

**From:** Jim Eberhard [REDACTED]

**Sent:** Friday, August 18, 2017 1:27 PM

**To:** IdahoNPDEScomments

**Subject:** Idaho NPDES

Sirs, Please do not let Idaho take control of this! If this happens, we will be drinking cow urine shortly. The power that the ranchers and miners have in this state is not to be underestimated. Idaho passed the "Ag Gag" law. It was done at the request of the agricultural PACS. There was no way the law would go uncontested by ACLU and other groups, sure enough, the courts ruled it unconstitutional. As you are aware of, the water in Idaho goes back to the environment of the world, it does not remain here. Giving the state the power to regulate water pollution will end up polluting everyone's water. The law suits that follow will be long, and very expensive. Our state and national tax dollars can be put to much better use. Please for the sake of our environment, and our tax dollars do not let this happen.

Very concerned citizen,

Jim Eberhard

[REDACTED]

**From:** Stu Bryant <[REDACTED]>  
**Sent:** Friday, August 18, 2017 9:24 PM  
**To:** IdahoNPDEScomments  
**Subject:** Idaho NPDES Primacy

I strongly urge the EPA to grant approval to the State of Idaho's application for primacy over the NPDES program. The Idaho Dept. of Environmental Quality has distinguished themselves as overseers of environmental matters and enjoys the greatest buy-in from stake holders I have ever witnessed. Indeed, they are efficient and get results, but do so in partnership with those they serve. It creates a unique opportunity to be successful. There is some excellent leadership, tremendous dedication, and supreme effort for this to be able work out this way. I highly commend them. I see this as an opportunity to not only reduce the burden upon the already taxed public servants USEPA, but a win for the people of Idaho. Idahoans who have a working relationship (as I do) with IDEQ understand the synergy and enthusiasm which can result from dealing with folks who are so (relatively speaking) local and accessible. I cannot complain about my dealings with the USEPA either, but it is no secret that IDEQ folks tend to be easier to reach and quicker to respond. Such is the nature of federal vs state level. This is a logical move. It helps everyone. And I would also urge Tribal authorities to consider joining this as well, although I understand they have no obligation to.

Respectfully,

Stuart J. Bryant,  
Chief Water Treatment Plant Operator  
City of Kamiah, Idaho

**From:** Mayor Gordon Petrie [REDACTED]  
**Sent:** Monday, August 21, 2017 10:48 PM  
**To:** IdahoNPDEScomments  
**Cc:** 'Bruce Evans'; 'Clint Seamons'; 'Jake Sweeten'  
**Subject:** [WARNING: SPF validation failed] The Idaho Department of Environmental Quality (IDEQ) seeking approval to administer the Idaho Pollutant Discharge Elimination System (IPDES) program regulating discharges of pollutants into waters of the United States u...

To whom it may concern:

Without question, the most efficient government is the one closest to the people it governs. Accordingly, it is without hesitation that the City of Emmett, Idaho, fully supports approving IDEQ to be the administrator of the Idaho Pollutant Discharge Elimination System program. Standards are standards. There is nothing in our experience with Idaho DEQ that would suggest its personnel would not fully and fairly enforce federal standards with regard to the discharge of pollutants into our streams and rivers. The real benefit to us, of course, should IDEQ be named the administrator is the simple face of having someone 30 miles away to talk to who can make a decision rather than someone 300 miles away. Emails and telephones have their use, but oft-times a face-to-face experience is the only real solution; flying to Seattle is not always an option for this small town.

*Gordon W. Petrie*  
Mayor, Emmett, Idaho

*Our vision:*  
*A core competent municipal team*  
*providing excellence in municipal governance.*

**From:** Burgess, Karen  
**Sent:** Wednesday, August 23, 2017 3:52 PM  
**To:** IdahoNPDEScomments  
**Cc:** Lopez, Maria; Levo, Brian; Kenknight, Jeff; Martich, Tara; Vakoc, Misha  
**Subject:** RE: Transfer of Clean Water Act permitting and enforcement to State of Idaho

Thank you. I've sent these comments to the [IdahoNPDEScomments@epa.gov](mailto:IdahoNPDEScomments@epa.gov) mailbox, which was provided on the notice.

Any comment you receive through other means should be sent to this mailbox as well as copying me. Thanks.

**From:** Lopez, Maria  
**Sent:** Wednesday, August 23, 2017 8:31 AM  
**To:** Levo, Brian <Levo.Brian@epa.gov>; Kenknight, Jeff <Kenknight.Jeff@epa.gov>; Martich, Tara <Martich.Tara@epa.gov>  
**Cc:** Burgess, Karen <Burgess.Karen@epa.gov>  
**Subject:** FW: Transfer of Clean Water Act permitting and enforcement to State of Idaho

FYI

**From:** Medeiros, Richard **On Behalf Of** EPA-Seattle  
**Sent:** Wednesday, August 23, 2017 8:34 AM  
**To:** Lopez, Maria <[Lopez.Maria@epa.gov](mailto:Lopez.Maria@epa.gov)>; Lidgard, Michael <[Lidgard.Michael@epa.gov](mailto:Lidgard.Michael@epa.gov)>  
**Subject:** FW: Transfer of Clean Water Act permitting and enforcement to State of Idaho

Hi Maria & Michael,

FYI, from the EPA mailbox.

