



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

**[FRL-9965-41-Region 10]**

### **Public Notice of State of Idaho National Pollutant Discharge Elimination System (NPDES)**

#### **Program Submission for EPA Approval**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability; request for comment; notice of public hearing.

**SUMMARY:** The United States Environmental Protection Agency (EPA) is requesting comments on and will hold public hearings for the State of Idaho's National Pollutant Discharge Elimination System (NPDES) program application (to be referred to as the "IPDES program application" or the "application"). The Governor of the State of Idaho submitted the application to the EPA Region 10 Administrator pursuant to section 402 of the Clean Water Act (CWA or 'the Act'). With this submission, the Idaho Department of Environmental Quality (IDEQ) seeks approval to administer the Idaho Pollutant Discharge Elimination System (IPDES) program regulating discharges of pollutants into waters of the United States under its jurisdiction. The State's request includes an implementation plan to transfer from the EPA to IDEQ the administration of specific program components in four phases over a four-year period beginning July 1, 2018, or upon program approval, whichever is later. If the EPA approves the IPDES program, IDEQ will administer this program, subject to continuing EPA oversight and enforcement authority, in place of the NPDES program now administered by the EPA. The EPA will retain permitting authority over all facilities that are located within a tribal reservation and/or facilities that discharge to tribal waters. Today, the EPA is requesting comments on the

State’s application and providing notice of public hearings that will be held at locations throughout the state. At the close of the public comment period, the EPA will review all the public comments received and will either approve or disapprove the State’s request for program approval. If approved, the NPDES program authority will begin to transfer from the EPA to IDEQ on or after July 1, 2018, with the final program phase being transferred to IDEQ on or after July 1, 2021.

**DATES:** Comments must be received on or before **[insert date 60 days after date of publication in the Federal Register]**.

**ADDRESSES:**

Location of Informational Meetings and Public Hearings: EPA Region 10 will hold five information meetings, with each followed by a public hearing on the following dates and times. Please check the website at <https://www.epa.gov/npdes-permits/idaho-npdes-program-authorization> prior to the scheduled dates for any updates to this information.

Table I-1—Locations for Informational and Public Meetings

<b>Informational Meeting and Public Hearing City/Location/Address/Phone Number</b>	<b>Date and Time</b>
<u>Idaho Falls</u> Central Public Library 457 W Broadway St Idaho Falls, ID 83402 (208) 612-8460	<u>September 11, 2017:</u> Duration: 4:00 p.m. until no later than 8:00 p.m. (MT) <u>Information meeting</u> at 4:00 p.m. until 5:30 p.m. <u>Hearing</u> will begin promptly at 6:00 p.m., until testimony is complete.
<u>Twin Falls</u> Twin Falls Public Library 201 Fourth Avenue East Twin Falls, ID 83301 (208) 733-2964	<u>September 12, 2017:</u> Duration: 4:00 p.m. until no later than 8:00 p.m. (MT) <u>Information meeting</u> at 4:00 p.m. until 5:30 p.m. <u>Hearing</u> will begin promptly at 6:00 p.m., until testimony is complete.

<b>Informational Meeting and Public Hearing City/Location/Address/Phone Number</b>	<b>Date and Time</b>
<u>Boise</u> Boise Public Library 715 S Capitol Blvd Boise, ID 83702 (208) 972-8200	<u>September 13, 2017:</u> Duration: 4:00 p.m. until no later than 8:00 p.m. (MT) <u>Information meeting</u> at 4:00 p.m. until 5:30 p.m. <u>Hearing</u> will begin promptly at 6:00 p.m., until testimony is complete.
<u>Lewiston</u> Lewiston Community Center 1424 Main St Lewiston, ID 83501 (208) 746-2313	<u>September 14, 2017:</u> Duration: 4:00 p.m. until no later than 8:00 p.m. (PT) <u>Information meeting</u> at 4:00 p.m. until 5:30 p.m. <u>Hearing</u> will begin promptly at 6:00 p.m., until testimony is complete.
<u>Coeur d'Alene</u> Coeur d'Alene Public Library 702 E Front Ave Coeur d'Alene, ID 83814 (208) 769-2315	<u>September 15, 2017:</u> Duration: 2:00 p.m. until no later than 6:00 p.m. (PT) <u>Information meeting</u> at 2:00 p.m. until 3:30 p.m. <u>Hearing</u> will begin promptly at 4:00 p.m., until testimony is complete.

Providing Comments. The EPA will consider comments on the IPDES program application before making a final decision. You may submit comments by any of the following methods:

By email: Send comments by email to [IdahoNPDEScomments@epa.gov](mailto:IdahoNPDEScomments@epa.gov),

By Mail/Hand Delivery/Courier: Deliver comment to U.S. EPA, Attn: Idaho NPDES

Comments, Office of Water and Watersheds, Mail Stop OWW-191, 1200 Sixth Ave, Suite 900, Seattle, WA 98101-3140.

