



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706 • (208) 373-0502
www.deq.idaho.gov

C.L. "Butch" Otter, Governor
John H. Tippetts, Director

August 1, 2017

Dan Opalski, Director
Office of Water and Watersheds
U.S. EPA Region 10
1200 6th Ave., Ste. 900
Seattle, WA 98101

Re: Idaho DEQ's submission of revisions to the IPDES Program Application

Dear Mr. Opalski:

On August 31, 2016, Idaho Department of Environmental Quality (IDEQ) submitted an application for delegated authority for the National Pollutant Discharge Elimination System (NPDES) program. On September 30, 2016, IDEQ received a letter from the U.S. Environmental Protection Agency (EPA) stating that the submitted application was found to be complete. In that letter EPA provided comments on issues that needed to be addressed prior to program approval. IDEQ and EPA have continued to work collaboratively over that last 11 months to ensure that these and other issues EPA has identified are being addressed.

On March 10, 2017, EPA provided via electronic mail comments on Idaho's IPDES Program submission requesting that Idaho Department of Environmental Quality (IDEQ) provide an individual response to each item on an Excel worksheet provided with the letter. IDEQ transmitted via electronic mail that same Excel worksheet with the individual responses as requested on May 1, 2017 along with revised versions of the IPDES Program Description and Memorandum of Agreement. IDEQ also submitted to EPA a letter discussing the various changes already made in response to EPA comments along with the IPDES Enforcement Procedures Manual on June 30, 2017.

On July 24, 2017, EPA transmitted via electronic mail comments on the IPDES Enforcement Procedures Manual. Upon review of IDEQ's response to comments and revised materials, EPA, on July 25, 2017, provided IDEQ with comments stating whether the issue was resolved in EPA's opinion. IDEQ held a conference call with EPA Region 10 Staff as well as staff from the Office of Criminal Enforcement on July 27, 2017 to discuss the remaining issues. Based on EPA's written and verbal comments for those issues that needed further work, IDEQ has identified the following major categories: authority to regulate poultry CAFOs, criteria for minor modifications to IPDES permits, criminal investigations, prosecution of criminal violations, meeting enforcement deadlines.

IDEQ is proposing the following resolutions to the outstanding issues:

1. IDEQ will draft potential legislative language to ensure that IDEQ has the appropriate authorities for poultry CAFOs and will present this proposal to the 2018 Idaho Legislature;
2. IDEQ has included in the currently proposed administrative rule (published in the Idaho Administrative Bulletin August 2, 2017) removal of the criteria for minor modification that states *"Make a change in a permit provision that will result in neither allowing an actual or potential increase in the discharge of a pollutant or pollutants into the environment nor result in a reduction in monitoring of a permit's compliance with applicable statutes and regulations."*; and
3. Revise the IPDES Program Description and IPDES Enforcement Procedures Manual to address criminal investigations, prosecution of criminal violations, and meeting enforcement deadlines.

IDEQ is submitting for EPA's review, and for publishing for public comment, the revised IPDES Program Application materials to include:

- a revised IPDES Program Description,
- revised Attorney General's Statement,
- revised Memorandum of Agreement, and
- updated versions of the rules and statutes regarding the IPDES program.

IDEQ will also include draft proposals for legislative changes to Title 39 Chapter 1 Idaho Code (Idaho Environmental Protection and Health Act) and Title 25 Chapter 40 Idaho Code (Poultry Environmental Act). As an attachment to this letter, IDEQ is providing EPA with responses to written comments received on March 10, July 24, and July 25, 2017.

If you would like to discuss this matter further, please contact Mary Anne Nelson, IPDES Program Manager, at (208) 373-0291 or via email at mary.anne.nelson@deq.idaho.gov.

Sincerely,



Barry N. Burnell
Water Quality Division Administrator
Idaho Department of Environmental Quality

BNB:MN:lf

Enclosure

- c: Mr. Michael Lidgard, Region 10 NPDES Permits Unit Manager, Environmental Protection Agency
Mr. Ed Kowalski, Director, Region 10 Office of Compliance and Enforcement, Environmental Protection Agency
Ms. Courtney Weber, Assistant Regional Counsel, Region 10 Office of Regional Counsel
Ms. Cynthia Giles, Assistant Administrator, Office of Enforcement and Compliance Assurance
Mr. John Tippetts, Director, DEQ
Ms. Lisa Carlson, Section Chief, Idaho Attorney General's Office

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
1	AG Statement		<p>The AG Statement explains that NMPs that are developed in connection with the IPDES program are available to the public. The statement goes on to explain that this is because NMPs are required to be submitted with the CAFO NPDES permit application and are considered effluent data. Are NMPs for unpermitted facilities available to IDEQ (e.g., in order to determine if the CAFO is subject to IPDES)? The AG Statement should explain IDEQ's authority to obtain NMPs.</p>	<p>NMP's and the compliance information for unpermitted facilities are required by Idaho Code § 37-606A (dairies) and § 22-4909A (beef CAFO) to be maintained by the facility on site. IDEQ has authority to inspect unpermitted facilities per Idaho Code § 39-108 and may request during the course of such inspection to review the NMP and the NMP compliance information.</p>	<p>Attorney General's Statement has been updated to reflect IDEQ's response.</p>
2	AG Statement		<p>For purposes of NPDES, NMPs for permitted facilities are considered effluent data, thus, are publicly available. EPA suggests that the "may" be changed to "are" in the 4th sentence, and conforming changes be made in other program documents.</p>	<p>Unclear about this comment. AG's statement page 3 does not contain any "may" in the 4th sentence, or any sentence.</p>	
			<p>EPA's Comment on IDEQ's response to Comment 2: The sentence that this comment is referring to says, "In addition, NMPs may be considered effluent data which is also required by state law to be available to the public."</p>	<p>IDEQ will make this change</p>	<p>Attorney General's Statement has been updated to reflect IDEQ's response.</p>

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
3	AG Statement		<p>This part of the AG's statement describes IDEQ's CAFO authority. There is a description of the MOU between IDEQ and ISDA. Part of that description states that the MOU provides that IDEQ and ISDA will coordinate and consult with respect to enforcement for actions that violate both the IPDES regs and ISDA regs. There should be a clear description of how enforcement coordination will occur. Who will take the lead on enforcement? How is that determined? In addition, the discussion of the overlap between ISDA and IDEQ fails to address what happens if there is a discharge without a permit. The discussion of the overlap should clarify that IDEQ has independent authority to determine whether or not there has been a discharge without a permit.</p>	<p>Attachment F to the Program Description is the Draft MOU between ISDA and IDEQ. This MOU provides the requested detail and specifies that ISDA will take the lead for enforcement of ISDA regs and IDEQ will take the lead for enforcement of IPDES requirements. The MOU specifies how information concerning discharges from non-permitted facilities will be transmitted to IDEQ and further specifies that IDEQ will make the determination on the applicability of IPDES and any follow up enforcement. Enforcement is coordinated by the respective program managers for ISDA and IDEQ and the office of the Attorney General Natural Resources Division. IDEQ has independent authority to enforce IPDES and to make the determination that an unpermitted discharge has or has not occurred.</p>	No changes made.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
4	AG Statement		This section describes the creation of a record of public meetings. It would be helpful if additional detail was provided on what the term "record" means as well as a citation to the applicable section of the state's administrative code.	Idaho Code § 39-175D requires that the Department prepare an administrative record that includes all comments received. The "record" of public hearing comments that will be prepared will consist of an audio recording of the meeting that will be subsequently transcribed if preparation of an administrative record is required for purposes of any appeal. There is no directly applicable legal authority requiring a recording. IDEQ will amend its Rules to include language consistent with 40 CFR 124.12(d) as part of negotiated rulemaking that will commence June 1, 2017.	Language added to AG's statement as follows: "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. IDEQ will amend its Rules to specify this as part of negotiated rulemaking that will commence June 1, 2017."

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
5	AG Statement		<p>Idaho Code 39-109 states that the "attorney general may delegate the authority and duty ... to the prosecuting attorney of the county" where the violation arises. IDEQ cannot delegate IPDES authority down to the county prosecutor. Request clarification on what this provision means, etc.</p>	<p>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.</p>	<p>The Attorney General's statement was updated to reflect IDEQ's response.</p>

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
6	AG Statement		<p>The AG Statement explains that IDEQ intends to follow 40 CFR 123.27(d)(2) for public participation in the State enforcement process. 40 CFR 123.27(d)(2) states that a State must provide for public participate in the State enforcement process by providing for assurance that the State will (i) investigate and provide written responses to all citizen complaints submitted pursuant to 123.26(b)(4), (ii) not oppose intervention by any citizen when permissive intervention may be authorized and (iii) publish notice of and provide at least 30 days public comment on any proposed settlement of a State enforcement action. The AG's statement says that Idaho Code 39-108(9) states that IDEQ shall comply with the public participation requirements set forth in 40 CFR 123.27(d)(2). However, the AG statement does not explain how the statute (Idaho Code) satisfies the regulation (40 CFR 123.27(d)(2)).</p>	<p>Idaho Code 39-108(9) makes compliance with 40 CFR 123.27(d)(2) mandatory for IDEQ. In order to comply, IDEQ 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) in circumstances where e-mail is not available, IDEQ will mail a copy of its inspection follow up to the complainant; Public notices of settlements will be posted to IDEQ's website and in the major newspaper within the permittee's IDEQ region. The public notice will provide 30 days for the receipt of public comment, and information on how to submit comments.</p>	<p>The Attorney General's statement was updated to reflect IDEQ's response.</p>
7	AG Statement		<p>This section describes the state's compliance with the requirement in CWA 402(b) that it has adequate authority to comply with 301,302,306,307 and 403. 403 should be omitted from the state's list.</p>	<p>Thank you for the recommendation.</p>	<p>Reference to 403 has been deleted.</p>