R.

***Rick Medeiros***

Public Environmental Resource Center

Phone - 206-553-1275

Fax - 206-553-0149

[Medeiros.Richard@epa.gov](mailto:Medeiros.Richard@epa.gov)

Save Natural Resources by NOT Printing This email

---

**From:** Eric Shannon [REDACTED]  
**Sent:** Tuesday, August 22, 2017 10:01 AM  
**To:** EPA-Seattle <[EPA-Seattle@epa.gov](mailto:EPA-Seattle@epa.gov)>  
**Subject:** Transfer of Clean Water Act permitting and enforcement to State of Idaho

The following are comments to the U.S. Environmental Protection Agency (EPA) regarding the proposed transfer of federal Clean Water Act permitting and enforcement to the State of Idaho, and specifically that of Municipal Separate Storm Sewer Systems (MS4).

**Special Use Districts:** Permitting and enforcement agencies must recognize the unique status of special use districts, such as highway districts. Unlike state, county or city governments, special use districts do not have ordinance or law enforcement authority, nor broad jurisdictional authority. Highway districts, for example, do not have jurisdiction beyond their rights-of-way. Past permits have failed to recognize this, trying to pass on regulatory functions to the permittee, which are beyond the permittee's authority or ability to perform.

**Drainage:** Permitting and enforcement agencies must recognize that highway districts, similar to a private property owner, have no power to regulate or require the alternation of historic and otherwise legal drainage onto their rights-of-way.

**Irrigation Discharges:** Past and proposed MS4 permits say irrigation (including landscape irrigation) discharges are allowed. There is confusion, however, about whether "allowed" means they are permitted or exempt; this needs clarification to say exempt. Irrigation flows, which do not originate on highway rights-of-way, typically cross those rights-of-way to discharge into Waters of the U.S. If "permitted", then they must be catalogued and monitored in the permittee's MS4 inventory; "exempt" means they do not.

**Storm Runoff into Irrigation:** Past permits have defined “discharge” as flows collected in catch basins, pipes or ditches; it does not mean sheet flow. EPA staff have historically held that storm sheet flow into irrigation facilities (catch basins, pipes and ditches which would not exist but for the irrigation) do not qualify as storm discharge. This needs to be clarified in future permits, and similarly interpreted by future state regulators.

**Pollutants of Concern:** Permittees should not be required to test for and eliminate “pollutants of concern” which originate outside their jurisdiction. Examples listed in the draft MS4 permit are chlorpyrifos and malathion (agricultural insecticides) and E. coli (a sewage bacteria). These come from farms, dairies, septic tanks, etc., not highway rights-of-way. This should be a public health agency responsibility, not a highway district.

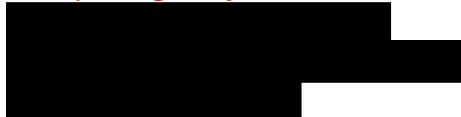
**Waiver:** A permit should be waived when the outfalls are so few that no real public benefit is achievable by regulating them. There is a huge and costly bureaucratic overhead effort to a MS4 permit program, whether the permittee has 10 or 10,000 outfalls. It is poor stewardship to spend tax dollars on this effort without any real public benefit.

The EPA allows for such a waiver where (1) the MS4 serves a population of 1,000 or less, (2) the MS4 is not interconnected with adjacent jurisdictions, and (3) the MS4 does not impair water quality. In Idaho, the Nampa Highway District No. 1 MS4 system has nine outfalls, and serves a population of 156. The District submitted a draft waiver request, which was endorsed by EPA staff. State of Idaho staff disagreed, however, on the premise that **all** highway drainage impairs water quality, an interpretation that rules out a waiver under any circumstance. The EPA will not approve a waiver independent of the State, because it is in the process of transferring administration and enforcement of the MS4 permitting program to the State.

Hopefully these are clear and concise. Please contact me if there are any questions.

***Eric R. Shannon, P.E.***

*Nampa Highway District No. 1*



**From:** Malisa Maynard [REDACTED]  
**Sent:** Friday, August 25, 2017 6:19 AM  
**To:** IdahoNPDEScomments  
**Cc:** mary.anne.nelson@deq.idaho.gov  
**Subject:** Submission for EPA Approval 82 Fed. Reg. 37583 (August 11, 2017)

Please find attached comments from Clearwater Paper.

