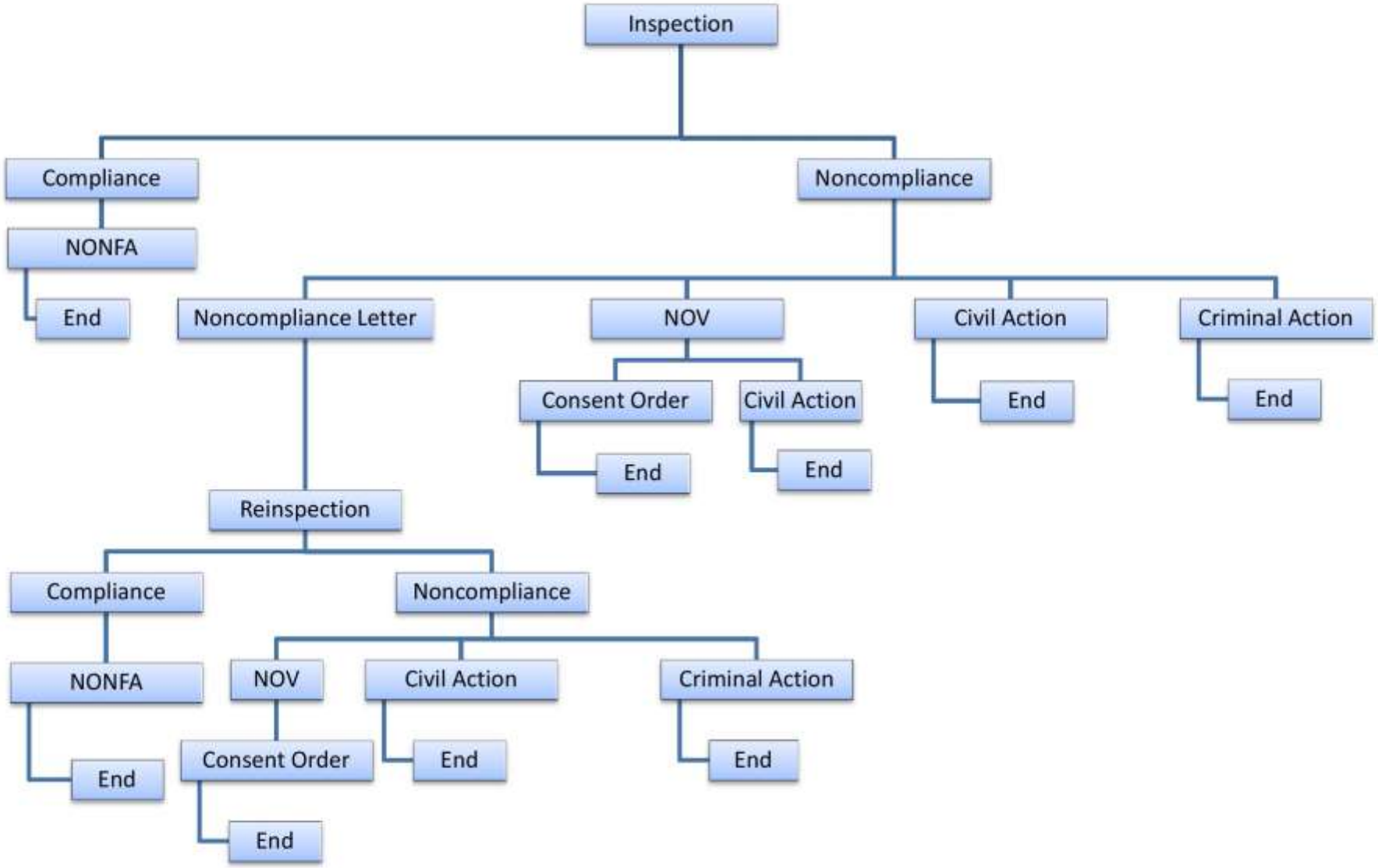


Figure 2. Enforcement Process Overview

4.3 Escalating Enforcement Responses

As identified in the Enforcement Response Guide, DEQ will exercise three possible levels of response to an illegal discharge or other violations of IPDES program requirements: no immediate action, informal response, or formal enforcement action. DEQ will review the violation and determine the appropriate enforcement response.

The magnitude, frequency, duration, and degree of recalcitrance of a noncompliance event determine whether DEQ's response is formal or informal or requires immediate action. Events resulting in known harm to public health or the environment prompt a formal enforcement action. Harmful events are those events that create a nuisance or render surface waters detrimental or injurious to public health, safety, or welfare; fish and wildlife; or beneficial uses of the water body (e.g., swimming beach closures or fish kills).

For those noncompliance events identified as not significant, DEQ may offer compliance assistance, and may deploy an escalating informal response process to bring permittees back into compliance. DEQ reserves discretion when initiating an informal response such that an informal response may begin with the highest level of informal enforcement (i.e., notice of intent to enforce).

4.4 Informal Responses

Informal responses typically take four forms: compliance assistance, noncompliance letters, notices of deficiency, and notices of intent to enforce.

4.4.1 Compliance Assistance

DEQ uses compliance assistance in the form of verbal or electronic notifications/requests (phone call, e-mail) to inform a permittee of a problem and to informally explain regulatory requirements (e.g., surface water quality standards, environmental statutes and rules) and permit requirements or to provide guidance on how to comply with or satisfy a particular permit condition. For example, DEQ may explain the purpose of a storm water pollution prevention plan or quality assurance project plan and provide resources to assist in completing these types of documents. Compliance assistance is not technical assistance; for information on technical assistance, see *IPDES Enforcement Response Guide*, Section 3. DEQ will contact permittees via phone within 5 days of becoming aware of a noncompliance event, regardless of whether a formal response will follow.

DEQ uses permittee education and outreach (i.e., compliance assistance) when noncompliance is identified statewide or by sector (e.g., storm water). As reporting data are reviewed and inspections are conducted, DEQ will analyze noncompliance trends and address these issues through education and outreach, including publication of online IPDES resources, permittee file reviews, workshops, conferences, and newsletters.

4.4.2 Issuance of a Noncompliance Letter

According to the EPHA, the administrative enforcement process begins with the issuance of the Notice of Violation. All actions prior to this, such as issuance of noncompliance letters, would not technically be part of administrative enforcement. However, DEQ views the informal responses identified in the Enforcement Response Guide as part of the administrative remedies available to help ensure compliance. The noncompliance letter can be an effective tool in achieving the primary goal of enforcement: to gain compliance. Thus it is discussed here as a measure that may, if heeded, make further enforcement proceedings unnecessary. If the noncompliance letter is ignored, then further enforcement may be necessary.

The noncompliance letter serves two purposes:

1. To identify deficiencies/violations observed during an inspection/review process; and
2. To identify a timeframe for implementing corrective measures to mitigate the deficiencies/violations.

Noncompliance letters are generally reserved for addressing minor or low-priority discrete violations and do not assess a penalty. Typically, the violations addressed in a noncompliance letter can be resolved expeditiously with relatively low costs to industry and minimal oversight by DEQ. The noncompliance letter is an informal tool for gaining compliance without escalating to a Notice of Violation or other formal proceeding.

4.4.3 Noncompliance Letter Processing and Routing Procedure

The internal DEQ process for development, review and issuance of a noncompliance letter is diagrammed in Figure 3 of this manual. The Compliance Officers are responsible for drafting the noncompliance letter, which is then reviewed by the Regional Office Administrator (RA) or designee. Upon approval and signature by the RA, the letter is then issued to the registered agent and owner and/or operator of the facility via certified mail. A response from the facility must be received by DEQ by the date specified in the noncompliance letter. The facility's written response must include specific documentation to confirm all violations outlined in the letter have been resolved.

Upon DEQ's receipt of the response letter from the facility, the Compliance Officer is required to review the submittal to determine whether compliance with the regulatory requirements has been achieved. If the Compliance Officer determines that the facility has satisfactorily remedied the violations cited in the noncompliance letter, the Compliance Officer may recommend that the Regional Administrator issue a Notice of No Further Action (NONFA). The Compliance Officer may also opt to confirm resolution of the violations by re-inspecting the facility. In this case, an NONFA would only be issued upon completion of the inspection verifying compliance. The NONFA is specific to the areas identified in the originating noncompliance letter, do not absolve the facility from responsibility to maintain compliance with all aspects of the permit, and retains DEQ's rights and remedies should DEQ become aware of new or additional information regarding the specific matter or any other violations.

The NONFA is a letter issued primarily by the Regional Offices which indicates that concerns relating to the relevant violations identified by DEQ during an inspection or compliance review have been satisfactorily addressed. The NONFA terminates the administrative enforcement

process related to the issuance of a Noncompliance letter. A copy of the NONFA is maintained in the DEQ Regional and State Program Office facility file to demonstrate DEQ's closure of the enforcement action. The appropriate information is then entered into the enforcement tracking databases.

If the facility fails to cooperate with the Compliance Officer or inadequately responds to the Noncompliance letter, the Compliance Officer may recommend an NOV with possible penalties be issued through the State Program enforcement office. See Appendix D of this manual for a standard Noncompliance letter form and an example draft Noncompliance letter.

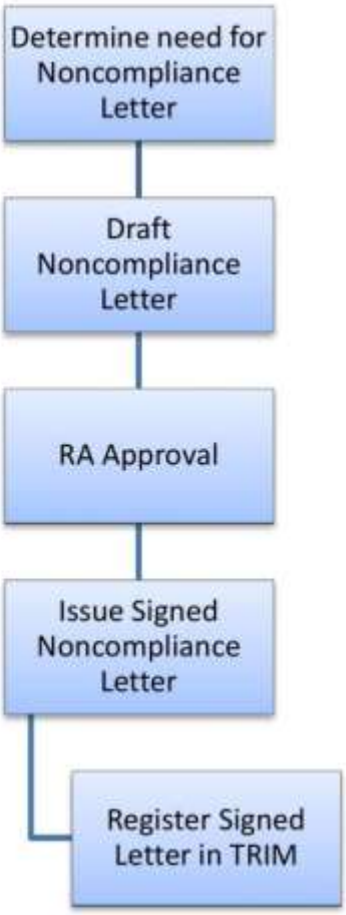


Figure 3: Noncompliance Letter Process Flow Diagram

4.5 Formal Responses

4.5.1 Notice of Violation (NOV)

An NOV is one of DEQ's formal legal means of informing responsible persons or parties that violations have been documented. The key elements of an NOV, in the sequence they appear, are:

1. Notification of the violations (by citing the legal provisions violated) documented by DEQ as a result of an inspection or a compliance review;
2. Assessment of a civil penalty, typically for each violation; and
3. An invitation to a Compliance Conference, providing an opportunity to negotiate a Consent Order (CO) designed to prescribe the terms and conditions the alleged violator must follow to return the facility to compliance through resolution of the violation(s).

Pursuant to Idaho Code §39-108(3)(a), a Notice of Violation:

> "shall identify the alleged violation with specificity, shall specify each provision of the act, rule, regulation, permit or order which has been violated, and shall state the amount of civil penalty claimed for each violation. The notice of violation shall inform the person to whom it is directed of an opportunity to confer with the director or the director's designee in a compliance conference concerning the alleged violation. A written response may be required within fifteen (15) days of receipt of the notice of violation by the person to whom it is directed."

The main purpose of a response to the NOV is to establish a mutually acceptable date, time and place for the compliance conference.

Issuance of an NOV is generally reserved for more serious, egregious, continual, or recalcitrant violations of environmental regulations. These types of violations typically require complex and more costly corrective measures than violations cited in a noncompliance letter, as well as longer time frames for the facility to return to compliance. In addition to addressing more serious violations, an NOV should also address minor or moderate violations identified as part of an inspection or compliance review.

The NOV, in all its stages of preparation, is considered an *Enforcement Confidential* document. Seek advice from the Attorney General's Office before deciding to release an NOV in connection with a public records request.

When a NOV is issued to a permittee, it is sent via certified mail to the responsible parties at the permittee's address(es). When a permittee does not have a registered agent, the NOV is issued to the individual who has been identified by DEQ as being responsible for the business. This is most often the owner and/or operator. In cases where the owner and/or operator of the business is not the owner of the real property and is leasing from another party the property on which the facility operates, DEQ will provide the owner of the real property a copy of the NOV. This practice notifies the property owner of the environmental violations on his property and of his potential liability.

The internal process for the development of a Notice of Violation is shown in Figure 4.

The NOV consists of a summation of DEQ's primary evidence for the allegation of the violations. Generally this includes a specific reference to the inspection, compliance review, or other methods used to discover the alleged violation(s). The summation also includes the citation of DEQ's statutory authority to pursue formal enforcement by issuance of an NOV.

The main body of the NOV lists the violations in numerical order, each with a specific citation of the provision violated (i.e., permit condition, rule, standard, etc.). Also included is reference to DEQ's evidence supporting each alleged violation and a description of the actions (or inactions) constituting each alleged violation.

Following each violation is a penalty assessment for that individual violation, as determined by the IPDES penalty policy (Appendix B and Appendix C). After the last violation noted in the body of the NOV, the total assessed penalty amount is specified. This is followed by language describing the proposed timetable for response by the facility to the NOV. The final step is obtaining the signature of the DEQ Director, complete with the effective date of issuance.

Refer to Appendix D for examples of an NOV and associated accompanying documents.

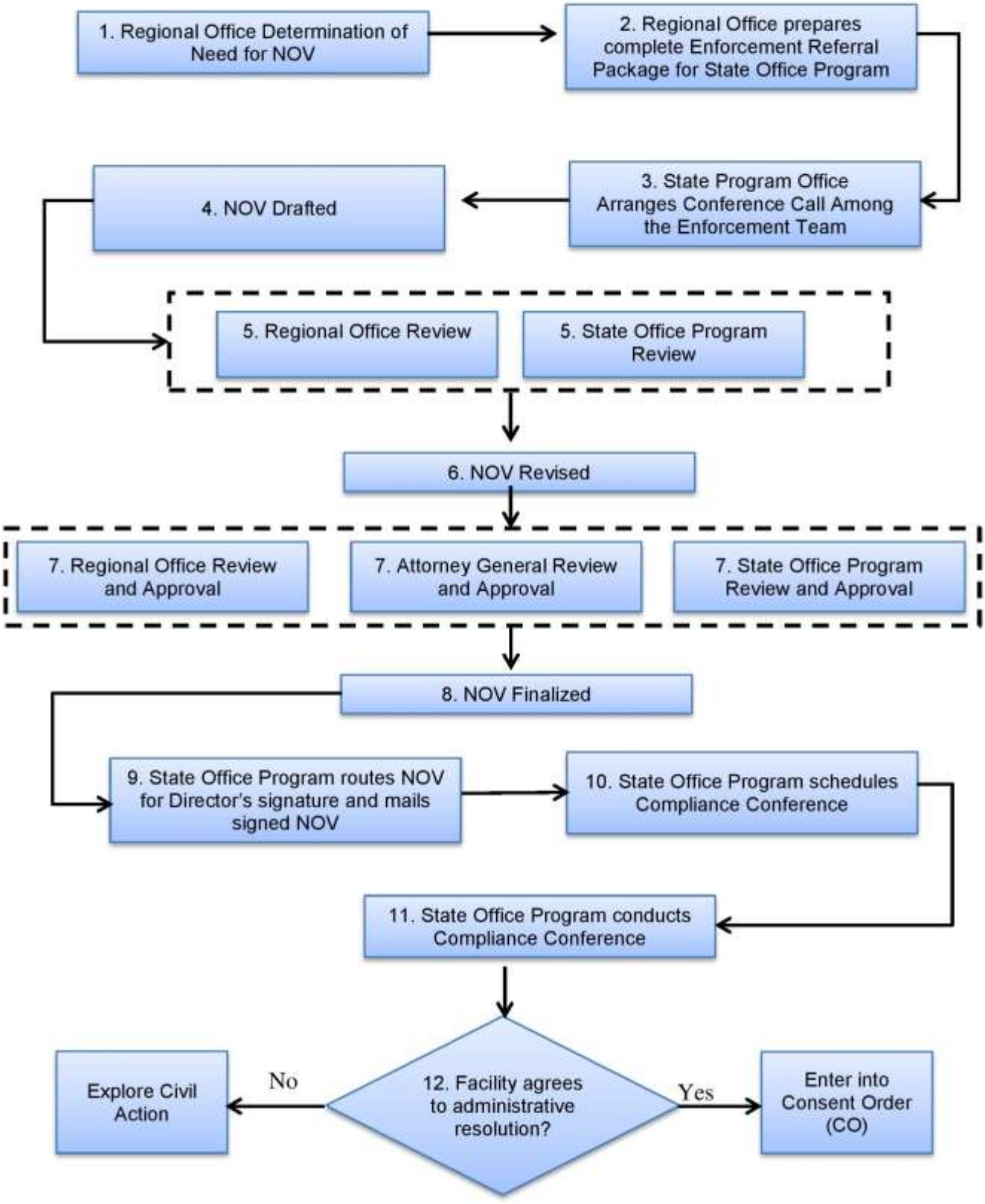


Figure 4: Notice of Violation (NOV) Routing Diagram.

4.5.1.1 NOV Routing and Review Process

Once the Enforcement Referral Package is sent from the Regional Office to the State Program Office, the NOV routing and review process will proceed as follows:

- **State Office (SO) Responsibilities -** Upon receipt of the referral package, the SO will arrange for a telephone conference call with the team (SO Compliance, Inspection, and Enforcement Lead, SO Compliance and Enforcement Coordinator, RO Compliance Officer, and RO Manager). Additionally, a Deputy Attorney General (DAG) will be assigned to the case, but the DAG's participation in the phone call will be optional. The phone call will allow the team to discuss and determine strategies. If sufficient grounds to proceed are identified, the first draft of the Notice of Violation (NOV) will be drafted by the SO Compliance and Enforcement Coordinator.

- **Multimedia Enforcement Actions -** Under certain circumstances, an investigation may reveal violations involving more than one program office. In this instance, the RO will refer the violations to the SO Program that initiated the investigation. For example, if a review of an IPDES annual report or inspection detects both IPDES and hazardous waste violations, the referral would be sent to the state IPDES Program. The IPDES Program would become the lead SO Program, and would be responsible for ensuring the SO Waste Management and Remediation Division remains informed and involved in the case.

- **Actions Involving Site Remediation -** If enforcement actions will involve site remediation, they will be referred to the SO Waste Management and Remediation Division or the SO IPDES Program as follows. If the enforcement action occurs at a facility that has an IPDES permit, the enforcement action will be referred to and managed by the SO IPDES Program. All other enforcement actions involving remediation will be referred to and managed by the SO Waste Management and Remediation Division.

- **Draft NOV** – Following the telephone conference call, the SO Compliance and Enforcement Coordinator will produce the first draft of the NOV. The SO Compliance and Enforcement Coordinator will identify any complex or controversial issues connected with the draft NOV and identify them in an e-mail to team members. The draft NOV is provided electronically to the SO IPDES Program and the RO team member. The first draft will not be provided to the assigned DAG, unless the DAG specifically requests to review it.

- **Review of First Draft of NOV -** The team will review and comment on the draft. The team is expected to comment electronically, and copy all team members with their comments.

- **State Office IPDES Program Conducts Conference Call -** If the SO Compliance and Enforcement Coordinator determines significant issues remain, or if the DAG's review identifies significant issues, the SO Compliance and Enforcement Coordinator will conduct a conference call with the team members. The purpose of the conference call will be to reach consensus on the wording of the final NOV. If consensus cannot be reached,

the SO IPDES Program team member will determine the final wording in conjunction with the DAG assigned to the case.

- **State Office IPDES Program Finalizes NOV -** The SO Compliance and Enforcement Coordinator finalizes the NOV by incorporating the agreed-to changes into the NOV. The final NOV, along with the cover letter and copies, is routed by the SO Compliance and Enforcement Coordinator for signature.