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
8	AG Statement		<p>This section describes the state's 308 authority in the context of permit issuance and compliance programs. Would this include the authority to require additional permitting requirements and to request information pertinent to determining whether permit coverage is needed similar to EPA's authority? There is also a description of the state's prohibition of warrantless searches, is the use of IDEQ's authority pursuant to the Environmental Protection and Health Act one of the exceptions to this prohibition? Based on the description, it's unclear how/whether the exception applies. In the AG Statement regarding authority required by CWA § 402(b)(2)(A) and (B), the following statement is included: "Warrantless searches are prohibited, in the absence of either consent or exigent circumstances such as public health or environmental emergency. " This appears to limit the authority of inspectors to enter premises for inspection without a warrant. Please clarify.</p>	<p>This comment addresses several separate issues.</p> <p>First, regarding the ability to "require additional permitting requirements" it is unclear what the comment requests. IDAPA 58.01.25.300 provides the conditions applicable to all permits. There is no general provision in this section that provides for "other conditions as necessary." CWA section 308 does not seem to require such a provision nor do the regulations for state programs at 40 CFR</p> <p>Second regarding the authority to "request information pertinent to determining whether permit coverage is needed" IDAPA 58.01.25.300.08 provides as a general permit condition that the permittee "furnish to the Department ... any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing or terminating the permit or to determine compliance with the permit." This constitutes authority to request additional information.</p> <p>Third concerning the question raised about 39-108(2)(c) which prohibits IDEQ from conducting warrantless searches. This requirement is consistent with 40 CFR 123.26(c) which specifically</p>	

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
				states: "States whose law requires a search warrant before entry conform with this requirement." No further clarification is necessary.	
			<p>EPA's Comment on IDEQ's response to Comment 8:</p> <p>1) This comment may not be worded as clearly as it could have been. The goal was to find out whether the state's authority was as extensive as EPA's (as required by 402(b)(2)(A) of the CWA); for example, can the state include permit conditions like non-ELG required BMPs in permits or ask dischargers for information that could result in the inclusion of permit limits or other permit requirements?</p> <p>2) It's still unclear whether IPDES will have the ability to identify unpermitted discharges and require and issue permits to control them, if needed.</p>	<p>IDEQ did not initially make changes to the AG's statement in response to the previous comment. This clarifying comment on the issue has provided IDEQ with the ability to respond with appropriate changes to the AG's statement.</p> <p>Idaho Code provides the Director broad authority to establish rules necessary to deal with water pollution and investigate alleged violations. These authorities in addition to the rules regulating the IPDES program allow IDEQ the authority to identify unpermitted discharges and issue permits to control them.</p>	The AG's statement was updated to reflect the authorities stated in Idaho Code 39-105 and 39-108.
9	AG Statement		Given the number of sections of the regulations that will be incorporated by reference, the state should clarify in the AG statement and/or procedures for adopting revisions to federal regulations.	The IDEQ will engage when necessary in an annual update of the IPDES Rules to update and incorporate any relevant revisions to the Code of Federal Regulations occurring in the preceding year. If there are no changes to the CFR, no update will be necessary. This has been the practice in the RCRA program and will be mirrored in the IPDES program.	The Attorney General's statement was updated to reflect IDEQ's response. Additionally, Section IV Item 6 of the Memorandum of Agreement also lays out IDEQ's responsibility to ensure that revision to state rules as needed to conform to new federal regulations within two years of the date of promulgation.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
10	MOA	I, II	These sections explain that IDEQ will administer an IPDES program consistent with Sections 304, 307 and 402 of the Clean Water Act. Since IDEQ is seeking authority for Biosolids this statement also include Sections 405.	Thank you for the recommendation.	Correction made.
11	MOA	II	Add "conduct compliance monitoring" to the statement "In any event, EPA maintains concurrent authority with IDEQ to address noncompliance issues and to take enforcement actions."	Thank you for the recommendation.	Correction made.
12	MOA	IX	This section explains that "the sludge management program will develop and implement procedures for taking appropriate enforcement actions..." These procedures must be developed prior to program authorization and submitted with the program application.	Enforcement actions for the sludge management program will be taken in accordance with the already developed processes and procedures in IDEQ's Enforcement Procedures Manual, Enforcement Response Guide, and Compliance Monitoring Strategy. Refer to these documents for descriptions of the various enforcement actions specific to biosolids. FYI: the language regarding developing and implementing procedures was taken directly from the approved Arizona MOA on biosolids program management when Arizona was seeking delegated authority for the biosolids permitting program.	IDEQ corrected the 3rd paragraph under IX Sewage Sludge Management Program from "...develop and implement..." to "...follow and implement procedures for taking appropriate enforcement actions to ensure resolution of compliance issues in accordance with IDEQ's Enforcement Procedures Manual, Enforcement Response Guide, and Compliance Monitoring Strategy."
13	MOA	Jurisdiction	There's a typo at the beginning of the second sentence of item #4a.	Thank you for the recommendation.	Corrected to Appendix B
14	MOA	Section F. Review of Draft and Proposed Permits...	There is a minor typo in paragraphs 4.c.i and 5bi: the word "statement" is capitalized.	IDEQ recommends that EPA update the template MOA language to reflect the change they are requesting here as well.	Correction made.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
15	MOA	VI.4.a	The second sentence is missing language at the beginning. Review and correct as needed.	This was an oversight.	Corrected to Appendix B
16	MOA	X.A	EPA suggests IDEQ consider adding the sludge violation report to this table.	Thank you for the recommendation.	Added sludge violation report to table in Section X Reporting and Transmittal of Information.
17	MOA	X.A.8	The timeline provided for proposed revisions to the schedule of compliance inspections should be "As negotiated."	Thank you for the recommendation.	Correction made.
18	MOA	X.B.12	EPA suggest the timeframe for "notification of the commencement of federal civil enforcement actions" to be changed to "as issued."	IDEQ requests retaining the language as is to ensure that EPA is providing timely notice that a federal civil enforcement action is occurring. If EPA waits until the action is completed and issued, then it isn't the commencement of an action, but the completion of the action that IDEQ is being notified of.	No changes made.
19	MOA	XII.B	EPA recommends IDEQ mention the biosolids program in the first paragraph.	Thank you for the recommendation.	Correction made.
20	MOA	XII.B	Bullet 3 where the current national policy references to the PCS Policy Statement and the ICIS Addendum are incorrect. The correct reference should be the 2015 Electronic Reporting Rule.	IDEQ recommends that EPA update the template MOA language to reflect the change they are requesting here as well. That can be found in Section X.B bullet 3 of the MOA template.	Correction made.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
21	MOA	XII.C.2	This section states that IDEQ will transmit inspection information to ICIS in accordance with and on a schedule established in the PPA. However, inspection information is a required ICIS data element and its input should be in accordance with the data entry regulations.	IDEQ recommends that EPA update the template MOA language to reflect the change they are requesting here as well.	Correction made.
22	MOA	XIII.D	IDEQ should establish procedures for "routine coordination on enforcement cases between IDEQ and the appropriate legal resources within the State..." prior to program delegation. EPA recommends including these procedures as appendices to the program description.	IDEQ already has established procedures for coordinating enforcement cases with our attorney general's office. These procedures are used in the other delegated program (Drinking Water, air, RCRA). IDEQ will clarify these procedures in the program description.	IDEQ added clarifying language on the process for coordination on enforcement cases to the program description at Section 12.1
23	PD App. F MOU IDEQ ISDA	4.1.2	This section describes ISDA as determining whether CAFOs who have discharged need IPDES permit coverage. ISDA, however, does not have IPDES authority; thus, this determination is beyond the scope of ISDA's authority. EPA recommends that this section of the MOU clarify that ISDA can make recommendations but that IDEQ is the ultimate decisionmaker regarding which facilities need IPDES permit coverage.	IDEQ and ISDA have negotiated language changes to ensure that it is clear ISDA inspectors pass along information gathered on an inspection to IDEQ and to clarify that IDEQ is the final authority on whether an unpermitted CAFO is required to get coverage under an IPDES permit.	IDEQ added the following language: "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 IDEQ 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 IDEQ according to the process laid out below."