Malisa



**Malisa Maynard**  
Clearwater Paper Corporation  
Environmental & Sustainability Manager  
601 W. Riverside, Suite 1100, Spokane, WA 99201  
T 509.344.6419 C 509.413-8497 F 509.344.6752



Clearwater Paper Corporation  
601 West Riverside, Suite 1100  
Spokane, WA 99201

August 24, 2017

**VIA EMAIL - IdahoNPDEScomments@epa.gov**

U.S. EPA  
Attn: Idaho NPDES Comments  
Office of Water and Watersheds  
Mail Stop OWW-191  
1200 6th Ave Ste 900  
Seattle, WA 98101-3140

**Re: State of Idaho National Pollutant Discharge Elimination System (NPDES) Program Submission for EPA Approval 82 Fed. Reg. 37583 (August 11, 2017)**

Dear Sir or Madam:

Clearwater Paper Corporation (Clearwater) owns and operates a pulp and paperboard facility in Lewiston, Idaho and is currently subject to NPDES Permit No. ID0001163 issued by EPA Region 10 and therefore has an interest in the NPDES program in Idaho. Clearwater submits these comments in response to the subject Federal Register notice. Clearwater supports EPA approval of the state of Idaho's application for IPDES program approval as set forth in Governor Otter's letter to EPA dated August 31, 2016. We believe the state of Idaho has clearly demonstrated that it has the resources and legal authority to issue and enforce NPDES permits consistent with the Clean Water Act and implementing federal regulations and guidance.

It is important to note, that the state of Idaho, through the Idaho Department of Environmental Quality (IDEQ), went through a very robust and open process over the past few years in promulgating IPDES Rules, quantifying necessary resources to support the program, developing guidance, and drafting a Memorandum of Understanding (MOU) with EPA setting forth a four-phase approach for Idaho to assume authority over the NPDES permit program in Idaho. Anybody interested in the NPDES program in Idaho, including environmental groups, regulated entities, federally recognized tribes, other federal, state and local agencies and the general public were invited to participate in development of Idaho's IPDES program. Many of these groups and entities actively participated in and helped shape the program that is currently being considered by EPA. As you know EPA Region 10, and at times, EPA headquarters, also actively participated in development of Idaho's IPDES program. Moreover, the Idaho Legislature passed specific legislation to ensure that Idaho could implement a state NPDES program consistent with the requirements of the Clean Water Act. The Idaho Legislature appropriated resources to IDEQ ensure that the agency has the capacity to implement the IPDES program (combined with user fees that will be paid by permittees to fund the program). Thus the Idaho IPDES program has been developed through a very public and transparent process.

In terms of substance, it is clear that Idaho's application and the Idaho IPDES program meets the requirements of Section 402(b) of the Clean Water Act and EPA implementing rules at 40 CFR Part 123. For example IDEQ has adopted all of the Rules (literally verbatim) set forth in 40 CFR Section 123.25 to ensure that permits are issued consistent with current EPA Rules and procedures. Idaho clearly has the legal authority to enforce IPDES permits consistent with federal requirements as specified at 40 CFR Section 123.27. "The Idaho Environmental Protection and Health Act" (EPHA) at Title 39, Chapter 1, Idaho Code which specifies the required civil and criminal penalties. The EPHA enforcement provisions and processes clearly meet the requirements of the Clean Water Act and EPA implementing rules at 40 CFR Section 123.27 governing enforcement authorities. The state's program has the required compliance evaluation program, public participation processes and appropriate judicial oversight of the program to ensure that the state of Idaho's program will meet all federal requirements. Finally, the state of Idaho undertook a very robust analysis of the resources that would be required to support the program and the funding to support the required resources (user fees combined with general fund monies).

We strongly urge EPA to approve Idaho's IPDES program in a timely matter to ensure that Idaho can assume permitting and compliance authority for the NPDES program in accordance with the phased approach specified in the MOU. Thank you for the consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Malisa Maynard".

Malisa Maynard

Corporate Environmental and Sustainability Manager

cc: Mary Anne Nelson, IPDES Program Manager

**From:** Ava Isaacson [REDACTED]  
**Sent:** Wednesday, September 20, 2017 10:09 PM  
**To:** IdahoNPDEScomments  
**Subject:** Idaho Rivers United NPDES Comments

Please Idaho Rivers United's attached comments.

Thank you.

Best,  
Ava

--

*The river delights to lift us free, if only we dare to let go.  
Our true work is this voyage, this adventure. - Richard Bach*

**Ava Nora Isaacson**



[Home](#)

[idahorivers.org](http://idahorivers.org)

If you love a river... Take Action Now



[Support Idaho Rivers United](#)



Idaho Rivers United - PO Box 633 - Boise, ID 83701 - (208) 343-7481 - idahorivers.org

Protecting and Restoring the Rivers and Fish of Idaho

Dear Idaho Department of Environmental Quality,

Idaho Rivers United would like to provide comments on the Idaho NPDES Program Authorization process.

Idaho Rivers United (IRU) is a 501(c)3 nonprofit environmental advocacy organization with 3,500 members throughout Idaho and beyond. Our members generally are river-loving rafters, kayakers, anglers and environmentally-attuned citizens. The mission of IRU is “to protect and restore the rivers of Idaho.” IRU, its members, and supporters expect protection of rivers for their ecological, scenic and recreational values. The restoration of wild salmon and steelhead species has been IRU’s highest organizational priority for the past 20 years. We have also worked to prevent unneeded new dams, decommission dams that outlived their useful lives, cease water pollution, designate new wild and scenic rivers and defend existing wild and scenic rivers.

