

# **Idaho Pollutant Discharge Elimination System**

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IPDES Permitting/Permit Writers' Manual



**State of Idaho  
Department of Environmental Quality**

**November 2015**



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IPDES Permitting/Permit Writers' Manual

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

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## Table of Contents

Executive Summary .....	iv
1 Introduction .....	1
1.1 Purpose .....	1
1.2 Electronic IPDES Information .....	2
Electronic Tools .....	2
1.3 Legislative and Regulatory Citations .....	3
1.4 Hyperlinks in this Document .....	3
2 Development of the Clean Water Act, NPDES Program, and IPDES Program.....	3
2.1 History of Water Pollution Control in the United States.....	3
2.2 Evolution of the NPDES Program .....	6
2.3 IPDES Program Development .....	8
2.4 NPDES Statutory Framework and IPDES Regulations .....	8
2.4.1 Permit.....	8
2.4.2 Person.....	9
2.4.3 Pollutant.....	9
2.4.4 Waters of the United States.....	9
2.4.5 Point Source .....	10
2.4.6 Direct Discharge and Indirect Discharger.....	10

## List of Tables

## List of Figures

## List of Equations

## **Executive Summary**

To be completed after all content is developed.

# 1 Introduction

This manual reviews the statutory and regulatory framework of the Idaho Pollutant Discharge Elimination System (IPDES) program and examines technical considerations for developing IPDES permits for wastewater discharges. The manual is primarily designed to assist the regulated community (permittees) select and apply for the proper permit to address proposed wastewater discharges to waters of the United States in Idaho. Additionally, this manual is designed for new permit writers becoming acquainted with the IPDES Program and the process of permit writing but can also serve as a reference for experienced permit writers or anyone interested in learning about the legal and technical aspects of developing IPDES permits. This manual was modeled after the 2010 United States Environmental Protection Agency's (EPA's) *NPDES Permit Writer's Manual*:

[http://water.epa.gov/polwaste/npdes/basics/upload/pwm\\_2010.pdf](http://water.epa.gov/polwaste/npdes/basics/upload/pwm_2010.pdf).

## 1.1 Purpose

The purpose of this *IPDES Permitting/Permit Writers' Manual* is to provide the following:

- Overview of the scope and the statutory and regulatory framework of the IPDES Program
- Description of the essential components of a permit and provide an overview of the permitting process
- A general reference for permit writers that outlines and explains the core permit areas of the IPDES permit program
- Assistance for the regulated community to
  - Determine whether an IPDES permit is applicable for their facility or activity
  - Identify application(s) that must be completed, and
  - Submit the required information to apply for each type of permit
- Description of the different types of effluent limitations and the legal and technical considerations involved in developing effluent limitations
- Description of the legal and technical considerations involved in developing other permit conditions:
  - Standard conditions
  - Monitoring and reporting requirements
  - Special conditions
- Description of other permitting considerations:
  - Variances
  - Antibacksliding
  - Other applicable statutes
- Explanation of the administrative process for issuing, modifying, revoking, and terminating IPDES permits

The core permit areas form the foundation of the IPDES Program on which guidance for specific areas of the program (e.g., stormwater, municipal, industrial, concentrated aquatic animal production facilities) can be built. While the guidance for these core permit areas will be

applicable in many cases, the Idaho Department of Environmental Quality (DEQ) will tailor specific aspects of its IPDES permitting procedures to address state and local laws and site-specific concerns and conditions.

This manual is not intended to be a standalone reference document. Rather, it establishes the framework for IPDES permit application and development, and will be supplemented, where necessary, by additional Idaho and federal regulations, policy, and detailed guidance applicable to specific circumstances. To that end, this manual identifies and references relevant regulations, policy, and other guidance documents throughout the text.

## 1.2 Electronic IPDES Information

DEQ has developed websites, which contain electronic publications that are available to assist the regulated community apply for individual permits or complete a Notice of Intent (NOI) seeking coverage for a surface water discharge under a general permit. These websites are accessible from DEQ's Water Quality Permitting, National Pollutant Discharge Elimination System (NPDES) website: [deq.idaho.gov/permitting/water-quality-permitting/npdes/](http://deq.idaho.gov/permitting/water-quality-permitting/npdes/), and will be updated periodically as new guidance is published.