- **State Office IPDES Program Routes for Signature -** The SO Compliance and Enforcement Coordinator routes the NOV to the Compliance, Inspection, and Enforcement Lead, IPDES Program Manager, Water Quality Division Administrator, then to the Director for signature. The signed NOV is returned to the SO Compliance and Enforcement Coordinator and mailed to the facility. The SO Compliance and Enforcement Coordinator will register the signed NOV into TRIM according to the TRIM Filing Index standard operating procedures and inform all team members of the TRIM reference record number.

- **State Office IPDES Program Schedules Compliance Conference -** The SO Compliance and Enforcement Coordinator will be the point of contact when the facility requests a compliance conference. The SO Compliance and Enforcement Coordinator will contact all team members and determine a date and location for the compliance conference. Normally conferences will take place in the regional office unless otherwise agreed to. The DAG team member will generally participate in the compliance conference only if the facility has legal counsel present during the conference. Once the details are finalized, the SO Compliance and Enforcement Coordinator will contact all team members by e-mail with the time and location of the compliance conference.

- **State Office IPDES Program Conducts Compliance Conference -** The SO Compliance and Enforcement Coordinator is the lead negotiator at the compliance conference. The RO Compliance and Enforcement Coordinator of the facility will provide background, clarification, and direction for understanding the inspection, record review, or nature and extent of the violations that led to the issuance of the NOV. The results of the compliance conference will be documented in a file note to the facility's enforcement file, with copies provided to all team members.

- **Facility Refuses Compliance Conference** - In the event that the facility refuses to schedule or attend a compliance conference, the SO IPDES Program is required to determine the next step.

4.5.1.2 Compliance Conference

The purpose of a compliance conference is to provide the opportunity for both parties to meet to discuss the violations cited in the NOV. Pursuant to Idaho Code §39-108(3)(a)(iii), the compliance conference provides "an opportunity for the recipient of a [NOV] to explain the circumstances of the alleged violation and, where appropriate, to present a proposal for remedying damage caused by the alleged violation and for assuring future compliance." If the recipient and DEQ agree on a plan to remedy damage caused by the alleged violation and to assure future compliance, they may enter into a Consent Order (CO) formalizing their

agreement. The CO may include a provision for payment of any agreed civil penalty and a scheduled time frame for compliance.

Once the recipient receives the NOV, they have fifteen (15) days in which to contact DEQ to request and schedule a compliance conference. An attempt should be made to schedule the compliance conference within twenty (20) days, as specified in the EPHA. The recipient contacts the SO Compliance and Enforcement Coordinator by phone or in writing to request the compliance conference. Once the compliance conference date is scheduled, a confirmation letter is sent by the SO Compliance and Enforcement Coordinator confirming the date, location, and any special considerations outlined. If the recipient chooses not to travel to the State Office in Boise to attend the compliance conference, the SO Compliance and Enforcement Coordinator should offer to hold the meeting at the DEQ regional office nearest the facility. Compliance conferences also may be held via telephone conference calls.

When scheduling a compliance conference it is important to find out whether the recipient will be represented by an attorney at the conference. If this is the case, DEQ's policy is to also be represented by a DAG. It is important to inform the recipient of this policy at the time the compliance conference is being scheduled. It is also recommended that the SO Compliance and Enforcement Coordinator inform the recipient that the conference is their opportunity to present any additional information that may be needed to resolve the alleged violations. Advising the recipient to be prepared to present their case and any good faith efforts they may have taken to resolve the noncompliance issues since the time of the inspection is strongly encouraged. The DEQ Compliance Officer(s) who observed the noncompliance should be present to provide background information and clarification, and to take notes for the file record of the compliance conference.

Prior to the compliance conference, a pre-conference meeting should be held between the Compliance Officer(s), the SO Compliance and Enforcement Coordinator (s), SO Compliance, Inspection, and Enforcement Lead, RO personnel, and/or the IPDES Program Manager. A DAG should attend, even if the alleged violator has indicated they will not have legal representation at the compliance conference. The purpose of this meeting is to discuss all critical aspects of the enforcement action, to determine the goals of the compliance conference, and to establish the enforcement bottom line for negotiation purposes. The pre-meeting also allows the Compliance Officer(s) the opportunity to recount the circumstances of the inspection and to discuss in greater detail, if necessary, the technical or regulatory aspects supporting the alleged violations. The meeting also serves as a briefing for the SO Compliance and Enforcement Coordinator, who is usually the lead negotiator during the compliance conference. It also provides the SO Compliance and Enforcement Coordinator additional information such as the justification for the proposed penalty, the history of the alleged violator, and any actions which may need to be taken to return the violator to compliance. Often during pre-meetings various negotiation strategies are discussed in anticipation of the recipient's response to the NOV and the assessed penalties.

The compliance conference begins with DEQ introducing all parties present at the meeting and providing a sign-in sheet. The SO Compliance and Enforcement Coordinator generally takes the lead and explains the purpose of the compliance conference is to provide the alleged violator the opportunity to explain any circumstances surrounding the alleged violations. It is further explained that the purpose of the meeting is to identify, discuss and negotiate terms and

conditions of a CO which will result in resolution of the alleged violations cited in the NOV and in an agreement on the final civil penalty.

Typically issues are discussed chronologically beginning with the original Compliance Officer's findings as outlined in the NOV. The Compliance Officer's role during the compliance conference is to take notes for documenting the file with the recipient's responses to the NOV and proposed resolutions. The RO Compliance Officer may also participate, as requested by the SO Compliance and Enforcement Coordinator, by defending the factual information collected and observations made during the inspection, and by providing any technical or regulatory information needed to clarify the issues.

The role of the DAG at the compliance conference varies case by case. If the recipient's attorney presents their case, typically the DAG will present DEQ's case. On some occasions the discussions may be more technical in nature, in which case attorneys from both sides tend to take a back seat to DEQ personnel and company officials. Each compliance conference presents unique situations which must be dealt with as they arise.

A compliance conference may last from a few hours to a few days, depending on the number of alleged violations and the complexity of the issues involved. If, however, it appears the alleged violator is not willing to enter into a CO or is not negotiating in good faith, and an agreement likely will not be reached within one hundred eighty (180) days from the date of the compliance conference, DEQ may elect to pursue civil action in district court to compel compliance. If the alleged violator appears to be negotiating in good faith and making satisfactory progress towards achieving compliance through administrative resolution of the alleged violations, the SO Compliance and Enforcement Coordinator may, with concurrence of the Compliance, Inspection, and Enforcement Lead and IPDES Program Manager, continue to negotiate beyond the standard timeframes. The one hundred and eighty day (180) maximum has been established by DEQ as an outside limit to the negotiation process in an effort to establish what the IPDES Program believes is a reasonable time frame for negotiation of a CO.

At some point during the compliance conference the SO Compliance and Enforcement Coordinator may suggest the parties break from negotiations to caucus. The purpose of caucusing is to provide a brief period for the parties to discuss, in private, the issues before resuming the meeting and continuing to work towards settlement. At the conclusion of the compliance conference, the SO Compliance and Enforcement Coordinator will summarize each of the parties' positions. Sometimes the alleged violator will need to provide additional information to DEQ to support their response to the NOV. The alleged violator may also have requested DEQ provide additional information. Time frames for submittal of additional information are agreed to by both parties.

By the end of the compliance conference, the SO Compliance and Enforcement Coordinator determines whether the alleged violator is willing to enter into a CO agreement. If so, the SO Compliance and Enforcement Coordinator will explain that DEQ initiates the drafting of the CO. The CO will include the conditions agreed to by the parties during the compliance conference(s) and any changes which may affect the assessed penalty. The SO Compliance and Enforcement Coordinator will explain that the facility will have the opportunity to review, comment on, and factually correct the draft CO. Negotiations may continue until both parties agree on the terms and conditions of the CO within the one hundred and eighty (180) day period.

Should negotiations break down the SO Compliance and Enforcement Coordinator, with concurrence of the Compliance, Inspection, and Enforcement Lead and IPDES Program Manager, may refer the case to the Attorney General's Office for filing of a civil action (see Section 5 of this manual).

Following the compliance conference, the SO Compliance and Enforcement Coordinator is required to prepare a file note which documents the issues as discussed during the compliance conference. The file note contains or references all documents, photographs, and information provided to DEQ by the alleged violator during or following the compliance conference. The file note should be reviewed by the SO Compliance and Enforcement Coordinator for accuracy prior to inclusion into the agency source file. The file note and any subsequent information obtained from the alleged violator then become the basis for the SO Compliance and Enforcement Coordinator to begin writing the draft CO.

4.5.1.3 Consent Order

The CO results from both parties coming together to negotiate mutually agreed-upon provisions which address corrective measures to mitigate violations. The CO also includes a schedule in which to complete certain activities and/or the terms for payment of a civil penalty. A negotiated CO is referred to as a *bilateral agreement* or a *mutually acceptable written agreement* because it has been negotiated and agreed to by both parties, rather than being a unilateral order imposed on one party by another.

Pursuant to Idaho Code §39-108(3)(a)(iv) and (v) of the EPHA, if the recipient of an NOV and DEQ agree on a plan to remedy damage caused by the alleged violation and to assure future compliance, they may enter into a CO formalizing their agreement. The CO may include a provision providing for payment of any agreed civil penalty. A CO shall be effective immediately upon signing by the violator and the Director of DEQ, and shall preclude any civil enforcement action for the same alleged violation. If a party does not comply with the terms of the CO, DEQ may seek and obtain, in any appropriate district court, specific performance of the CO and other such relief as authorized by EPHA.

For examples of standard language for the CO and transmittal letter, see Appendix D of this document.

4.5.1.3.1 Consent Order Routing and Review Process

Once DEQ and the alleged violator have come to a tentative agreement on resolving the problem(s), the production, routing and review of the CO proceeds as follows. (See Figure 5 below, *Consent Order Routing Process*, for a graphical depiction of the procedure.)

- **Team Members -** In order to maintain efficiency and consistency, the same team that prepared the Notice of Violation will produce the ensuing CO. The team will consist of the following: the SO IPDES Program Manager; SO IPDES Compliance, Inspection, and Enforcement Lead; SO IPDES Program Compliance and Enforcement Coordinator; the RO Compliance Officer; and the Attorney General's Office.

- **Collection and Distribution of Documents -** Often the recipient will submit documents needed to prepare a CO (e.g., SEP proposals, manifests, and analytical data). The

recipient should be encouraged to submit these to the SO IPDES Program, from which they will be distributed to other team members as needed.

- **First Draft of CO -** The SO Compliance and Enforcement Coordinator will draft the Consent Order based on the agreements reached during the Compliance Conference. The SO Compliance and Enforcement Coordinator will identify any complex or controversial issues connected with the draft Consent Order and identify them in an e-mail to the team. The draft CO will be sent electronically to all team members, except for the DAG. The first draft CO will only be sent to the DAG if specifically requested.

- **Review of First Draft of the CO -** The team will review and comment on the draft. The team is encouraged to comment electronically, and copy all team members with their comments.

- **State Office IPDES Program Incorporation of Comments -** The SO Compliance and Enforcement Coordinator will incorporate all suggested changes to the CO. If comments conflict, the SO Compliance and Enforcement Coordinator will use professional judgment to determine which comment to incorporate, subject to approval by the State or Regional Office. Any conflict or complex issues addressed in the final draft will be identified in the e-mail transmitting the final draft to all team members. At this point, the DAG assigned to the case will review the CO.

- **State IPDES Program Conducts Conference Call -** The SO Compliance and Enforcement Coordinator will conduct a conference call with the team if they determine significant conflicting issues remain, or if the DAG's review indicates a significant difference in approach. The purpose of the conference call will be to reach consensus on the wording of the final CO. If consensus cannot be reached, the SO Compliance and Enforcement Coordinator will determine the final wording in conjunction with the DAG assigned to the case.

- **State IPDES Program Finalizes Consent Order -** The SO Compliance and Enforcement Coordinator finalizes the CO by incorporating the agreed-upon changes. The final CO, along with the cover letter and copies, will be provided to the SO Compliance, Inspection, and Enforcement Lead.

- **State Office IPDES Program Routes for Signature -** The SO Compliance and Enforcement Coordinator routes the CO through the Compliance, Inspection, and Enforcement Lead, IPDES Program Manager, and the Water Quality Division Administrator. The CO is returned to the SO Compliance and Enforcement Coordinator and mailed to the facility. The SO Compliance and Enforcement Coordinator will register the CO into TRIM according to the TRIM Filing Index standard operating procedures and inform all team members of the TRIM reference record number.

- **State Office Program Mails Consent Order -** The SO Compliance and Enforcement Coordinator sends, via certified mail, the CO. The SO Compliance and Enforcement Coordinator shall notify all team members of the date the CO is mailed.

- **If Comments/Changes Returned from the Facility -** The previously described process will be repeated from the *First Draft of the Consent Order* step.

- **If Signed Consent Order Returned from the Facility -** The SO Compliance and Enforcement Coordinator will notify the team members when they receive the signed CO from the facility. The SO Compliance and Enforcement Coordinator will route the signed CO through the IPDES Program Manager, and the Water Quality Division Administrator for signature by the Director and notify the team members of the date the CO is effective; register the signed CO into TRIM according to the TRIM Filing Index standard operating procedures; and provide the TRIM reference record number to the team members.

- **If Facility Refuses to Sign Consent Order -** In the event that the facility refuses to sign the CO, the SO IPDES Program is required to determine the next step. At this point the case may be referred to the Attorney General's Office for filing of a civil complaint. Or it may be referred to EPA for enforcement under federal statutes. In any event, the SO IPDES Program, with input from the RO, must make this determination.

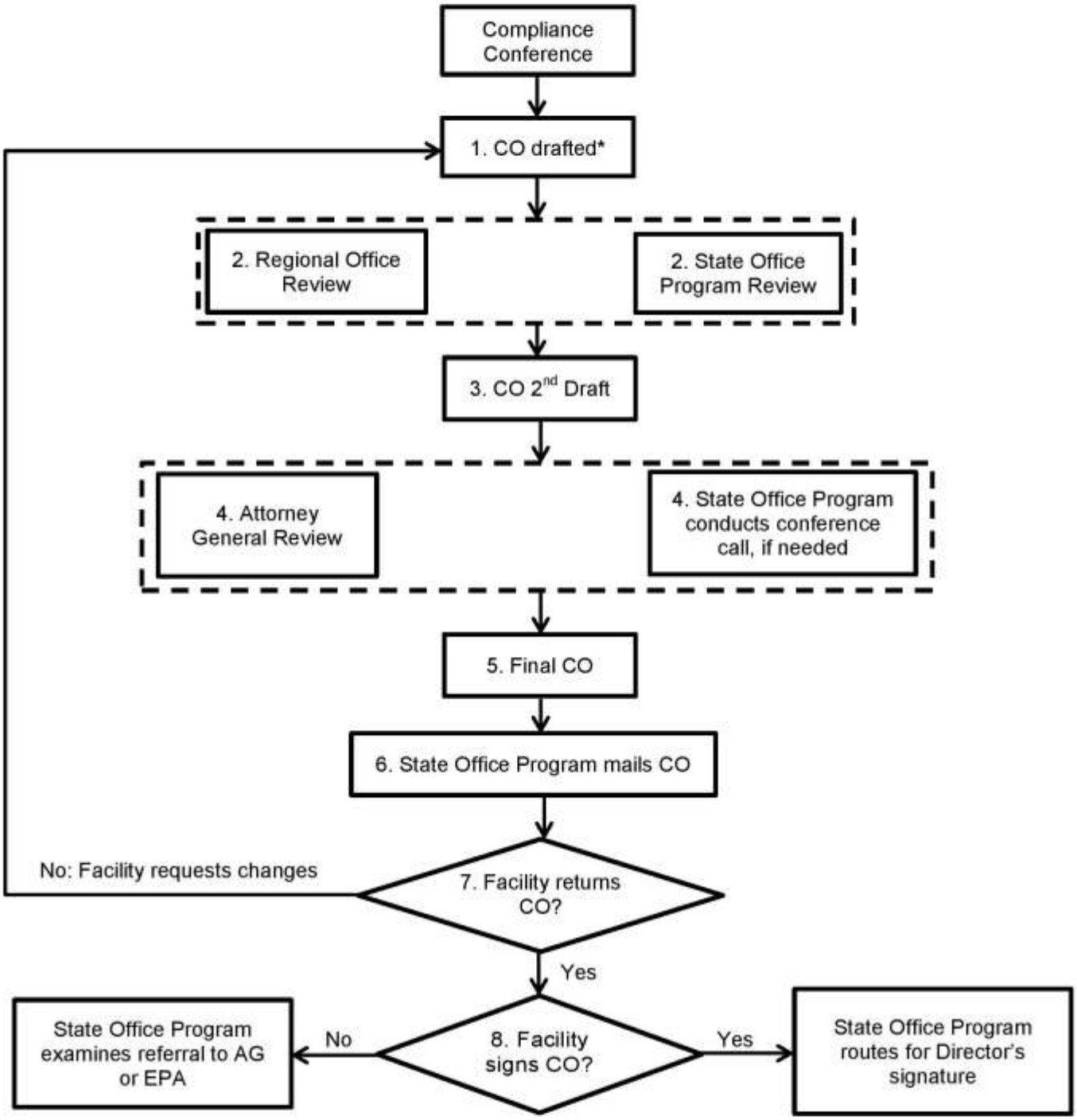
4.5.1.3.2 Compliance Schedules in the Consent Order

The goal in setting Compliance Schedules (CS) in COs is to ensure the responsible party demonstrates progress in achieving compliance. The DEQ takes into consideration the amount of time necessary to achieve compliance when setting CS. Time limits are discussed by DEQ and the respondent's representatives during the compliance conference and an agreed-upon schedule is set. A very short time frame, such as five (5) days, may be set for submittal of documentation that must be developed by the respondent. A longer time period may be set for cleanup actions that need to be taken if such delayed action would not pose an imminent threat to human health, public safety, or the environment.

An extension to a CS in a CO may be granted by DEQ for justifiable reasons. In the written extension request, the responsible party (owner/operator) must document that the extension is necessary and negligence has not caused the delay. DEQ will then perform a completeness review on all documents, plans, and/or procedures. If the documentation is not acceptable, a prompt revision is requested or the extension request may be denied.

CSs that are not met may be addressed by DEQ in several ways. The first response is for a DEQ representative to call the responsible party and inform them of the missed deadline. If the schedule is then met within a short time frame (typically 5-10 working days), it is unlikely that formal action will be taken. If the schedule is not met within the extended period, a noncompliance letter may be sent explaining that the deadline was missed and must be met within (5) working days. If the responsible party does not respond to the noncompliance letter, legal action may ensue.

If the parties cannot reach agreement on a CO within sixty (60) days from receipt of the NOV, or if the recipient fails to request a compliance conference, DEQ, through the Attorney General's Office, may commence and prosecute a civil enforcement action in district court. Civil action is initiated through the use of a civil referral package to the Attorney General's Office from the SO Compliance and Enforcement Coordinator requesting the preparation and filing of a civil complaint. Refer to Section 5 of this manual for specifics on referring a case for civil action.



*** If the responsible party makes changes to the draft Consent Order, the routing process from this point will be repeated.**

Figure 5: Consent Order (CO) Routing Process.

4.5.1.3.3 Consent Orders without Prior Enforcement Action

There are two circumstances which may result in a CO being negotiated between DEQ and a responsible party in which no prior enforcement action has been taken. Those circumstances include:

- Immediate negotiation of a CO may occur when there is substantial immediate or potential imminent threat to human health or the environment, or
- Violations are self-discovered by a facility or are identified by DEQ and a facility is expected to be cooperative, its compliance history is good, and the violations are simple and few.

These circumstances may result in a CO being negotiated without the prior issuance of a noncompliance letter or NOV. These are often referred to as Voluntary Consent Orders (VCO). The discretion to negotiate a VCO in these cases lies with the SO Compliance and Enforcement Coordinator, the SO Compliance, Inspection, and Enforcement Lead, the Regional Office, the Attorney General's Office, and the Program Manager. VCOs may provide for payment of penalties, stipulated penalties, performance of Supplemental Environmental Projects (SEPs), and/or other sanctions, even though penalties were not imposed first through use of an NOV.