The Clean Water Act is a necessary and invaluable piece of legislation that requires diligent supervision and rigorous standards. If IDEQ operates Idaho’s NPDES process, we expect that the Clean Water Act’s integrity and intentions will continue to be upheld to fullest extent possible. Idaho’s rivers are a resource that cannot be degraded for short-sided economic gains, or irresponsible operations.

Idaho Rivers United recognizes the necessity of the Clean Water Act to protect Idahoans from degradative actions of industry, or the like. Therefore, it is of paramount importance that the IDEQ continues to put environmental health and safety first in their pursuit of managing Idaho’s NPDES Program.

Thank you for your time in reading these comments.

Sincerely,

Idaho Rivers United

**From:** Jason Brown [REDACTED]  
**Sent:** Tuesday, October 3, 2017 3:29 PM  
**To:** IdahoNPDEScomments  
**Cc:** Travis Rothweiler; Jackie Fields  
**Subject:** Idaho NPDES Comments (City of Twin Falls)

US EPA,

The City of Twin Falls, Idaho has attached comments on the State of Idaho's Application authorizing them to administer the NPDES permit program in Idaho.

Thank you,

**Jason Brown**  
Environmental Engineer  
City of Twin Falls





P.O. Box 1907

103 Main Avenue East

Twin Falls, Idaho 83303-1907

Fax: (208) 736-2293

---

**OFFICE OF CITY MANAGER**

**208-735-7287**

October 2, 2017

US EPA  
ATTN: Idaho NPDES Comments  
Office of Water and Watersheds  
MS: OWW-191  
1200 Sixth Ave, Suite 900  
Seattle, WA 98101-3140

Re: IDAHO NPDES COMMENTS LETTER

US EPA,

The City of Twin Falls (City) has again reviewed the documents associated with the State of Idaho's (State) application for primacy to regulate point source discharge to the water of the United States in the State. Upon further review and attending the public information and comments session on September 12, 2017. The City of Twin Falls supports the State's decision to take on the authority to regulate discharges from point sources in the State.

It is our understanding that during the implementation of the Idaho Pollutant Discharge Elimination System (IPDES) program, the State will be relying on federal contributions, state general funds, and funds from the regulated community to support the program. Through our review and attendance of the public meeting, it is still our belief that the financial support to operate this program can come from State general funds, but should also be distributed among all of the discharger covered under any permit. Whether this permit is for an individual permit or general permit. It is also, our understanding that once the State has fully implemented the program by 2021, the State will again evaluate the funding sources and distribute financial burden equitably, which the City supports.

Again, the City is supportive of the State taking over regulatory authority of point source discharges in the State. If you have any questions or concerns please contact me at (208) 735-7272 or [jbrown@tfid.org](mailto:jbrown@tfid.org)

Sincerely,

A handwritten signature in blue ink that reads "Shawn Barigar". The signature is stylized and includes a long horizontal flourish extending to the right.

Shawn Barigar  
Mayor  
City of Twin Falls

cc: Travis Rothweiler  
City Manager  
City of Twin Falls

**From:** Justin Hayes [REDACTED]  
**Sent:** Thursday, October 5, 2017 2:31 PM  
**To:** IdahoNPDEScomments  
**Cc:** Burgess, Karen  
**Subject:** ICL cmnts re IPDES

Attached please find the Idaho Conservation League's comments regarding the the IPDES consideration.

- Justin

--

Justin Hayes  
Program Director  
Idaho Conservation League  
PO Box 844, Boise, ID 83701



<http://www.idahoconservation.org> • <http://idahoconservation.org/blog>



Idaho Conservation League

[www.idahoconservation.org](http://www.idahoconservation.org)

Twitter: iclnaturerocks

Facebook: /idahoconservationleague  
Instagram: @idahoconservationleague

Support Idaho's leading voice for conservation at [idahoconservation.org/donate](https://idahoconservation.org/donate)



208.345.6933 • PO Box 844, Boise, ID 83702 • [www.idahoconservation.org](http://www.idahoconservation.org)

10/5/2017

U.S. EPA  
Attn: Idaho NPDES Comments  
Office of Water and Watersheds, Mail Stop OWW-191  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101-3140

Submitted via email: [IdahoNPDEScomments@epa.gov](mailto:IdahoNPDEScomments@epa.gov)

**RE: Idaho Conservation League comments re proposed authorization of the Idaho NPDES program**

Thank you for the opportunity to comment on EPA's consideration of Idaho seeking approval to administer the Idaho Pollutant Discharge Elimination System (IPDES) program regulating discharges of pollutants into waters of the United States under its jurisdiction. Since 1973, the Idaho Conservation League has been Idaho's leading voice for clean water, clean air and wilderness—values that are the foundation for Idaho's extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. As Idaho's largest state-based conservation organization, we represent over 25,000 supporters, many of whom have a deep personal interest in protecting and preserving the water quality in Idaho's rivers and streams and protecting aquatic and human health.

