



IPDES User's Guide Volume 4 Response to Comments

September 19th, 2019 comment deadline

Summary of Comments Received

Idaho Conservation League

1. The introductory paragraph to Section 7 of the UGV4 states, "An AFO is a CAFO if it meets the regulatory definition of a Large or Medium CAFO or has been designated as a CAFO by DEQ in coordination with Idaho State Department of Agriculture (ISDA)." We are concerned with this language as it may suggest to an applicant that both IDEQ and ISDA are regulating CAFOs under the IPDES program. We encourage IDEQ to review the entirety of section 7 to ensure that it is clear to all applicants that the authority to administer the CAFO portion of the IPDES program resides solely with IDEQ (83 Fed. Reg. 27,769, 27,770 (Jun. 14 2018); ER 269 ("The Idaho program application provides that IDEQ will be the approved agency for the entire IPDES program.")). It's important that applicants clearly understand the relationship between the two agencies.

DEQ has updated the second paragraph of section 7 by essentially deleting, "in coordination with Idaho State Department of Agriculture (ISDA)."

2. Section 7.1.2.2 Medium CAFOs of the UGV4 should include discharges to Waters of the U.S. (WOTUS) via groundwater and/or a direct hydrologic connection in their bulleted list detailing the means of which pollutants can be discharged to a WOTUS. The EPA is currently wavering on their responsibility to regulate discharges to WOTUS via groundwater. Nonetheless, the most relevant case law (e.g. - County of Maui, Hawaii v. Hawai'i Wildlife Fund) affirms that the manner in which pollutants reach a WOTUS is irrelevant; so long as pollutants from a point source reach a WOTUS, then that point source is subject to the permitting requirements outlined in the CWA.

The guidance document is intended to discuss the existing general permit and how to obtain permit coverage and compliance. DEQ will follow all applicable case law, federal regulations, and guidance in this area.

3. Sections 7.1.2.5 and 7.1.2.6 discuss how the significance of a facility's contribution of pollutants to waters of the U.S. will be used to determine if an AFO is a CAFO. We feel its important that DEQ add language in section 7 stating that an AFO that discharges any amount of pollution to a WOTUS - regardless of the significance of said pollution or a CAFO designation - must have a permit to discharge that pollution pursuant to the CWA. We don't want this guidance document

to give the impression that AFOs that do not meet the thresholds to be designated as a CAFO, yet still discharge pollution to a WOTUS, are exempt from CWA permitting requirements.

The final sentence of the second paragraph in 7.1.1.6 reads: *"If the facility does not discharge to a water of the United States, the AFO will not be designated as a CAFO and will not require an IPDES permit."*

4. The third sentence in this section reads, "DEQ compliance monitoring activates..." We assume "activates" is a typo and should instead read "activities."

Thank you, typo corrected.

5. IDEQ states that the prohibition of pesticide application in Tier 3 waters may be lifted if, among other things, the "discharge only degrades water quality on a short-term or temporary basis." We assume that this language stems from IDAPA 58.01.02.052.09.f.ii, which permits nonpoint source activities to continue such that they, "...shall not affect short term or temporary activities that do not alter the essential character or special uses of a segment..." If our assumption is correct, we are concerned with IDEQ's application of this rule language in this context. First, we wish to stress that short-term or temporary degradation is not the same as an activity that would "not alter the essential character or special uses of a segment." Second, this section regulates nonpoint activities, not point sources such as pesticide application. Finally, the topic of antidegradation and short-term or temporary degradation has come up before with regards to Tier 2 water bodies. In a July 2nd, 2015 letter from the EPA to IDEQ, the EPA clarified that, to their knowledge, "DEQ has not identified in any finalized antidegradation implementation methods an explicit general exemption from Tier 2 review for short-term and temporary discharges and activities, or for temporary and short term degradation." If IDEQ wished to exempt such activities, the EPA recommended that IDEQ "either clearly identify the exemption provision in a revision to Idaho's antidegradation implementation rule or in finalization of Idaho's draft antidegradation implementation guidance." We assume the EPA's recommendations extend to Tier 3 waters. If IDEQ has fulfilled this obligation, we request that they provide a reference to a final and approved document that details such an exemption. Otherwise, we request that IDEQ remove the above referenced language.

We edited section 8.1.2.2 to make it clear that the exceptions in the existing permit include, "To restore or maintain water quality," and "To protect public health or the environment."

6. In response to the discussion during the September 5th meeting, we wish to clarify our comments regarding this section. We are not requesting that IDEQ retain PDMP records on their premises. However, should a member of the public request these records via a public records request then pursuant to Idaho Code 74-114 IDEQ is obligated to acquire these documents and provide them to the requestor.

The following text, already in section 8.2.2 of the UGV4, sufficiently covers the request: "The PDMP should be kept at the address included in the NOI. The permittee should supply the PDMP to DEQ, EPA, or local governing agencies upon request. DEQ will request to see the

PDMP during inspections, but will not retain the document in DEQ's possession." Idaho's PRR law stipulates that DEQ should supply records that the state has in their possession; DEQ does not intend to obtain and retain PDMPs in our records.

Chantilly Higbee

1. What is considered a degradant?

Degradants are the chemicals that result from the degradation (chemical decomposition) of the pesticide.