Negotiating a VCO directly without prior issuance of an NOV can result in corrective measures being agreed to which immediately address or stabilize the situation. This may result in minimizing the threat to the public and the environment and helps expedited bringing the responsible party into compliance. In instances where the facility is willing to commit necessary resources to immediately address the noncompliance issues and where immediacy is an issue, retaining the flexibility to move directly to a negotiated VCO may prove effective in resolving the matter expeditiously and to the benefit of all.

4.5.1.3.4 Termination of a Consent Order

Once a CO has been signed by the Director of DEQ, the CO is legally effective. The RO with jurisdiction is then responsible for monitoring the facility's compliance with all of the conditions agreed to in the CO, including payment of a civil penalty, if required. When the RO has determined all of the conditions and terms of the CO have been completed in a manner satisfactory to DEQ, the RO may recommend termination of the CO. Typically, COs include specific language on their termination. The language in the CO may require the facility to request DEQ send the facility a Termination Letter, acknowledging termination of the CO.

The Termination Letter is sent to the owner/operator of the facility specifically stating that the terms and conditions of the CO have been met, and that DEQ considers the facility's regulatory status as having *returned to compliance* with respect to the violations identified in the initial action. Once the letter has been sent to the facility the enforcement case is considered resolved and the case is closed. A copy of the letter is registered into TRIM according to the TRIM Filing Index standard operating procedures as evidence that the case has been closed. The SO Compliance and Enforcement Coordinator provides the Attorney General's Office and the relevant DEQ Offices with the relevant TRIM reference record numbers. Information is then entered into the appropriate enforcement tracking database, reflecting termination of the action.

4.5.1.3.5 Press Releases Regarding Consent Orders

Press releases may be issued regarding permittees who have entered into CO agreements with DEQ to demonstrate to the public the facility's commitment to return to compliance. In the past, the threat of notifying the public of facilities that are not complying with environmental laws and regulations has proven an effective deterrent. Current practice, however, focuses more on positive reinforcement than on punishment. DEQ does not generally use press releases, or their threat, as tactical tools in bargaining. DEQ normally issues press releases only on signed and effective COs, or on their successful termination.

4.5.2 Compliance Agreement Schedule (CAS)

A compliance agreement schedule (CAS) is an agreement entered into between DEQ and any person or entity as authorized by Idaho Code §39-116A. The CAS may include an enforceable schedule for actions necessary for the person or entity to come into or maintain compliance as expeditiously as practicable with applicable statutes and rules if the person or entity demonstrated to the satisfaction of DEQ that such a schedule is appropriate. Terms of a CAS may not exceed ten years, but successive agreements may be entered into. The agreement must provide for annual meetings between DEQ and the person or entity to reassess whether the schedule and other terms of the agreement are still appropriate. CASs entered into by DEQ must take into account the following, in descending priority:

1. Protection of public health,
2. Protection of environment,
3. Ability of the person or entity to pay for costs of compliance,
4. Current fiscal obligations of the person or entity, and
5. Any other factors as determined by DEQ or its Board

CASs are voluntary agreements that are typically proposed to DEQ by a person or entity that is proactively trying to maintain, or come into, compliance with applicable rules and statutes. The person or entity must demonstrate to DEQ that a CAS is an appropriate route to address their situation on a case-by-case basis. A CAS is enforceable as an order by DEQ.

4.6 Public Notice Regarding Proposed Settlement of an Administrative Enforcement Action

Public notice will be issued by DEQ regarding entities that have negotiated a proposed settlement of an enforcement action. Public notices will provide a minimum of 30 days for public comment on any proposed settlement of a state enforcement action as required by IDAPA 58.01.25.500.04.c.

4.7 Other Enforcement Options

Besides the administrative enforcement process described above, there are some additional tools which may help to achieve compliance under certain circumstances.

4.7.1 Permit Modifications or Revocation and Reissuance

When DEQ receives any pertinent information the Department may determine whether or not one or more causes listed in IDAPA 58.01.25.201.02.c-d for modification or revocation and reissuance or both exist. Pertinent information may include, but is not limited to:

- Information obtained through an inspection of the facility or through a review of the permit file;
- Receipt of information submitted by the permittee as required in the permit; or
- Requests for modification or revocation and reissuance of the permit consistent with IDAPA 58.01.25.201.01.

If cause exists, DEQ may modify or revoke and reissue a permit subject to the limitations of IDAPA 58.01.25.201.01.b and may request a new or updated application. For a list of causes for modification but not revocation and reissuance of a permit see IDAPA 58.01.25.201.02.c. For a list of causes to modify or alternatively revoke and reissue a permit see IDAPA 58.01.25.201.02.d.

DEQ also has the ability, upon consent of the permittee, to modify and make corrections or allowances for changes in the permitted activity without following the procedures of IDAPA 58.01.25.108-109 and 201.01. Modifications made under the allowance of IDAPA 58.01.25.201.03 are referred to as minor modifications. Modifications not processed as minor modifications must be made for cause as described above. For a list of allowances for minor modifications see IDAPA 58.01.25.201.03.a-i.

4.7.2 Use of Supplemental Environmental Projects (SEP's)

During the process of negotiating a CO it may become apparent that:

1. The facility has corrected all of its violations, thus leaving only the issue of penalty payment to negotiate; or
2. The facility is willing to perform actions which are above and beyond the regulatory requirements; or
3. Both parties agree there are extenuating circumstances which prevent the violation from being corrected.

In these and other cases the facility may propose another environmentally beneficial activity, known as a SEP, be included in the terms of a CO.

According to Idaho Code sections 39-108(5)(b), a SEP is a project:

1. The person is not otherwise required to perform; and
2. Which
   A. Prevents pollution;
   B. Reduces the amount of pollutants reaching the environment;
   C. Contributes to public awareness of environmental matters; or
   D. Enhances the quality of the environment.

In its evaluation of a particular SEP proposal, DEQ may give a preference to those projects with an environmental benefit which:

1. Relates to the violation or the objectives of the underlying statute which was violated; or
2. Enhances the quality of the environment in the general geographic location where the violations occurred.

A SEP proposal shall contain as much detail as possible, and shall specifically include:

- A time frame, including specific dates, for the implementation of the SEP;
- The methods of recordkeeping which will be used to document the implementation of and expenditures expected to be included in performance of the SEP;
- A projected budget for the project, including a breakdown of costs for equipment, labor and capital; and
- Identification of the nature and amount of any tax benefits to be claimed by the owner/operator as a result of implementation of the SEP.

Each proposed SEP will be evaluated by the IPDES Program Manager, SO Compliance, Inspection, and Enforcement Lead, SO Compliance and Enforcement Coordinator, and the Attorney General's Office to ensure it meets the statutory requirements, as well as those of DEQ and EPA. An example of SEP language for inclusion into a CO or settlement Agreement is set forth Appendix E; this language can be modified as appropriate for any given SEP.

Once a SEP has been successfully negotiated and included as part of a CO, the RO is responsible for monitoring the completion of the SEP activities, as part of their requirement to monitor and ensure compliance with all terms and conditions agreed to in the CO. Additional information on supplemental environmental projects is provided in the DEQ policy statement attached as Appendix E, and in Idaho Code sections 39-108(5)(b).

4.7.3 Technical Assistance

Compliance with environmental requirements can also be achieved through education and outreach efforts. It has become a national and state priority to sharpen the focus on education of the regulated community through the use of technical assistance outreach efforts. The intent of such programs is to demonstrate that voluntary compliance can be achieved by industry through the educational efforts of the regulatory agencies.

Technical assistance efforts can include:

- Performing site visits;
- In-person and telephone consultations, with follow-up as needed;
- Development and distribution of *user friendly* regulatory guides and industry-specific pollution prevention information;
- Participation in and sponsorship of workshops and seminars;
- Working with trade groups;
- Assistance with permitting requirements; or
- Referrals to other local, state, or federal agencies for relevant information.

A technical assistance site visit normally will consist of an evaluation of the facility's operating practices in light of environmental requirements. The facility owner/operator is informed of the outcome of the evaluation at the time of the visit and may be given an opportunity to correct any discrepancies or problems within a given time frame. The facility is then informed that a follow-

up inspection may be performed at a later date to re-assess compliance. If, at that time, the facility has not corrected problems and thus complied with the requirements, DEQ may pursue the appropriate enforcement action.

5 Civil Enforcement Process

This section of the manual discusses the options available to DEQ for civil action, instances in which civil action is warranted, what constitutes a civil referral package and how to prepare the referral, an overview of the civil enforcement process, the respective roles of the Compliance Officer and the attorney during a civil action, and supplemental actions available in a civil enforcement action.

5.1 Authority to Commence Civil Enforcement Action

Pursuant to Idaho Code Section 39-108(3)(b):

> "The director may initiate a civil enforcement action through the attorney general as provided in section 39-109, Idaho Code. Civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred and may be brought against any person who is alleged to have violated any provision of this act or any rule, permit or order which has become effective pursuant to this act. Such action may be brought to compel compliance with any provision of this act or with any rule, permit or order promulgated hereunder and for any relief or remedies authorized in this act. The director shall not be required to initiate or prosecute an administrative action before initiating a civil enforcement action."

5.2 Instances in which Civil Action May Be Initiated

Civil actions are most often initiated when all reasonable attempts to resolve the violation(s) through the administrative enforcement process have been exhausted and the parties cannot come to agreement.

It is important to note, however, that per Idaho Code 39-108(3) a civil action can be initiated without first pursuing matters through the administrative enforcement process. A civil action can be brought for violations of statutes, rules, orders or permits, usually when the violator has shown little or no willingness to resolve past violation(s) and/or pay penalties. The following are a few examples of circumstances under which DEQ may choose to bypass the administrative enforcement process and move directly to civil enforcement:

1. The violator fails to schedule a compliance conference within fifteen (15) days of receipt of the NOV, or after the expiration of a reasonable timeframe granted by DEQ.
2. The violator has demonstrated a history of non-compliant, recalcitrant behavior, has created unnecessary delays, is un-cooperative, or generally does not negotiate in good faith to remedy the violation(s).

In an emergency situation presenting imminent and substantial threat to human health and/or the environment, and when there is no time to negotiate or the violator is not willing to negotiate an acceptable remedy, DEQ would likely pursue an injunction through the courts to stop the action creating the emergency.

5.3 Preparation of a Civil Referral

Requests for civil action are made through a Civil Referral Package (Civil Referral). The Civil Referral is prepared by the SO Compliance and Enforcement Coordinator, reviewed and approved at the various levels of management, and then routed to the Attorney General's Office. It is then the responsibility of the Attorney General's Office to confer with the appropriate DEQ personnel to make the determination as to filing a civil complaint in district court. Generally, the Civil Referral should be submitted to the Attorney General's Office within one year.

Once the decision has been made to file a civil complaint, the Attorney General's Office needs access to the entire facility file to proceed with litigation preparation. A judicial referral letter is used to refer cases to the Attorney General's Office.

The Civil Referral Package may contain the following elements. Each case is different, and the specific contents of the package will be dictated by the particular circumstances and issues the case presents.

1. Warning Against Disclosure - To demonstrate the attorney-client intent of this communication, the referral package should be in the *form of a memorandum* to the Attorney General's Office from the SO IPDES Program. The top of the memo should be boldly labeled CONFIDENTIAL to warn against release of the memo to anyone outside the agency. This warning also establishes that the memo was requested (or is required) by the Attorney General to help support the litigation effort.

2. Agency Contact Persons - This section of the Civil Referral identifies the name(s) of the DEQ personnel who will serve as the primary contact(s) for the case. The primary contact is usually a person with in-depth firsthand knowledge of the facts of the case. This section provides a convenient reference for clerical to use when sending copies of correspondence and pleadings to the appropriate contacts within DEQ, as well as when providing the assigned attorneys with the identity of the contact persons who will approve settlement offers and coordinate DEQ's activities in the litigation.

If DEQ provides a cc list, the attorney will be able to ensure all appropriate persons stay informed about events in the case.

3. Identification of any persons with knowledge of the case - This section provides the names and telephone numbers of all persons within and outside of DEQ who possess knowledge relevant to the case, and a summary of that knowledge. The attorneys can then contact, interview or depose them, as necessary. If any former DEQ employees were involved, this section should provide their phone numbers and addresses, as well.

4. List of Violations - This section includes a list of the rules and statutes, permit conditions, and/or Consent Order terms which may have been violated by the defendant. Each alleged violation should include a short description of its basis to provide the attorneys a starting point in analyzing the cause of action. If an NOV has previously been prepared it should be attached and included as part of the Civil Referral.

5. List of potentially responsible parties - The most likely responsible persons, including the permittee and/or owner or operator of the facility, are included in this section. There may also be

others whose actions, or lack of actions, *contributed* to the violations at the facility. List the names, addresses, and phone numbers of these individuals. The purpose of providing these names is simply to give the attorneys information which may indicate the need or desirability to pursue persons other than operator(s) of the subject facility. The attorneys will eventually identify who is a responsible party. Generally, the following person(s) may be responsible parties:

a. Operators - present and past operators who operated on or controlled the property on which the alleged violations occurred, or which is the alleged source of a violation.
b. Owners - present and past owners of the property during the time violations occurred. This includes present owners of a property on which pollution is still present, even if the pollution may have been caused by prior operators or owners.
c. Parent corporations - where the subject property is owned by one company, a parent corporation of that company may also be liable under certain circumstances.
d. Individuals - who may have participated in causing the alleged violation(s), or whose omission resulted in the alleged violations, or who supervised the illegal act but took no action to prevent or stop the alleged violations from occurring. Under case law, individuals such as employees or officers who fit the above description may be liable for violations.

6. Chronology of Significant Events - This section includes a chronology of events significant to the case (i.e., inspections, important correspondence, sampling events, meetings, important telephone or personal conversations with the defendant, etc.). It is important to include the identity of all persons involved in each of the events; relevant information regarding pending permit applications; and information regarding potential enforcement actions being considered by other programs in DEQ. Check with the other program and regional office personnel within DEQ to ensure that all enforcement actions are coordinated.

7. Identification of sampling locations and rationale for selection of sampling locations - Frequently, the sheets providing the result of laboratory analyses do not provide the attorneys with enough information to determine the significance of the sample. For example, due to the limited space on the lab sheets, the sampling location may not be identified in enough detail for the attorneys to tell where the sample was taken, nor does it provide the reason for taking the sample at that location. Background and upstream samples should be identified as such. Where not obvious from the sampling documents, the sampled media should be indicated (e.g., soil, liquid, solid, powder, air). A sketch of sampling locations can be especially helpful to clarify issues. This section should also indicate the present status of the samples (i.e., whether they have been retained or destroyed). This fact may be useful in discovery, as the defense counsel may wish to re-analyze the sample before trial. Be sure to note sampling and analysis procedures, and attach a copy of these procedures if possible.

8. Identification of sampling personnel - Identify all persons present during the sampling, and their respective positions, even if only one of these persons physically collected the sample(s).

9. Interpretation of Sample Results - Because most attorneys do not have scientific backgrounds, they may be unable to determine the significance of sampling results when they receive the laboratory sheets, therefore, it would be extremely helpful to indicate what the results of each laboratory analysis appear to conclude, so the attorney can determine whether they help

or detract from the case. Identification of the strengths and weaknesses in sample results is critical to both effective negotiation and litigation. Information of this nature not only educates the attorneys about the case, but also gives more up-front warning about possible problems in a case, and thus perhaps more information for use against the defendant during early settlement negotiations in cases where the evidence is strong.

10. Identification of lab analysts - Since the state lab performs the majority of DEQ analytical work, it would be helpful to provide the attorneys with a list of the names of the individual analysts who worked on the samples. Where the lab analysts have initialized the parameters which they analyzed on the lab sheets, this identification need only be a list of names to match the initials.

11. Sampling methodology - If this information is included in the inspection report or in the Compliance Officer's field notes, a reference to those documents is needed in the Civil referral. This information should describe the sampling method (e.g., grab sample), the sample container (e.g., glass 250 ml jar), preservatives used, and any other information necessary to prove the sample's validity. Otherwise, it is difficult to prove that the collection was performed in accordance with approved procedures. Information regarding sampling and laboratory analysis need not be provided in any one specific fashion as long as it can be clearly understood by the attorneys once received.

12. Locations of all document files inside and outside of DEQ - The importance of the attorneys knowing where all relevant files are located before filing a civil action cannot be over-emphasized. To properly evaluate a case for filing and engaging in settlement discussions, every document related to the defendant must be available for review. Sometimes, helpful and/or harmful information is stored at locations other than the primary facility file. These locations may include the files of other programs, individual staff files including field notebooks or documents, calendars, datebooks and telephone records, laboratory files, and files located at the Regional Offices of DEQ.

13. Review of all public records requests specific to the referral - Once the Civil Referral has been made, the Attorney General's Office must review and determine the appropriate response to any public records request regarding the case.

14. Settlement position - The Civil Referral should contain sufficient information regarding DEQ's settlement position for the Attorney General's Office to write a complete first draft of the settlement offer for DEQ's review and approval. This information should include recommending compliance schedules, civil penalty assessments, injunctive relief, pollution prevention, and any other supplemental alternatives that may be available.

5.4 Roles of the Attorney and Compliance Officer during the Civil Enforcement Process

The purpose of a civil action is to compel compliance and to obtain remedies and penalties for violations. Before recommending a civil action, it is important to take into consideration that an action of this type is much more resource-intensive than an administrative enforcement action, and will likely require a more significant commitment of time from both DEQ staff and attorneys

in pursuing the case. A team approach is critical to the success of any settlement or litigation activity; hence both the enforcement staff and attorneys must keep open lines of communication and work together as a team for a substantial period of time to be successful.

5.4.1 Role of the Attorney

The primary role of the DAG assigned to the case is to provide legal counsel to management and technical staff at DEQ. The DAG is charged with providing legal advice to the agency and acts on behalf of the State of Idaho.

5.4.2 Role of the Compliance Officer

The Compliance Officer's most important role has been completed before civil proceedings are even initiated. That is, they have taken great care to make sure all DEQ policies and procedures have been followed, that all relevant aspects of the compliance investigation have been explored, and that all alleged violations are thoroughly documented. *Assume that every inspection will end up in court*, so always be meticulous, objective and professional.

The SO Compliance and Enforcement Coordinator is responsible for preparing the Civil Referral Package and forwarding it through DEQ management and the Director to the Attorney General's Office. Once the Attorney General's Office has agreed to proceed with filing a civil complaint, the primary role of the Compliance Officer becomes that of providing technical assistance to the attorney assigned to the case.

Throughout the process of preparing the complaint, affidavits, interrogatories, motions, orders and settlement agreements, the DAG will typically solicit technical input from the Compliance Officer and other involved DEQ staff. The Compliance Officer may assist counsel in the following ways:

- Explaining complex technical issues,
- Developing a strategy,
- Drafting written discovery requests and deposition questions,
- Answering the defendant's discovery requests,
- Helping with cross-examination of opposing experts,
- Developing conditions and compliance schedules in settlement negotiations,
- Helping prepare affidavits for use in motions for summary judgment,
- Preparing exhibits to illustrate testimony,
- Selecting other experts,
- Drafting briefs,
- Determining the appropriate civil penalty, and
- Testifying as a witness in depositions, hearings, or trial.

5.5 Public Notice Regarding Proposed Settlement of an Civil Enforcement Action

Public notice will be issued by DEQ regarding entities that have negotiated a proposed settlement of an enforcement action. Public notices will provide a minimum of 30 days for public

comment on any proposed settlement of a state enforcement action as required by IDAPA 58.01.25.500.04.c.

5.6 Complying with 39-108 Statute of Limitations

Idaho Code 39-108(4) states that no civil or administrative proceeding may be brought to recover for a violation more than two years after the director had knowledge or ought reasonably to have had knowledge of the violation. This statute of limitations creates a need for DEQ to ensure that violations are identified in a timely manner and that referrals for civil or administrative proceedings are processed efficiently.