Our comments regarding this matter are attached below. Please do not hesitate to contact me at 208-345-6933 ext. 24 or [jhayes@idahoconservation.org](mailto:jhayes@idahoconservation.org) if you have any questions regarding our comments or if we can provide you with any additional information on this matter.

Sincerely,

Justin Hayes  
Program Director

*Idaho Conservation League comments re proposed authorization of the Idaho NPDES program*

1. The Idaho NPDES program does not comply with the requirements of 40 C.F.R. §§ 123.27(a)(3) and 123.27(b)(1). 40 C.F.R. §§ 123.27(a)(3)(ii) requires that state programs authorize criminal penalties “in at least the amount of \$10,000 a day per violation,” while the Idaho laws cited in the Attorney General’s Statement allow for *maximum* fines of \$10,000 per day. The Idaho penalty provisions also fail the minimum standards set out in 40 C.F.R. §§ 123.27(b)(1) because the Idaho penalties are not assessable up the maximum amount set out in § 123.27(a)(3) for each day of violation.

2. The EPA regulations require that the state standard for burden of proof or mental state for violations of state NPDES program requirements not be stricter than the standard the EPA must comply with for NPDES violations under the Clean Water Act. § 123.27(b)(2). The *mens rea* standard for criminal NPDES violations is simple negligence. CWA § 309(c); United States v. Hanousek, 176 F.3d 1116 (9<sup>th</sup> Cir. 1999), *cert. denied*, 528 U.S. 1102 (2000). But the Idaho Code cited in the Idaho Attorney General’s report requires “criminal negligence.” EPA’s September 30, 2016 and November 30, 2016, letters to Idaho DEQ spelled out this deficiency, but Idaho has not corrected it. The Attorney General’s reference to the Note in 40 C.F.R. §§ 123.27(a)(3)(ii) to justify the heightened standard is misplaced because the note refers to remedies, not the mental state required to establish a criminal violation. The Note following 40 C.F.R. § 123.27(b)(2) specifically addresses the standard of proof for mental state of a violator, and clarifies that the mental state required to prove *civil* violations may not be greater than the degree of knowledge required under the Clean Water Act. By referring to civil violations specifically, as opposed to violations generally, the Note clarifies that the (b)(2) requirement prohibiting stricter state mental state requirements applies to civil and criminal violations separately. The Idaho program does not meet this requirement because the “criminal negligence” requirement for criminal violations under § 123.27(a)(3)(ii) is a stricter standard than the “simple negligence” standard under CWA § 309(c). The rationale EPA set out in the November 30, 2016 letter to DEQ explaining why Idaho’s criminal provisions are substandard is correct.

3. The 1984 EPA criminal regulations found at 40 C.F.R. §§ 123.27(a)(3) and (b) are out of date, and not consistent with either current case law or the 1987 amendment to section 309(c) of the CWA. EPA is arbitrary and capricious and violates section 706(2)(A), 5 U.S.C. § 706(2)(A), in relying on outdated regulations to review and approve the Idaho state program.

4. The EPA is also arbitrary and capricious and is otherwise acting contrary to law in approving Idaho’s program where the statute of limitations for civil and criminal violations in Idaho is two years and the federal standard is five. The EPA regulations require that the state standards for enforcement “shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the appropriate Act.” 40 C.F.R. §§ 123.27(b)(2).

5. The State of Idaho has proposed to allow the Idaho State Department of Agriculture take the lead on CAFO enforcement even though it will not be part of the authorized program. It is not clear from the documents provides by the state that ISDA

will enforce the law as rigorously as DEQ or that DEQ will devote resources necessary to ensure compliance of CAFOs in Idaho. Also, state law prohibits ISDA from sharing nutrient plans with other agencies unless those plans are part of an NPDES permit application. This will make it very difficult, if not impossible, for DEQ to inspect, or obtain relevant documents from, CAFOs that discharge without permits.

6. Notice of Compliance Letter. The proposed Idaho program will allow all violators to avoid compliance by simply coming into compliance once they receive a notice from DEQ. This takes away all incentive to comply before a violator is caught. This get-of-jail-free card eviscerates the Idaho enforcement program, and therefore violates section 402(b)(7) of the CWA, 33 U.S.C. § 1342(b)(7).

7. Memorandum of Agreement. A state program application must contain a Memorandum of Agreement (MOA) “executed by the State director and the Regional Administrator,” which “shall become effective when approved by the Administrator.” 40 C.F.R. §§ 123.21(a), 123.24(a). The MOA that the State submitted as part of the program application has been executed by neither the State director nor the Regional Administrator. In fact, as described in EPA’s Completeness Determination letter dated September 30, 2016, Idaho legislation requires IDEQ to submit the MOA to the state Legislature for approval before signing it, and this has not yet occurred and is not scheduled until 2018. Thus EPA does not have before it, and at the time of this public comment period, the public does not have access to, an MOA that has been signed by IDEQ or has the authority to sign, and therefore which may take effect when and if the Administrator approves it. EPA may not approve the program until it has received from IDEQ, as part of its program application, a signed MOA that can go into effect upon Administrator approval, and that has been subject to the required notice and comment procedures required as part of the program approval process.

