



October 28, 2021

Mary Anne Nelson, PhD,
Administrator, Surface and Wastewater Division
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706

RE: Idaho Pollutant Discharge Elimination System Discharge Permit No IDR100000

Dear Ms. Nelson,

On behalf of the more than 600 member firms of the Idaho Associated General Contractors (AGC), I write to submit formal comments regarding the recently published Idaho Pollutant Discharge Elimination System (IPDES) Discharge Permit No IDR100000, also known as the IPDES Construction General Permit.

1. The permit references in many places discharges to waters of the United States (WOTUS). We understand this has been incorporated into the permit to align it with language included in Idaho State Statute. However, there is currently no comprehensive map or list of identified WOTUS. Furthermore, we understand that only the US Army Corps of Engineers can delineate what constitutes WOTUS. To complicate matters, the federal definition of WOTUS is often changed.

We suggest DEQ add guidance to the permit to help potential operators evaluate where their discharge is.

- a) We believe additional clarification is needed in Section 1.1.1 to indicate that coverage is required when the site discharges to a water body that is not WOTUS but is a tributary to the WOTUS.
- b) We suggest adding the following language for how the operator will determine if a water body is a WOTUS.

"The water body is (1) identified in the Idaho DEQ integrated report including upper effermeal reaches of waterbodies that are identified downstream, or; (2) The waterbody is identified as a tributary in an approved TMDL document, or; (3) The water body is identified in the US Fish and Wildlife Service National Wetlands Inventory Wetlands Mapper, or; (4) The water body has been identified as WOTUS by the Army Corps of Engineers, or; (5) The operator determines the water body meets the current definition of WOTUS."

2. Section 1.1.7 states “If you add cationic treatment chemicals as defined in Appendix A, to storm water and/or authorized non-storm water prior to discharge, you may not submit your NOI until and unless you notify DEQ in advance and DEQ authorizes coverage under this permit after you include appropriate controls and implementation procedures designed to ensure that your use of cationic treatment chemicals will not lead to discharges and cause an exceedance of WQS.”

We understand this to mean that DEQ will not authorize coverage until after appropriate controls are approved. However, the permit does not outline the process for approving the controls. We assume the controls can be “included” in the SWPPP plan, but this is not clear. We suggest DEQ clarify where the controls are to be included and the approval process.

On a related note, the permit does not indicate what should be done if it becomes clear that cationic chemicals could improve compliance after the project begins. We suggest DEQ include an approval process for after the project begins.

3. Footnote 5: We feel that the term “storm sewer system” should be defined. While some storm sewer systems are obvious in most locations, others, especially in more rural areas, are not so obvious. For example are culverts or roadside ditches considered a storm sewer system? Likewise, if an irrigation lateral or drain receives stormwater from a road or development area, does DEQ consider the irrigation facility the storm sewer system for purposes of the permit?
4. Section 2.1.4.B and C: These paragraphs seem to give more than one definition for when maintenance needs to be completed. In one location it says, “a repair or replacement that can be completed by the end of the next business day”. In another location it says, “within 24 hours of initiating the maintenance.” In paragraph C it says, “if you find that a storm water control needs repair or replacement that will take more than 24 hours to complete”.

We suggest that all these definitions be aligned to create clarity and improve compliance. We suggest that “by the end of the next workday” should be used. By eliminating requirements associated with a specific hour, conversations between inspectors and contractors can focus on meeting the deadlines. We believe doing so will significantly increase compliance.

5. Footnote 19: This section references multiple types of silt fence but not the most common perimeter controls: fiber rolls and silt fence. We interpret this to mean that DEQ intends to require an array of perimeter controls that are often cost prohibitive. We suggest eliminating this footnote or deferring to the common BMP manuals used in the state.
6. Footnote 19: We noted that vegetative filter strips have been eliminated from the examples. As detailed in Appendix D, upland vegetation can be far more effective at removing sediment from stormwater runoff. If a contractor can preserve a

substantial vegetative buffer that provides a higher effectiveness of sediment removal, we feel this should be allowed as an adequate substitute for other perimeter controls that ultimately can produce unneeded waste. We recommend that vegetative filter strips be returned to this section of the permit.