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
			<p>EPA's Comment on IDEQ's response to Comment 23:</p> <p>While this language provides helpful detail, it still does not make it clear that IPDES has the independent authority to make the determination that an unpermitted discharge needs to be permitted.</p>		Added the following: "It is IDEQ's sole authority to determine if an unpermitted discharge needs to be permitted"
24	PD App. F MOU IDEQ ISDA	Appendix F	Should Section 4.1.1 include a commitment for IDEQ to "follow process and procedures for issuing a general permit as outlined in IDAPA 58.01.25 and the IPDES User's Guide?" This provision is included in Section 4.1.2, which addresses individual CAFO permits.	Thank you for the recommendation.	IDEQ has made the appropriate addition.
25	PD App. F MOU IDEQ ISDA	Appendix F	Section 4.2 #2 states "Select IPDES permitted CAFOs for inspection in accordance with EPA's Compliance Inspection Manual or IDEQ equivalent." Did IDEQ intend to cite the Inspection Manual or the Compliance Monitoring Strategy?	Thank you for the recommendation.	IDEQ has made the appropriate addition.
26	PD App. F MOU IDEQ ISDA	Appendix F	Section 4.2 #3 states that "IDEQ will coordinate any planned inspections with ISDA staff during the annual meeting." Section 3.4 explains that IDEQ and ISDA will hold coordination meetings and is silent on the frequency. If IDEQ and ISDA intend to hold annual inspection planning meetings, the MOU should reflect this.	Thank you for the recommendation.	IDEQ has made the appropriate addition.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
27	PD App. G Compliance Monitoring Strategy	3.2	Section 11 of the Program Description and Section 3.2 of the CMS appear to conflict with each other on how CM activities are flowing data-wise. The Program Description infers that CRIPS will be the initial recipient of CM activity data, whereas the CMS infers that ICIS-NPDES is the initial recipient for the same information. In addition, Section X.D of the MOU states that IDEQ will be the initial recipient of compliance data. Please clarify.	Section 3.2 of the CMS has been revised to correct the appearance of any conflicts between this section of the CMS and Section 11 of the Program Description and Section X.D of the MOU.	Clarified in Section 3.2 of the CMS that compliance monitoring data will be flowing from IDEQ's CRIPS database to EPA's ICIS-NPDES database, making IDEQ the initial recipient of compliance monitoring information, excluding DMR data.
28	PD App. G Compliance Monitoring Strategy	4.8, 4.8.1, 4.8.2	Will CAFO inspections performed by ISDA be posted to CRIPS and ICIS, including unpermitted CAFOs?	Section 4.8 of the CMS has been revised to clarify CAFO inspection and compliance monitoring data being provided to IDEQ, entered into CRIPS, and transferred to ICIS-NPDES.	Section 4.8 of the CMS has been revised to include clarification that all data gathered from IPDES inspections performed by ISDA at permitted and unpermitted CAFOs will be transferred to IDEQ and entered into CRIPS. CRIPS will transfer all inspection and compliance monitoring data related to permitted and unpermitted CAFOs to ICIS-NPDES.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
29	PD App. H Enf. Response Guide	3 and 4.3.1	The ERG contains language concerning "Technical Assistance" (section 3) as an aid to formal enforcement response and "Compliance Assistance" (Section 4.3.1) as an informal response to noncompliance. Could additional language be included in both sections stating that "Technical Assistance" is different from "Compliance Assistance" and vice-versa?	The requested clarification has been added to Section 3 and Section 4.3.1.	The third sentence of Section 3 states technical assistance is not compliance assistance. An additional reference has been added to this section to refer readers to Section 4.3.1 for information on compliance assistance. Section 4.3.1 has been edited to clarify what IDEQ considers compliance assistance and that is not the same as technical assistance. An additional reference has been added to this section to refer readers to Section 3 for information on compliance assistance.
30	PD App. H Enf. Response Guide	Appendix H	The ERG contains a Notice of Compliance, which is new as of this version of the ERG. As explained in Section 4.3.3, IDEQ intends to use this notice to document that all known noncompliance has been addressed and that IDEQ will not take further action regarding those specific events. Any commitment not to enforce a legal requirement against a regulated party may severely hamper later enforcement efforts against that party or other parties who claim to be similarly situated.	Section 4.3.3 has been edited to address this concern.	Section 4.3.3 of the ERG has been edited to reflect the change of this document to Notice of No Further Action which documents that the noncompliance has been adequately addressed by the facility at the time of issuance, but that IDEQ is not precluded from taking further enforcement action regarding the specific noncompliance events the facility was addressing.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
31	PD App. H Enf. Response Guide	Chart	The state needs to clarify the meaning of the phrase, "consider criminal prosecution" that's used in these tables. As part of this clarification, the state should provide the underlying criteria/thought process.	<p>The decision to pursue criminal enforcement or prosecution is a decision made by the Director of IDEQ in consultation with the Office of the Attorney General, the Water Quality Division administrator, the IPDES program manager, and the IPDES Compliance, Inspection, and Enforcement Lead.</p> <p>The Enforcement Response Guide is meant to help program staff determine an appropriate response to a violation; it is not meant to be the guide for determining if criminal prosecution is warranted or not. Therefore, the response identified as consider referral for criminal prosecution is meant to direct staff to prepare documentation to submit to the IPDES CIE Lead and program manager for further consideration. It is the IDEQ Director's discretion to pursue criminal enforcement or refer to EPA CID. The Enforcement Response Guide is not the appropriate venue for determining whether they will pursue criminal prosecution. That is outside the scope of this document.</p> <p>As stated in Section 6 (revised) of the Enforcement Procedures Manual (included as Appendix H of the program description), criminal prosecution is typically reserved for grievous violations of</p>	

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
			<p>EPA's Comment on IDEQ's response to Comment 31: OECA has significant concerns with the document and particularly the tables. On page 4 the accelerating enforcement response arrow (Figure 1) only allows for civil enforcement. Criminal appears to not be an enforcement response. In instances of intransigent violations where the permittee basically refuses to come into compliance (i.e., willful violations), criminal prosecution is warranted. Escalation of the enforcement response to that level needs to be incorporated on the page.</p> <p>The tables use of "consider" criminal referral does merit considerable explanation re: the underlying criteria. If, for example, the permittee is submitting false information, there is not much to consider. That is a criminal act and the table should say "criminal judicial action." If the permittee unknowingly has a broken/malfunctioning instrument that may not be willful but it sounds negligent to fail to determine the accuracy of the data</p>	<p>environmental statutes, regulations, and rules. Section 6.3 of Appendix H (Enforcement Procedures Manual) describes the criteria considered when determining to proceed with criminal prosecution.</p>	<p>Removed "consider" from the range of responses. The response is now "refer for criminal prosecution or other judicial action". As stated in other comments, it is not appropriate for the field staff to be making a determination of pursuing criminal matters or not. They should be directed to refer the matter and allow the DAG, RA, DA, and Director to determine the appropriate course of action.</p> <p>With regards to the comment on judicial action, the table contained a footnote (c) that described judicial action as those civil and criminal remedies IDEQ may pursue in district court.</p>

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
			<p>submitted.</p> <p>This also raises the use of “judicial action” in the table. Judicial action is being used in the table as synonymous with civil judicial, however, in many places it likely should read civil or criminal judicial action. Any instance of continued or frequent noncompliance should have criminal judicial action in the Range of Response column. That’s because continued or frequent noncompliance can and likely is due to willful or negligent behavior, i.e., criminal behavior. The tables currently do not reflect those circumstances and need to. Every single page of the tables has that deficiency. Phrasing the response option as civil or criminal allows them to exercise discretion as to which route to take without forcing them to go criminal, but Idaho must allow for criminal enforcement when warranted.)</p>		
32	PD App. I Enf. Procedures Manual	Appendix I	<p>IDEQ has included Section 6 of its Enforcement Procedures Manual, which is specific to Criminal Enforcement Actions. IDEQ relies on its Enforcement Procedures Manual for implementation of its CIE program and therefore, EPA requests that the entire Enforcement Procedures Manual be included as an appendix to the Program Description.</p>	<p>IDEQ will provide EPA with a complete copy of the enforcement manual</p>	<p>IDEQ has included a copy of the IPDES Enforcement Procedures Manual as part of the Program Description. As such, the appendices have been renamed. Appendix H is now the Enforcement Procedures Manual and Appendix I is the Enforcement Response Guide.</p>

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
33	PD App. I Enf. Procedures Manual	Appendix I	<p>Section 6.2.2 states that "IDEQ does not have dedicated criminal investigators." This section explains the procedures IDEQ staff should follow when becoming aware of conduct that might be criminal in nature. This includes collecting physical evidence and conducting witness interviews. Section 6.2.3 explains that IDEQ will notify IDEQ Management, the Attorney General, and the IDEQ Director <u>prior to</u> notifying EPA CID (emphasis added). If IDEQ does not have dedicated criminal investigators, it is unclear why immediate coordination with EPA CID isn't occurring.</p>	<p>IDEQ inspectors will inform agency staff of the need to begin criminal investigation prior to informing EPA CID so that the agency Director and Attorney General are prepared and up to date on actions being taken that may have serious repercussions. The attorney general's office is more suited for determining the course forward with a criminal investigation than a civil inspector. However, it is anticipated that EPA CID will be informed immediately following the update to IDEQ management and the Attorney General's office.</p>	<p>IDEQ has made appropriate changes to the Enforcement Procedures Manual regarding the collection of evidence and witness interviewing. Trained criminal investigators available through the Attorney General's Office will be available to assist IDEQ in the instance of suspected criminal violation. IDEQ field staff will not pursue the collection of evidence or the interviewing of witnesses.</p>
			<p>EPA Comment on IDEQ's response to Comment 33: Section 6.2.2 of the 2017 Enforcement Procedures Manual still includes the same procedures regarding evidence collection and witness interview. EPA remains concerned about IDEQ initiating criminal investigations prior to referral to EPA, which may jeopardize EPA's criminal case.</p>		

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
34	PD App. I Enf. Procedures Manual	Appendix I, section 6.2 and 6.2.1	40 CFR 403.10(f)(1)(iv) states that the State must be able to "Seek civil and criminal penalties and injunctive relief..." How will IDEQ investigate POTWs and/or industrial users for criminal activities if it does not have dedicated investigators? EPA expects authorized states to implement its approved NPDES programs fully, appropriately, and timely.	IDEQ will be training inspectors in basic criminal investigations, when appropriate, and will contract with the Attorney General's office and Idaho State Police if a situation warrants a higher degree of investigation.	IDEQ updated the enforcement procedures manual and program description to help clarify.
35	PD App. I Enf. Procedures Manual	Sec 6.2	This section describes the offices/staff in IDEQ, in the AG's office and in EPA who will coordinate on criminal matters. However, it does not describe the logistics/timing of this consultation and communication. The state should provide more details regarding how this process will occur.	IDEQ is submitting the IDEQ's enforcement procedures manual which details these processes for the agency. The IPDES program will follow the standard agency procedures in addition to the procedures identified in the Enforcement Response Guide. Section 6.2.3 of Appendix I describes the notification process and referral to CID. In summary, IDEQ staff notifies the regional or divisional administrator as soon as possible once aware of possible criminal conduct. The RA or DA then notify the AGs office followed by consulting with the Director. If the Director deems it appropriate (or deputy Director in the Director's absence) then IDEQ/AG will promptly notify EPA CID. These are often phone notifications or in-person meetings and setting a strict timeframe on them may not be possible or reasonable. Often it's as simple as walking down the hall to speak with the Deputy AG.	

