



Association of Idaho Cities
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April 30, 2020

Mr. Troy Smith
Idaho Department of Environmental Quality
1410 N Hilton
Boise, ID 83706

Re: AIC Comments on the April 15, 2020 draft Volume 5 IPDES Guidance

Dear Mr. Smith,

The Idaho Department of Environmental Quality (IDEQ) is seeking public comment on a draft Idaho Pollutant Discharge Elimination System (IPDES) Volume 5 Guidance (Guidance) for storm water permits. AIC and our Stormwater Technical Task Force have worked to review and develop comments on the April 20, 2020 version of the draft Guidance. AIC concurs with comments submitted by our other members on the Guidance.

AIC and our members appreciate IDEQ staff efforts and understand the advantages to Idaho cities for delegation of the Clean Water Act discharge permit program to Idaho including (1) access to regulators and technical compliance assistance, (2) increased competency of state regulators and technical compliance assistance, and (3) access to and improved coordination of state and federal financial and technical resources for facility planning and capital improvements.

Should you have questions concerning our attached comments, please feel free to contact us.

Sincerely yours,

Johanna M. Bell, PE
AIC Policy Analyst – Environment

cc: Susan Hawkins, AIC President
Kelley Packer, AIC Executive Director
Elaine Clegg, AIC Environment Committee Chair
AIC Municipal Water Users & Storm Water Task Force

Attachment



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General Comments

AIC and our members support the decision to develop a separate biosolids permitting guidance manual and look forward to working with IDEQ staff as this guidance is developed in the future.

There are significant differences among the various storm water permits (i.e., construction, industrial, and municipal) and associated requirements stem from the language contained within the Clean Water Act and supporting Code of Federal Regulations. That is, specific programmatic and performance requirements are unique and different between the industrial and construction permits, versus the municipal permits. Because of these differences, AIC suggests that the IDEQ staff consider the inclusion of unique introductory overviews for each of the programmatic and performance requirements pertinent to each type of storm water permit.

We also observe how the initial draft of the Municipal Separate Storm Sewer (MS4) permitting guidance is very general and does not appear to provide the type or level of detail necessary for an effective permitting program for these types of discharges. AIC would like to see IDEQ staff address the need for less generic guidance either by expanding the content in Volume 5 or consider the development of supplemental guidance. AIC is available to assist in these efforts and, to this end, would like to bring the 2018 National Association of Clean Water Agencies (NACWA) Stormwater Permitting Guide (Guide) to your attention as one of a number of helpful resources developed with the assistance of stakeholders and experts engaged with other States' more mature permitting programs.¹

Specific Comments

Section 1.2.3 Idaho Water Quality Standards

AIC requests that the standards of performance for these unique Permits be clarified in this or subsequent sections of the Volume 5 Guidance. A more detailed description is provided here for IDEQ staff's consideration. AIC encourages IDEQ to refer to the NACWA Guide and other resources from States that have more mature permitting programs and guidance.

The Code of Federal Regulations (CFRs) for storm water permits set forth requirements to reduce the discharge of pollutants to receiving water bodies to the maximum extent practicable (MEP), meet permit requirements, and meet water quality standards through the development and implementation of storm water management plans (SWMP) for regulated municipal discharges and storm water pollution prevention plans (SWPPP) for regulated construction site discharges.

¹ https://www.nacwa.org/docs/default-source/news-publications/white-papers/2018-03-07permittingguide.pdf?sfvrsn=29e1f761_4, accessed 4/29/2020. For a pdf copy please reach out to AIC.

Permittees of these permits are required to develop and implement these plans that involve implementation of a variety of Best Management Practices (BMPs) to reduce the discharge of pollutants. Specific to MS4s, MEP is the standard that establishes the level of pollutant reductions that operators must achieve through implementation of BMPs included in their SWMPs. Storm Water Management Program requirements are the controls used in place of numeric limits to achieve a reduction of pollutants in the storm water discharge from MS4s.