The regional Compliance Officer is expected and encouraged to utilize the IPDES online tracking system to ensure that violations are being tracked and handled appropriately. This online system includes tracking of the initial violation, any informal and formal enforcement actions taken to address the violation, correspondence regarding to the violation, and any documentation associated with the violation and/or discovery of the violation.

DEQ is not required to exhaust administrative enforcement actions prior to proceeding with a civil or criminal enforcement case. If DEQ finds it necessary to proceed straight to civil or criminal court all that is necessary is for DEQ to complete a referral package to the Attorney General's Office containing pertinent documentation and information. The Attorney General's Office only needs a few weeks to file the civil or criminal case once the referral is in their possession. This streamlined process allows DEQ to operate successfully within the statute of limitations provided by Idaho Code. However, it is DEQ's policy and preference to provide non-criminal IPDES violators the opportunity to come back in to compliance through informal and formal administrative enforcement actions if timelines allow this opportunity.

DEQ is committed to responding in a timely manner to every known noncompliance event within the IPDES program's jurisdiction. DEQ will determine whether to respond to noncompliance events with formal or informal administrative enforcement based on the magnitude, frequency, and duration of a noncompliance event. Events resulting in known harm to public health or the environment (e.g., nuisance conditions, public health and/or safety threat, loss of beneficial use) will always begin at the formal enforcement level. These are referred to as significant noncompliance events. Noncompliance events that are not deemed significant will typically begin at the informal enforcement level. DEQ reserves the discretion to initiate informal enforcement at the highest level of informal enforcement or to begin with formal enforcement in lieu of informal enforcement on a case-by-case basis.

Informal enforcement provides the permittee an opportunity to achieve compliance without penalty within a specified timeframe. Informal enforcement may take the form of compliance assistance or noncompliance letters (i.e., notice of noncompliance, notice of deficiency, notice of intent to enforce). Formal enforcement may be undertaken by administrative actions (i.e., notice of violation, compliance agreement schedule, or consent order), civil remedies (i.e., civil suit, temporary restraining order/preliminary injunction), or criminal remedies.

The proposed process for enforcement is provided in the following tables with a proposed timeline included:

Table 1: DEQ administrative enforcement steps and timeline for non-criminal IPDES violations.

Enforcement Steps	Timeline[1,2]
DEQ becomes aware of a non-criminal IPDES violation through an inspection, report, or complaint	Day 1
DEQ issues first informal enforcement letter (Notice of Noncompliance)	By Day 60
DEQ issues second informal enforcement letter (Notice of Deficiency)	By Day 120
DEQ issues third informal enforcement letter (Notice of Intent to Enforce)	By Day 150
DEQ issues formal enforcement notice (Notice of Violation)	By Day 180
DEQ provides NOV recipient 15 days to request a compliance conference (conference is held within 20 days of NOV receipt)	By Day 200
DEQ and NOV recipient enter into a Consent Order (within 60 days of NOV receipt, unless otherwise agreed to by both parties). The consent order may contain an enforceable Compliance Agreement Schedule.	By Day 240
Failure to reach an agreement on a CO will prompt DEQ to file a civil enforcement action through the Attorney General.	By Day 730

1. **Timelines may be shorter than those presented but should not exceed the provided dates which leave a significant buffer time between the final administrative action of a consent order or compliance agreement schedule and the filing of a civil enforcement action.**
2. **DEQ may begin the administrative enforcement process on any informal or formal step as determined on a case-by-case basis.**

6 Criminal Enforcement Actions

6.1 Criminal Enforcement Actions

Statutory authority for DEQ to initiate criminal enforcement actions is found at Idaho Code §39-117. This statute generally provides that a person is guilty of a misdemeanor punishable by a fine if they do any of the following:

- Willfully or negligently violates the non-air quality environmental protection laws or the terms of any lawful notice, order, permit, standard, rule, or regulation issued pursuant to such laws;

- 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; or
- Willfully or negligently violates any IPDES standard or limitation, permit condition, or filing requirement.

In addition, federal environmental statutes enforceable by the US Environmental Protection Agency (EPA) and the US Department of Justice make certain environmental violations felonies. A person committing a criminal violation of a law applicable to the IPDES program may also have committed other crimes such as wire fraud, conspiracy, or creating a public nuisance.

Depending upon the circumstance, therefore, the prosecution of IPDES crimes committed in Idaho may involve:

1. The Idaho Attorney General's Office;
2. DEQ;
3. Idaho State Police;
4. County prosecutor's offices;
5. United States Attorney's Office, District of Idaho; or
6. US Environmental Protection Agency, Criminal Investigations Division (EPA CID).

Decisions related to the role of DEQ and DEQ personnel in crimes related to the IPDES Program are vested in the DEQ Director. This section is intended to advise staff on how to proceed when confronted with information indicating a possible criminal violation.

6.2 Roles and Responsibilities

DEQ Staff: DEQ Compliance Officers and staff are to perform their duties as set forth in the remainder of this manual and in accordance with inspection protocols established by DEQ.

Idaho Office of the Attorney General: The DEQ Director and the Office of the Attorney General, Environmental Quality Section, have designated a deputy attorney general criminal liaison (DAG criminal liaison) for purposes of establishing a single point of contact for legal consultation and communication related to criminal matters. The DAG criminal liaison is the principal advisor to the DEQ Director and staff concerning the investigation and prosecution of criminal cases by DEQ. The DAG criminal liaison also communicates and coordinates with EPA CID, the US Attorney's Office, and the Idaho Department of Law Enforcement concerning potential criminal cases.

The Office of the Attorney General will provide trained criminal investigators upon request to assist in the processing of a scene for evidence and the interviewing of witnesses. The Office will also provide basic training to DEQ compliance officers to ensure a basic understanding of what to do if a criminal violation is suspected.

In the absence or unavailability of either of the previous individuals, the Office of the Attorney General assistant should be contacted at (208) 373-0494 and the matter will be routed to a DAG for assistance.

EPA Criminal Investigations Division: The Criminal Investigations Division (CID) is the EPA section that investigates criminal violations for the majority of federal environmental regulations in Idaho. The EPA CID is a full Title 18 federal law enforcement agency with the power to investigate all criminal acts, both environmental and non-environmental.

US Environmental Protection Agency
Criminal Investigations Division
950 W. Bannock Street, Suite 900
Boise, ID 83702
Office: (208) 378-6516

6.2.1 Pursuit of Criminal Enforcement in Idaho

Generally, criminal enforcement whether by the federal government or by Idaho is reserved for only the most grievous violations of environmental statutes, regulations, and rules. Candidate criminal cases may be distinguished from civil actions by the greater magnitude of harm, willfulness, negligence, and/or fraud and deceit. In Idaho, state law criminal environmental enforcement actions are quite rare. Some cases qualifying for potential criminal prosecution may be referred to the EPA CID and United States Attorney's Office.

The decision as to whether criminal or civil proceedings should be pursued by Idaho or referred to the EPA CID will be made by the DEQ Director in consultation with the Office of the Attorney General, division administrator, SO compliance, inspection, and enforcement lead, regional administrator, IPDES program manager, and regional manager. Criminal prosecutions or threats of criminal prosecution *shall not* be initiated without approval by the Director or Deputy Director.

Factors the Director will consider in determining whether the state should initiate prosecution may include the following:

- Significant potential environmental harm or threat to human health
- An identifiable defendant or defendants
- Bad faith conduct by the defendant including
    - Deceit
    - Fraud
    - Intent to conceal
    - Flagrant disregard for legal requirements or DEQ directives
- A comparison of the relative goals of the agency as achieved through civil or administrative enforcement
- Whether the acts constitute a crime under federal law
- Opinion of the DAG criminal liaison that the case constitutes a state crime
- Criminal prosecution is declined by EPA CID and/or the US Department of Justice

As noted previously, some matters significant enough to warrant felony criminal prosecution will be referred to EPA CID and the US Department of Justice. DEQ and the Attorney General's office will coordinate with EPA CID regarding these matters in a timely manner to ensure the statute of limitations is not exceeded.

6.2.2 Field Investigation of Possible Criminal Violations and Notification

DEQ does not have dedicated criminal investigators but will rely on, and coordinate with, criminal investigators with the Attorney General's Office and county prosecutors' offices. When an investigator or other DEQ personnel become aware of conduct they believe should be referred for criminal investigation and/or prosecution, the following steps should be taken:

1. **Public Health, Safety, and Personal Security:** DEQ field staff shall first address any emergency situations posing imminent danger to public health and safety by notifying appropriate emergency response officials. If the situation poses a threat to personal security, the field staff should take appropriate steps to remove themselves from any such situation and notify their supervisor.
2. **Evidence Collection:** In circumstances not posing an immediate threat to public health or personal security and in conformity with DEQ's property access authorities and investigation and sampling protocols, field staff should contact the appropriate state office staff to ensure that someone trained in criminal investigations is made available for evidence collection.
3. **Scene Security:** In circumstances where consent to search or inspect has been denied and where evidence could be destroyed prior to collection, the field staff should either remain on the premises to observe while a warrant or necessary equipment is obtained or undertake to secure the scene by contacting local law enforcement and having them secure the area prior to departure. At no time, however, should the field staff place themselves at risk. If no alternative exists but to leave the scene unsecured, field staff should document the scene condition as best as possible by recording field notes and taking photographs prior to leaving.

6.2.3 Notification Process and Referral to EPA CID

DEQ places a high priority on any cases that may warrant criminal prosecution. It is DEQ's intent that the following procedures be completed in an efficient and speedy manner. Although there are outside time limits associated with various steps identified in this process, all due effort should be expended in notifying the appropriate management and legal personnel in the least amount of time possible. The following procedures should be followed **unless emergency or urgent circumstances require immediate notification of EPA CID or other law enforcement personnel**.

1. **Notify DEQ Management:** DEQ field staff shall, as soon as practical but within 2 working days after becoming aware of factors indicating possible criminal conduct, inform their supervisor, their ~~appropriate~~ regional administrator (RA), the division administrator (DA), and the program manager of the circumstances and possible evidence relating to potential criminal violations.
2. **Notify Office of the Attorney General:** The RA or DA (or duly designated representative(s) of each) should contact the DAG criminal liaison as soon as practical, but within 2 working days, after being briefed by the field staff. The RA or DA should set up a conference call with the DAG criminal liaison and appropriate field staff within 5 working days of notification. The RA, DA, and/or field staff shall advise the DAG of all facts and circumstances, including any evidence collection and preservation undertaken to that point.

3. **Notify DEQ Director:** If appropriate in the determination of the DAG, the RA, and DA shall consult with the DEQ Director or Deputy Director to determine appropriate steps to be taken, including whether to pursue criminal investigation through the Attorney General's office or notify EPA CID. This consultation should occur within 5 working days of the initial conference call with the DAG criminal liaison.
4. **Notify EPA CID:** If deemed appropriate by the Director or Deputy Director, the DAG criminal liaison shall promptly (e.g., within 1 working day) notify EPA CID or other criminal case contacts.
    a. If the Director of Deputy Director is unavailable, it shall be the decision of the appropriate DA in consultation with the DAG criminal liaison to determine whether EPA CID should be notified.
    b. In circumstances where intermediate managers and/or the DAG cannot be contacted, field staff may contact the DEQ Director and/or EPA CID directly. However, field investigators should attempt direct contact only when in their judgment circumstances require immediate action.

6.2.4 Notification of Contact with EPA CID

In certain cases, EPA CID or other criminal law enforcement agencies may initiate direct contact with DEQ staff. This may include being on scene during an emergency response action or an inspection or by telephone contact or office visit. In such circumstances, staff is to share information openly, answer any questions truthfully, and provide any assistance they deem appropriate under the circumstances. As soon as possible, staff shall notify their respective RA or DA, the program manager, and DAG criminal liaison and provide a summary of the contract, including whether EPA CID has asked for additional information or further assistance.

6.3 Parallel Criminal and Civil Environmental Enforcement Actions

In some situation, it may be appropriate to pursue both a civil or administrative environmental enforcement action and a criminal action based on the same set of facts. A case-by-case decision must be made by the DEQ Director in consultation with the Office of the Attorney General whether it is better to pursue the two types of proceedings concurrently or to suspend prosecution of one proceeding (usually the civil one) pending completion of the other case.

References

ASTM. 2010. *Standard Guide for Sampling Chain-of-Custody Procedures,* ASTM International, West Conshohocken, PA, D4840-99(2010). www.astm.org

California Air Resources Board Compliance Division, *Uniform Air Quality Training Program Course 106 Investigative and Report Writing Techniques* (California Environmental Protection Agency, 1992).

EPA (US Environmental Protection Agency). 1989 *FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation Requirements.* Memorandum. Washington, DC: EPA, Office of Enforcement and Compliance Assurance.

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Appendix A. DEQ Policy Memorandum: Policy for Records Management

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STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, ID 83706-1255 • (208) 373-0502

C. L. "Butch" Otter, Governor
Curt Fransen, Director

DEQ POLICY MEMORANDUM
PM13-02

POLICY FOR RECORDS MANAGEMENT

PURPOSE

The purpose of this policy memorandum is to formalize a policy by which the Department of Environmental Quality (DEQ) shall comply with the following statute and procedures for managing agency records:

1. "Records Management Services—Rules, Guidelines, Procedures" (Idaho Code 67-4131)
2. *Records Management Guide* (May 2012), Idaho State Historical Society
3. "Guidelines for Digitalization in State of Idaho Government Agencies," Idaho State Historical Society

This policy and procedure shall supersede and take the place of the DEQ "Policy for Records Management" (PM95-1), dated November 28, 1995. It is distinct from DEQ Policy Memorandum PM12-03, "Policy for Handling Public Records Requests."

Procedures for complying with this policy are contained in the DEQ *Records Management Manual* (December 2012).

STATEMENT OF POLICY

1. It is DEQ's policy to comply with Idaho law and procedures for managing agency records.
2. All records created or received in the conduct of DEQ business are considered property of DEQ and shall be managed according to the procedures outlined in the DEQ *Records Management Manual* (December 2012).
3. All DEQ records shall be retained according to the record classification and associated record type and retention period identified in the agency's records retention schedule.
4. As identified in the DEQ *Records Management Manual*, certain records must be kept in paper format. Whenever appropriate and feasible, however, DEQ records should be retained in electronic format and managed through the agency's electronic document management system. Creating paper copies of documents other than those required to be maintained in paper format is strongly discouraged as the agency advances toward digitization of its records.

5. Current records necessary for day-to-day business that must be kept in paper format shall be stored in a manner that ensures rapid access for the required retention periods, reasonable protection from disaster, and the appropriate level of confidentiality. Noncurrent DEQ records in paper format (i.e., those not necessary for day-to-day business but whose records retention periods remain in effect) shall be transferred to a records storage center away from the agency's active office area.

6. In general, DEQ records shall be destroyed when their retention schedules have expired. However, no record may be destroyed, even if its retention period has expired, if it is the subject of a public records request and/or legal action until the request/action is completed.

IMPLEMENTATION

This policy shall be effective immediately.

Dated this 11 day of Jan., 2013.

Curt A. Fransen
Director

Appendix B. Water Quality Administrative Penalty Guidance

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IDAHO DEPARTMENT OF HEALTH AND WELFARE

DIVISION OF ENVIRONMENTAL QUALITY

WATER QUALITY ADMINISTRATIVE PENALTY GUIDANCE DOCUMENT

November 1999

I. INTRODUCTION

This document sets forth the Idaho Division of Environmental Quality, State Water Quality Program=s procedures for assessing administrative penalties under the Idaho Environmental Protection and Health Act (EPHA). The purpose of this document is to provide guidance and procedures for assessing penalties in a consistent manner. This document focuses on determining an administrative penalty once a decision has been made to pursue an enforcement action. This document is not intended to restrict the discretion or judgment of the office of the Attorney General in a civil case.

The EPHA at Idaho Code ºº 39-101 et seq. provides the Idaho Department of Health and Welfare, Division of Environmental Quality (DEQ), with the authority to assess penalties against any person who has violated or is violating a provision of the EPHA or any permit, standard, rule, condition, requirement or consent order issued or promulgated pursuant to the EPHA. Idaho Code º 39-108(3)(a) and 108(5). For violations of water quality rules under the EPHA, a responsible party may be liable for penalties not to exceed ten thousand dollars ($10,000) per violation or one thousand dollars ($1,000) for each day of a continuing violation, whichever is greater. Idaho Code º 39-108(5).

In addition to any administrative penalties, a violator may be liable to DEQ for any expense incurred by DEQ in enforcing the EPHA. Idaho Code º 39-108(6). When a civil complaint is filed in district court pursuant to the EPHA, DEQ Deputy Attorneys General are not bound by this policy and may seek penalties up to the maximum statutory amount. Penalties associated with criminal convictions are established in Idaho Code º 39-117 and are not considered in this document.

The procedures set forth in this document are intended solely for the guidance of DEQ personnel. This document is not intended and cannot be relied upon by any person to create any rights or privileges, either substantive or procedural, enforceable by any party in litigation with DEQ. DEQ reserves the right to deviate from this document, including any appendices, and to change it at any time without public notice.

II. PENALTY DETERMINATION PROCEDURES

The penalty calculation consists of two stages: (1) determining the matrix penalty; and, if warranted, (2) adjusting the matrix penalty for specific factors and circumstances as provided for in this document. In calculating the amount of a penalty for a violation, the following procedures apply:

- & Determine the potential of harm for each violation;
- & Determine the extent of deviation for each violation;
- & Choose the appropriate penalty established by the applicable matrix based upon the above findings; and
- & Apply any adjustment factors that may be warranted.

These procedures then establish a total penalty for each violation reflected as the following computation formula:

TOTAL PENALTY = matrix penalty + any adjustment factors.

III. PENALTY DETERMINATION

Two factors are considered in determining the penalty: (1) potential for harm; and (2) extent of deviation from a statutory or regulatory requirement. Both of these factors establish the seriousness of the violation.

A. Potential for Harm to Human Health and Welfare and the Environment

The potential for harm resulting from a violation is determined by the likelihood and degree of exposure of persons or the environment to pollution. The emphasis may be placed on the potential harm posed by a violation, as well as on whether harm actually occurred.

DEQ will evaluate whether the potential for harm is major, moderate, or minor for any given violation and substantiate the classification on the Penalty Worksheet. Some factors which may be considered in determining the potential for harm include:

- The potential toxicity and amount of any pollutant or contaminant emitted, discharged, released, or spilled.
- The sensitivity of the environment where a violation occurred.
- The duration of a violation.
- The location of a violation, including whether the violation occurred in a populated or nonpopulated area.

The potential for harm is generally categorized in the following classifications:

Table 1. Potential For Harm

MAJOR	The violation poses a substantial likelihood of harm to human health, welfare, or the environment.
MODERATE	The violation poses a significant likelihood of harm to human health, welfare, or the environment.
MINOR	The violation poses a relatively low likelihood of harm to human health, welfare, or the environment.

B. Extent of Deviation from Requirement

The extent of deviation from any statutory or regulatory requirement or permit condition relates to the degree to which the requirement or condition has been violated. For any violation, a range of potential deviation from the subject requirement exists. For example, an alleged violator may be mostly in compliance with the provisions of a requirement, or an alleged violator may have totally disregarded the requirement (or any point in between). As with potential for harm, the extent of deviation may be either major, moderate, or minor.

DEQ will evaluate whether the extent of deviation is major, moderate, or minor for any given violation and substantiate the classification on the Penalty Worksheet.

The extent of deviation is generally categorized in the following classifications:

Table 2. Extent of Deviation

MAJOR	The alleged violator deviates from the requirements to such an extent that there is substantial noncompliance.
MODERATE	The alleged violator significantly deviates from the requirements but some of the requirement(s) are implemented as intended.
MINOR	The alleged violator deviates somewhat from the requirements but most of the requirement(s) are met.