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
EPA's Comment on IDEQ's response to Comment 35:			Additional details should be incorporated from the standard agency procedures and, perhaps, from the Enforcement Response Guide to help flesh out this section of the document. The language that IDEQ has provided in its response to this comment would be a good start and that could be augmented by including more specifics from the standard agency procedures and the Enforcement Response Guide. Additionally, since Idaho will be administering its own program, EPA recommends that matters are not referred to EPA CID as part of the regular criminal enforcement process.		IDEQ has updated the Enforcement Procedures Manual and Program Description to clarify how IDEQ, AG, and CID will coordinate on criminal matters.
36	PD App. I Enf. Procedures Manual	Sec 6.2.2	The Manual lacks a description of what should happen in an imminent hazard situation; it should be revised to say that if it's an imminent hazard case – leave immediately; if criminal, contact appropriate criminal authority (e.g., AG's office or State Police) to investigate and secure evidence. Civil inspectors/investigators are not appropriately trained for collection of criminal evidence and securing crime scenes.	The Enforcement Procedures Manual section concerning potential environmental crimes contains the following instructions: When an investigator or other IDEQ 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: IDEQ field staff shall first address any emergency situations posing imminent danger to public health and safety by	

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
				<p>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.</p>	
				<p>2. Evidence Collection and Scene Security: In circumstances not posing immediate threat to public health or personal security and in conformity with IDEQ's property access authorities and investigation and sampling protocols, field staff should properly collect any physical evidence, including photographs and samples, and conduct witness interviews.</p> <p>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.</p>	

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
37	PD App. I Enf. Procedures Manual		<p>EPA's Comment on IDEQ's response to Comment 36: The concern in this comment is that the response to these imminent hazard situations is not being conducted by trained criminal investigators. DEQ should ensure that trained investigators are included so that the scene is appropriately secured and evidence can be collected, and this should be reflected in the process that's described in the Enforcement Procedures Manual.</p>	<p>IDEQ understands EPA's concern regarding unqualified staff potentially collecting samples using improper techniques. IDEQ has updated this section</p>	<p>Deleted "properly collect any physical evidence, including photographs and samples, and conduct witness interviews" and replaced with "contact the appropriate state office staff to ensure that someone trained in criminal investigations is made available for evidence collection".</p>
			<p>EPA strongly recommends that Idaho establishes procedures for using the State Police, Criminal Investigations Unit</p>	<p>IDEQ has access to the State Police and to specifically assigned criminal investigators within the Office of the Attorney General. However, these investigators are not trained in environmental crimes or in determining regulatory compliance. IDEQ's inspectors are trained in determining regulatory compliance and gathering evidence in accordance with QA/QC requirements. As noted in numerous places IDEQ also regularly coordinates with EPA CID in cases where criminal violations are apparent.</p>	<p>Added language in the Enforcement Procedures Manual highlighting that the AG's office will provide criminal investigators upon request.</p>
			<p>EPA's Comment on IDEQ's response to Comment 37: Similar to the earlier comment, trained criminal state investigators should be part of the state criminal enforcement program. The goal is to ensure that state criminal enforcement actions can be taken.</p>		

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
38	Program Description	11.1	This section explains that the CRIPS database will maintain an inventory of all IPDES-permitted sources, including "other reporting requirements covered in both the permit (established both inside and outside a permit)." Please provide an example of a reporting requirement established outside a permit and cite the authority IDEQ would use.	The original intent was to address CIE related requirements that weren't directly identified in a permit. However, these reporting requirements are still enacted under the permit authorization.	This language was ambiguous and therefore deleted.
39	Program Description	11.1	The final paragraph in 11.1 incorporates by reference how CBI is handled. For CBI materials collected during an inspection, how does CRIPS identify such materials as CBI? Can the inspector or data entry person mark information into CRIPS as CBI?	Any application or report information that is typed and submitted through the user interface is not considered confidential business information. Confidential information would be limited to uploaded and submitted documents that are in addition to user interface requirements.	The language referenced in 6.2.1 was inaccurate and has been corrected. Confidential information will be stored in TRIM and/or the IDEQ server, not the database.
			<p>EPA's Comment on IDEQ's response to Comment 39:</p> <p>The revised sentence in Section 6.2.1, "All confirmed proprietary material received electronically will be stored in server..." appears to be incomplete. Is "server" a file server run by</p>	IDEQ's document management system has the ability to limit who can view or access certain documents identified as confidential.	IDEQ has added clarifying language to the Program Description at 6.2.1 stating that confirmed proprietary material receiving electronically will be stored on a "secure server". The materials will be marked with the "confidential configuration" and limited access will be provided to agency staff.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
40	Program Description	12.7	"The enforcement strategy for violation of Pretreatment and Sewage Sludge/Biosolids Program requirements will follow the general enforcement procedures for the IPDES Program and IDEQ's Enforcement Procedures Manual." EPA is concerned about the lack of program specific procedures for biosolids. The biosolids program has unique elements that do not lend themselves well to fitting in with the general enforcement procedures outlined in the program description and enforcement response guide. Arizona's program application included a separate program description for the biosolids program. EPA requests IDEQ submit procedures specific to the biosolids program with the IPDES program application.	IDEQ reviewed Arizona's program application regarding biosolids. Personal communication with Michael Le at R10 suggests the concern is more regarding how compliance monitoring for biosolids will be handled instead of the enforcement actions available to IDEQ to deal with violations of biosolids permitting. Information similar to Arizona's compliance monitoring is found in various sections and documents supplied with the IPDES program application but were not specifically called out in Section 8 of the program description on biosolids.	IDEQ has added sections 8.6 through 8.8 (renumbering previous 8.6 to become 8.9) to address this comment.
41	Program Description	13.1	Add "enforcement data" to the end of the second sentence "CRIPS will allow IDEQ to compile, manage, and report IPDES Program permitting and compliance monitoring data."	Thank you for the recommendation.	Added "and enforcement data" to the sentence.
42	Program Description	13.3	The first sentence in the second paragraph is duplicative and may be removed.	Thanks for catching the duplication.	IDEQ removed the sentence from the first paragraph and left the sentence in the second paragraph.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
43	Program Description	10.1.5	<p>This section only describes ISDA's authority and does not explain IDEQ's role in this sector. IDEQ's role and authority should be explained here; IDEQ must be the ultimate authority for regulating poultry CAFOs under the IPDES program.</p> <p>EPA's Comment on IDEQ's response to Comment 43: More specific language is needed here. Is the plan that the agencies will coordinate in this sector in the same manner as outlined for the beef and dairy sectors, e.g., ISDA will perform inspections? Additionally, do the rules cited here intend to indicate that ISDA will be responsible for those poultry operations that do not discharge, while IDEQ will be responsible for those operations that do discharge? If that's the case, similar to comments regarding the beef and dairy sector, IDEQ should have the authority to identify and regulate unpermitted facilities that need to have NPDES permits.</p>	<p>Thank you for the recommendation.</p> <p>IDEQ is pursuing legislative changes that will clarify IDEQ and ISDA's roles in dealing with poultry operations.</p>	<p>Added "IDEQ and ISDA will work cooperatively to ensure that poultry CAFOs comply with the appropriate state and federal regulations. IDAPA 02.04.32 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. For poultry operations identified as CAFOs, IDEQ has authority to regulate under the IPDES program the same as a beef or dairy operation."</p>

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
44	Program Description	10.5.1 Inspections-Compliance monitoring for CAFOs	This section describes ISDA as conducting the inspections but does not explain how IDEQ will be looped back in for compliance and enforcement. Suggest that more detail be included that describes how this part of the CAFO program will operate.	IDEQ will provide further details in the program description regarding this.	Added the following: "IDEQ 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 IDEQ forms for IPDES inspections of CAFOs and will be expected to provide a copy of those forms back to IDEQ 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."
45	Program Description	11 Compliance Evaluation	The last paragraph describes IDEQ's goal is to inspect each major facility every two years. This is contrary to the requirements in 123.26(e)(5), which requires that state NPDES programs have the procedures and ability to conduct inspections of all major dischargers occur at least annually.	IDEQ followed EPA's 2014 Compliance Monitoring Strategy which states that major facilities may be inspected once every two years. IDEQ brought up with EPA R10 staff the discrepancy between the regulation and the CMS and was told that following the CMS was acceptable.	
			EPA's Comment on IDEQ's response to Comment 45: IDEQ's response is accurate. EPA recommends that a citation be added to EPA's 2014 Compliance Monitoring Strategy since the EPA's regulations only mention 1 year.	IDEQ did reference the 2014 Compliance Monitoring Strategy in the introduction to Section 11. Also, the IPDES compliance monitoring strategy makes distinct reference to the 2014 EPA CMS when discussing the goals for monitoring major permittees.	IDEQ added the parenthetical phrase "(consistent with EPA's 2014 CMS)" to the sentence regarding the compliance evaluation inspection goal commented on here.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
46	Program Description	11.1.1	<p>Procedure #4 appears to have missing information, suggestions in <u>underlined text</u>. Review baseline monitoring reports submitted by IUs subject to categorical pretreatment standards to determine the need for pretreatment requirements <u>for the CIU</u> or development of a pretreatment program <u>for the receiving POTW</u>.</p> <p>EPA's Comment on IDEQ's response to Comment 46: Upon further discussions, it is been found that another suggestion be made to Item 4 as well as Item 5. See edits in bold, underlined text below.</p> <p>4. Review baseline monitoring reports submitted by IUs subject to categorical pretreatment standards to determine the applicability of categorical pretreatment standards for the CIU where IDEQ is the control authority. In addition, determine whether the receiving POTW is required to develop a pretreatment program.</p> <p>5. Review 90-day compliance reports submitted by CIUs following the date for final compliance with applicable categorical pretreatment standards where IDEQ is the control authority.</p>	<p>Thank you for the recommendation.</p>	<p>Made suggested change</p> <p>IDEQ made the recommended change</p>