**From:** Darin Taylor [REDACTED]  
**Sent:** Monday, October 9, 2017 6:44 PM  
**To:** IdahoNPDEScomments  
**Cc:** Chad Beverage; Amy Woodruff; Becky Crofts  
**Subject:** Comments on Idaho's NPDES Program Application

U.S. EPA  
Attn: Idaho NPDES Comments  
Office of Water and Watersheds  
Mail Stop OWW-191, 1200 Sixth Avenue, Suite 900  
Seattle, WA 98101-3140

**RE: US EPA is Accepting Comments on Idaho's NPDES Program Application**

Thank you for the opportunity to submit comments regarding the above-referenced Application. The City of Middleton supports the State of Idaho's application to assume the role of writing, administering and enforcing water quality discharge permits within Idaho. The City of Middleton as a discharger will uphold the rules and law with Idaho Department of Environmental Quality (IDEQ) as we have with US EPA.

As a permitted discharger, the City of Middleton now collaborates extensively with both US EPA and IDEQ, and sees many benefits, and no detriments, when IDEQ, under US EPA's direction, assumes regulatory authority for administering the Clean Water Act permitting program in Idaho. Middleton residents favor the change as another step toward improved surface-water quality in Idaho.

Darin Taylor, Mayor  
[REDACTED]

City of Middleton  
1103 W. Main St.

P.O. Box 487  
Middleton ID 83644



**From:** Justin Hayes [REDACTED]  
**Sent:** Tuesday, October 10, 2017 3:51 PM  
**To:** IdahoNPDEScomments  
**Subject:** Additional ICL cmnts re IPDES

Attached please find comments from the Idaho Conservation League related to EPA's consideration of the IPDES program. These comments are meant to supplement comments that the Idaho Conservation League submitted previous.

- Justin

--

Justin Hayes  
Program Director  
Idaho Conservation League  
PO Box 844, Boise, ID 83701



<http://www.idahoconservation.org> • <http://idahoconservation.org/blog>



## Blog - Idaho Conservation League

idahoconservation.org

Sign up to receive our weekly legislative updates, Your Voice for Conservation, in your inbox. Use the form in the upper right of this window. You can also text 4IDAHO YVC to 52886 to receive ICL texts about issues and



## Idaho Conservation League

[www.idahoconservation.org](http://www.idahoconservation.org)

---

Twitter: [iclnaturerocks](https://twitter.com/iclnaturerocks)

Facebook: [/idahoconservationleague](https://www.facebook.com/idahoconservationleague)

Instagram: [@idahoconservationleague](https://www.instagram.com/idahoconservationleague)

Support Idaho's leading voice for conservation at [idahoconservation.org/donate](http://idahoconservation.org/donate)



208.345.6933 • PO Box 844, Boise, ID 83702 • [www.idahoconservation.org](http://www.idahoconservation.org)

10/10/2017

U.S. EPA  
Attn: Idaho NPDES Comments  
Office of Water and Watersheds, Mail Stop OWW-191  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101-3140

Submitted via email: [IdahoNPDEScomments@epa.gov](mailto:IdahoNPDEScomments@epa.gov)

**RE: Supplemental Idaho Conservation League comments re proposed authorization of the Idaho NPDES program**

This comment letter is a supplement to comments that we previously provided related to EPA's consideration of Idaho seeking approval to administer the Idaho Pollutant Discharge Elimination System (IPDES) program regulating discharges of pollutants into waters of the United States under its jurisdiction.

Our comments regarding this matter are attached below. Please do not hesitate to contact me at 208-345-6933 ext. 24 or [jhayes@idahoconservation.org](mailto:jhayes@idahoconservation.org) if you have any questions regarding our comments or if we can provide you with any additional information on this matter.

Sincerely,

Justin Hayes  
Program Director

*Supplemental Idaho Conservation League comments re proposed authorization of the Idaho NPDES program*

1. The IPDES program lacks the necessary prohibition of unpermitted discharges, and enforcement authority to address them. EPA regulations at 40 C.F.R. § 123.1(g)(1) require that “the State program must prohibit all point source discharges of pollutants, all discharges into aquaculture projects, and all disposal of sewage sludge which results in any pollutant from such sludge entering into any waters of the United States within the State's jurisdiction except as authorized by a permit in effect under the State program or under section 402 of CWA.” CWA § 402(b)(7) and 40 C.F.R. § 123.27 require state enforcement authority for violations of state program requirements. Idaho’s IPDES statutory and regulatory authority require dischargers to submit IPDES permit applications, IDAPA 58.01.25.102, and to comply with any IPDES permit, IDAPA 58.01.25.500, and also authorize IDEQ enforcement actions for violations of state program requirements, including violations of a permit or failure to apply for a permit. But they do not appear to prohibit or authorize any enforcement authority for discharges that are not authorized by a permit. The only remedy under State law for such discharges appears to be limited to addressing the failure to submit a permit application.