IV. PENALTY ASSESSMENT MATRICES

Potential for harm and extent of deviations from a requirement each form one of the axes of the two penalty assessment matrices. The matrix in Table 3 is used for single violations, while the matrix in Table 4 applies to each day of a continuing violation. The matrices have nine cells, each containing a penalty dollar amount. The amount of an administrative penalty should be determined through the use of the following matrices in conjunction with the penalty computation formula:

Table 3. Penalty Assessment Matrix For Single Violations

		POTENTIAL FOR HARM		
		Major	*Moderate*	*Minor*
Extent of Deviation	*Major*	$10,000	$5,000	$2,500
	Moderate	$8,000	$2,500	$1,000
	Minor	$5,000	$1,000	$500

Table 4. Penalty Assessment Matrix For Continuing Violations

		POTENTIAL FOR HARM		
		Major	*Moderate*	*Minor*
Extent of Deviation	*Major*	$1,000	$500	$250
	Moderate	$800	$250	$100
	Minor	$500	$100	$50

The highest cell (major potential for harm/major extent of deviation) is limited by the maximum statutory penalty allowance. Application of the matrix is used to establish the penalty amount, after which adjustment factors may be considered.

IV. PENALTY ADJUSTMENT FACTORS

The matrix penalty may be adjusted taking into account the alleged violator's intent and other factors related to the alleged violator's past and present compliance status. These factors provide DEQ the flexibility, when necessary, to make adjustments based on legitimate differences between similar violations. In adjusting the matrix penalty, DEQ may consider the willful, negligent, or unavoidable nature of the violation and an alleged violator's history of noncompliance.

The adjustment factors may increase, decrease, or have no effect on the claimed penalty amount. An upward adjustment cannot result in a penalty greater than the statutory maximum. Application of the adjustment factors can be cumulative, i.e., more than one factor may apply in any given case.

The following factors, based on information available at the time of penalty computation, may be considered in assessing a penalty in a NOV:

A. Willful, Negligent, or Unavoidable Nature of a Violation

Subject to the following, DEQ may make adjustments, up or down, by as much as 100% of the matrix penalty.

The degree or absence of willfulness and/or negligence by the alleged violator prior to and at the time the violation occurred may be considered in determining an adjustment to the matrix penalty. A penalty may be adjusted upward for willfulness or negligence. Conversely, a downward adjustment may be made when DEQ determines that unforeseeable or unavoidable circumstances caused the violation.

The following factors may be considered when determining the willful, negligent, or unavoidable nature of any violation:

- Extent of the alleged violator's direct or indirect control over the events resulting in the violation(s).
- The foreseeability of the events resulting in the violation(s).
- Whether the violator took reasonable precautions to prevent the events constituting the violation(s).
- Whether the alleged violator promptly reported a noncompliance or violation.
- Whether the alleged violator promptly corrected the violation(s).
- Whether the alleged violator knew, or should have known, of the violation(s).

B. Alleged Violator's History of Noncompliance

Subject to the following, DEQ may make adjustments upward by as much as 100% of the matrix penalty.

DEQ may consider the alleged violator's history of noncompliance when developing the administrative penalty. The existence of a prior violation(s) may be used to support an upward adjustment of the penalty, unless the prior violation(s) was caused by factors entirely out of the alleged violator's control. An upward adjustment may be warranted for any prior violation that DEQ is aware of by any means.

In considering prior violations, DEQ may review the substance and resolution of each action in determining the percent of an upward adjustment. Some additional factors DEQ may consider are the following:

- Similarity to a previous violation by the alleged violator.
- Recentness of a previous violation.
- The number of previous violations.
- The alleged violator's efforts and/or success in correcting previous violation(s).

PENALTY WORKSHEET

Name of Alleged Violator:_____

Violation No.:_____of_____ (USE ONE WORKSHEET PER VIOLATION)

I. Penalty

Potential For Harm: _____ Major _____ Moderate _____ Minor
Justification:

Extent of Deviation: _____ Major _____ Moderate _____ Minor
Justification:

Matrix Penalty Amount:$_____

Number Violation Days:_____
(If calculating daily penalties)

MATRIX PENALTY:$_____
[MATRIX PENALTY] x [NUMBER VIOLATION DAYS]

II. Adjustment Factors

Intent of Alleged Violator:_____
(+ or - 100% ADJUSTMENT)
Justification:

History of Noncompliance:_____
(+100% ADJUSTMENT)
Justification:

Total % Adjustment:_____
(Intent + HISTORY)

TOTAL PENALTY: $
[Matrix PENALTY] + [TOTAL % ADJUSTMENT]

Appendix C. IPDES Penalty Policy Addendum

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Modification of Table B to be Consistent with Idaho Statutory Maximum Penalty Amounts and Service Populations

PURPOSE

The purpose of this policy is to addend EPA's 1995 *Interim CWA Settlement Penalty Policy* by replacing Table B, national municipal litigation consideration table. Table B penalty amounts were developed consistent with federal statutory limitations and service population sizes mostly larger than those found in Idaho.

Idaho Code §39-108 authorizes DEQ to bring civil judicial and administrative actions against those who violate any requirement of the IPDES program. Idaho Code §39-108(5)(a)(ii) establishes a maximum penalty amount of $5,000 per day for continuing violations of any provision of the act, rule, permit or order (administrative) related to the IPDES program. DEQ will initiate a formal enforcement action to promptly correct violations and remedy any harm caused by the violations. DEQ will use the national municipal litigation consideration as prescribed in EPA's 1995 *Interim CWA Settlement Penalty Policy* with discretion on a municipal case-by-case basis for those entities who failed to comply but made good faith efforts.

STATEMENT OF POLICY

This addendum to the national policy establishes a municipal litigation consideration specific to publicly owned treatment works and treatment works treating domestic sewage in Idaho (and under IPDES jurisdiction). As stated in the 1995 policy, the national municipal litigation consideration is based on the economic benefit, environmental impact, duration, and size of the facility, and is derived, in part, on the settlement penalties EPA obtained from judicial municipal cases settled between October 1988 and December 1993.

The national policy provides an option for mitigating the preliminary penalty amount proposed on a municipality to no less than the cash penalty as determined by the use of two tables, with two exceptions:

- The settlement penalty may be reduced based on compelling ability to pay, or
- By 40% based on a Supplemental Environmental Project

There are three steps to calculate a penalty using the national municipal litigation consideration tables:

1. Table A is used to determine the economic benefit environmental impact factor amount
2. Table B determines the population months of violations factor amount
3. The sum of these two values is used in conjunction with gravity adjustments to determine the preliminary penalty amount
4. Additional considerations such as litigation consideration reduction, ability to pay reduction, and SEP reduction will be used to determine the bottom-line cash settlement penalty

Table A as presented in the national policy will remain unchanged. However, Table B was developed using federal statutory penalty amounts and limitations which vary substantially from the maximum amounts established in Idaho code. Additionally, the majority of population sizes

outlined in Table B are not applicable to cities in Idaho. As such, DEQ has developed an Idaho specific Table B, referred to here as Addendum 1, to be used by the IPDES program when determining preliminary settlement penalty amounts. Addendum 1 replaces Table B in the national policy and modifies Table B in the following manner:

- Service population sizes were delineated by grouping Idaho cities with similar service populations and treatment works average daily flows,
- Months of violations were expanded and separated into calendar quarters, and
- Dollar amounts were derived generally, by using percentages (similar to those in the national policy) of the Idaho maximum statutory penalty amount of $5,000 per day for continuing violations.

Unless superseded, the below Addendum 1 will be used to calculate preliminary penalty amounts consistent with the 1995 national policy.

Addendum 1. Revised Table B – Idaho Municipal Litigation Consideration

Service Population	Months of Violation							
	1 to 3	**4 to 6**	**7 to 9**	**10 to 12**	**13 to 15**	**16 to 18**	**19 to 21**	**22 to 24**
Up to 500	0 to 435	0 to 720	0 to 900	100 to 1,200	100 to 1,400	100 to 1,905	100 to 2,300	100 to 2,650
501 to 3,000	0 to 500	0 to 1,900	0 to 2,929	1,201 to 3,629	1,401 to 3,950	1,906 to 4,499	2,301 to 2,950	2,651 to 3,500
3,001 to 10,000	501 to 1,180	1,901 to 3,080	2,930 to 3,323	3,630 to 4,000	3,951 to 4,300	4,500 to 6,000	2,951 to 7,780	3,501 to 9,200
10,001 to 30,000	1,181 to 2,420	3,081 to 4,500	3,324 to 3,951	4,001 to 5,189	4,301 to 6,300	6,001 to 8,000	7,781 to 9,500	9,201 to 21,000
30,001 or more	2,421 to 4,960	4,501 to 7,440	3,952 to 7,699	5,190 to 10,600	6,301 to 13,650	8,001 to 16,525	9,501 to 24,000	21,001 to 28,000

MUNICIPALITY ABILITY TO PAY CLAIM

Financial Data Request Form

This form requests information regarding the municipality's financial status. The data will be used to evaluate the municipality's ability to pay for environmental clean-up or penalties. If there is not enough space for your answers, please use additional sheets of paper. Note that we may request further documentation of any of your responses. We welcome any information you wish to provide supporting the case, particularly, if you feel the municipality's situation is not adequately described through the information requested here. If a particular question does not apply to the municipality's situation, please indicate that it does not apply and give the reason. **Failure to answer all the questions clearly and completely may result in denial of the municipality's claim of inability to pay.**

Certification

Under penalties of perjury, I declare that this financial statement submitted by me as a responsible officer or representative of the organization is a true, correct, and complete statement of all the organization's income and assets, real and personal, whether held in the organization's name or otherwise to the best of my knowledge and belief. I further understand that I may be subject to prosecution by the state of Idaho to the fullest extent possible under the law should I provide any information that is not true, correct, and complete to the best of my knowledge.

_____ _____

Signature Date

_____

Name (printed or typed)

_____

Position or Title

U.S. CENSUS DATA

	2000 Census Data	2010 Census Data
Population		
Number of Persons age 18 or above		
Number of Persons age 65 or above		
Number of Individuals Below 125% of Poverty Level		
Median Home Value		
Median Household Income		

FINANCIAL DATA FOR CITY, TOWN, VILLAGE, OR COUNTY

In addition to the data items below, annual audited financial statements, general obligation bond prospectuses, and budgets should be provided for the last three years. (Note that if the municipality uses an enterprise fund to account for the activities related to the enforcement action, then the data described in Section C should be included as well)

Most Recent Fiscal Year:	
General Fund Unreserved Ending Balance	
Total Principal and Interest Payments	
Total Revenues for all Governmental Funds [excluding transfers between such funds]	

General Fund Unreserved Ending Balance

From the most recent fiscal year's Combined Balance Sheet for All Fund Types and Account Groups, enter the General Fund unreserved ending balance.

Total Principal and Interest Payments for all Governmental Funds

From the most recent fiscal year's Combined Statement of Revenues, Expenditures and Changes in Fund Balances for All Governmental Fund Types, (i.e., General Fund, special revenue, capital projects, debt service, and special assessment), enter the sum (if stated separately) of total principal and interest payments.

Total Revenues for all Governmental Funds (excluding transfers between such funds)

From the most recent fiscal year's Combined Statement of Revenues, Expenditures and Changes in Fund Balances for All Governmental Fund Types (i.e., General Fund, special revenue, capital projects, debt service, and special assessment), enter the sum of total revenues. Be sure to exclude revenues that are simply transfers between governmental funds.

Most Recent Estimates for:	
Market Value of Taxable Property	
Property Tax Collection Rate [%]	
Median Household Income & Year of Estimate	
Median Home Value & Year of Estimate	
Population & Year of Estimate	
Prior Estimate for Population & Year of Estimate	

Most Recent Estimates for:

Market Value of Taxable Property

Enter the current total market value of taxable property within the municipality. Do not enter the assessed value. If you have to extrapolate from the assessed value to the market value, attach an explanation of your methodology and calculations.

Property Tax Collection Rate

Enter the property tax collection rate, expressed as a percentage. If you do not have an accurate estimate for the rate, simply enter 100.

Median Household Income

Enter the median household income, followed by the year of the estimate.

Median Home Value

Enter the median home value, followed by the year of the estimate. Use the most recent estimate available and identify the source of the estimate.

Population

Enter the most recent estimate for the population of the municipality, plus the year of the estimate. Use the most recent estimate available and identify the source of the estimate.

Prior Estimate for Population

Enter a prior estimate for population, and the year of the estimate. Attach a notation of the source for the prior population estimate if it is not the U.S. Census value.

Debt Statistics:	
Direct Net Debt	
Overall Net Debt	
Most Recent General Obligation Debt Rating	
State Limit for general Obligation Debt Level [if applicable]	
Next Year's Budget/Anticipated General Fund Expenditures Plus Net Transfers Out	

Direct Net Debt

Enter the value for the municipality's direct net debt. Direct net debt is equal to gross debt incurred directly in the name of the municipality, less debt fully supported from enterprise fund revenues, (i.e. revenue debt), and short-term debt.

Overall Net Debt

Enter the value for the municipality's overall net debt. Overall net debt is equal to direct net debt of the municipality plus the net debt of overlapping and underlying units of government apportioned in accordance with property valuation. Attach a breakdown detailing the supporting calculation.

Most Recent General Obligation Debt Rating

Enter the most recent General Debt Obligation debt rating.

State Limit for General Obligation Debt Level

Enter the state limit for General Obligation debt level. Attach an explanation of the limit's methodology and your calculations. If your state does not limit a municipality's debt levels, simply note it on the data form.

Next Year's Budgeted/Anticipated General Fund Expenditures Plus Net Transfers Out

Enter the sum of the next year's budgeted or anticipated General Fund expenditures plus net transfer out. Attach either the relevant page from the official budget documents, or calculations for anticipated amounts based on prior years' increases.

FINANCIAL DATA FOR MUNICIPALITY WITH RELEVANT ENTERPRISE FUND; OR, INDEPENDENT AND PUBLICLY OWNED UTILITY

In addition to the data items below, annual audited financial statements, revenue bond prospectuses, and budgets should be provided for the last three years.

General Fund: (omit for an Independent and Publicly Owned Utility)	
General Fund Unreserved Ending Balance for the Most Recent FY	
Next Year's Budgeted/Anticipated General Fund Expenditures	
Plus Net Transfers Out	

General Fund:

Note the above two entries are not applicable for independent and publicly owned utilities.

General Fund Unreserved Ending Balance

From the most recent fiscal year's Combined Balance Sheet for All Types and Account Groups, enter the General Fund's unreserved ending balance.

Next Year's Budgeted/Anticipated General Fund Expenditures Plus Net Transfers Out

Enter the sum of the next year's budgeted or anticipated General Fund expenditures plus net transfers out. Attach either the relevant page from the official budget documents, or calculations for anticipated amounts based on prior years' increases.

Balance Sheet for the Most Recent Fiscal Year	
Current Assets	
Current Liabilities	
Total Liabilities	
Total Equity	

Balance Sheet for Most recent Fiscal Year:

From the most recent fiscal year's Balance Sheet for the specified enterprise fund, enter the Current Assets (excluding any restricted assets), Current Liabilities (payable from current assets, excluding any liabilities payable from restricted assets), Total Liabilities, and Total Equity. Current assets can include such categories as cash and cash equivalents, investments, accounts receivable, and inventories. Current liabilities can include such categories as accounts payable, accrued expenses, current portion of long-term debt, accrued interest payable, and liability for compensated absences.

Revenues & Expenses for the Most Recent Fiscal Year:	
Operating revenues	
Operating Expenses	

Revenues and Expenses for Most Recent Fiscal Year:

From the most recent fiscal year's Statement of Revenues, Expenses, and Changes in Retained Earnings, enter the total amounts for: Operating Revenues and Operating Expenses.

Most Recent Estimates for:	
Residential Portion of System Revenue	
Service Households	
Median Household Income and Year of Estimate	

Most Recent Estimates for:

Residential Portion of System Revenue

Enter the residential portion of system revenue. If this figure is not available, you can derive it by multiplying the average annual residential user charge by the number of serviced households, and then divide by the annual operating revenues. (Note the average annual residential user charges are not necessarily the same as the residential user charge of 90,000 gallon consumption, but you may use the latter if the former is not known.)

Serviced households

Enter the number of serviced households. Note this is not necessarily the same as the number of accounts, which could overestimate the number of serviced households because of commercial accounts, or underestimate the number of serviced households because of multiple-household apartment buildings that hold only one account. If the official estimate is not available, a reasonable approximation may be to divide the serviced population by the U.S. Census estimate for the number of persons per household.

Median Household Income

Enter the value of median household income, plus the year of the estimate. If you use the Census estimate, note the year of the estimate. Attach a notation of the source if it is not the U.S. Census.

Miscellaneous Data:	
Nest Year's Budgeted/Anticipated Enterprise Fund Expenditures Plus Net Transfers Out	
Most Recent Revenue Debt Rating	
Annual Residential Charges on 90,000 Gallon Consumption	
Total Principal and Interest Payments	

Miscellaneous Data:

Next Year's Budgeted/Anticipated Enterprise Fund Expenditures Plus Net Transfers Out

Enter the sum of next year's budgeted or anticipated Enterprise Fund expenditures plus net transfers out. Attach either the relevant page from the official budget documents, or calculations for anticipated amounts based on increases in prior years.

Most Recent Revenue Debt Rating

Enter the most recent revenue debt rating.

Annual Residential Charges on 90,000 Gallon Charges

Enter the annual residential charges on 90,000 gallon consumption. If the enterprise fund accounts for operations other than drinking water or sewer treatment, (e.g. a municipally owned electricity plant), enter the annual charges for a residence consuming the average level of services.

Total Principal and Interest Payments

From the most recent fiscal year's Statement of Cash Flows, enter the sum of principal and interest payments. You can usually find this under the heading of "Cash Flows from Financing Activities." Do not use the amount for "interest expense" from the Statement of Revenues, Expenses, and Changes in Retained Earning.

With respect to additional information needed for a financial assessment please provide the following:

1. Copies of the current municipality's or independent utility rate ordinance and previous rates in effect for the last three calendar years.

2. Copies of studies used to establish utility rates in effect for the last three calendar years.
3. Annual audit reports for the municipality or independent utility for the last three calendar years.
4. Describe differences, if any, between the municipality and the utility's revenue generating or control authority or "service area."
5. Identify and produce all currently effective service agreements which the municipality or independent utility has entered into with communities, industries, persons or other public entities with respect to services provided.
6. Identify estimated and actual total revenue as well as the source of money (e.g., municipal income tax, notes, user charges, etc.) used to fund expenditures of the utility for the last three calendar years. If there is more than one source of this money, state the amount or percentage of this money obtained from each source.
7. Itemize by category the current budget and actual expenditures for the municipality's or independent utility for each of the last three calendar years, including the expenses for labor, power, chemicals, materials, office equipment, billing, training, transportation, other utilities, insurance, consultants, miscellaneous and contingencies as well as debt service, improvements, and construction.
8. Identify and produce financial statements for each of the last three fiscal years relating to the municipality, as distinct from only its utility, including balance sheets, statement of revenues and expenses, statement of changes in financial position or fund balances, all management letters prepared by an auditor in conjunction with an audit, notes to the financial statements, and any other study or report relating to financial status of the municipality and, if available, State Accounting Board Audit Reports.
9. List all local sources and amounts of revenue for the municipality, excluding receipts of borrowing, for the most recently completed fiscal year, including service charges, fees property taxes, income taxes, and transfers from other government entities.
10. Identify and produce the municipality or independent utility budget(s) for the last three years, including estimates of yearly revenues and expenses for capital improvements and operational costs.
11. For each bond currently outstanding or retired during the preceding three years:
    a. Provide a copy of the official statement regarding the sale of the bond;
    b. Identify the type of the bond (e.g., general obligation, revenue, etc.);
    c. State the amount borrowed, interest rate, term of maturity, date of maturity, source of revenue for repayments and annual debt service payment;
    d. Describe the uses to which the money obtained from the bond sale were put;
    e. State whether the bond has been repaid, and the date(s) of any repayment, the amount of interest paid, and the amount of obligation outstanding.
12. Provide the following information regarding financial conditions for each of the last three calendar years.
    a. Bond rating for general obligation and revenue bonds;

b. Total outstanding indebtedness;

c. Tax ceilings, legal debt limits and how much of tax ceilings was used;

d. Real property tax collection tax rate (rates collected divided by taxes levied during tax year);

e. Assessed value of real property;

f. Full market value of real property;

g. Amount of tax supported debt owed to other governments, such as school, library, special and road districts, which is payable by owners of property within the legal boundaries of the municipality (i.e., share of the debt of the governmental units which overlap the municipality);

h. Amount of general obligation bonds outstanding;

i. Amount of each debt obligation on any outstanding leases, unfunded pension liabilities, or notes having a maturity greater than one year; and

j. Total amount of annual debt services.