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
47	Program Description	11.1.1	How will CIUs be handled in the CRIPS database? Will they have permit information entered into CRIPS just like a direct-discharging NPDES facility?	IU reports that include E-Reporting Rule required data elements will be entered through the IPDES web application and the data will be stored in CRIPS. Other IU reports and information that do not specifically include E-Reporting Rule required data elements will be submitted electronically as PDFs. Both kinds of submittals will be stored in TRIM and/or on the IPDES server.	Modified item 4 to read as follows: "Review baseline monitoring reports submitted by IUs to determine the need for pretreatment requirements or development of a pretreatment program."
			EPA's Comment on IDEQ's response to Comment 47: See resolution comments to Comment ID #46 above.		IDEQ made the recommended change.
48	Program Description	11.1.1, 11.1.2, 12.1, 12.2	These sections describe the coordination among state office and regional office staff and managers. EPA requests IDEQ establish standard operating procedures clarifying coordination of compliance, inspection and enforcement processes and submit these procedures with the program application.	IDEQ intends to produce standard operating procedures for various CIE aspects of the program once the tools (i.e., CIE interface in electronic database) are developed and complete. Developing SOPs prior to the full slate of CIE tools being developed is premature. Additionally, IDEQ already has established procedures for coordinating these actions in other authorized programs which are identified in IDEQ's Enforcement Procedures Manual. Staff in the IPDES program will continue to follow the practices and principles identified in the most recent version of the Enforcement Procedures Manual complemented by the IPDES Enforcement Response Guide and	IDEQ added the following language at Section 12.1: "Initial responsibility for determining enforcement response lies with the regional inspector or 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

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
49	Program Description	11.1.2	<p>2nd paragraph of Page 75 references the 2004 <i>NPDES Compliance Inspection Manual</i>. OECA recently published an interim revised version to the manual (EPA-305-K-17-001) and is publicly available at https://www.epa.gov/compliance/compliance-inspection-manual-national-pollutant-discharge-elimination-system</p>	<p>Thank you for the recommendation.</p>	<p>the IPDES Program Description.</p> <p>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 officers 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 IDEQ Water Quality Division Administrator, IDEQ will determine the most appropriate formal enforcement action route (i.e. administrative, civil, or criminal) to pursue."</p> <p>Edit made to reference the 2017 version in section 11.1.2 and in section 15.</p>

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
50	Program Description	11.1.2 and 11.1.3	This section identifies inspection forms and checklists to be used during program implementation. EPA requests that these forms and checklists be submitted with the program application.	The forms and checklists referenced in this section are for inspections (e.g., inspection templates). IDEQ has just begun the process of inspection template development and they are not yet ready to be provided to EPA. IDEQ is drafting inspection checklists and report forms in a "mock-up" template. These mock-ups will be used to develop final inspection forms once IDEQ settles on the method of development. Additionally, IDEQ is developing these checklists and forms based on need (i.e., when IDEQ obtains authority in a specific sector). At this time only the POTW CIE and Pretreatment desk audit and PCI forms are under development. IDEQ would be happy to share these forms with EPA once they are in their final stage of development.	No changes made.
51	Program Description	12, 12.4.2	The second paragraph states that "IDEQ retains its discretion to collect any economic benefit that may have been realized as a result of noncompliance..." In accordance with EPA's 1995 Interim CWA Penalty Policy, economic benefit is required to be collected. If IDEQ plans to develop its own penalty policy, EPA requests that it be submitted with the program application.	IDEQ intends to be consistent with EPA's 1995 Interim CWA Penalty Policy. Changes have been made to these sections accordingly.	Section 12 was changed to read "IDEQ will collect any economic benefit that may have been realized as a result of noncompliance through monetary penalties;" Section 12.4.2 was changed to read "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)."

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
52	Program Description	13 (all)	<p>Idaho has acquired the Permit and Reporting Information System (PARIS) database from the State of Washington which uses the Windsor node plugin to send data to ICIS. There isn't any mention that Idaho was planning to use the Windsor node plugin, but rather, they will be developing a data exchange flow with ICIS. However, Idaho states in Section 13.4 (ICIS-NPDES Data Exchange Flow) that "Data in CRIPS will be extracted using SQL queries and loaded into an SQL staging database" and since the staging database is a concept used in the Windsor software, is Idaho planning to use the Windsor node plugin? Or is IDEQ creating its own data exchange flow?</p>	<p>IDEQ is using the Central Data Exchange and OpenNode2 plug in for establishing the data flow.</p>	<p>Added the following language clarifying that IDEQ is using the Central Data Exchange and OpenNode2 plug in for establishing the data flow. "IDEQ is developing a data flow between EPA's ICIS-NPDES and IDEQ'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). IDEQ is working with EPA and contractors to use the OpenNode2 plug-in when developing the data flow. If IDEQ encounters issues with the plug-in, Windsor Solutions is available to provide limited support on behalf of EPA. IDEQ 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."</p>

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
53	Program Description	13 (all)	Idaho states that they will fully implement the 2015 Electronic Reporting Rule. This includes using NetDMR for DMR data and implementing an online electronic interface for permittees to submit permit applications since PARIS was not designed for electronic application/NOI submittal. Is there a timeline for IDEQ's implementation of the 2015 Electronic Reporting Rule?	IDEQ will comply with the E-reporting rule in the order of implementation for each sector.	Added the following language clarifying that IDEQ will comply with the E-reporting rule concurrently upon receiving delegated authority to implement each sector, in so much as ICIS-NPDES data fields are developed. "IDEQ will comply with the 2015 Electronic Reporting Rule concurrently upon receiving delegated authority to implement each sector. IDEQ 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."
54	Program Description	13 (all)	Idaho states for data quality purposes, that there will be a need to reconcile what is in their system with what migrated from PCS and what Region 10 has entered in ICIS. Yet there is no specific discussion about how differences will be resolved other than the data will be reconciled. At a minimum an approach should be discussed.	IDEQ will develop QA procedures for CRIPS data completeness and correctness.	Added language clarifying that IDEQ will develop CRIPS database quality assurance procedures that include evaluating and establishing thresholds for data completeness and correctness.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
55	Program Description	13.1.1	This section states "IDEQ will seek CROMERR approval concurrent with applying for NPDES program authorization to submit an IPDES application and other information." Has IDEQ sought CROMERR approval? If not what is the timeframe for doing so?	Because the IPDES Program is utilizing the full Shared CROMERR Services, and because other IDEQ programs have CROMERR approval, the application and approval process should be rather short (EPA pers. comm.). However, according to EPA, IDEQ cannot receive CROMERR approval until it is granted delegated program authority, and we have been directed not to apply at this time. As a result, IDEQ and EPA need to determine how IDEQ can receive CROMERR approval prior to or simultaneously to receiving delegated program authority.	No changes made.
56	Program Description	13.4 and 13.5	These sections explain the need for EPA and IDEQ to coordinate on the data migration and data quality processes prior to program implementation. EPA suggests adding provisions to the EPA-IDEQ PPA for these tasks, as appropriate.	IDEQ will consider adding provisions in the PPA to address these tasks, as necessary.	No changes made.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
57	Program Description	13.6.2	This section explains that IDEQ will work 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. EPA requests that these procedures be developed and submitted with the program application.	IDEQ is endeavoring to develop a "third-party data" quality assurance plan that will address these issues and provide for efficient, accurate, and complete data entry into CRIPS. Due to the nature of IDEQ's guidance development process, there is not staff time available at the current time to address this document. IDEQ anticipates developing these documents by the end of 2017 and will ensure that EPA is kept apprised. IDEQ will follow EPA-established quality assurance and quality control procedures in developing quality assurance plans. IDEQ's Quality Management System has been reviewed, approved, and audited over the years. This QMS is also a guiding factor in ensuring that programs within the agency appropriately address the handling of data for regulatory purposes. The QMS is available at http://www.deq.idaho.gov/assistance-resources/quality-management/	No changes made.
58	Program Description	9.4.2-Coverage under a general permit	There's a typo: In the first sentence, "for" should be deleted after the word, "process."	Thank you for this comment; however, there is no "for" after "process" at the location identified	No changes made.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
59	Program Description	Administrative record	<p>The list of the permit provisions that will be entered into the state database includes special conditions and compliance schedules as separate items. What kind of compliance schedules is the state referring to - permit schedules or enforcement schedules? It would help to clarify since permit compliance schedules are special conditions so, would not need to be listed separately from special conditions.</p>	<p>IDEQ agrees that compliance schedules are a form of special condition which may be used to document facility improvements, documentation updates, and other activities that will bring the facility into compliance with the permit. Additionally, if IDEQ and the permittee have entered into an Administrative Enforcement Action (Idaho Code 39-108), documented in a Compliance Agreement Schedule (CAS), to rectify facility operational &/or discharge problems, and the facility's permit renewal occurs while the CAS is still open, IDEQ IPDES Program may choose to include the open items from the CAS into the permit in a Compliance Schedule. IDEQ will alter Section 6.2.6, Administrative Record, to clarify the breadth of compliance schedules.</p>	<p>Added the following language to Section 6.2.6, "Compliance schedules are special permit conditions and may address both permit compliance activities and corrective actions required to comply with Administrative Enforcement Actions."</p>