Additional tools discussed below have been created to assist permit writers with specific aspects of permit development and are discussed in their respective sections. The electronic tools listed below apply to all aspects of permit development and serve as valuable references for the permit writer.

### Electronic Tools

IPDES personnel composing permits, or providing compliance, inspection, and enforcement (CIE) oversight will utilize electronic tools that include, but are not limited to spreadsheets and word processing applications, to evaluate applications, compose draft permits, assess compliance activities, schedule, and document inspections. Many of these electronic tools are affiliated with the IPDES database developed to support Compliance, Reporting, Inspection, and Permitting System (CRIPS) activities. A web-based interface with the CRIPS database will also provide the regulated community a single location for completing and submitting:

- Applications for Individual Permits (IP)
- Notices of Intent (NOI) to obtain coverage under a General Permit (GP)
- Notices of Termination (NOT) for regulated community activities no longer discharging pollutants to waters of the United States in Idaho.
- No Exposure Certifications (NOEs) and Low Erosivity Waiver (LEW) requests
- Annual Reports and other permit compliance documentation
- Sewage Sludge/Biosolids Annual Program Reports (40 CFR 503)

The IPDES web interface will enable dischargers to electronically sign and submit permit applications and NOIs; submit and track permit compliance documents; and view enforcement, compliance, and inspection documents. DEQ anticipates using EPA's electronic Data Monitoring Report (NetDMR) system since many Idaho facilities are already submitting the permit required DMRs utilizing this system. Additional information on CRIPS will be provided throughout this document.



### 1.3 Legislative and Regulatory Citations

Different conventions are used to cite legislation and regulations in this manual. The following conventions are used:

- Idaho Code—Title of the code follow by the code citation: “Approval of State NPDES Program” (Idaho Code §39-175C). After initial use, the code is then referred to by the citation (e.g., Idaho Code §39-175C).
- Idaho Administrative Rules—Title of the rule is followed by the rule citation: “Rules Regulating the Idaho Pollutant Discharge Elimination System Program” (IDAPA 58.01.25). After initial use, the rule is then referred to by the rule citation (e.g., IDAPA 58.01.25).
- Code of Federal Regulations—Initial and subsequent references to CFRs use the regulation citation (e.g., 40 CFR 136).
- United States Code—Initial and subsequent references to US code use the code citation (e.g., 16 USC §1531 et seq. or 33 USC §§1251–1387).
- Clean Water Act—Title of the act is followed by the act citation: Clean Water Act Section 402 (e.g., CWA §402). After initial use, the act is then referred to by the act citation (e.g., CWA §402).

Most of the regulatory citations in this manual are for the “Rules Regulating the Idaho Pollutant Discharge Elimination System (IPDES) Program” (IDAPA 58.01.25) and 40 CFR. Other titles are explicitly referenced and are in the format for the first regulatory citation (e.g., 40 CFR 402).

### 1.4 Hyperlinks in this Document

Where a website provides supplementary information or is referenced in this manual, the website address appears in blue italics so that readers can reference the address in printed and electronic versions of this document. In the electronic version, the website address is hyperlinked to the site. Correct website addresses and hyperlinks are provided; however, these references can change or become outdated after this manual’s publication.

## 2 Development of the Clean Water Act, NPDES Program, and IPDES Program

This section presents an overview of the history of water pollution control in the United States, the evolution and accomplishments of the NPDES Program, and the development of the IPDES Program.

### 2.1 History of Water Pollution Control in the United States

Major water pollution control legislation in the United States dates back to the end of the 19th century. A summary of key legislative and executive actions in the history of developing the clean water program in the United States is provided below:

- 1899 Rivers and Harbors Act
- 1948 Federal Water Pollution Control Act (FWPCA)
- 1965 Water Quality Act
- 1970 Executive Order—EPA established
- 1970 Refuse Act Permit Program (RAPP)
- 1972 FWPCA Amendments
- 1977 Clean Water Act
- 1987 Water Quality Act
- 2014 Idaho State Legislature passed statute generating Idaho Code §39-175C authorizing DEQ to pursue delegated authority from EPA for the NPDES Program

The first major water pollution control statute was the 1899 Rivers and Harbors Act, which established permit requirements to prevent unauthorized obstruction or alteration of any navigable water of the United States. The act focused on navigation rather than water quality.