13. Provide the most recent estimate of;

    a. Utility's current assets;

    b. Utility's current liabilities;

    c. Utility's current revenues and expenditures.

    d. Estimate of residential users' share of operating expenditures.

14. Identify and produce all documents prepared by or for the municipality during the last three years which forecast or estimate its future revenues, expenses of economic posture.

15. Describe the capital improvement projects which the municipality/independent utility is undertaking and/or has completed in the last three years. For each such project, state the start and completion dates, estimated cost, final actual cost and financing method, including any grant, bond and loan schedule, and amount.

16. Describe any future project which the municipality is presently planning or contemplating.

17. Is it contended that it is financially infeasible for municipality/independent utility to obtain funds to pay the proposed penalty? If the answer is anything other than an unqualified no, state precisely the basis or bases for such contention and describe in detail all factual evidence which supports or refutes the basis or bases for the contention, including the identification of documentary evidence.

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Appendix D. Sample Administrative Enforcement Documents

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<NAME OF OFFICIAL>
<TITLE>
<FACILITY NAME>
<ADDRESS>
<CITY, ID ZIP>

Re: Notice of Deficiency - <FACILITY NAME> IPDES Permit Number <IPDES PERMIT NUMBER>

Attention <NAME OF OFFICIAL>:

The Idaho Department of Environmental Quality (DEQ) has determined that <FACILITY NAME> is out of compliance with Idaho Pollutant Discharge Elimination System (IPDES) Permit Number <IPDES PERMIT NUMBER>. The noncompliance is due to:

- <ENTER WHAT THE FACILITY IS IN NONCOMPLIANCE WITH CITING THE STATUTE, RULE, OR PERMIT CONDITION VIOLATED >.

Previous notice regarding this noncompliance was sent to you on <ENTER DATE OF NOTICE OF NONCOMPLIANCE >. DEQ is providing this notice so <FACILITY NAME> may take the necessary corrective action to correct the noncompliance with IPDES permit number <IPDES PERMIT NUMBER>. The following corrective action is required by <ENTER DATE 30 DAYS FROM DATE OF LETTER>:

- <ENTER WHAT ACTION OR INFORMATION MUST BE TAKEN OR SUBMITTED BY PERMITEE TO RESOLVE THE MATTER>

DEQ appreciates your cooperation in resolving this matter. Responsibility for compliance with the IPDES permit requirements rests with the permittee, and DEQ encourages you to continue your efforts to ensure your compliance. DEQ retains all rights and remedies available to it should this noncompliance not be resolved or if further action is found to be necessary to address this matter or any other IPDES permit noncompliance.

If you have any questions concerning this matter, please do not hesitate to contact me at <CIE STAFF PHONE NUMBER>.

Sincerely,

<CIE STAFF NAME>
<CIE STAFF TITLE>
<CIE STAFF PROGRAM>

cc: <OTHER FACILITY CONTACT(S)>
<STATE OFFICE CIE LEAD>

Figure 6: Notice of Deficiency Template Letter.

<NAME OF OFFICIAL>
<TITLE>
<FACILITY NAME>
<ADDRESS>
<CITY, ID ZIP>

Re: Notice of Noncompliance - <FACILITY NAME> IPDES Permit Number <IPDES PERMIT NUMBER>

Attention <NAME OF OFFICIAL>:

The Idaho Department of Environmental Quality (DEQ) has determined that <FACILITY NAME> is out of compliance with Idaho Pollutant Discharge Elimination System (IPDES) Permit Number <IPDES PERMIT NUMBER>. The noncompliance is due to:

- <ENTER WHAT THE FACILITY IS IN NONCOMPLIANCE WITH CITING THE STATUTE, RULE, OR PERMIT CONDITION VIOLATED>.

DEQ is providing this notice so <FACILITY NAME> may correct the noncompliance with IPDES permit number <IPDES PERMIT NUMBER>. Please provide the following information or documentation by <ENTER DATE 30-60 DAYS FROM DATE OF LETTER>:

- <ENTER WHAT ACTION OR INFORMATION MUST BE TAKEN OR SUBMITTED BY PERMITEE TO RESOLVE THE MATTER>

DEQ appreciates your cooperation in resolving this matter. Responsibility for compliance with the IPDES permit requirements rests with the permittee, and DEQ encourages you to continue your efforts to ensure your compliance. DEQ retains all rights and remedies available to it should this noncompliance not be resolved or if further action is found to be necessary to address this matter or any other IPDES permit noncompliance.

If you have any questions concerning this matter, please do not hesitate to contact me at <CIE STAFF PHONE NUMBER>.

Sincerely,

<CIE STAFF NAME>
<CIE STAFF TITLE>
<CIE STAFF PROGRAM>

cc: <OTHER FACILITY CONTACT(S)>
<STATE OFFICE CIE LEAD>
<OTHER CC'S ENTERED BY CIE STAFF>

Figure 7: Notice of Noncompliance Template Letter.

<NAME OF OFFICIAL>
<TITLE>
<FACILITY NAME>
<ADDRESS>
<CITY, ID ZIP>

Re: Notice of Intent to Enforce - <FACILITY NAME> IPDES Permit Number <IPDES PERMIT NUMBER>

Attention <NAME OF OFFICIAL>:

The Idaho Department of Environmental Quality (DEQ) has determined that <FACILITY NAME> is out of compliance with Idaho Pollutant Discharge Elimination System (IPDES) Permit Number <IPDES PERMIT NUMBER>. The noncompliance is due to:

- <ENTER WHAT THE FACILITY IS IN NONCOMPLIANCE WITH CITING THE STATUTE, RULE, OR PERMIT CONDITION VIOLATED>.

The noncompliance is based upon the following findings of fact:

- <ENTER THE FINDINGS AND FACT SUPPORTING THE VIOLATION DETERMINATION>

Previous notice regarding this noncompliance was sent to you on <ENTER DATE(S) OF NOTICE OF NONCOMPLIANCE AND/OR NOTICE OF DEFICIENCY>. DEQ is providing a final notice so <FACILITY NAME> may complete the necessary corrective action to correct the noncompliance with IPDES permit number <IPDES PERMIT NUMBER>. This is the final informal notice DEQ will provide to assist in correcting the noncompliance noted above. The following corrective action is required by <ENTER DATE 30 DAYS FROM DATE OF LETTER>:

- <ENTER WHAT ACTION OR INFORMATION MUST BE TAKEN OR SUBMITTED BY PERMITEE TO RESOLVE THE MATTER>

Failure to resolve the noncompliance by <ENTER DATE 30 DAYS FROM DATE OF LETTER>may result in DEQ pursuing formal enforcement actions against <FACILITY NAME> for violation of IPDES permit number <IPDES PERMIT NUMBER>, as authorized by IDAPA 58.01.25.500. Formal enforcement actions may include administrative, civil, or criminal enforcement and may carry monetary penalties. DEQ retains all rights and remedies available to it should this noncompliance not be resolved or if further action is found to be necessary to address this matter or any other IPDES permit noncompliance.

If you have any questions concerning this matter, please do not hesitate to contact me at <CIE STAFF PHONE NUMBER>.

Sincerely,

<CIE STAFF NAME>
<CIE STAFF TITLE>
<CIE STAFF PROGRAM>

cc: <OTHER FACILITY CONTACT(S)>
<STATE OFFICE CIE LEAD>
<REGIONAL IPDES MANAGER>
<REGIONAL DEQ ADMINISTRATOR>
<OTHER CC'S ENTERED BY CIE STAFF>

Figure 8: Notice of Intent to Enforce Template Letter.

<NAME OF OFFICIAL>
<TITLE>
<FACILITY NAME>
<ADDRESS>
<CITY, ID ZIP>

Re: Notice of No Further Action - <FACILITY NAME> IPDES Permit Number <IPDES PERMIT NUMBER>

Attention <NAME OF OFFICIAL>:

This letter is follow-up from the Idaho Department of Environmental Quality (DEQ) regarding <ENTER WHAT ACTION WAS TAKEN BY DEQ AND DATE ACTION WAS TAKEN>. Based upon <ENTER WHAT ACTION OR INFORMATION WAS TAKEN BY PERMITEE OR SUBMITTED TO RESOLVE THE MATTER>, and information available to DEQ at this time, DEQ has determined that no further action is necessary in regards to this matter. The receipt of this letter from DEQ is your documentation of this determination and it is recommended that you retain this letter in your facility records.

DEQ appreciates your cooperation in resolving this matter. Responsibility for compliance with the IPDES permit requirements rests with the permittee and DEQ encourages you to continue your efforts to ensure your compliance. While this matter is considered resolved, DEQ retains all rights and remedies available to it should DEQ become aware of new or additional information or if further action is found to be necessary to address this matter or any other violations.

If you have any questions concerning this matter, please do not hesitate to contact me at <CIE STAFF PHONE NUMBER>.

Sincerely,

<CIE STAFF NAME>
<CIE STAFF TITLE>
<CIE STAFF PROGRAM>

cc: <OTHER FACILITY CONTACT(S)>
<STATE OFFICE CIE LEAD>
<OTHER CC'S ENTERED BY CIE STAFF>

Figure 9: Notice of No Further Action Template Letter.

<DATE>
CERTIFIED MAIL #: P
RETURN RECEIPT REQUESTED

<NAME OF OFFICIAL>
<TITLE>
<FACILITY NAME>
<ADDRESS>
<CITY, ID ZIP>

Re: Notice of Violation - <FACILITY NAME> IPDES Permit Number <IPDES PERMIT NUMBER>

Attention <NAME OF OFFICIAL>:

Enclosed is a Notice of Violation resulting from Idaho Pollutant Discharge Elimination System (IPDES) inspection at <FACILITY NAME> on <DATE>. <FACILITY NAME> has fifteen (15) days to request a conference to develop a Consent Order which will include payment of the penalty and a plan to remedy damage caused by any violations and assure future compliance. Also enclosed for your records is a copy of the inspection report based on the <DATE> inspection.

While not required, <FACILITY NAME> may choose to notify DEQ that they will prepare and offer to DEQ a proposal for a pollution prevention project to be discussed at the compliance conference. At the discretion of DEQ a pollution prevention project may be considered in addition to determining the appropriate remedy for the violation(s). This pollution prevention proposal shall include all the elements outlined in the attached description of pollution prevention projects. All elements of the pollution prevention project proposal are negotiable and DEQ may choose to not accept any proposal. Please contact <IPDES COMPLIANCE AND ENFORCEMENT COORDINATOR> at (208)373-0502 if you have any questions regarding a pollution prevention proposal.

Arrangements for a compliance conference may be made by contacting <IPDES COMPLIANCE AND ENFORCEMENT COORDINATOR> also at (208)373-0502 or the following address:

<NAME>
IPDES Compliance and Enforcement Coordinator
Idaho Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

Sincerely,

John Tippets, Director

Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706-1255

Enclosures (NOV, inspection report)
cc: [Name], Deputy Attorney General
[Name], Water Quality Division Administrator
[Name], IPDES Program Manager
[Region]
TRIM Reference #

Figure 10: Cover Letter template for Notice of Violation.

Notice of Violation Language with Explanation

NOTICE OF VIOLATION - EXAMPLE

NOTICE OF VIOLATION

Issued to: <FACILITY NAME>
IPDES Permit Number <IPDES PERMIT NUMBER>
<ADDRESS>
<CITY, ID ZIP>

On <DATE> the Idaho Department of Environmental Quality (DEQ) conducted an inspection at the above named facility. Pursuant to the Environmental Health Act of (EPHA), Idaho Code §§ 39-101 through 39-130, DEQ has determined that the following violations have apparently occurred at the <FACILITY NAME> facility in <LOCATION/CITY/STATE>.

VIOLATIONS

Violation No. 1

Legal Provision Violated: IDAPA § *Citation of Statute/Rule/Permit condition violated*

[paragraph] *Description of requirements of Statute/Rule/Permit condition violated.*

[paragraph] *Facts alleged which constitute a violation.*

Penalty TEN THOUSAND DOLLARS ($10,000)

Violation No. 2

Legal Provision Violated: IDAPA § *Citation of Statute/Rule/Permit condition violated*

[paragraph] *Description of requirements of Statute/Rule/Permit condition violated.*

[paragraph] *Facts alleged which constitute a violation.*

Penalty TEN THOUSAND DOLLARS ($1,000)

TIMETABLE

<NAME OF OFFICIAL> may request a compliance conference with DEQ to explain the alleged violations and discuss entry into a Consent Order which will include payment of assessed penalties, and a plan to remedy damage caused by any violation and assure future compliance. To arrange a compliance conference, <NAME OF OFFICIAL> must contact DEQ within fifteen (15) days after receipt of this Notice of Violation. Failure to request a conference within fifteen (15) days after receipt of this Notice of Violation, or reach agreement on a Consent Order within sixty (60) days may result in a civil enforcement action in district court for penalties, injunctive relief, and costs including attorney fees.

Inquiries or correspondence concerning this Notice of Violation shall be directed to:

<NAME>
IPDES Compliance and Enforcement Coordinator
Idaho Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

DATED THIS ___ day of _____, 20__

_____
John Tippets, Director
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706-1255

Figure 11: Example Notice of Violation.

CONFIDENTIAL

WATER QUALITY ENFORCEMENT CASE REFERRAL

INTERNAL AGENCY COMMUNICATION

PREPARED AS PART OF AN ONGOING INVESTIGATION

CASE NAME:_____

Regional Office: _____

Designated Tracker:_____

Case Type: _____Ground Water _____Surface Water

_____Reuse _____Wastewater

Routing Sequence:

1. _____ _____
Prepared by Date

2. _____ _____
Regional Administrator Date

Date received by
State Water Quality Division: _____
Date

CONFIDENTIAL

(12/15) -1-

Enforcement Action Requested:

_____a. Prepare a Compliance Agreement Schedule (CAS).

_____b. Prepare a Consent Order without the issuance of an NOV.

_____c. Issue an NOV for violation(s) of statutes or rules.

_____d. Issue an NOV for violation(s) of a Consent Order or CAS.

_____e. Request Deputy Attorney General to prepare a civil complaint.

_____f. Request Deputy Attorney General to investigate criminal proceedings.

Responsible Party:

Name of person(s) or company responsible for water quality violation:

_____

Address:_____

_____

Phone:_____ Fax:_____

If the responsible party is a company, state the nature of the business:

_____

_____

List steps taken by the regional office to provide compliance assistance to the responsible party to remedy the violation(s), including dates:

1)
2)

Briefly describe how the violation occurred and how the Department became involved: (include dates of involvement)

_____

_____

_____

_____

CONFIDENTIAL

Indicate what impact violation(s) has made (example - impairment of a drinking water system, fish kill, standards exceeded):

_____

_____

_____

_____

What evidence supports a water quality violation(s) (i.e. samples, site visit, police report):

_____

_____

_____

For nonpoint source activities, what BMPs were required and were they used? _____

_____

_____

_____

(Attach all pertinent documents such as maps, lab analyses, field notes, photos, site assessment reports, and police reports).

If the violation(s) is the result of non-compliance with a consent order, compliance agreement schedule, permit, or rule, list the specific terms or conditions violated (including permit number and/or rule violation if applicable):

1)
2)

List any other DEQ programs or other agency(s) involved in regards to the violation(s):

1)
2)

List all persons with knowledge of the case:

1)
2)

List steps the responsible party must take to remedy the violation(s), including dates (i.e. monitoring, construction, submittal of plans, cleanup):

1)
2)

ATTACH ALL CORRESPONDENCE PERTINENT TO THE CASE

Figure 12: Enforcement Referral Template.

Appendix E. DEQ Policy Memorandum PS15-05, Supplemental Environmental Projects

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STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, ID 83706 • (208) 373-0502

C. L. "Butch" Otter, Governor
Curt Fransen, Director

DEQ POLICY STATEMENT
PS15-05

SUPPLEMENTAL ENVIRONMENTAL PROJECTS

PURPOSE

By statute, the imposition or computation of monetary penalties for an enforcement action brought under the Environmental Protection and Health Act (EPHA), Idaho Code §§39-101, et. seq., or the Hazardous Waste Management Act of 1983 (HWMA), Idaho Code §§39-4401, et. seq., may take into account an enforceable commitment by the person against whom the penalty is directed to implement a supplemental environmental project. For these purposes, "supplemental environment project" (SEP) is defined as an environmentally beneficial project which the person is not otherwise required to perform, and which falls into at least one of four categories: pollution prevention, pollution reduction, public awareness, and general enhancement of the quality of the environment. Idaho Code §§39-108(5)(b), -4414(1)(c). Environmentally beneficial means a SEP must improve, protect, or reduce risks to public health or the environment.

STATEMENT OF POLICY

As a general policy, DEQ encourages the use of SEPs as a way of furthering the objectives of the EPHA and HWMA while deterring noncompliance with the provisions of those statutes and the administrative rules which implement them. At the same time, DEQ's consideration of a particular SEP proposal must take into account the scope of DEQ's authorities under Idaho law and federal requirements. While this consideration must necessarily be conducted on a case-by-case basis, the purpose of this policy document is to provide a framework to be applied when a SEP is proposed to resolve or partially resolve an administrative enforcement action initiated by DEQ under the EPHA or HWMA. By developing a consistent approach to SEPs, it is believed that DEQ can ensure fairness and consistency in the use of SEPs as a settlement option.

This document is to be used as a tool in settlement negotiations and is not intended to create substantive or procedural rights or legal obligations. This policy does not change or affect any existing obligation to remedy damage caused by a person's noncompliance or to ensure future compliance. This policy may be considered in all enforcement actions filed after its effective date and in all pending actions in which DEQ and the person against whom a penalty is directed have not reached agreement in principle on the specific terms of a SEP.

This policy document shall be used by authorized DEQ staff to determine the types of projects that are permissible as SEPs, the penalty mitigation appropriate for a particular SEP, and the

terms and conditions under which a SEP may become part of a settlement. Subject to statutory and constitutional limitations, DEQ's decision to accept or reject a particular SEP as part of a settlement is discretionary. Even though a proposal appears to satisfy all of the provisions of this policy, the federal requirements, and Idaho law, DEQ may decide, for one or more reasons, that the SEP is not appropriate. In such case, the SEP need not get taken into account in mitigating the civil penalty amount. Acceptance of a particular SEP proposal shall be made only after review by, and consultation with, the Office of the Attorney General and the DEQ director. This policy supersedes DEQ Guidance Document GD98-1 dated March 12,1998.

Substantive Nexus

Preference may be given to those SEPs with an environmental benefit that has some relationship to the specific violations for which the enforcement action was brought or at least one of the more broad objectives of the underlying statute(s). A project cannot be inconsistent with any provision of the underlying statute(s).

Geographic Nexus

Preference may be given to those projects with a benefit in the actual or general geographic location where the violations occurred.