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
			<p>EPA's Comment on IDEQ's response to Comment 59: The added language does not resolve the issue; it seems to create another issue. Corrective actions are separate from the permit terms and conditions and should not be included in a permit. The permit could potentially include requirements, e.g., BMPs, that are consistent with an enforcement schedule. In that case the permittee would have 2 obligations: 1) compliance with the permit and, 2) compliance with the enforcement order to remedy its non-compliance. Open items from a CAS should not be included in a permit.</p>		<p>Corrected sentence at 6.2.6 to "Compliance schedules are special permit conditions that address permit compliance activities."</p>
60	Program Description	Application Completeness Determination	<p>This discussion does not mention minimum levels or waivers under 122.21(j) or (q), which are cited in 122.21(e). The state's regulation should include the same references as included in 122.21(e).</p>	<p>This section in the Program Description will be augmented to reference Minimum Levels and Waivers found under 40 CFR 122.21(e), (j), and (q). These are already incorporated into Idaho Rules at §106.06. Incomplete Due to Waiver Denial, specifies that a permit will not be deemed complete if IDEQ waived application requirements under 105.11 (122.21(j), or 105.17 (122.21(q) and EPA disapproved the waiver. §106.07 addresses the issue if EPA has not made a waiver determination within the allotted time. §106.02 addresses Sufficiently Sensitive Methods, and specifically ML.</p>	<p>IDEQ has made appropriate changes to the "Application Completeness Determination" subsection within Section 6.3.1, Permit Application and Review. A statement has been added identifying all quantitative data results must have been analyzed using 40 CFR 136, 40 CFR chapter I, subchapter N or O compliant methods. Additionally, a statement has been added identifying IDEQ approved waivers under 40 CFR 122.21(j) and (q) are subject to EPA approval.</p>

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
61	Program Description	Board of Env Quality	This section should probably clarify whether the Board will play any role in the permitting process. The current discussion just says that the Board won't play a role in permit appeals; 123.25(c) is broader in scope -- it prohibits conflicted individuals from being a part of approving "all or portions of permits."	The first sentence in the section regarding the IDEQ board states that their responsibility is to adopt, amend, or repeal IDEQ's rules. This is the only action they take with regards to the IPDES program. They are not involved in the drafting or issuing of permits.	Addition of "The board does not take part in the drafting or issuing of IPDES permits." to the first paragraph of Section 3.1
62	Program Description	Draft Permit & Proposed Permit	Regarding the proposed permit, will the public be informed in the Response to Comments when the permittee has provided IDEQ with additional information?	Yes, 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. If the change is deemed significant, the altered permit will be submitted to a second round of public review and comment.	To reflect the practice in the Program Description IDEQ added "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." in the first paragraph under Proposed Permit in Section 6.4.1.
			<p>EPA's Comment on IDEQ's response to Comment 62:</p> <p>IDEQ's response describes a good practice; it should be reflected in the program description.</p>		

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
63	Program Description	Minor Modifications of Existing Permits	<p>The description of minor modifications includes a consideration that is not in the federal requirements, "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."</p> <p>EPA's Comment on IDEQ's response to Comment 63: This additional basis for the minor modification of permits makes the state's provision less stringent than the federal requirements. The 1986 Program Guidance provides that "[s]tates may not adopt any causes for minor modifications other than those listed in 40 CFR 122.63."</p>	<p>Yes this is true.</p> <p>IDEQ has included removal of this provision in the proposed rule submitted for publication in the August Administrative Bulletin and open for public comment until Sept 2, 2017.</p>	<p>IDEQ removed reference to the deleted provision from Section 6.2.1 of the program description.</p>

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
64	Program Description	Permit prohibitions	Regarding new source or new dischargers, this seems to be echoing the requirements of 122.4(i) so why is it limited in application to just discharges from construction activities or operations? Is this a typo?	The Program Description section 6.2.2, Permit Prohibitions, paragraph on "New Sources or New Dischargers" is derived from 40 CFR 122.4(i). IDEQ has paraphrased the regulations, but will alter the text.	IDEQ has altered the text as follows: "IDEQ will not issue a permit if the discharge from the construction of a new source or new discharger, or the 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.
65	Program Description	Sec 12.6	This section explains further how IDEQ will meet the public participation requirements of 40 CFR 123.27(d)(2). However, like the AG's statement, it does not explain how each of the factors in 123.27(d)(2) will be met. For example, it does not explain how/when IDEQ will publish notice of and provide at least 30 days for public comment of a proposed settlement. Where in the regs or statute provide for this type of public comment period?	Idaho Code 39-108(9) requires that IDEQ comply with the public participation requirements set forth in 40 CFR 123.27(d)(2). This is where the public comment period is provided for. Clarification has been provided on how the requirements will be met.	"(2) IDEQ 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); Public comment notices will be posted to IDEQ's website, the major newspapers within the permittee's IDEQ region, and a public comment mailing list (i.e., email) maintained by the IPDES program."
66	Program Description	Sec 3.5	See comment above re AG's statement and delegating down to the country prosecutor	See response to Comment 5	

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
67	Program Description	Sec 6.2.1	The section that describes minor modifications should further clarify that minor modifications will not be used to make effluent limit changes.	IDEQ acknowledges that the text, being a double negative, is less than satisfactory, and proposes to change the text.	IDEQ changed the text to remove the double negative statement and add: "The permit writer shall not change the permit's limits nor reduce the monitoring requirements as a permit minor modification."
68	Program Description	Sec 6.2.4	This section should further clarify that transfers cannot occur after the expiration date of the permit	This section will be modified to clarify that expired permits cannot be transferred to another permittee. Additionally, a permit that has been administratively extended will be identified as requiring revocation and reissuance to the new permittee.	IDEQ changed the text to address "currently active" permits. Additionally, a paragraph was added that states: "Expired permits are not eligible for transfer. Permits that have been administratively continued will not be transferred. IDEQ 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."

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
69	Program Description	Table 2	<p>Need clarification as to the 1.0 FTE for "Legal" in this Table. Is this intended to capture just a single FTE or does this reflect time that would be spent by a few individuals?</p>	<p>IDEQ 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 inspector or enforcement officer. IDEQ has made the decision to 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.</p>	<p>Added IDEQ's response to comment 69 to the description below Table 2 in Section 4.1.</p>
			<p>EPA's Comment on IDEQ's response to Comment 69: As a clarification, this comment was just seeking a bit more detail in the description of the FTE allocation.</p>		

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
70	Program Description	Table 3	<p>Need clarification as to how a ½ attorney for all enforcement is adequate – examples from other authorized programs? Is this FTE in addition to FTEs for the SDWA and RCRA programs? Given Idaho’s 2-year SOL is ½ an enforcement FTE sufficient to investigate and prosecute CWA criminal violations? Please provide examples of environmental crimes cases in other programs successfully investigated and completed in 2 years or less. Also, it appears that Table 3 reflects the PD wherein Idaho stated they were planning on having a liaison attorney working with criminal. Is the ½ FTE in Table 3 civil only or does it include the liaison attorney mentioned in the PD?</p>	<p>Idaho's Attorney General's office requested an additional FTE from the 2017 Legislature which will be specifically assigned to the Environment Section at IDEQ for work in the IPDES program. IDEQ is assigned attorneys to work at the agency regarding environmental issues. IDEQ 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.</p>	<p>IDEQ added the response to this comment as a description of information provided in Table 3 of the Program Description.</p>
			<p>EPA’s Comment on IDEQ’s response to Comment 70: The language that IDEQ has provided is very helpful in describing the staffing level - could this be added to the program description?</p>		

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
71	Program Description	Wastewater Program	Is it anticipated that there will be NPDES permits that include provisions for land application or other methods of wastewater reuse? This section is unclear; should indicate one whether that will be the case. Also, if there will be permits that include these provisions, this section of the PD should explain how the IDEQ wastewater program and permits program will coordinate on developing and including them in permits.	It is not IDEQ's intent to combine IPDES and reuse permits into a single permit. For several reasons, that is not feasible at this time. IDEQ will clarify that these two types of permits will not be combined.	Removed language discussing the various responsibilities of the wastewater program to narrow the focus to only those areas where IPDES and wastewater overlap. Added "IDEQ will not be combining reuse permits with IPDES permits."
72	Program Description		The program description fails to include an adequate description of criminal enforcement capability: We are concerned about a potential need for some basic training by either the AG or State Police for civil inspectors on criminal law. We also believe it may be appropriate to include training opportunities for the criminal and civil AG personnel on the NPDES program. EPA is willing to work with Idaho on this matter.	After discussion with EPA HQ staff on this point, IDEQ understands the lack of description on how criminal enforcement will be pursued. IDEQ would like to point out that Basic Environmental Investigations (3-day) and Advanced Environmental Investigations (10-day) trainings offered by the Western States Project are identified in the capacity building plan (appendix B to the program description) as training opportunities available to IPDES compliance, inspection, and enforcement staff. IDEQ will also submit as part of the application package IDEQ's Enforcement Procedures Manual which identifies processes and procedures utilized by the agency's authorized programs when pursuing enforcement actions.	IDEQ has added to the IPDES Program Description in Chapter 12 Enforcement, more detail regarding how civil and administrative enforcement actions are handled to ensure that the appropriate statute of limitations will be met.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
73	Program Description		The program description does not adequately describe the state's criminal enforcement capability: include training of civil inspectors to recognize criminal violations; different ways of processing (collect & preserve evidence, chain of custody) – i.e., need to make sure civil inspectors know how to “switch” to being criminal investigators/inspectors when the inspection reveals there may be a criminal violation. (Similar to comment on page 8.) It is more appropriate to have a designated criminal investigator along with of number of civil inspectors who have received some level of criminal training. OECA criminal enforcement has a training program for state inspectors; may need to follow up on funding availability. There are training opportunities available through the Western States Project.	See response to Comment 72	