The 1948 Federal Water Pollution Control Act (FWPCA) initiated the federal government's involvement in water pollution control for public health protection. The act allotted funds to state and local governments for water pollution control and emphasized the states' role in controlling and protecting water resources with few federal limitations or guidelines. The act, however, did charge the US Surgeon General with developing comprehensive programs to eliminate or reduce the pollution of interstate waters.

Over the next two decades, Congress became increasingly interested in the problem of water quality degradation. From 1956 through 1966, it enacted four major laws to strengthen the federal role in water pollution control, including the 1956 FWPCA Amendments and the 1961 FWPCA Amendments. Those statutes focused primarily on providing funding to municipalities to construct wastewater treatment plants.

Just a few years later, Congress further strengthened federal water pollution control laws by enacting the 1965 Water Quality Act. This law created the Federal Water Pollution Control Administration and represented a major regulatory advancement in water pollution control by requiring states to develop water quality standards for interstate waters by 1967. The Water Quality Act also called for states to quantify the amount of pollutants that each discharger could release without exceeding the water quality standards (i.e., pollutant loadings). Despite escalating public concern and increased public spending, only about half of the states developed water quality standards by 1971. Furthermore, enforcement of the federal statute was minimal because the regulatory agencies had to demonstrate a direct link between a discharge and a health or water quality problem, and the scientific data to make such demonstrations were often lacking. Finally, there were no criminal or civil penalties for violations of statutory requirements.

Growing concern about the environment prompted President Nixon to form EPA in 1970 to enforce environmental compliance and consolidate federal pollution control activities. That year, the President also created the Refuse Act Permit Program (RAPP) through Executive Order 11574 and under the authority of section 13 of the 1899 Rivers and Harbors Act (a section also known as the Refuse Act). This new permitting program was focused on controlling industrial water pollution. EPA and the US Army Corps of Engineers (USACE) would prepare the program requirements and the USACE would administer the program. EPA was tasked with developing

*guidelines on effluent quality* for 22 different categories of sources. A discharger would apply for a permit, and the USACE would ask EPA if the proposed effluent levels were consonant with state water quality standards and with the newly developed guidelines on effluent quality. States would be asked to examine permit applications and advise EPA whether existing or proposed treatment processes would ensure that established water quality standards would be met. EPA would review the state's response for interstate waters and instruct USACE whether to issue the permit. However, the US District Court for the District of Columbia struck down RAPP (*Kalur v. Resor*, Civ. Action No. 1331-71 [DDC Dec. 21, 1971]) because the program would allow the issuance of permits to discharge refuse to non-navigable tributaries of navigable waterways, which the Court said exceeded the authority given in the Act, and because the regulations implementing the program did not require compliance with certain procedural requirements of the National Environmental Policy Act.

Because of the perceived need for a discharge permit program, and to rectify the problems encountered in earlier water pollution control legislation, Congress enacted the 1972 FWPCA Amendments. This legislation, which was passed over a Presidential veto in November 1972, provided a comprehensive recodification and revision of past federal water pollution control law. The 1972 amendments marked a distinct change in the philosophy of water pollution control in the United States and marked the beginning of the present water programs, including the NPDES permit program. Under those amendments, the federal government assumed a major role in directing and defining water pollution control programs. In establishing the basis for clean water programs, Congress sought a balance between economics (considering both the costs and benefits of cleanup) and ecology (setting deadlines and ambitious requirements for reducing discharges and restoring water quality).