Categories of SEPs

To be considered by DEQ, a SEP proposal must conform to one or more of the following categories:

- **Pollution Prevention:** A pollution prevention project is one that reduces, at the source, the amount or toxicity of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise being released into the environment. These projects will often involve changing an industrial process, substituting fuels and raw materials, as well as closed loop recycling and reuse. Pollution prevention also includes any project that protects natural resources through conservation or increased efficiency in the use of energy, water, or other materials.
- **Pollution Reduction**: A pollution reduction project employs recycling, treatment, containment, or disposal techniques to reduce the amount or toxicity of a pollutant or waste stream that has already been generated or released.
- **Public Awareness:** Public awareness projects may include publications, broadcasts, or seminars aimed at the regulated community and underscoring the importance of environmental compliance and pollution reduction and/or prevention. These projects may be accomplished through donations to nonprofit groups or emergency planning and preparedness support or training to responsible state or local emergency response or planning entities.
- **Environmental Enhancement:** An environmental enhancement project is one that goes beyond repairing environmental damage caused by the violation to protect, restore, or otherwise enhance the environment. Cleanups required by law do not fall under this category. Included in this category are proposals to donate money to a local government or nonprofit entity to advance the goals of a specific environmental program or project or to conduct qualifying research.

  A study or assessment may be a viable SEP if it is designed to explore pollution prevention or reduction and the person making the proposal commits to implementing

one or more of the study solutions. Consideration of a SEP proposal which includes a study or assessment shall take into account the likelihood that technically feasible and cost effective solutions can be identified.

Contents of the SEP Proposal

DEQ shall, as fully as possible, require that the details of a SEP be set out prior to the signing of the Consent Order rather than being left open for negotiation after the primary agreement is signed. (Model consent order language is included in Appendix A.) To the extent practicable, the SEP proposal shall set out an itemized projected budget for the project including a detailed breakdown of equipment, labor, and capital costs and a schedule, with specific dates, for implementation and completion of the SEP. To be subject to consideration by DEQ, a SEP proposal shall specifically identify the nature and amount of any tax or other direct, quantifiable, and traceable economic benefits that will be realized by the person proposing the SEP as a result of the SEP performance.

Not Otherwise Required to Perform

DEQ shall only consider those SEP proposals describing activities the person is not otherwise required to perform by virtue of any local, state, or federal statute, regulation, rule, order, decree, permit, or other law or agreement. The person making the proposal shall not receive a credit for the SEP as part of another enforcement action or a grant from a state, federal, or local entity. A SEP must go beyond what a violator must do to achieve and maintain compliance; SEPs cannot include actions the person may be required to perform as injunctive relief in the instant case or as part of a settlement or order in another legal action.

SEP Proposals and Existing Agency Duties

DEQ shall not consider a SEP proposal that conflicts with Idaho Const. Art. VII, §13 ("No money shall be drawn from the treasury, but in pursuance of appropriations made by law"), or Idaho Code §67-3516(2) ("An agency cannot supplement its appropriation with outside funds unless the agency has received prior approval from DFM"). Specifically barred from consideration are SEP proposals which (1) involve an activity a state agency is already legislatively required to perform; (2) provide a state agency with additional resources to perform an activity for which the legislature has specifically appropriated funds; or (3) appear to expand existing state programs.

DEQ Oversight of SEPs

SEPs that would be resource intensive for DEQ are unacceptable. DEQ shall not consider SEP proposals that would require DEQ to manage funds, control SEP performance, or provide substantial oversight. If warranted by the SEP implementation schedule, a person performing a SEP shall be required to submit periodic progress reports. Once implementation has been completed, the person shall submit to DEQ a written statement of completion accompanied by appropriate documentation (such as invoices, receipts, or tax statements) that can be used by DEQ to verify the amount of the expenditures made and the acceptable implementation and completion of the SEP. In the event that actual expenditures for a SEP fall short of projected expenditures, the person performing the SEP may be required to submit the amount of the shortfall (or some percentage thereof) to the state as a penalty payment.

Calculating SEP Value and Penalty Mitigation

The net present value of any economic benefits—including tax relief—identified in the SEP proposal shall be deducted from the SEP value used to determine the appropriate amount of penalty mitigation. After the deduction of the identified economic benefits, a ratio of $2 in project dollars for every $1 in penalty dollars mitigated shall generally be applied. To preserve the deterrent effect of enforcement, the amount of a penalty reduction a violator will receive in exchange for a commitment to undertake a SEP shall not generally exceed 75% of the total penalty amount. Under no circumstances shall the cash penalty obtained combined with the amount of penalty mitigation resulting from the SEP exceed the statutory administrative penalty limit.

Failure of SEP Implementation and Completion

In the event a SEP is not timely implemented or completed as required by a settlement agreement, the person shall be required to pay some or a portion of the penalty mitigation as a stipulated penalty.

Public Statements

DEQ shall require that any public statement made about the SEP by the person implementing shall (1) identify the fact the SEP is being or has been implemented as part of the settlement of a DEQ enforcement action and (2) specifically cite the statute violated.

RESPONSIBILITY

DEQ's Waste Management and Remediation Division administrator is responsible for maintaining this policy.

IMPLEMENTATION

This policy is effective immediately and will remain in effect for 5 years unless amended, replaced, or rescinded prior to expiration.

Dated this 21st day of May, 2015

Curt Fransen
Director

Appendix A. Model Consent Order Language: Supplemental Environmental Projects

1. In partial settlement of the civil penalty for matters included in the NOV, **[owner/operator]** agrees to undertake a Supplemental Environmental Project (SEP) as specifically described in the plan attached hereto as Exhibit A which plan is incorporated by reference into, and enforceable as part of, this Consent Order. The Department has determined the proposed SEP is in accordance with and approvable pursuant to Idaho Code §39-108(5)(b) **[and/or 39-4414(1)(c)].** Performance of the SEP will benefit the environment, and it is a project which **[owner/operator]** is not otherwise required to perform. **[Owner/operator]** agrees to implement the SEP in accordance with the detailed plan attached as Exhibit A and the following terms and conditions.

   A. The total expenditure for the SEP shall not be less that $_____. All costs of the SEP shall be the responsibility of **[owner/operator]. [Owner/operator]** certifies that any economic benefit – including tax relief – that **[owner/operator]** will realize as a result of the SEP is detailed in the plan included as Exhibit A. For any SEP which is fully and completely implemented, to the extent that the actual expenditures for the SEP totals less than 90% of $_____. **[owner/operator]** shall pay to the Department as a penalty, within 30 days of submission of the certificate of completion required below, the amount of the shortfall after it has been proportionately adjusted by the amount of any economic benefit realized and reduced by the ratio of penalty mitigation of SEP expenditure, which ratio is __:__. The penalty shall be deposited by the Department into the Hazardous Waste Emergency Account as provided by paragraph ___ of this Consent Order.

   B. The plan included as Exhibit A contains a time frame, including specific dates for the implementation of the SEP. **[Owner/operator] shall** fully implement all aspects of the SEP within that time frame.

   C. **[Owner/operator]** certifies that **[owner/operator]** is not otherwise required by virtue of any local, state, or federal statute, regulation, rule, order, decree, permit, or other law or agreement, to develop or implement the SEP. **[Owner/operator]** further certifies that **[owner/operator]** has not received, and is not presently negotiating to receive, a credit for the SEP as part of any other enforcement action or any grant from the State, EPA or any other entity.

   D. In the event **[owner/operator]** fails to fully and completely implement the SEP as provided herein to the reasonable satisfaction of the Department, the Department will provide written notice to **[owner/operator]** of the nature of the deficiency. **[Owner/operator]** shall have thirty (30) days from receipt of the notice to submit documentation that the deficiency has been corrected. In the event the deficiency is not corrected to the satisfaction of the Department, **[owner/operator]** shall be in violation of this Consent Order and shall be required to pay to the Department a stipulated penalty of the amount of penalty mitigation originally allowed as a result of the SEP. The amount of the stipulated penalty may be reduced or waived by the Department if **[owner/operator]** made good faith and timely efforts to complete the project. Any stipulated penalty

payment received shall be deposited by the Department into the Hazardous Waste Emergency Account as provided by paragraph _____ of this Consent Order. Payment under the terms of this paragraph shall satisfy **[owner/operator's]** obligation to complete the SEP. **[Owner/operator]** agrees that the Department has sole discretion to make the following determinations: 1) whether the SEP has been satisfactorily completed; 2) whether a timely, good faith effort has been made to implement the SEP; and, 3) the amount, if any, to be paid as a stipulated penalty.

E. **[Owner/operator]** agrees that any public statement, oral or written, making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Idaho Department of Environmental Quality for violations of [**citation to law violated**]."

F. After the effective date of this Consent Order, until completion of implementation of the SEP, **[owner/operator]** shall provide the Department with a progress report every **[fill in the time].** The progress reports shall include a description of the SEP activities **[owner/operator]** performed in the prior **[fill in the name]** and a description of the SEP activities **[owner/operator]** expects to perform in the next **[fill in time].**

G. No later than ten (10) days after the completion of implementation of the SEP, **[owner/operator]** agrees to provide the Department with a statement certifying that the SEP has been implemented and completed in accordance with the terms and conditions of this Consent Order. The certification shall be accompanied by appropriate documentation (such as invoice, receipts, or tax statement) to verify the amount of the expenditures made and actions taken. It shall be the sole determination of the Department whether **[owner/operator]** has complied with the terms of this Consent Order through implementation and completion of implementation of the SEP as herein required.

Appendix I. IPDES Enforcement Response Guide

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Idaho Pollutant Discharge Elimination System

Enforcement Response Guide



State of Idaho
Department of Environmental Quality

May 2017

Revised July 2017



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Acronyms

CAS	compliance agreement schedule
CO	consent order
CSO	compliance schedule order
DEQ	Idaho Department of Environmental Quality
DMR	discharge monitoring report
IPDES	Idaho Pollutant Discharge Elimination System
NOD	notice of deficiency
NONC	notice of noncompliance
NONFA	notice of no further action
NOV	notice of violation
POTW	publicly owned treatment works
NNCR	NPDES noncompliance reports
SIU	significant industrial user
SNC	significant noncompliance
TRE	toxicity reduction evaluation
TRO	temporary restraining order

1 Purpose, Principles, and Measures

This guide supplements the Idaho Department of Environmental Quality's (DEQ's) *IPDES Enforcement Manual* and provides a more detailed description of the various informal and formal enforcement responses. This guide is designed to help Idaho Pollutant Discharge Elimination System (IPDES) Program compliance officers determine the appropriate enforcement response to a specific violation of an IPDES permit and related sections of state law. This guide serves two purposes:

1. It recommends an enforcement response that is timely and appropriate with respect to the nature and severity of the violation and the overall degree of noncompliance.
2. It ensures uniform application of enforcement responses to comparable levels and types of violations.

IPDES compliance officers are the front line in compliance monitoring and enforcement. They are responsible for conducting inspections, reviewing documentation, preparing informal enforcement responses, and compiling enforcement referral packages when appropriate. Because this guide is drafted for the IPDES compliance officer, the primary focus of this supplement will be on the informal administrative enforcement responses. Formal administrative, civil, and criminal responses are drafted at the state office program level in collaboration with the attorney general's office. A brief description of these formal actions are found in Section 4.4 for reference, however are discussed in more detail in the *IPDES Enforcement Procedures Manual*.

While this guide addresses a broad range of IPDES Program violations, it is not intended to cover every possible noncompliance event (Attachment A). The enforcement responses reflect the enforcement actions available to DEQ. When taking into consideration the elements of the *IPDES Enforcement Response Guide*, DEQ will administer any enforcement responses available under, and consistent with, state law. DEQ maintains enforcement discretion in all cases.

DEQ considers an effective enforcement response as one that ensures the noncompliant facility returns to compliance as expeditiously as possible, establishes the appropriate deterrent effect for a particular violator and for other potential violators, and promotes fairness of government treatment among comparable violators and among complying and noncomplying parties.

When determining the level of the enforcement response, IPDES staff should consider the following:

- The degree of variance from the permit condition or legal requirement,
- The severity of adverse impacts or threats of adverse impacts to human health or the environment,
- The duration of the violation,
- Previous enforcement actions taken against the violator,
- The deterrent effect of the response on the violator and on the similarly situated regulated community, and
- Any information regarding knowledge or intent of the violator.

2 Timing of Enforcement Response

DEQ must respond to all significant noncompliance (SNC)[1] in a timely and appropriate manner. The response should reflect the nature and severity of the SNC violation. Unless there is supportable justification, the response must be a formal enforcement action or require a return to compliance by the permittee.

DEQ expects to take a formal enforcement action no more than 180 days identifying a violation. When formal enforcement action is not taken, DEQ will keep a written record that clearly justifies why the alternative action (e.g., informal enforcement or permit modification) was the more appropriate action.

It is DEQ's general guideline to determine the appropriate enforcement response, action, and documentation no more than 60 days after identifying a violation. DEQ will consider the appropriate formal enforcement response in those instances when noncompliance continues beyond a reasonable time, not to exceed 180 days after identifying a violation.

Throughout this guidance, references to days represent calendar days, unless specified otherwise (e.g. business days). In computing any period of time scheduled to begin after or before the occurrence of an activity or event, the date of the activity or event is not included. The last day of the period is included, unless it is a Saturday, a Sunday, or a legal holiday, in which case the period runs until the end of the next day (which is not a Saturday, a Sunday, or holiday). However, when a party or interested person is served by mail, 3 days are added to the prescribed time.

3 Technical Assistance as a Conjunctive Tool

In some instances, DEQ may provide technical assistance to permittees with documented chronic violations. However, a regulated entity may request technical assistance at any time. Technical assistance is the provision of advice, assistance, or training pertaining to the installation, operation, and maintenance of equipment; it is not compliance assistance. For information on compliance assistance, see section 4.3.1. Rather, its function is independent of any enforcement action DEQ may pursue and may or may not be a resource for a permittee. The objective of technical assistance is to provide permittees with the expertise needed to gain compliance. Technical assistance may involve site visits to teach skills, guidance on obtaining grants and loans, or help solving problems related to the operation and maintenance of a treatment works. While the proper operation and maintenance of a facility is the responsibility of the permittee, DEQ staff expertise may be a useful resource for the regulated community.

[1] SNC designations are made in accordance with EPA's December 12, 1996, guidance document *General Design for SNC Redefinition Enhancement in PCS*, the October, 2007, guidance document *Interim Significant Noncompliance Policy for Clean Water Act Violations Associated with CSOs, SSOs, CAFOs, and Storm Water Point Sources,* the September 27, 1989 memorandum *"FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation Requirements"* and the September 21, 1995, memorandum "Revision of NPDES Significant Noncompliance (SNC) Criteria to Address Violations of Non-Monthly Average Limits."

While a permitted facility may request technical assistance at any time, the IPDES Program may request a technical assistance inspection of a permitted facility by regional DEQ engineering staff to determine the cause of a chronic violation. For example, a small community may lack the financial resources to employ a consultant capable of troubleshooting a deficient treatment removal process. As a result, the facility continues to report effluent limit exceedances. IPDES personnel may proceed with enforcement action while informing the facility that DEQ regional engineering staff is available for technical assistance. Technical assistance does not preclude the IPDES Program from initiating a formal enforcement response.

4 Enforcement Responses

DEQ will exercise three possible levels of response to an illegal discharge or other violations of the IPDES program requirements: no immediate action, informal response, or formal enforcement action. DEQ will review the violation and determine the appropriate enforcement response.

4.1 Escalating Enforcement Responses

DEQ will respond in a timely manner to every known noncompliance event. The magnitude, frequency, duration of a noncompliance event determine whether DEQ's response is formal or informal or requires immediate action. Events resulting in known harm to public health or the environment prompt a formal enforcement action. Harmful events are those events that create a nuisance or render surface waters detrimental or injurious to public health, safety, or welfare; fish and wildlife; or beneficial uses of the water body (e.g., swimming beach closures or fish kills).

For those noncompliance events identified as not significant, DEQ may offer compliance assistance, and may deploy an escalating informal response process to bring permittees back into compliance. For an example of an escalating response, see Figure 1. DEQ reserves discretion when initiating an informal response such that an informal response may begin with the highest level (i.e., notice of intent to enforce).

DEQ's initial informal response to an isolated single noncompliance event may be to contact the facility via phone or e-mail. If the permittee is unresponsive or fails to return to compliance expeditiously, then DEQ may escalate the informal response by sending the permittee a written notification. As the severity (magnitude) of the violation increases, a formal enforcement response becomes more likely. Where frequent unrelated noncompliance events persist, DEQ may inform the permittee in writing that a formal enforcement action is imminent.

Significant noncompliance violations identified on a quarterly NNCR as unresolved or recurring violations similar in nature (e.g., chronic reporting deficiencies) should trigger a formal enforcement action. When establishing enforceable schedules (timelines) for achieving compliance, DEQ will strive to set realistic expectations of the permittee.

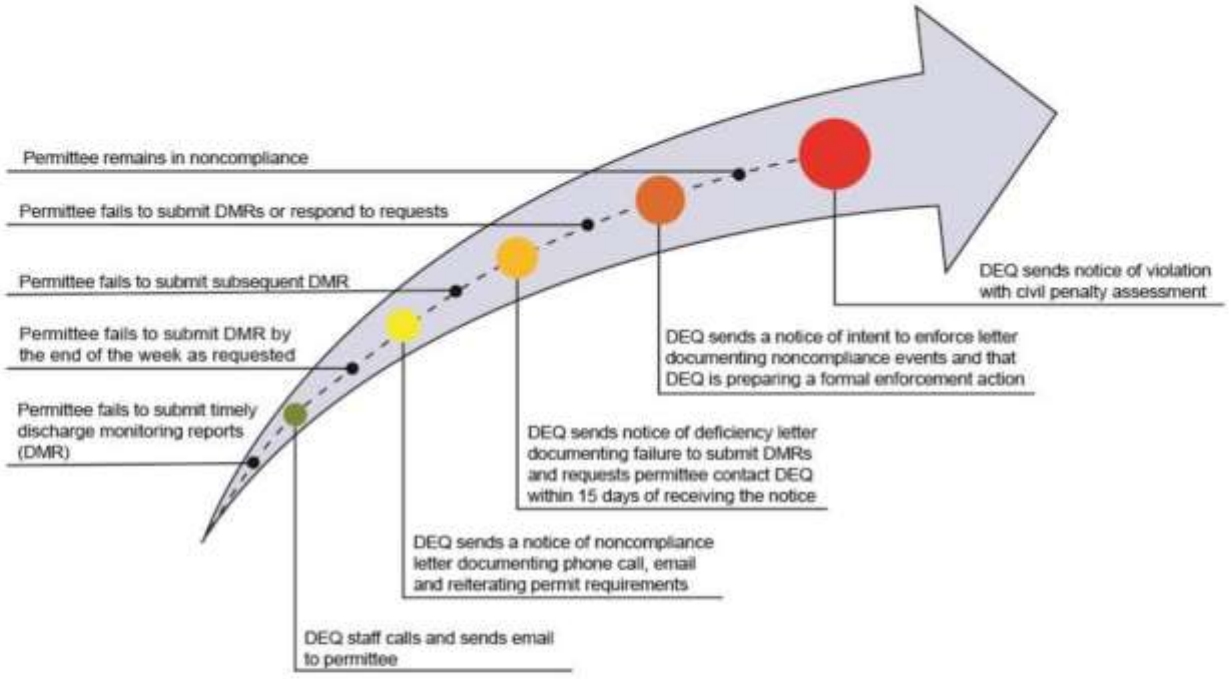


Figure1. Example of an Escalating Enforcement Response

Figure 1. Example of an escalating administrative enforcement response.

4.2 No Immediate Action

DEQ may encounter circumstances that delay an informal response or formal enforcement action. For example, a file review may reveal noncompliance with a permit condition or IPDES rule; DEQ may choose to address this discovery at a later date, during a compliance evaluation inspection. Should IPDES resources become constrained by workload and preclude immediate action, DEQ will focus enforcement actions on those violations posing the greatest risk to public health and the environment.

4.3 Informal Responses

Informal responses typically take four forms: compliance assistance, notices of noncompliance, notices of deficiency, and notices of intent to enforce.