Comment No.	Document	Section/ Heading	Narrative Description of Issue	IDEQ Response	Changes Made
74	Program Description		State needs clarify how they will refer criminal cases to EPA – e.g., all felonies, since Idaho does not have felony penalties for CWA violations? Or not enough resources to do the case? What are criteria for referral?	Since IDEQ does not have felony authority per Idaho Code § 39-117 and since the civil penalties available to IDEQ are equal to the criminal sanctions available (monetary fines and no incarceration), most cases that appear to involve criminal behavior will be referred to EPA CID for investigation and prosecution. The criteria for referral are largely similar to the same criteria used by EPA CID in determining whether to pursue a criminal investigation and include but are not limited to: The degree of intent and/or mens rea of the defendant; the significance of harm; indicia of guilt such as concealment or dishonesty; motivation of the offender (i.e. monetary gain). The IDEQ has been coordinating with EPA CID in this fashion for approximately eleven years and has developed a good working relationship with EPA CID resulting in numerous successful prosecutions by EPA based upon information provided by IDEQ. Likewise EPA CID refers matters to the State that it has chosen not to pursue as criminal matters using their criteria for case selection.	IDEQ updated 6.2.3 to provide clearer timelines for the steps involved when referring a case to EPA CID.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
75	Program Description		In accordance with the 1986 Guidance, EPA requests that IDEQ submit all forms to be used in its program (e.g., inspection checklists, letter templates).	IDEQ submitted all forms that were available at the time of the application and referenced our intent to use EPA forms and checklists until such time as the agency had developed a replacement. IDEQ will provide an updated list of forms and other documents intended for use in the program. IDEQ requests EPA provide a copy of the reference 1986 guidance document.	No changes made
76	Program Description		IDEQ relies on its 1999 Enforcement Procedures Manual to describe its implementation of the IPDES Program. However, IDEQ did not include the Manual as an appendix.	IDEQ will provide EPA with a complete copy of the enforcement manual	Incorporated the IPDES Enforcement Procedures Manual into the Program Description at Appendix H.
77	Regulation	58.01.25.010.87	This section contains a definition of sludge that is different from 122.2 in that 122.2 states, "...treatment of municipal wastewater or domestic sewage" but this section states, "...treatment of wastewater." This comment was made in the 7/15 letter and is still unaddressed.	The referenced subsection of IDAPA 58.01.25.010.87 is the definition of silvicultural point source, not sludge. The definition of sewage sludge is 58.01.25.010.84	IDEQ conducted a negotiated rulemaking in 2017 which addressed changes necessary. This was an oversight and was corrected during this rulemaking.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
78	Regulation	58.01.25. 109.02	The public must request a public meeting within 14 days after the date of the public notice – less opportunity than the federal requirements at 124.11, which does not place a time limitation on requesting a hearing.	<p>IDEQ negotiated this language with the stakeholders present, including EPA representatives, during the development of the rule chapter. Revisions to the language at 109.02.b were in direct response to comments raised during the rulemaking, including the ability of IDEQ to issue timely permits if requests for a public meeting were allowed until the last day of the public comment period. Under 109.01.c, IDEQ is required to provide 30 days' notice prior to holding a public meeting which would in effect create a 60 day public comment period if a meeting request were received at the end of the original 30 day public comment period. Negotiations resulted in a deadline of 14 days from the time of public notice for an interested party to request a public meeting. This written request is not required to state the nature of the issues proposed to be raised in the hearing.</p> <p>IDEQ, under 109.02.h, also provides for the public comment period to be extended, if requested in writing, up to the last day of the public comment period. IDEQ believes that this provides for an equal (if not exactly the same) opportunity for interested parties to provide comment on draft permits. Stakeholders were involved in this negotiation and were comfortable with the rule as drafted. EPA did</p>	No changes made.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
79	Regulation	58.01.25. 109.02.h	This provision allows the permit applicant the opportunity to provide additional information after the close of the comment period and prior to the final permit decision. Consideration of new information may require a new public comment period for the draft permit.	<p>not provide comment during the meeting or in written response at any point after that indicating there was an issue with this provision. Under 109.01.e and g, IDEQ is required to include in the public notification of a draft permit either 1) the date and time of the scheduled public meeting or 2) provide procedures for the public to request a public meeting. IDEQ intends that the majority of permits will have ample opportunity for the public to comment either in a written format or at a scheduled meeting.</p> <p>This provision is specific to the permit applicant providing information to respond to public comments and help IDEQ provide a response to the comments received. IDEQ understands that if new information is provided during the public comment, or afterwards, that causes a material modification of the draft permit, a new public comment period and announcement will need to be made.</p>	No changes made.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
80	Regulation	58.01.25.201.03(i)	<p>This regulation seems to have a less stringent definition of minor modification than the federal definition since it allows a minor mod to be made "that will result in neither allowing an actual or potential increase in the discharge of a pollutant or pollutants into the environment nor result in a reduction in monitoring of a permit's compliance with applicable statutes and regulations." This comment was made in the 7/2015 letter and is still unaddressed.</p> <p>EPA Comment on IDEQ's response to Comment 80: This additional basis for the minor modification of permits makes the state's provision less stringent than the federal requirements. The 1986 Program Guidance provides that "[s]tates may not adopt any causes for minor modifications other than those listed in 40 CFR 122.63."</p>	<p>IDEQ provided this in response to the regulated community's request during the negotiation of the IPDES rules chapter. As it is constrained in preventing either a decrease in monitoring, or any potential increase in the discharge of pollutants, the overall impact of this is going to be minimal. EPA approved this exact language in Alaska's rules.</p> <p>DEQ has included removal of this provision in the proposed rule submitted for publication in the August Administrative Bulletin and open for public comment until Sept 2, 2017.</p>	
81	Regulation	58.01.25.300.10 & .11	<p>Requirements mirroring 122.41(j) and (k) are missing from these provisions. This comment was made in the 7/2015 letter and is still unaddressed.</p>	<p>122.41(j)(1) = 300.01.a; 122.41(j)(2) = 300.10.b.ii; 122.41(j)(3) = 300.10.c; 122.41(j)(3)(i) thru (3)(vi) = 300.01.c.v thru x; 122.41(j)(4) = 300.10.d; 122.41(j)(5) = 300.11 & 090.04 & 500.02 thru 03; 122.(k) = 090 and 500</p>	No changes made.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
82	Regulation	Petition for judicial Review	What is the definition of "person aggrieved"? Is it just someone who has filed a petition for review? This section cites 204.25 but that subsection does not specifically define the term. Should the correct cite be 204.01?	As stated in 58.01.25.204.01.a "A person aggrieved is limited to the permit holder or applicant, and any person or entity who filed comments or who participated in the public meeting on the draft permit". The citation is correct in that it is referencing which agency actions or determinations have a right to judicial review. As stated, 'aggrieved person' is defined early in the Section (204.01)	No changes made.
83	Regulation	Section 120	It would be helpful to clarify that the definition of "new source" only applies to <u>direct dischargers</u> since the state has incorporated the 403.3 definition of new sources for pretreatment by reference; this would help ensure that it's clear that the definition in Section 120 does not apply in the pretreatment context.	IDEQ copied the language regarding new sources directly from EPA's rules. That language refers to discharge of pollutants which is very specifically defined as a direct discharge to a waters of the US. IDEQ is choosing not to add language to the new source definition until EPA chooses to update their rules regarding this definition.	No changes made.
84	Regulation		Language seems to be missing from section 105.03b, "Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. " 40 CFR 122.21(c)(1)	The language referenced by this comment does not place a requirement on the regulated entity and is a recommendation that applications be submitted in advance of the regulatory deadline. IDEQ did not incorporate this language in the rule, but has worked with the regulatory community and stakeholder groups to ensure the intent of this language is evident in IDEQ's User's Guide to permitting and compliance.	N/A

