



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

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OFFICE OF
WATER AND WATERSHEDS

November 28, 2016

Mr. John Tippetts, Director
Idaho Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

Dear Mr. Tippetts:

On behalf of the Regional Administrator I would like to thank you for your November 8, 2016, letter in which you requested an extension of the statutory review period for the Idaho Pollutant Discharge Elimination System program. We agree that an extension is warranted and agree with your proposal to extend the review period to June 30, 2018.

The U.S. Environmental Protection Agency has a 90-day period of time to review and approve National Pollutant Discharge Elimination System (NPDES) program submissions unless an extension is mutually agreed upon pursuant to 40 CFR § 123.21(d).¹ As you know, the EPA received the Idaho Pollutant Discharge Elimination System (IPDES) program submission on August 31, 2016. Therefore, without an extension, the 90-day statutory review period would end on November 28, 2016, by which time EPA would have had to approve or disapprove the submission. If the EPA decided to approve the proposed program at that time, the authority to issue permits would transfer to the Idaho Department of Environmental Quality (IDEQ) as of the date of approval.²

Following receipt of the IPDES program submission on August 31, 2016, the EPA deemed the application complete on September 30, 2016. However, the EPA explained that a detailed review of the program submission was needed. More importantly, the EPA highlighted some initial concerns, which, depending on IDEQ's response, may require legislative changes to address. With respect to the request to extend the EPA's review period, the EPA considered IDEQ's intent to develop the funding and resources needed to implement the IPDES program, the need to address the EPA's initial concerns and the EPA's required public process.

The EPA anticipates significant time and effort will be required to complete the public process required under the CWA. This includes publishing notice of the application in the Federal Register (FR) and in the largest newspapers in the state to attract statewide attention and notifying persons known to be interested. The public process must include a comment period of not less than 45 days and the

¹ Pursuant to 40 CFR 123.21(b)(1), the statutory review period [i.e. the time period allotted for EPA review of the proposed state program under the Clean Water Act 402(c)(1)] begins on the date of receipt of the State's submission. The CWA allows for not more than 90 days after the date on which the State submitted the program, the EPA shall suspend issuance of permits. 40 CFR 123.61(b) states that within 90 days of receipt of the complete program submission under 123.21, the EPA shall approve or disapprove the program.

² 40 CFR 123.21(d) allows for the State and EPA to extend the statutory review period by mutual agreement. 40 CFR 123.61(c) states that "The Regional Administrator shall suspend the issuance of permits by EPA as of the date of program approval."

opportunity for public hearing(s). Additionally, pursuant to 40 CFR 123.61(b) following the comment period and hearing(s), the EPA must provide a responsiveness summary that includes the public participation activities conducted, describes matters presented to the public, summarizes significant comments received and explains the agency's response to these comments. Finally, the EPA must publish notice of the program approval in the FR.

Concurrent with the public process, the EPA must consult with Idaho tribes to invite their participation in the process and ensure that we have an opportunity to address their concerns about the transfer of NPDES permitting authority to the State of Idaho.

Regional office staff are beginning to plan for IPDES program related activities in the coming year. We would like to coordinate with IDEQ staff to ensure an open and transparent process. The following is a preliminary listing of the timeline and activities. We invite your input on this proposed schedule.

EPA Public Process for IPDES Program in 2017 (approximate dates):

Jan. – June	EPA will coordinate public process and tribal consultation logistics including travel needs, dates, and hearing locations with IDEQ.
May 1	IDEQ will provide changes to any IPDES program documents and final versions of legislative bills, as requested in EPA's September 30 letter and subsequent requests.
May 1 – July 1	EPA will complete final review of IPDES program document in preparation for public notice of the IPDES program application.
June 1 – Aug. 1	EPA will prepare public notice document with EPA HQ coordination.
Aug. 1 – Sept. 30	EPA will commence public notice period (propose 60-days) with 1 week of hearings, in select Idaho cities, during the late Aug. or early Sept.
Oct. 1 – Dec. 30 (or longer)	EPA will produce the responsiveness summary with EPA HQ coordination.

Thank you for your commitment to developing a strong IPDES program. The EPA looks forward to working with you to ensure the program's long-term success. If you have any further questions, please contact me, at (206) 553-1855, or have your staff contact my staff Karen Burgess at (206) 553-1644.

Sincerely,



Daniel D. Opalski, Director
Office of Water and Watersheds

cc: Mr. Barry Burnell, Water Quality Division Administrator, IIDEQ

Ms. Mary Anne Nelson, IPDES Program Manager, IIDEQ