4.3.1 Compliance Assistance

DEQ uses compliance assistance in the form of verbal or electronic notifications/requests (phone call, e-mail) to inform a permittee of a problem and to informally explain regulatory requirements (e.g., surface water quality standards, environmental statutes and rules) and permit requirements or to provide guidance on how to comply with or satisfy a particular permit condition. For example, DEQ may explain the purpose of a storm water pollution prevention plan or quality assurance project plan and provide resources to assist in completing these types of documents. Compliance assistance is not technical assistance; for information on technical

assistance, see section 3. DEQ will contact permittees via phone within 5 days of becoming aware of a noncompliance event, regardless of whether a formal response will follow.

DEQ uses permittee education and outreach (i.e., compliance assistance) when noncompliance is identified statewide or by sector (e.g., storm water). As reporting data are reviewed and inspections are conducted, DEQ will analyze noncompliance trends and address these issues through education and outreach, including publication of online IPDES resources, permittee file reviews, workshops, conferences, and newsletters.

4.3.2 Noncompliance Letters

4.3.2.1 Notice of Noncompliance

DEQ issues a notice of noncompliance (NONC) letter when compliance assistance efforts have proven ineffective or when noncompliance issues by first time violators that do not cause actual harm to human health or the environment are identified. Violators will be given an opportunity to rectify the situation within a realistic timeframe (typically within 30–60 days). A NONC is best suited for addressing paperwork-related noncompliance, not including failure to develop a plan as required by a permit condition. For example, a permittee may miss a deadline for notifying DEQ that a particular plan has been updated; DEQ may attempt to contact the facility, and where the permittee developed the plan but neglected to notify, DEQ may issue a NONC.

4.3.2.2 Notice of Deficiency

DEQ issues a notice of deficiency (NOD) letter to inform the permittee that a noncompliance event has occurred and requires corrective action. This letter provides the responsible party an opportunity to correct the situation within a specified period of time. The NOD stipulates the appropriate corrective action required to achieve compliance and the type of response required of the permittee. A NOD is best suited for addressing noncompliance events with no known harm to public health or the environment.

4.3.2.3 Notice of Intent to Enforce

DEQ may issue a notice of intent to enforce (NOIE) letter when noncompliance issues persist beyond a previously established amount of time or when noncompliance nears the threshold for initiating a formal enforcement response. This letter is often issued after an NONC or NOD letter and prior to a notice of violation (NOV). This letter is the most serious form of an informal enforcement action. It will follow the format of an NOV to facilitate the transition from an informal response to a formal enforcement action. The NOIE will:

- Cite DEQ's authority to pursue administrative or judicial enforcement actions,
- Cite the statute, rule or permit condition allegedly violated,
- State the findings of fact that support DEQ's position that a violation occurred,
- Provide a final offer for compliance assistance,
- Specify reasonable timelines to achieve compliance,
- Require a written response that corrective action has been completed, or a schedule for returning to compliance, and
- Identify the individual to whom correspondence and inquiries should be directed.

While the NONC, NOD, and NOIE are all informal responses, the IPDES NOIE is most similar to EPA's notice of violation informal enforcement action.

4.3.3 Notice of No Further Action

DEQ will issue a notice of no further action (NONFA) once it has been determined that a facility has adequately addressed the documented noncompliance. This notice documents that the documented noncompliance has been adequately addressed by the facility. Issuance of a NONFA by DEQ does not preclude the agency from taking further enforcement action regarding those specific noncompliance events up to the statute of limitations.

4.4 Formal Responses

Pursuant to Idaho Code §39-175E, all investigation, inspection, and enforcement authorities set forth in Idaho Code §§39-101 through 39-130 are available to DEQ with respect to the IPDES program. Violations that rise to the level of a formal enforcement response should be referred to an IPDES Compliance and Enforcement Coordinator. The following sections describe the formal enforcement actions available to DEQ. However, more detail on the process for pursuing these formal actions may be found in the *IPDES Enforcement Procedures Manual.* The public will be given the opportunity to comment on all proposed enforcement action settlements.

4.4.1 Administrative Actions

A notice of violation (NOV) under Idaho Code §39-108 is a notice that documents a violation. The majority of enforcement work starts with an NOV. There is no requirement to issue an NOV every time a violation is observed. An NOV is not an order. The notice must include an opportunity to confer with DEQ within 20 days of receiving the notice, unless a later date is agreed to. This compliance conference provides the violator an opportunity to explain the circumstances of the alleged violation and propose a remedy for returning to compliance. The notice may require a written response within 15 days. NOVs may precede other formal administrative or civil/judicial enforcement actions and may include a civil penalty. An NOV is not required prior to filing a civil enforcement action. If an NOV is issued, however, a civil action may not be filed until the recipient has been afforded an opportunity for a compliance conference and to enter into a consent order (discussed below).

A compliance agreement schedule (CAS) under Idaho Code §39-116A is an enforceable schedule that establishes actions necessary to maintain or come into compliance as expeditiously as practicable. The term of the agreement is not to exceed 10 years. Annual meetings between DEQ and the permittee will be included in the schedule when agreements last longer than 1 year.

A consent order (CO) under Idaho Code §39-108 is an administrative order entered into by agreement of the violator and DEQ. It may include a provision providing for payment of any agreed civil penalty. If no agreement is reached, DEQ may initiate a civil enforcement action in district court.

4.4.2 Civil Remedies

A **civil suit** under Idaho Code §39-108 and 109 is an enforcement action that causes a violator to be liable to the state for a sum to be assessed by the court. A civil suit is filed in district court by the Office of the Attorney General in consultation with DEQ. Sufficient evidence must be available to prove the case in court. DEQ is not required to initiate or prosecute an administrative action before initiating a civil enforcement action.

A temporary restraining order (TRO) and **preliminary injunction** under Idaho Code §39-108(8) allows DEQ to seek immediate injunctive relief when there is an imminent and substantial danger to public health and the environment.

4.4.3 Criminal Remedies

Per Idaho Code §39-117, any person will be guilty of a misdemeanor who willfully or negligently violates any IPDES standard or limitation, permit condition, or filing requirement; 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. The convicted party may be punished by a fine or imprisonment (Idaho Code §18-113). DEQ's *IPDES Enforcement Procedures Manual* describes the procedures to refer a potential criminal action to the Office of the Attorney General.

Attachment A. Noncompliance events, circumstances, and range of responses.

The table below outlines various noncompliance scenarios, circumstances, and the range of responses that may be appropriate. When using this table:

- "Isolated or infrequent" refers to a noncompliance event that occurs at an interval once within a permit cycle and unrelated to another noncompliance event.
- Phone calls should be noted in the IPDES database record and followed up with noncompliance letters if reports are not received within the specified timeframe.
- A noncompliance letter includes notice of noncompliance (NONC), notice of deficiency (NOD), and notice of intent to enforce letters. The specific letter type depends on the escalating factors.
- Consult the Office of the Attorney General before proceeding with a formal enforcement action.

Noncompliance	Circumstances	Range of Response[a,c]
Sampling, Monitoring, and Reporting		
Failure to sample, monitor, or report (routine reports, discharge monitoring reports [DMRs])	Isolated or infrequent (depending on circumstance)	Phone call, noncompliance letter, or NOV. Request that a report be submitted immediately.
	Permittee does not respond to NOV, does not follow through on verbal or written commitments, or commits frequent violations	Consider CAS or CO, depending on circumstance. Judicial action if failure to comply with CAS, CSO, or CO. Refer for criminal prosecution or other judicial action.
Failure to sample, monitor, or report (IDAPA 58.01.25.300.10)	Any instance	NOV, CAS, CO, or judicial action.
Failure to sample, monitor, or report (one-time requirement)	Any instance	Noncompliance letter, NOV, CAS, CO, or judicial action.
Failure to perform biological testing as required	Isolated or infrequent	NOV or CAS.
	Frequent or continued	CAS, CO, or judicial action.
Failure to report biological testing results	Submitted within 30 days of due date	Noncompliance letter.
	Submitted 30 days or more late	NOV, CAS, CO, or judicial action.
Failure to submit final toxicity reduction evaluation (TRE) planning or implementation report as required	Submitted within 30 days of due date	Noncompliance letter.
	Submitted 30 days or more late	NOV, CAS, CO, or judicial action.
Failure to file 24-hour report for effluent violations required by IDAPA 58.01.25.300.12	No known harm	NOV, CAS, or CO.
	Known harm	Refer for criminal prosecution or other judicial action.

Noncompliance	Circumstances	Range of Response[a,c]
Sampling, Monitoring, and Reporting (cont.)		
Failure to submit with DMRs a report explaining other violations	Isolated or infrequent	Phone call, noncompliance letter, or NOV.
	Frequent or continued violations	CAS or CO.
Minor sampling, monitoring, or reporting deficiencies (e.g., computational or typographical errors)	Isolated or infrequent	Phone call, noncompliance letter, or NOV. Require corrections be made in next submittal.
	Frequent or continued violations	NOV, CO, or CAS with penalty.
Major or gross sampling, monitoring, or reporting deficiencies (e.g., missing information, late reports, or repeated occurrences of computational errors)	Isolated or infrequent	NOV, CAS, or CO. Require corrections be made in the next submittal.
	Frequent or continued violations	CAS, CO, or judicial action.
Reporting false information	Any instance	Refer for criminal prosecution or other judicial action.
Failure to install monitoring equipment	90 days or more outstanding with no good or valid cause	NOV, CAS, CO, or judicial action.
Quality Assurance		
Nonsubmittal of DMR quality assurance data	Isolated or infrequent	Noncompliance letter, NOV, CAS, or CO.
	Continued violation	NOV, CAS, or CO.
Permit Effluent Limits		
Effluent limit exceedance	Outside permittee's control (e.g., upset or bypass)	Contact permittee and require proof of good and valid cause, noncompliance letter.
	Isolated or infrequent minor violation	Noncompliance letter, NOV.
	Isolated or infrequent major violations of a single effluent limit	NOV, CAS, CO, or judicial action.
	Frequent violations of effluent limits	CAS, CO, or judicial action.
Failure to meet whole effluent toxicity testing limits	Isolated or infrequent violation with no known harm	NOV or CAS.
	Isolated or infrequent with known harm	CAS, CO, or judicial action.
	Continuing violations with or without harm	CO or judicial action.
Discharge without a permit	One time with no known harm	NOV, CAS, or CO.
	One or more times with or with no known harm	Refer for criminal prosecution or other judicial action.

Noncompliance	Circumstances	Range of Response[a,c]
Permit Compliance Schedule (Construction phases or planning, including required TRE activities)[b]		
Missed interim date	No written notification within 14 days	Phone call, noncompliance letter, NOV, or CO.
	Will not cause late final date or other interim dates	Phone call, noncompliance letter, NOV, or CO.
	Will result in other missed interim dates but the violation is for good or valid cause	NOV, CAS, or CO. Contact permittee and require documentation of good and valid cause.
	Will result in other missed interim dates and no good or valid cause (i.e., was negligent)	CAS, CO, or judicial action[c].
	Will result in missed final date and no good or valid cause	Judicial action.
Missed final date [d]	No written notification within 14 days	Phone call, noncompliance letter, NOV, or CO.
	Violation due to act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy (force majeure)	Contact permittee and require submittal of written documentation of good and valid cause and date of or schedule for returning to compliance. Follow-up with facility to determine compliance.
	90 days or more outstanding with no good or valid cause	NOV, CAS, or judicial action.
Failure to make timely corrective control/treatment decisions as part of TRE	Late with good or valid cause	NOV.
	Continued violation with no good or valid cause	CAS, CO, or judicial action.
Failure to undertake TRE control/treatment activities as required	Isolated or infrequent	Phone call, noncompliance letter, NOV, CAS, CO, or judicial action.
	Frequent or continued	CAS, CO, or judicial action.
Exceeding interim effluent limits	Outside permittee's control (e.g., upset or bypass)	Contact permittee and require proof of good and valid cause, noncompliance letter.
	No known harm	Noncompliance letter, NOV, CAS, CO, or judicial action.
	Known harm	Judicial action.
Failure to meet interim whole effluent toxicity testing limits	Isolated or infrequent with no known harm	Noncompliance letter, NOV, CAS, or CO.
	Isolated or infrequent with harm	CAS, CO, or judicial action.
	Continued violation with or without harm	CO or judicial action (TRO).

Noncompliance	Circumstances	Range of Response[a,c]
Compliance Inspection		
Minor violation of sampling or analytical procedure (e.g., failure to update quality assurance project plan)	One instance or as many as three unrelated instances	Noncompliance letter.
	More than three instances	NOV.
Major violation of sampling or analytical procedure (e.g., failure to follow quality assurance project plan)	No evidence of intent	Noncompliance letter, NOV, CAS, or CO.
	Evidence of negligence or intent	Refer for criminal prosecution or other judicial action.
Violation of permit conditions other than (numerical) effluent, schedule, or reporting requirement (e.g., BMP, O&M, unauthorized discharge or bypass, record detention, or record availability)	No evidence of negligence or intent	Noncompliance letter, NOV, CAS, or CO with immediate correction action required.
	Evidence of negligence or intent	NOV, CAS, or CO. Refer for criminal prosecution or other judicial action.
Compliance Agreement Schedule (Construction phases, TRE activities)		
Missed deadline	Contained in CAS previously issued and good or valid cause	CO or judicial action. Contact permittee and require documentation of cause, if not already provided by permittee.
	Contained in CAS previously issued and no good or valid cause	Judicial action.
Reporting false information	Any instance	Refer for criminal prosecution or other judicial action.
Exceeding interim effluent limits	Outside permittee's control (e.g., upset or bypass)	Contact permittee and require proof of good and valid cause.
	No known harm	NOV, CAS, CO, or judicial action.
	Known harm	Judicial action.
Failure to meet interim whole effluent toxicity testing limits	Isolated or infrequent with no known harm	NOV, CAS, or CO.
	Isolated or infrequent with harm	CAS, CO, or judicial action.
	Continued violation with or without harm	CO or judicial action (or TRO).
Consent Order with Interim Limits		
Exceeding interim limits contained in CO	Isolated or infrequent violation	Judicial action on basic violation.
	Frequent or continued violations within the control of the permittee or known environmental damage	Amend CO; Refer for criminal prosecution or other judicial action.

Noncompliance	Circumstances	Range of Response[a,c]
Consent Order with Compliance Schedule		
Missed deadline	Contained in CO and good or valid cause	Contact permittee and require documentation of cause, if not already provided by permittee.
	Contained in CO and no good or valid cause	Judicial action.
Reporting false information	Any instance	Refer for criminal prosecution or other judicial action.
Exceeding interim effluent limits	Outside permittee's control (e.g., upset or bypass)	Contact permittee and require proof of good and valid cause.
	No known harm	NOV, CAS, CO, or judicial action.
	Known harm	Judicial action.
Failure to meet interim whole effluent toxicity testing limits	Isolated or infrequent with no known harm	NOV, CAS, amend CO.
	Isolated or infrequent with harm	Judicial action.
	Continued violation with or without harm	CO or judicial action (TRO).
Pretreatment Program (State Control): Industrial Users		
Failure to submit baseline monitoring reports or other required pretreatment reports or plans.	Isolated or infrequent	Phone call, noncompliance letter, NOV, or CAS.
	Continued	NOV, CAS, CO, or judicial action.
Failure to sample or analyze or to properly sample or analyze as required, including resampling	Isolated or infrequent	NOV, CAS, or CO.
	Frequent or continued	CAS, CO, or judicial action.
Reporting false information	Any instance	Refer for criminal prosecution or other judicial action.
Failure to submit notice of slug loading or 24-hour report required by 40 CFR §403.12, adopted by reference at IDAPA 58.01.25.003.02.x	Single incident	NOV, CAS, or CO.
	Multiple incidents	Refer for criminal prosecution or other judicial action.
Failure to maintain and have records available	Isolated or infrequent	NOV.
	Frequent or continued	CAS, CO, or judicial action.
Failure to meet schedule requirements	Violation due to act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy (force majeure)	If not already provided, contact user and require documentation of good and valid cause and date and schedule for compliance.
	Missed interim date but will not affect meeting final date	Phone call, noncompliance letter, or NOV.
	Missed final date by less than 90 days	Noncompliance letter, NOV, or CAS.
	Missed final date by 90 days or more for no good or valid cause.	CO or judicial action.

Noncompliance	Circumstances	Range of Response[a,c]
Pretreatment Program (State Control): Industrial Users (cont.)		
Violation of general standards, categorical standards, or local limits (including no treatment installed)	Minor or infrequent with no known harm.	Phone call, noncompliance letter, NOV, CAS, or CO.
	Frequent violations or known harm	NOV, CAS, or judicial action.
	Causes interference or pass through	Refer for criminal prosecution or other judicial action.
Discharge of slug load	Any discharge with timely notification	NOV or CAS.
	Any discharge without timely notification	CO or judicial action (including TRO).
Pretreatment Program: POTW Implementation		
Nonsubmittal of required pretreatment reports	Within 30 days of date required in approved program	Noncompliance letter, CAS, or CO.
	Continued nonsubmittal after notification	NOV, CAS, or judicial action.
Violation of any requirement of an approved pretreatment program, pretreatment regulation, or IPDES permit	Minor or infrequent	NOV, CAS, or CO.
Pretreatment Program: Violations by POTWs		
Failure to establish significant industrial user (SIU) control mechanism after program approval, as required	Within 6 months of program approval	Noncompliance letter.
	Continued violation after notification	NOV, CAS, CO, or judicial action.
Failure to issue a new control mechanism or reissue a control mechanism to an industrial user (UI) on a timely basis	Within 90 days of date required in approved program	Noncompliance letter.
	Continued violation after notification	NOV, CAS, CO, or judicial action.
Failure to perform at least 80% of required inspections	Continued	NOV, CAS, CO, or judicial action.
Failure to establish and enforce SIU self-monitoring requirement, as required	Isolated or infrequent	Phone call, noncompliance letter, or NOV.
	Continued	CAS, CO, or judicial action.
Failure to appropriately enforce pretreatment standards (categorical standards, ~~and~~ local limits, including BMPs, and pretreatment requirements)	Isolated or infrequent	Phone call, noncompliance letter, or NOV.
	Continued non-enforcement against one or more SIUs	CAS, CO, or judicial action.
Failure to enforce against instances of pass through or interference, and any permit conditions (such as monitoring, record keeping, reporting, or notification of hazardous waste discharge.)	Any instance	CO or judicial action.
Failure to publish list of significant violators, as required by 40 CFR §403.8(f)(2)(viii), adopted by reference at IDAPA 58.01.25.003.02.x	Within 30 days of date required in approved program	Noncompliance letter .
	Continued violation	NOV, CAS, CO, or judicial action.

Noncompliance	Circumstances	Range of Response[a,c]
Pretreatment Program: Major Violations by POTWs (cont.)		
Failure to comply with compliance schedule	Milestone missed by less than 90 days	Noncompliance letter.
	Milestone missed by 90 days or more	NOV, CAS, CO, or judicial action.
Failure to maintain and update user inventory	Continued violation	NOV, CAS, CO, or judicial.
Failure to investigate instances of reported or alleged noncompliance by industrial users	Isolated or infrequent and no known harm	Noncompliance letter.
	Continued violation or single violation with known harm	NOV, CAS, CO, or judicial action.
Pretreatment Program: Obtaining Approval		
Failure to submit an approvable program	First occurrence and 90 days or more outstanding with no good or valid cause	Noncompliance letter, CAS, CO, or judicial action.
	Continued violation	NOV or judicial action.

[a] DEQ reserves the right to exercise enforcement discretion in response to an IPDES Program violation, including its right to depart from the approach set out in this Enforcement Response Guide, if circumstances warrant such departure.
[b] If the compliance schedule is established by a judicial order, the violation should be brought to the attention of the program manager and legal counsel to determine whether the court should be notified. DEQ may not excuse or allow a violation of a court order without court approval.
[c] Judicial action includes those civil and criminal remedies DEQ may pursue in district court (sections 4.4.2 and 4.4.3).
[d] The enforcement response chosen for missed final dates must be consistent with national EPA policy provisions for achieving a particular level of treatment.