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
85	Regulation		Sections 122.21(c)(2)(i), (ii) and (iii) appear to be missing from the state requirements.	122.21(c)(2)(i) thru (iii) are found in the requirements listed in IDAPA 58.01.25.105.17, application requirements for TWTDS, which is referenced at IDAPA 58.01.25.102.03	No changes made.
86	Enforcement Proc. Manual	2.1	<p>The Compliance Officer's routine duties include "[requesting] consent to enter and inspect the premises" and "[requesting] a search warrant if consent has been denied and documented". This direction appears to be consistent with Idaho Code § 39-108(2). However, this direction appears to differ from the AG's Statement (p. 52), which states:</p> <p>i. Idaho Code section 39-108 authorizes IDEQ to conduct investigations, conduct a program of surveillance and of regular or periodic inspections, to enter at all reasonable times upon any private or public property, upon presentation of appropriate credentials, for the purpose of inspecting or investigation to ascertain possible violations of IDEQ rules, permits, requirements or orders. Warrantless searches are prohibited, in the absence of either consent or exigent circumstances such as public health or environmental emergency.</p> <p>ii. The highlighted portion of the above passage appears to imply that inspectors or compliance</p>	<p>Only if the highlighted sentence is taken out of context and not read to include the previous sentence. Basically, the permittee must give consent (it's a condition of the permit). If they do not, then IDEQ inspectors must get a warrant. However, IDEQ can find the permittee in violation by not giving consent.</p>	The AG's statement has been updated to clarify that inspections are conducted within the fullest extent allowed by U.S. and Idaho Constitutional search and seizure law.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
			officers must always obtain warrants before conducting any IPDES inspection. Can IDEQ and the AG's Office please clarify what appears to be an inconsistency?		
87	Enforcement Proc. Manual	2.1	The end of Section 2.1 references out of date materials for inspector training. EPA recommends they cite training available on EPA's National Enforcement Training Institute (NETI) eLearning Center which can be found at https://www.epa.gov/compliance/national-enforcement-training-institute-neti-elearning-center and the recently revised <u>NPDES Compliance Inspector Manual (EPA-305-K-17-001)</u> as training resources.	Thank you for the recommendation.	Corrected end of Section 2.1 to reflect the appropriate references for training materials.
88	Enforcement Proc. Manual	3.5.1	a. The SNC criteria defined in the manual does not go far enough to address SNC for approved pretreatment programs where IDEQ would be the approval authority or industrial users (IUs) where IDEQ would be the control authority. IDEQ should incorporate elements from the following materials into the non-wet weather SNC criteria or incorporate these materials by reference: i. September 27, 1989 EPA memo , "FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation Requirements". (Elements of the Level I criteria stated in this memo appear to be	Thank you for the recommendation.	Corrected Section 3.5.1 to reflect the appropriate references for significant non-compliance criteria for pretreatment programs.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
			covered already in the bullets on Page 18, but Level II criteria should be incorporated/paraphrased.) ii. 40 CFR § 403.8(f)(2) (Procedures to ensure compliance with the requirements of a Pretreatment Program. Recommend incorporating IU compliance by reference.)		
89	Enforcement Proc. Manual	App. D	Example case referral document does not appear to refer any cases to the Deputy AG for criminal enforcement.	Thank you for the recommendation.	IDEQ added another item to the example case referral document: "f. Request Deputy Attorney General to investigate criminal proceedings"
90	Enforcement Proc. Manual	6.2	Roles and Responsibilities; Idaho Office of Attorney General: The paragraph provides for a liaison function only. IDEQ is not assigning anyone to serve as a criminal prosecutor and see their role as solely one of coordinating with CID. That is not satisfactory as IDEQ is not properly staffing this important component of a criminal enforcement program.	Thank you for the recommendation.	IDEQ changed the manual to reflect that the Deputy Attorney General assigned to assist the IPDES program is chiefly responsible for providing counsel to IDEQ in the investigation and prosecution of criminal cases. Additional responsibilities of this role include communicating and coordinating with EPA CID, the US Attorney, and the Idaho Dept of Law Enforcement. The previous language emphasized the liaison role more than the advisor role which is not accurate.
91	Enforcement Proc. Manual	6.2	Roles and Responsibilities; EPA Criminal Investigations Division: There is only one (1) CID agent in Idaho as of June 2017. Darren Mogleston has retired. His name should be removed from the document. Further, EPA will not be backfilling that position making	Thank you for the recommendation.	IDEQ has made the appropriate change removing specific names from the section regarding EPA CID.

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
92	Enforcement Proc. Manual	6.2.2	<p>it even more important that Idaho develop and provide for filling criminal investigator positions.</p> <p>Field Investigation of Possible Criminal Violations and Notification: The first paragraph states IDEQ does not have dedicated criminal investigators. This is an obvious problem as mentioned above. IDEQ needs to staff a criminal investigator position.</p>	<p>IDEQ staffed a criminal investigator in the past to handle investigations into environmental crimes. There was not enough work to keep this person occupied on a full-time basis. IDEQ does have access to criminal investigators in the Attorney General's Office as well as through the Idaho State Police and may utilize these resources as needed.</p>	<p>IDEQ provided further description in the Program Description and the IPDES Enforcement Procedures Manual regarding the ability of the agency to coordinate with the AG's office and utilization of the criminal investigators available there.</p>
93	Enforcement Proc. Manual	6.2.2	<p>Field Investigation of Possible Criminal Violations and Notification; 2. Evidence Collection: Civil inspectors without proper training in criminal procedure can potentially compromise a criminal case. This is applicable to any evidence collection and especially so with witness interviews. IDEQ needs dedicated and trained criminal investigators. If an IDEQ civil inspector collects evidence or conducts interviews at a crime scene and compromises it that would make it less likely EPA CID could pursue it.</p>	<p>IDEQ will provide basic and advanced criminal investigation training to the state office Compliance and Enforcement Coordinators. In addition, the AG's office has committed to providing basic training to regional Compliance Officers to ensure that they have a basic understanding of what to do should they encounter a situation they believe may be criminal. In essence, the civil inspector would not pursue the collection of evidence or interviewing of witnesses, but instead refer the matter to the criminal investigator at the earliest possible time. This training is identified in the Program Description Appendix B Capacity Building Plan.</p>	<p>The Program Description and the IPDES Enforcement Procedures Manual has been updated to reflect these processes.</p>

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
94	Enforcement Proc. Manual	6.2.3	Notification Process and Referral to EPA CID: This whole section is problematic not only because it relies on CID to investigate their cases but also it has no time lines. Given Idaho's inadequate statute of limitations of one year, how long will it take to go through all the steps outlined here and then call CID. If CID takes the case we can apply the federal 5 year SOL. However, if Idaho decides to take the case, how long would it take them to complete the steps they have outlined? It would be helpful if IDEQ established time lines for the various steps to assure they could prosecute a case if they decided to take one.	The timeframe needed to complete the steps outlined in Section 6.2.3 may be as short as one day or up to one month. This should not have any significant impact on EPA CID to investigate.	IDEQ updated 6.2.3 to provide clearer timelines for the steps involved when referring a case to EPA CID.
95	Enforcement Proc. Manual	4.4	On page 30, the State notes that "If the Compliance Officer determines that the facility has satisfactorily remedied the violations cited in the Noncompliance letter, the Compliance Officer may issue of Notice of No Further Action (NONFA). . . The NONFA terminates the administrative enforcement process related to the issuance of a Noncompliance letter [and demonstrates] IDEQ's closure of the enforcement action." This is a change from the prior submission, and re-raises the concern that intermittent violations may be forgiven in the event of a NONFA. Further, it is unclear as to who the Compliance Officer is for this purpose – a supervisor or	Thank you for the recommendation.	IDEQ amended the following language to clarify that the NONFA is issued by the Regional Administrator not the Compliance Officer "the Compliance Officer may recommend that the Regional Administrator issue a Notice of No Further Action (NONFA)." Also IDEQ added the following to clarify that role the NONFA plays in addressing noncompliance "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

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
			field staff? (This kind of decision should never be made by inspectors/field staff.)		become aware of new or additional information regarding the specific matter or any other violations.
96	Enforcement Proc. Manual	4.5	<p>Page 32 describes a Compliance Agreement Schedule (CAS), which appears to be what we would recognize as an administrative compliance order. EPA's concerns here are twofold: First, the State doesn't explain how the CAS relates to other enforcement options, such as a Noncompliance letter (which also can provide for a schedule) or an NOV (a penalty/compliance formal administrative action). Second, the Manual states that "Terms of a CAS may not exceed ten years, but successive agreements may be entered into." This is an <i>extremely</i> long period of time for an administrative schedule, let alone the possibility of renewal. It is equivalent to the longest compliance schedules EPA enters into in its judicial civil enforcement cases. The Manual provides no context in either circumstance.</p>	<p>A CAS is a formal enforcement action taken by IDEQ. It would not be part of a noncompliance letter as those are informal enforcement actions (although, the noncompliance letters may lead to a CAS). Also, noncompliance letters do not provide for compliance schedules, they do provide a timeframe (in terms of days, weeks, or months) for a facility to correct a non-compliance issue such as updating a QAPP. IDEQ does understand the general confusion that this document may cause with regards to these items. That is why the supplemental Enforcement Response Guide was developed. IDEQ will work to enhance the clarity of this section. Regarding the terms of a CAS: this is legislatively dictated and IDEQ will utilize the flexibility allowed. The CWA and CFR do not put a restriction on the time period of an administrative schedule.</p>	<p>The EPM has been updated by moving the section regarding CAS from before NOV to after NOV to provide clarity on how CAS fit into the formal enforcement actions available to IDEQ. The Enforcement Response Guide provides the clarity regarding how CAS relates to other enforcement options.</p>
97	Enforcement Proc. Manual		<p>EPA's other concern, which is critical, relates more generally to the administrative enforcement timeline. Idaho's two year SOL places a burden on the State to provide how it will stay on top of violations before they are lost to the short limitations period. The</p>	<p>IDEQ issues NOVs with a tolling agreement to preserve the ability to enforce if the statute of limitations is approaching. However, IDEQ is authorized to implement the RCRA and federal clean air act and has experience with similar statutes of limitations</p>	<p>IDEQ has added to the IPDES Program Description in Chapter 12 Enforcement, more detail regarding how civil and administrative enforcement actions are handled to ensure that the appropriate statute of limitations will be met.</p>

Comment No.	Document	Section/Heading	Narrative Description of Issue	IDEQ Response	Changes Made
			<p>Manual on page 38 notes that negotiations over a Notice of Violation can run for as long as 180 days, and that (at 5.3 on page 47) that “Generally, the civil referral should be submitted to the Attorney General’s Office within one year.” The State needs to provide more information on how these time periods (the SOL, the 180 days for NOV negotiation, and the one year for a civil referral) would interact in the case of a matter than ultimately would be filed in court. In particular, what starts the clock on the one year period – the inspection, the report of violation, the end of the NOV negotiation, or the beginning of writing the litigation report? And how would the State avoid losing virtually all of its penalty claim to the short SOL?</p>	<p>where the agency works within those constraints to pursue enforcement. IDEQ staff does have experience in tracking violations and ensuring that the appropriate enforcement action is pursued. Additionally, the IPDES program is building an online software application that will help identify issues (violations of DMRs etc.) and track the ensuing enforcement actions (both formal and informal).</p> <p>General rule of thumb is that the trigger is when the agency knows or ought to have known of the violation (typically the inspection or report of information). The discovery of fraudulently reported information would be the date of knowledge.</p>	