The 1972 FWPCA Amendments established a series of goals in section 101. Perhaps the most notable goal was that the discharge of pollutants into navigable waters be eliminated by 1985. Although that goal remains unmet, it underlies the CWA approach to establishing the technology standards that are implemented through technology-based effluent limitations (TBELs) in NPDES permits. The 1972 FWPCA Amendments also set an interim goal of achieving, “water quality [that] provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water” by July 1, 1983. The goal is commonly referred to as the *fishable, swimmable* goal of the act and is one of the factors that states must consider in developing their water quality standards. The water quality standards are implemented in NPDES permits through water quality-based effluent limitations (WQBELs). By prohibiting the discharge of a pollutant or pollutants from a point source to waters of the United States—except as in compliance with the statute—the 1972 FWPCA Amendments also established the important principle that the discharge of pollutants to navigable waters is not a right.

Since 1972, the FWPCA has been further amended on several occasions, including the 1977 Clean Water Act (CWA), which is now the name for the statute, and the 1987 Water Quality Act (WQA). Both of these statutes are discussed further in section 2.1 below with regard to their impact on the evolution of the NPDES Program. Exhibit B-1, Index to Sections of the CWA, in Appendix B of this document matches the key sections of the CWA to their appropriate reference in the US Code (33 USC §26 and 33 USC §§1251–1387) at <http://www2.epa.gov/laws-regulations>.

## 2.2 Evolution of the NPDES Program

FWPCA, Section 402 of Title IV, Permits and Licenses Certification, created the federal system for permitting wastewater discharges, known as the NPDES Program. Under the requirements of the program, a point source may be authorized to discharge pollutants into waters of the United States by obtaining a permit. Section 2.4 discusses this basic statutory framework in detail. A permit provides two types of control: technology-based limitations (based on the technological and economic ability of dischargers in the same category to control the discharge of pollutants in wastewater) and water quality-based limitations (to protect the quality of the specific waterbody receiving the discharge).

The 1972 FWPCA Amendments established several important requirements and deadlines. Municipal facilities were required to meet secondary treatment standards by July 1, 1977. Industrial facilities were required to meet two levels of technology standards: *Best Practicable Control Technology Currently Available* (BPT) and *Best Available Technology Economically Achievable* (BAT), which would bring them further toward the goal of eliminating the discharge of all pollutants. [CWA §301(b)(2)(A)]. Compliance deadlines for BPT and BAT were established as of July 1, 1977, and July 1, 1983, respectively.

In addition to BPT and BAT requirements for industrial categories, the 1972 FWPCA Amendments established *new source performance standards* (NSPS) or best available demonstrated control technology including where practicable a standard permitting no discharge of pollutants [CWA §306(a)]. The legislative history indicates that Congress believed that technologies would be more affordable for new dischargers who could plan control technologies at the design phase. The standards represent state-of-the-art control technologies for new sources because the permittees have the opportunity to install the most efficient production processes and the latest in treatment technologies during construction. NSPS are effective on the date the facility begins operation, and the facility must demonstrate compliance within 90 days of start-up.

EPA tried to set national, uniform effluent limitations guidelines and standards (effluent guidelines) as a basis for technology-based limitations; however, most effluent guidelines were not in place when the first set of permits was issued between 1973 and 1976. About 75% of the first round permits were issued under a section of the act that allows a permit writer to use best professional judgment to establish case-by-case limitations. Using that approach, a single permit writer developed effluent limitations for a specific facility using knowledge of the industry and the specific discharge, rather than using a set of national standards and limitations developed by EPA for the entire industry.

This first round of permitting focused on *conventional pollutants*, which generally are found in sanitary waste from households, businesses, and industries. CWA §304(a)(4) and 40 CFR 401.16 designate the conventional pollutants with oil and grease added to 40 CFR 401.16 in 1979. The following are formally designated as conventional pollutants:

- Five-day biochemical oxygen demand (BOD<sub>5</sub>)
- Total suspended solids (TSS)
- pH
- Fecal coliform

- Oil and grease

The 1972 FWPCA Amendments, however, also required that EPA publish a list of toxic pollutants within 90 days and propose effluent standards for those pollutants 6 months later. EPA was not able to meet those requirements because of the lack of information on treatability. The Natural Resources Defense Council (NRDC) sued EPA, resulting in a court supervised *consent decree* (NRDC et al. v. Train, 8 E.R.C. 2120, DDC 1976) that identified the following:

- Toxic (priority) pollutants to be controlled.
- Primary industries for technology-based control.
- Methods for regulating toxic discharges through the authorities of the FWPCA Amendments.