7. Footnote 20: The term “turf mats” is used without definition. We are unclear as to what turf mats are or how one might be used in a stabilized construction entrance. We recommend this term be eliminated or a proper definition and examples of its use be added.
8. Footnote 21: The term “karst areas” is used without definition. Typically these include areas of land made up by limestone that are rare in Idaho. We recommend removing this term from the permit.
9. Section 2.2.10.A: The first sentence says “Install inlet protection measures that remove sediment from discharges”. This statement could easily be interpreted that the inlet protection must remove all sediment from the stormwater discharges. There is currently no available BMPs that remove all sediment. We suggest DEQ remove this statement and replace it with the following “Install inlet protection measures that reduce sediment in discharges.”
10. Section 3.3: We believe a separate requirement for monitoring dewatering discharges is unnecessary and that it should be removed in its entirety.

The Idaho AGC and its partners have worked with contractors for more than five years to educate them on how to best follow the state’s water quality standard. We feel that most contractors have made testing turbidity a part of their typical operations. Changing this now will complicate the process, cause confusion, and decrease compliance. We believe the current requirements are adequate and recommend removing section 3.3.

It should be noted that we believe this change constitutes requirements that are more stringent than the NPDES requires.

11. Section 3.4.6.a: We suggest changing “All calibration and maintenance records” to “All calibration and maintenance records related to the project”.
12. Section 3.4.6.e: We are concerned with use of the term “exact place”. Specifically, how exact does this need to be? For example, can the sampling locations be on the SWPPP drawings, can a simple description like “at the northeast corner of the project” meet this requirement or does DEQ expect GPS coordinates. Making the permit more complicated in this manner is a significant increase in government regulation, drives up costs, and will ultimately decrease compliance. We recommend eliminating the term and finding a more suitable explanation of what DEQ requires.

- 13.** Section 3.4.6: The last paragraph seems to indicate that there are monitoring reports and a separate monitoring log that must be completed. The information required appears to be largely redundant. We suggest the information that is required be listed here and allow the operator to decide the best way to record the information that fits the project. In this way the operator can avoid preparing redundant reports.
- 14.** Section 3.4 – pH Monitoring: We strongly believe that this entire section should be removed for the following reasons:
- a) There does not appear to be a benefit to the environment from the requirement.
 - b) There are a limited number of specific activities that may cause a change in pH. It is unreasonable to have every project monitor for pH when many projects do not include any of the activities that run the risk of affecting or altering pH.
 - c) Many projects do not have discharges that can be sampled in a way to test the pH. This entire NPDES program was written around non-point source discharges. It is unreasonable to try to force sampling from discharge points inside a permit that is written to regulate non-point sources.
 - d) The current draft requires that “All permittees must conduct pH monitoring when there is a direct discharge from the site”. There is no physical way permittees can comply with this massive new requirement. Most job sites are staffed only eight to ten hours each day. The majority of discharges will occur outside of the sites normal operating hours. It is infeasible to have a person or equipment available during all discharges.
 - e) The new, burdensome requirement for pH monitoring will result in significant costs for compliance. While the equipment itself is inexpensive (about \$120 for a reliable instrument) its calibration and ongoing operation is not.

We suggest that the permit simply state the state’s water quality standard for pH and that discharges must meet the standard.

- 15.** Section 4.2 Frequency of Inspections: As currently drafted, the permit affords only one inspection option: every seven days and after a rain event of 0.25 inches. We recommend that DEQ include the options it has employed for over five years, namely an option for inspecting the site every 14 days and after rain events. Removing the options for inspections that are in the current permit represents a significant increased cost to construction projects. We believe the benefit of this change will be minimal and be far outweighed by the increased cost.
- 16.** Section 4: From experience with on-site inspections, we realize that it is difficult for some agency inspectors to understand when the rain event inspections are performed. We suggest statements that clarify that if within 24 hours of the occurrence of a storm event happens to land on the day of the regular inspection, then one inspection may be performed for the regularly scheduled inspection and the rain event inspection.