2. The IPDES program appears to lack program elements required by 40 C.F.R. § 403.10. Section 403.10(a) provides that “no State NPDES program shall be approved . . . unless it is determined to meet the requirements of paragraph (f) of this section,” i.e. 40 C.F.R. § 403.10(f). At IDAPA 58.01.25.003.02.x, the IPDES program explicitly incorporates by reference all portions of 40 C.F.R. § 403 *except* § 403.4, § 403.10, § 403.19 and § 403.20. This leaves out the required § 403.10(f).

3. The IPDES program lacks required criteria to evaluate whether certain small municipal stormwater discharges might result in exceedances of water quality standards. EPA regulations at 40 C.F.R. § 123.35(b)(1)(i) require state NPDES permitting authorities to “develop criteria to evaluate whether a storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.” The AG Statement states that this requirement is satisfied at IDAPA 58.01.25.102.04. The latter provision, however, merely provides for DEQ to determine whether a discharge “results in or has the potential to result in exceedances of water quality standards or other significant water quality impacts.” The State has not specified criteria to evaluate whether this threshold is met, as required by the EPA regulation.

4. The IPDES program lacks authority to implement 40 C.F.R. § 122.21(c)(2). The State program must have this authority (or something more stringent), as required by 40 C.F.R. § 122.25(a)(4). While there are similar or overlapping provisions in IDAPA 58.01.25.105, it is not clear that they are the same as, or more stringent than, those at 40 C.F.R. § 122.21(c)(2).

5. EPA regulations require the Attorney General’s Statement to set forth the State’s authority to carry out the required elements of a state NPDES program. The Attorney

*Supplemental Idaho Conservation League comments re proposed authorization of the Idaho NPDES program*

General's Statement fails to set forth adequately the State's authority regarding each of the required elements listed above.

**From:** Sharon Bosley <[REDACTED]>

**Sent:** Tuesday, October 10, 2017 5:56 PM

**To:** IdahoNPDEScomments

**Subject:** Idaho NPDES Comment

Please consider Kootenai Environmental Alliance's comments on the IPDES program application.

--

Thanks,

Sharon Bosley

Kootenai Environmental Alliance's Executive Director

[REDACTED]

[REDACTED]



October 10, 2017

U.S EPA Region 10  
Attn: Idaho NPDES Comments  
Office of Water and Watersheds  
Mail Stop OWW-191  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101-3140

RE: State of Idaho's Pollution Discharge Elimination System (IPDES) program application.

A plan to move the administration of Pollution Discharge Elimination systems from the Environmental Protection Agency to the Idaho Department of Environmental Quality is seeking approval. The following comments are being submitted in response to the State of Idaho's Pollution Discharge Elimination (IPDES) program application.

DEQ submitted a primary application that adheres to the Clean Water Act(CWA) and 40 CFR 123 to EPA to address water pollution by regulating point source discharge pollutants. Section 402 of the CWA contains language regarding the NPDES. Additionally, 40 CFR part 130 Water Quality Planning and Management mentions NPDES issues at 130.12. The following statement is found in 130.12,"Where a State has assumed responsibility for the administration of the permit program under section 402, it shall assure consistency in the Water Quality Management Plan."

To implement this program DEQ will require approximately 29 positions located in DEQ's state and regional offices and an annual budget of 3 million dollars. Permittees will gain access to permit writers and other staff with local experience and knowledge allowing the streamlining of issuing permits. If the EPA approves the IPDES program, IDEQ will administer this program, subject to continuing EPA oversight and enforcement authority, in place of the NPDES program now administered by the EPA.

If the application is approved, will the EPA oversight activities ensure that IDEQ has sufficient personnel to perform all necessary activities so that the IPDES program is in full compliance with all applicable CWA laws and regulations? During the public hearing in Couer d'Alene it was indicated two additional staff will be added to help with permitting in the Northern Region of IDEQ. Will that be sufficient staffing to administer all IPDES permits for the Northern Region?

Thank you for your consideration of Kootenai Environmental's comments regarding this subject.

Kootenai Environmental Alliance  
Sharon Bosley, Executive Director  
(208) 667-9093  
[kea@kealliance.org](mailto:kea@kealliance.org)

Kootenai Environmental Alliance (KEA) is the oldest non-profit conservation organization in Idaho. It is our mission to conserve, protect and restore the environment with particular emphasis on the Coeur d'Alene

Basin and the Idaho Panhandle. Our members live, work and play in the Coeur d'Alene Basin and have an active interest in water quality in our region.

**From:** Heather Tafoya [REDACTED]  
**Sent:** Tuesday, October 10, 2017 6:22 PM  
**To:** IdahoNPDEScomments  
**Cc:** Nate Runyan; Michael Fuss  
**Subject:** City of Nampa Comments for IPDES Program

*Good Afternoon,*

*The City of Nampa would like to provide comments for the Idaho National Pollutant Discharge Elimination System program. Please see the attached letter providing the comments the City of Nampa would like to submit.*

*If you have questions please let me know,*

*Thank you,*



**Heather M. Tafoya**  
Administrative Coordinator, Wastewater  
[REDACTED]

[City of Nampa, Like us on Facebook](#)

**NAMPA** Proud

Notice: All communication transmitted within the City of Nampa Email system may be a public record and may be subject to disclosure under the Idaho Public Records Act (Idaho Code 74-101 et seq.) and as such may be copied and reproduced by members of the public. In addition, archives of all City emails are generally kept for a period of two years and are also subject to monitoring and review.