The provisions of the consent decree were incorporated into the framework of the 1977 FWPCA Amendments, formally known as the CWA. This statute shifted the emphasis of the NPDES Program from controlling conventional pollutants to controlling toxic pollutant discharges. CWA §307(a)(1) required EPA to publish a list of toxic pollutants or combination of pollutants. Those pollutants often are called the priority pollutants and are listed in 40 CFR 401.15. The terms *toxic pollutant* and *priority pollutant* will be used interchangeably throughout this document.

CWA §307(a) originally identified 65 toxic pollutants and classes of pollutants for 21 major categories of industries (known as *primary industries*). The list was later further defined as the current list of 126 toxic pollutants. The priority pollutants are listed in Appendix A of 40 CFR 423. Note that the list goes up to 129; however, there are only 126 priority pollutants because 017, 049, and 050 were deleted.

The 1977 CWA adjusted technology standards to reflect the shift toward control of toxics, clarified and expanded the concept of BAT controls, created a new level of control for conventional pollutants, and made changes to strengthen the industrial pretreatment program. The 1977 law created a new pollutant category, nonconventional pollutants, that included pollutants (such as chlorine and ammonia) not specifically categorized as conventional or toxic. The CWA clarified that BAT covers both toxic and nonconventional pollutants, extended the compliance deadline for BAT for toxic pollutants to July 1, 1984, established a three-year deadline for compliance with BAT for newly listed toxics, and gave industries until as late as July 1, 1987 to meet BAT requirements for nonconventional pollutants. In addition, conventional pollutants, controlled by BPT and BAT in the first round of permitting, were now subject to a new level of control termed *Best Conventional Pollutant Control Technology* (BCT). The CWA established a compliance deadline for BCT of July 1, 1984. BCT was not an additional performance standard, but replaced BAT for the control of conventional pollutants. Finally, among other changes, the 1977 CWA authorized EPA to approve local pretreatment programs and required authorized states to modify their programs to provide for local pretreatment program oversight.

The 1977 CWA recognized that the technology-based limitations were not able to prevent the discharge of toxic substances in toxic amounts in all waterways. To complement its work on technology-based limitations, EPA initiated a national policy in February 1984 to control toxics using a water quality approach. On February 4, 1987, Congress amended the CWA with the 1987

WQA that outlined a strategy to accomplish the goal of meeting state water quality standards. The 1987 WQA required all states to identify waters that were not expected to meet water quality standards after technology-based controls on point source were imposed. Each state then had to prepare individual control strategies to reduce toxics from point and nonpoint sources to meet the water quality standards. Among other measures, those plans were expected to address control of pollutants beyond technology-based levels.

The 1987 WQA further extended the compliance deadline for BAT- and BCT-based effluent limitations, this time to a new deadline of March 31, 1989. The 1987 WQA also established new schedules for issuing NPDES permits to industrial and municipal stormwater dischargers. In addition to meeting water quality-based standards, industrial stormwater discharges must meet the equivalent of BAT and BCT effluent quality standards. *Municipal separate storm sewer systems* (MS4s) were required to have controls to reduce pollutant discharges to the *maximum extent practicable* (MEP), including management practices, control techniques and system design and engineering methods, and such other provisions as the Administrator deems appropriate for the control of such pollutants (CWA §402(p)(3)(B)). The 1987 WQA also required EPA to identify toxics in sewage sludge and establish numeric limitations to control such toxics. A statutory *antibacksliding* requirement in the WQA specified the circumstances under which an existing permit can be modified or reissued with less stringent effluent limitations, standards, or conditions than those already imposed.

Since 1987, there have been minor revisions to the CWA (e.g., Combined Sewer Overflow program requirements). However, the basic structure of the NPDES Program remains unchanged from the framework established in the 1972 FWPCA Amendments.