Viewing and/or Obtaining Copies of Documents. A copy of the application and related documents may be viewed or downloaded, at no cost, from the EPA website at

<https://www.epa.gov/npdes-permits/idaho-npdes-program-authorization>. Copies of documents

are also available for viewing or copying at the EPA Region 10 Library, 1200 Sixth Avenue, Suite 900 M/S OMP-0102, Seattle, WA 98101 and at the EPA Idaho Operations Office, 950 W Bannock, Suite 900, Boise, ID 83702 or call 208-378-5746. The R10 library is open Monday through Friday, excluding federal holidays, 9:00 AM - 12:00 PM, and 1:00 PM - 4:00 PM. For information about the cost of obtaining a copy or other information refer to EPA's webpage at <https://www.epa.gov/libraries/region-10-library-services> or call (206) 553-1289.

IDEQ will provide copies of the application available for viewing at their Boise office and on their website. The application, related documents and program development documents can be viewed or downloaded, at no cost, from the IDEQ website <http://www.deq.idaho.gov/water-quality/ipdes/program-application/>. The IDEQ contact is Mary Anne Nelson, IPDES Program Manager; [mary.anne.nelson@deq.idaho.gov](mailto:mary.anne.nelson@deq.idaho.gov); (208) 373-0291.

**FOR FURTHER INFORMATION CONTACT:** Visit <https://www.epa.gov/npdes-permits/idaho-npdes-program-authorization> or contact Karen Burgess, NPDES Permits Unit, EPA Region 10; (206) 553-1644; [burgess.karen@epa.gov](mailto:burgess.karen@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**General Information**

A. Does this action apply to me?

Entities potentially affected by this action are: the EPA; territorial, and tribal programs; and the regulated community and citizens within the state of Idaho. This table is not intended to be exhaustive; rather, it provides a guide for readers regarding entities that this action is likely to regulate.

Table I-2—Entities Potentially Affected by This Proposed Approval

<b>Category</b>	<b>Examples of potentially affected entities</b>
State, Territorial, and Indian Tribal Governments	States, Territories, and Indian Tribes that provide certification under section 401 of the CWA; States, Territories, and Indian Tribes that own or operate treatment works.
Municipalities	POTWs required to apply for or seek coverage under an NPDES individual or general permit and to perform routine monitoring as a condition of an NPDES permit.
Industry	Facilities required to apply for or seek coverage under an NPDES individual or general permit and to perform routine monitoring as a condition of an NPDES permit.
NPDES Stakeholders	Any party that may review and provide comments on NPDES permits.
Citizens of the state of Idaho	Any party that may review and provide comments on NPDES permits.

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the EPA taking?

The State of Idaho submitted a complete description of their IPDES program and associated documents to the EPA. In accordance with CWA section 402(b), 33 U.S.C. 1342(b), and NPDES regulations at 40 CFR part 123, the EPA shall approve a submitted program unless adequate authority does not exist as required by the CWA.

C. What is the EPA's authority for taking this action?

CWA section 402 established the NPDES permitting program and gives the EPA authority to approve state NPDES programs. 33 U.S.C. 1342(b).

State Permit Program Approval: Section 402 of the CWA, 33 U.S.C. 1342, created the NPDES program under which the EPA may issue permits authorizing the point source discharge of pollutants to waters of the United States under conditions required by the Act. The CWA Section 402(b), 33 U.S.C. 1342(b), provides that the EPA shall approve a State to administer its own permit program, upon the Governor's request, provided the State has appropriate legal authority and a program sufficient to meet the Act's requirements. The regulatory requirements for state program approval are set forth in 40 CFR part 123 (<https://www.ecfr.gov/>), and subpart B provides the requirements of state program submissions, which IDEQ refers to as the IPDES program application.

Decision Process: Pursuant to 40 CFR 123.21 and 123.61(b), the EPA must approve or disapprove the submitted IPDES program, which has been determined to be complete, within 90 days of receipt, unless this review period is extended by mutual agreement between the EPA and the State. The State must show, among other things that it has the authority to issue permits which comply with the Act, authority to impose civil and criminal penalties for permit violations, and authority to ensure that the public is given notice and an opportunity for a hearing on each proposed permit. After the close of the public comment period and completion of the required consultations, the Regional Administrator for EPA Region 10 will make a decision to approve or disapprove the IPDES program based on the requirements of section 402 of the CWA and 40 CFR part 123. If the Regional Administrator approves the IPDES program, the Regional Administrator will so notify the State and sign the proposed Memorandum of Agreement between the EPA and IDEQ (MOA). Notice would be published in the Federal Register and, as

of the date of program approval, the EPA would suspend issuance of NPDES permits in Idaho in accordance with the State's approved schedule to transfer NPDES program authority in accordance with the phased implementation plan. If the Regional Administrator disapproves the IPDES program, IDEQ will be notified of the reasons for disapproval and of any revisions or modifications to the program that are necessary to obtain approval. The EPA will not make a final decision on IPDES program approval until after: (1) considering all public comments provided during the public comment period and from the public hearings, and preparing a responsiveness summary-and (2) completion of government to government tribal consultations, as requested, with federally recognized tribes in Idaho.