Secondly, we suggest a statement that clarifies that if the 0.25-inch rain event is received and the end of the 24 hours lands on a day that is not typically a workday, the inspection can be completed within the next normal workday. For example, a projects normal work hours are 8 am to 5 pm Monday through Friday. The project site receives 0.25 inches of rain on Friday at noon, then an inspection on Monday prior to noon will meet the requirements of the permit.

17.Section 4.6.2.A: We recommend eliminating this section that requires permittees to “identify all discharge points at the site”. This requirement is redundant because the SWPPP already requires that discharge points are identified. Identifying the discharge points again during and inspection is simply not needed.

18.Section 4.6.3.D: We suggest removing the requirement to record photographs as part of the inspection. We believe requiring photographs every day there is a dewatering discharge will prove to be problematic and the information obtained will be mostly meaningless.

In addition, it appears that DEQ intends to observe turbidity in the photographs, because that is the only contaminant that can be seen in a photograph. All dewatering projects are very different but typically there are very short bursts of time when the water is sediment laden. The water is usually turbid when there is active excavation near the dewatering pumps. It would be very simple to do the inspection and take the photos during a time when the discharge is visibly clear. Also, it is difficult to capture turbidity in a photograph because of the reflection and refraction of the light on the water. Recording the photographs in an inspection log is time consuming and printing photographs for the inspection report records can be expensive. We believe the benefit from the photographs is not worth the cost. Finally, the photographs do not prove or disprove compliance with the water quality standard. The best way to verify compliance with the water quality standard is to test the water with a turbidity meter as required by the standard. The requirement to record photographs in the report is adding extra cost to do things that will have no meaning to an agency reviewer and no benefit to the environment.

19.Section 5: After working with corrective actions for the last 10 years, we do not see a benefit of requiring corrective actions at all. First, the corrective action has to be recorded on documents at the time of discovery and within 7 days. This reporting could easily be tracked with the regular inspection reports. Second, the differentiation between maintenance and a corrective action and normal project activities is nearly indistinguishable for practical purposes. Thirdly, most of the contracting community does not understand the purpose of the corrective actions and the benefit of the extra documents appears to have no or little effect on the environment.

We suggest adding the requirements for a corrective action to the inspection requirements where the reporting for a prohibited discharge and a discharge violating water quality standards is already required.

- 20.** Section 6.3.1: This section of the permit requires participation in an “EPA construction inspection course”. We are not aware of any such training and believe this to be an unrealistic and unattainable requirement that should be removed in its entirety.
- 21.** Section 6.3.2: We suggest DEQ accept all existing local and state training in Idaho as qualified programs. This approval needs to be documented for the contracting community to know where to go for training that meets this requirement.
- 22.** Section 7.2.4.E: Experience has proven that this can be very difficult to show on a drawing sheet without producing extra drawings. In addition, the extra drawings serve no practical purpose in determining compliance. Often the requirement is met with notes on the drawings and no actual drawing lines or symbols. We suggest that the requirement to document the pre-construction vegetative cover be expanded to allow this to be shown on the drawings or described in the SWPPP written narrative.
- 23.** Section 7.2.6.B.v.h: We suggest DEQ provide references to the applicable Idaho Code that governs the use of treatment chemicals. Doing so, instead of relying on contractors to perform the search themselves, will have a positive influence on compliance.
- 24.** Section 8.1.5: This section requires that a “Monitoring Report” be submit with the NOT. However, this new term is not defined nor are the purposes or uses of the report. We suggest removing this requirement.
- 25.** Section 8.2.A: This paragraph states “you must take photographs that clearly show your compliance with the Section 2.2.14 stabilization requirements and that are representative of the stabilized areas of your site and submit them with your NOT”. We request this requirement be removed. DEQ does not have the capability to submit an NOT electronically and adding more requirements only makes this situation worse. Furthermore, the requirement to upload photographs is redundant. The NOT submitter is already certifying that the site is stabilized, so there is no legal or compliance-based benefit to the environment to spend the time to capture, save and upload this information.
- 26.** Section 8.5: According to language currently in this section, DEQ has no deadline to approve the NOT. This is a significant and detrimental change to the current system that should be corrected. Failure to do so will add significant regulatory burden and costs to all Idaho contractors.

The current draft permit from EPA and the current 2017 CGP states that the NOT will be approved at midnight on the day the NOT is filed. We recommend including identical language in this section.