Notices of Intent

AIC requests that the “Notice of Intent” for individual and general permits include a requirement for the Permittee to seek approval if the discharge is designed to discharge into private systems.

Storm Water Construction General Permit - Compliance with Historic Preservation Requirements

AIC believes it would be best for the IDEQ to consult directly with the State Historic Preservation Office (SHIPO), instead of leaving this up to each individual application; especially where single-family home construction is subject to the CGP. For example, when an application is submitted online SHIPO should also be notified automatically. This is important for IDEQ, Permittee, and SHIPO coordination.

Further, AIC wonders which entity will define how the consultation process will be implemented? We believe the consultation process should be described, possibly with a checklist or other consultation template subject to public review and comment.

Oversight Coordination with MS4 Permittee Construction Permitting Programs, Especially for Single-Family Home Construction

AIC members are concerned that there may be significant political and social reactions to the dual permitting and oversight planned for construction for single-family home construction. This concern is much less for the larger construction sites, and our members see the additional compliance assistance resources from IDEQ as a real benefit from Idaho’s primacy for these permits.

Builders for single-family homes are unique from those engaged with larger projects, having less experience with these types of permit requirements. As our members continue to ramp up their permitting and oversight for these types of stakeholders, AIC encourages IDEQ staff to become more familiar with how other States with more mature programs have taken steps to address these coordination issues and give some thought as to how the coordination may be structured for Idaho.

Idaho SWPPP Template

A few other questions AIC and our members have include: When will Idaho develop its own SWPPP template? Is IDEQ planning to include elements in the Idaho SWPPP template that are not addressed in the EPA’s?

AIC requests the opportunity to review draft versions of the Idaho SWPPP template and looks forward to continuing to work with IDEQ on these and other important CGP resources.

Municipal Separate Storm Sewer System Permitting Guidance

E-Permitting

Phase 1 and phase 2 permits have differing authorizing language and case law. AIC would like to better understand how the e-permitting will differentiate between these two types of municipal permits; and suggest a section within the Guidance articulate how IDEQ's approaches may differ.

Phase 2 MS4 Permits – Template and Consistent Framework

AIC understands that for now the IDEQ is intending to develop the Guidance with individual Phase 2 MS4 permits in mind. Given this stated approach by IDEQ staff, AIC believes it is in everyone's interest for there to be a 'glide path' towards improved consistency for these types of MS4 Permits via an MS4 Permit Template that is available for public review and comment.

Phase 2 MS4 Remand Rule

The Phase 2 MS4 Permits issued by the EPA currently utilize new and revised requirements as informed by the Remand Rule. AIC requests that the Volume 5 Guidance include a section that articulates the optional controls provided for under the Remand Rule. Idaho Phase 2 MS4s have seen more flexibility over time in the permits issued by the EPA that AIC and members would like to preserve. These allowances set up a variety of projects and have been successfully implemented in Idaho.

5.1.4 Unauthorized Discharges - Natural Background Conditions

The list contained in this section identifies unauthorized discharges. The last bullet identified the following as an unauthorized discharge: "Material in concentrations that exceed applicable natural background conditions in receiving waters...)."

AIC and our members suggest that the discharge of material that exceed natural background conditions may be authorized in certain situations, especially when such discharges are to water bodies that have established waste load allocations for storm water discharges.

The IDAPA section referenced in the Guidance states:

09. Natural Background Conditions as Criteria. When natural background conditions exceed any applicable water quality criteria set forth in Sections 210, 250, 251, 252, or 253, the applicable water quality criteria shall not apply; instead, there shall be no lowering of water quality from natural background conditions. Provided, however, that temperature may be increased above natural background conditions when allowed under Section 401. (3-30-07)

AIC requests the Guidance delete the last bullet in this section and for IDEQ staff to take a closer look at more precise language that informs authorized discharges in light of both natural background and pollutant waste load allocations.