Informational Meetings: Informational meetings will include a technical overview of both the federal and state programs and provide an opportunity for question and answer. IDEQ will participate with EPA during these meetings. Questions and answers following the informational meeting will not be entered into the official record. Comments for the official record must be made in accordance with the public hearings procedures and/or submitted as written comments before the end of the comment period.

Public Hearing Procedures. The public hearings will be conducted in accordance with 40 CFR 124.12 and will provide interested parties with the opportunity to give written and/or oral testimony into the official record. The following procedures will be used at the public hearings. (1) The Presiding Officer shall conduct the hearing in a manner which will allow all interested persons wishing to make oral statements an opportunity to do so; however, the Presiding Officer

may inform attendees of any time limitations during the opening statement of the hearing. (2) Any person may submit written statements or documents for the hearing record. (3) The transcript taken at the hearing, together with copies of all submitted statements and documents, shall become a part of the record submitted to the Regional Administrator. (4) The hearing record shall be left open until the deadline for receipt of comments specified at the beginning of this Notice to allow any person time to submit additional written statements or to present views or evidence tending to rebut testimony presented at the public hearing. (5) Hearing statements may be oral or written. Written copies of oral statements are urged for accuracy of the record and for use of the Hearing Panel and other interested persons. Persons wishing to make oral testimony supporting their written comments are encouraged to give a summary of their points rather than reading lengthy written comments verbatim into the record. All comments received by the EPA in accordance with the instructions for 'Providing Comments' by the ending date of the comment period and/or presented at the public hearing, will be considered by the EPA before final IPDES program approval.

IPDES Program Application Summary: By letter dated, and received by the EPA on August 31, 2016, the Governor of Idaho submitted the IPDES program application for program approval. The application consisted of five main components required under 40 CFR 123.21: (1) a letter from the governor requesting approval of the state's application, (2) a program description that describes how the state will issue IPDES permits, ensure compliance with permit conditions, conduct enforcement, as well as fund and manage the program including programmatic information and data, (3) a statement from the Attorney General's office certifying that the

state's laws and regulations provide sufficient authority to the state to implement the discharge, pretreatment, and biosolids components of the NPDES program, (4) a Memorandum of Agreement (MOA) between the state and EPA which establishes, in part, timeframes for a phased approach for the state to assume authority, (5) copies of all applicable statutes and regulations including those that govern the state administrative procedures, which the state adopted to ensure the necessary authority for implementing the IPDES program, including Idaho House Bill 406 directing IDEQ to pursue permitting authority. IDEQ submitted their Continuing Planning Process (CPP) as required under 40 CFR 130.5 for program approval. Appendices to the Program Description include other IPDES program documents including guidance, forms and templates that IDEQ will use to implement their program.

The EPA deemed the application complete on September 30, 2016, in a letter that also identified initial issues to be addressed before program approval. In accordance with 40 CFR 123.21(d), IDEQ requested to extend the statutory review period for the application until June 30, 2018. The EPA and IDEQ will use the period of time until program approval to address issues, complete the public process, develop the IPDES program and build capacity for both permitting and enforcement functions.

IPDES Program Summary: As required under section 402(b) of the CWA, 33 U.S.C. 1342(b), and 40 CFR 123.22, the IPDES program description specifies how IDEQ will administer the NPDES program. IDEQ will issue IPDES permits under their jurisdiction; conduct compliance and enforcement activities; gather and maintain NPDES records and report to the EPA; and

oversee the regulated activities of all IPDES-permitted facilities. The EPA will retain the authority to issue NPDES permits for facilities located on tribal lands and/or discharging to tribal waters. The scope of IDEQ permitting authority includes 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) under 40 CFR part 503 and the pretreatment program under 40 CFR part 403. IDEQ's program will not include permitting of discharges incidental to the normal operation of a non-military, non-recreational vessel operating in a capacity as a means of transportation; the EPA will continue to issue permits under CWA section 402 to regulate such discharges from non-military, non-recreational vessels greater than 79 feet in length and all ballast water discharges.

IDEQ will assume permitting and compliance authority for the NPDES program in four phases. The EPA will retain full permitting and compliance authority over facilities until that authority is transferred to IDEQ in accordance with the following schedule:

Phase I – Individual Municipal Permits and Pretreatment upon gaining program authority (anticipated July 1, 2018).

Phase II – Individual Industrial Permits, one year after program authorization (anticipated July 1,

2019).

Phase III – General Permits (Aquaculture, Pesticide, CAFO, Suction Dredge, Remediation), two years after program authorization (anticipated July 1, 2020).

Phase IV – Federal Facilities, General and Individual Stormwater Permits and Biosolids, three years after program authorization (anticipated July 1, 2021).

**Authority:** This action is taken under the authority of section 402 of the Clean Water Act as amended, 33 U.S.C. 1342. I hereby provide public notice of the application by the State of Idaho for approval to administer the State NPDES program, in accordance with 40 CFR 123.61.

Dated: July 17, 2017.

Daniel D. Opalski,  
Acting Deputy Regional Administrator,  
EPA, Region 10.

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