27.Section 9.11.1: We suggest adding an alternative for a signatory that is delegated by a responsible corporate officer. It is very common for companies to delegate a person to manage the NOI and NOT process. DEQ would be wise to continue the ability to delegate a person within an organization to manage these processes.

28.Section 9.11.2.c: We believe this new requirement to submit the written authorization to DEQ is duplicative and not necessary. For the last ten years or more, this written authorization has been prepared and kept in the SWPPP for review during an inspection by the regulating authority. We suggest leaving this requirement as it is currently by removing requirement 'c' in this section.

29.Appendix C: We do not believe it is necessary to review the USFWS IPaC for authorization for a state permit and that this step should be eliminated.

Furthermore, this section contains a number of conflicting statements. For example, in the third paragraph it states "While coordination between you and the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS)(together, the "services) may not be required in all cases, DEQ encourages you to coordinate with the Services". In the note on the same page it states: "NOTE: You must use the information from the USFWS IPaC". While we believe the entire process should be eliminated, if it is to stay, DEQ must resolve these conflicts.

30.Appendix D.3.2 Step 1: It appears that the new requirement to include Tables D-2, D-3 is designed to force the use of two or "double" BMPs at the perimeter of at site. We believe this new costly and burdensome regulation should be removed in its entirety.

31.Appendix D, Attachment 1: We believe that the notes before Table D-4 which discuss a 90% efficiency cause confusion and should be removed.

Concerning the existing Notice of Intent system; it has come to our attention that many of our members are struggling with the usability of the system. This is detrimental to our members as all construction projects are schedule driven in their nature. The amount of time it is taking to submit a NOI or NOT is a great concern. We understand that many of these issues are administrative and are related to the approval process and account set-up. In this regard we would encourage DEQ to make more of the process automatic. We would ask that you look to EPA's NOI system and match more closely that system for the level of complexity.

We are concerned that DEQ is requiring more information than the federal system requires to be identified. For example, the current system requires uploading maps into the system and identifying water wells within the project action area. We find no requirements for this information in the federally issued Construction General Permit. We understand that before the NOI can be completed, the operator must establish a facility and wait for approval of the facility before proceeding with the NOI. This causes redundant entry of data and appears to be unnecessary.

There have been many NOIs that are taking many more days past the typical 14 day waiting period to be approved. These delays seem to be focused on a few areas. First, DEQ is reviewing maps and requesting additional information to identify discharge locations. The NPDES system is designed to control non-point source pollution. Non-point source pollution does not have a discharge "point" by its very definition. Discharge points are not easily identified and not easily sampled for most projects. We understand this is the justification for effluent limits that are technology based and not numeric in nature. At many sites we struggle to understand why DEQ cannot conceptualize sheet flow discharges based on the site plan topography and that these cannot be identified by a single point or single arrow on a drawing. In addition, why is DEQ reviewing drawings at all for an NOI process? The drawings may be reviewed at the time of an on-site inspection. This process did not exist in the EPA NOI system.

Next, some NOIs are getting rejected because DEQ reviewers do not agree with the submitters opinion that the receiving waters are waters of the United States. We understand that the only organization that can definitively say if a water course is waters of the United States is the Army Corps of Engineers (USACOE). Without a determination from the USACOE, the submitters opinion on the matter is equally as official as that of DEQ reviewer. To delay approval on this matter is completely unfounded.

Lastly, we believe there is no legal basis for the Idaho SHPO office to review and comment on NOI's in a state permitting system. This has resulted in long delays costing contractors, and owners of the construction projects, millions of dollars since July 1, 2021.

We request that the NOI system is modified on three levels. 1] that the technological system be modified to allow a person with average technological ability to set up an account and submit an NOI. 2] Review the NOI (not the drawings or the SWPPP) for complete and accurate information and approve the information. This was working in the EPA NOI system. 3] Remove SHPO from the Approval process.

We greatly appreciate you taking these comments into consideration and look forward to working with you to finalize the Guide in a manner that is not more restrictive than the federal standard and fosters continued construction and increased compliance across Idaho.

Sincerely,



Wayne L. Hammon, CEO
Idaho Associated General Contractors