# City of Nampa

PUBLIC WORKS ADMINISTRATION

CITY HALL

411 THIRD STREET SO.

NAMPA, IDAHO 83651

OFFICE (208) 468-5840

FAX (208) 467-9194

October 10, 2017

U.S. Environmental Protection Agency  
Attn: Idaho NPDES Comments  
Office of Water and Watersheds  
Mail Stop OWW-191  
1200 Sixth Ave., Suite 900  
Seattle, WA 98101

Subject: City of Nampa Comment for Idaho Pollutant Discharge Elimination System Program

To Whom It May Concern:

The City of Nampa (City) would like to express their support for the Idaho Department of Environmental Quality's (IDEQ's) application to administer the Idaho Pollutant Discharge Elimination System (IPDES) Program. It is the City's belief that a state-operated permitting program provides greater overall benefit to the participants and, ultimately, the environment. A local and engaged regulatory agency will be key as the City looks to implement innovative, integrated watershed management opportunities to best meet its community goals. The IPDES program will allow intimate collaboration between the City and local IDEQ staff to promote a streamlined permit development process that helps achieve the goals of the Clean Water Act.

The City has had the opportunity to work closely with IDEQ staff recently through the development of the Lower Boise River Total Phosphorus Total Maximum Daily Load and 401 Certification for the City's National Pollutant Discharge Elimination System permit. The City appreciates IDEQ's efforts on these critical issues and looks forward to more successful interactions with IDEQ through the IPDES program.

Should you have any questions please do not hesitate to contact me at (208) 468-4493, or via email at [runyann@cityofnampa.us](mailto:runyann@cityofnampa.us).

Sincerely,

A handwritten signature in blue ink, appearing to read "Nate W. Runyan".

Nate W. Runyan, P.E.

Deputy Public Works Director

Cc: Michael Fuss, Public Works Director

**NAMPA**Proud

**From:** George Moody <[REDACTED]>  
**Sent:** Tuesday, October 10, 2017 9:22 PM  
**To:** IdahoNPDEScomments  
**Subject:** Letter to EPA

Good afternoon,

You will find attached the 2017-10-10 Letter to EPA commenting on EPA's review of IDEQ's National Pollutant Discharge Elimination Program submission under the Clean Water Act

Thank you,

George W. Moody      Administrative Specialist  
Nez Perce Tribe | NPTEC Support Staff  
P.O. Box 305 | Lapwai, ID 83540

[REDACTED]  
[REDACTED]

CONFIDENTIALITY NOTICE: The information contained in this email and any accompanying attachment(s) is intended only for the use of the intended recipient and may be confidential and/or privileged. If any reader of this communication is not the intended recipient, unauthorized use, disclosure or copying is strictly prohibited, and may be unlawful. If you have received this communication in error, please immediately notify the sender by return email, and delete the original message and all copies from your email.



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

October 10, 2017

Via E-Mail to: [IdahoNPDESComments@epa.gov](mailto:IdahoNPDESComments@epa.gov)

Karen Burgess  
U.S. Environmental Protection Agency  
Attn: Idaho NPDES Comments  
Office of Water and Watersheds  
Mail Stop OWW-191  
1200 Sixth Ave., Suite 900  
Seattle, WA 98101-3140.

**Re: *EPA's Review of Idaho Department of Environmental Quality's National Pollutant Discharge Elimination (NPDES) Program Submission under the Clean Water Act.***

Dear Ms. Burgess:

The Nez Perce Tribe (Tribe) appreciates the U.S. Environmental Protection Agency (EPA) consulting with the Tribe on Idaho's National Pollutant Discharge Elimination System (NPDES) program submission under the Clean Water Act.

The Tribe has worked closely with EPA over the decades as EPA has administered the Clean Water Act's NPDES program in Idaho and in Indian Country. If Idaho Department of Environmental Quality's application is approved, EPA will continue to administer the NPDES program in Indian Country. As a result, the Tribe will continue to work with EPA on a government-to-government basis as EPA administers the NPDES program on the Nez Perce Reservation and the Tribe will continue to work with EPA as EPA implements its oversight, compliance monitoring, and enforcement roles for the NPDES permits Idaho issues.

The Tribe appreciates that the proposed transfer contemplates a phased transition, and that EPA is committed to being involved in each step of the proposed transfer and to carefully overseeing the proposed transition as it would with any new program.

Karen Burgess  
U.S. Environmental Protection Agency  
October 10, 2017  
Page 2

The Tribe's Water Resources Division will continue to be the point of contact for Clean Water Act and NPDES permitting issues; please contact Ken Clark at 208-843-7368, ext. 3903 or [kenc@nezperce.org](mailto:kenc@nezperce.org) if you have any questions.

Sincerely,



Mary Jane Miles  
Chairman