## 2.3 IPDES Program Development

The 2014 Idaho State Legislature passed a statute generating Idaho Code §39-175C authorizing DEQ to pursue delegated authority from EPA for the NPDES Program. In December 2014, Idaho began a negotiated rulemaking process to develop rules that comply with the requirements established in 40 CFR 123 for states pursuing delegated authority to execute the NPDES Program. These proposed rules will be assessed in the 2016 legislative session for statewide implementation. DEQ expects to submit its application package to EPA in September 2016.

## 2.4 NPDES Statutory Framework and IPDES Regulations

As noted in section 2.3, under the IPDES Program any point source that discharges or proposes to discharge pollutants into waters of the United States is required to obtain an IPDES permit. Understanding how each of these terms (i.e., permit, person, pollutant, waters of the United States, point source, direct discharge, and indirect discharger) is defined is the key to defining the scope of the IPDES Program.

### 2.4.1 Permit

A *permit* (IDAPA 58.01.25.010.63) is “*the authorization, license, or equivalent control document issued by the Department to implement the requirements*” stipulated in

IDAPA 58.01.25. “*This does not include any permit which has not yet been the subject of final Department action, such as a draft permit or a proposed permit.*”

An IPDES permit typically authorizes a discharge of a specified amount of pollutant(s) into waters of the United States in Idaho under certain conditions; however, IPDES permits can also authorize facilities to process, incinerate, landfill, or beneficially use biosolids (sewage sludge). Permits may be revoked for cause such as noncompliance with the conditions of the permit (IDAPA 58.01.25.203.03.a).

#### **2.4.2 Person**

Permits are issued to persons (IDAPA 58.01.25.010.64) defined as “*an individual, public or private corporation, partnership, association, firm, joint stock company, joint venture, trust, estate, state, municipality, commission, political subdivision of the state, state or federal agency, department or instrumentality, special district, interstate body or any legal entity, or an agent or employee thereof, which is recognized by law as the subject of rights and duties.*” A person does not have a right to receive a permit.

#### **2.4.3 Pollutant**

The term *pollutant* (IDAPA 58.01.25.010.66) is defined very broadly and includes “*dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:*

- *Sewage from vessels; or*
- *Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state in which the well is located, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources. (NOTE: Radioactive materials covered by the Atomic Energy Act are those encompassed in its definition of source, byproduct, or special nuclear materials. Examples of materials not covered include radium and accelerator-produced isotopes. See Train v. Colorado Public Interest Research Group, Inc., 426 U.S. 1 (1976).)*”

#### **2.4.4 Waters of the United States**

The proposed term “waters of the United States” is currently being litigated in multiple courts within the United States. Consequently, DEQ has incorporated by reference the term “waters of the United States or waters of the U.S.” in IDAPA 58.01.25.003.aa as follows: “*The term “Waters of the United States or waters of the U.S.,” as defined in 40 CFR 122.2, revised as of August 28, 2015 by 80 Federal Register 37054-37127 (June 29, 2015), unless said revision is stayed, overturned or invalidated by a court of law or withdrawn by EPA, in which case the Department incorporates by reference the term “Waters of the United States or waters of the U.S.” as defined in 40 CFR 122.2, revised as of July 1, 2015.*”

### **2.4.5 Point Source**

Pollutants can enter water via a variety of pathways including agricultural, domestic and industrial sources. For regulatory purposes, these sources generally are categorized as either point sources or nonpoint sources. The term *point source* is defined in IDAPA 58.01.25.010.65 as “*any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.*” Point source discharges include discharges from publicly owned treatment works (POTWs), industrial process wastewater discharges, runoff conveyed through a storm sewer system, and discharges from concentrated animal feeding operations (CAFOs), among others.

### **2.4.6 Direct Discharge and Indirect Discharger**

Pollutant contributions to waters of the United States may come from both direct and indirect discharges. *Direct discharge* is defined in IDAPA 58.01.25.010.24 as “*the discharge of a pollutant to waters of the United States.*” An *indirect discharger* is defined in IDAPA 58.01.25.010.45 as “*a nondomestic discharger introducing pollutants to a privately or publicly owned treatment works.*” IPDES permits are issued only to direct dischargers. Idaho’s Pretreatment Program controls industrial and commercial indirect dischargers (for more information on indirect discharges, see the pretreatment section of this manual).