

NPDES Primacy

Natural Resources Interim Committee

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and

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NPDES Primacy Outline

- Overview
- NPDES Primacy Components
- Existing Legislation
- Implementation



NPDES Primacy Overview

National Pollutant Discharge Elimination System
Regulates Discharges to Surface Water from:

- Municipalities
- Industry
- Aquaculture
- Stormwater
- Confined Animal Feeding Operations (CAFOs)



NPDES Primacy Components (CWA §402)

- (1) To issue permits which— comply with the CWA are for fixed terms not exceeding five years; and can be terminated or modified for cause; (D) control the disposal of pollutants into wells
- (2) Inspect, monitor, enter, and require reports
- (3) Public Notice of each application for a permit and to provide an opportunity for public hearing



NPDES Primacy Components (CWA §402)

- (4) Notify EPA of each application
- (5) To insure that any State ..., whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the EPA Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the EPA Administrator) in writing of its reasons for so doing



NPDES Primacy Components (CWA §402)

- (6) To insure that no permit will be issued if it will interfere with Coast Guard operations, anchorage and navigation of any of the navigable waters
- (7) Enforcement - civil and criminal penalties
- (8) Permit introducing pollutants subject to pretreatment standards under section 307(b) of this Act
- (9) To insure that any industrial user of any publicly owned treatment works will comply with:
 - User Charge Guidelines (204(b)),
 - Toxic and Pretreatment Effluent Standards (307), and
 - Inspection Monitoring, Entry, and Public Records (308)

NPDES Primacy Reports

- NPDES Decision Analysis Report #1 – Jan 2001
 - http://www.deq.idaho.gov/media/529911-npdes_primacy_report1.pdf
- NPDES Decision Analysis Report #2 – Nov 2002
 - http://www.deq.idaho.gov/media/529907-npdes_primacy_report2.pdf
- NPDES Decision Analysis Report #3 – Dec 2005
 - http://www.deq.idaho.gov/media/490946-npdes_primacy_report3.pdf



NPDES Primacy – Existing Legislation

Legislative Check Points


- ✓ 1. Direction to Evaluate Primacy
 - Statute -- HB176, 2005
- ✓ 2. Stringency Direction
 - Rules may not be more stringent than CWA
 - Program may not be broader than EPA
- 3. Approval of Pending Rule -- Concurrent Res.
- 4. Program Approval – Statute to Develop Memorandum of Agreement (MOA)

NPDES Primacy – Legislation

Direction to Seek Primacy --Statute HB176 – 2005

Idaho Code § 39-175a

LEGISLATIVE FINDINGS AND PURPOSES

- (a) **Navigable waters** are valuable natural resource
 - (b) **Public interest** to regulate the discharge of pollutants into navigable waters
 - (c) States can develop and implement a NPDES program
 - (d) CWA establishes a complex and detailed provisions for regulating discharges
 - (e) **Flexible permits** consistent with the CWA and avoid the existence of duplicative, overlapping or conflicting state and federal regulatory systems
- 

NPDES Primacy – Legislation

Direction to Seek Primacy --Statute HB176 – 2005

Idaho Code § 39-175a

LEGISLATIVE FINDINGS AND PURPOSES

(f) State program must be run with a **minimum of federal interference** in permitting, inspection and enforcement activities and that all state permitting actions under the approved state program are to be state actions;

(g) **Decision to accept delegation from the EPA to operate an NPDES program has significant public policy implications that should be made by the legislature.**

Legislative Intent is to establish **requirements** that must be satisfied prior to **legislative approval of a NPDES permitting program** which incorporates flexible permitting procedures and **rules to be promulgated by the board**.



NPDES Primacy – Legislation

Idaho Code §39-175B.

RELATIONSHIP BETWEEN STATE AND FEDERAL LAW.

- The legislature cannot conveniently or advantageously set forth in this chapter all the requirements of all of the regulations which have been or will be established under the clean water act.
- However, any state permitting program must avoid the existence of **duplicative**, **overlapping** or **conflicting** state and federal regulatory systems.



NPDES Primacy – Legislation

Idaho Code §39-175B.

RELATIONSHIP BETWEEN STATE AND FEDERAL LAW.

- Further, the **board may promulgate rules** to implement a state permitting program but such rules shall not impose conditions or requirements more **stringent** or broader in scope than the clean water act and regulations adopted pursuant thereto.
- Further, the department will **not require NPDES permits** for activities and sources not required to have permits by the United States environmental protection agency.



NPDES Primacy – Legislation

Idaho Code § 39-175C.

APPROVAL OF STATE NPDES PROGRAM

- Department Authorized to Explore NPDES Primacy. Prepare a report to the Legislature - **COMPLETED**
- Board is Authorized to proceed with Negotiated Rulemaking - **Not Implemented**
- Any Memorandum of Agreement executed by the Director to obtain approval to operate a state NPDES program shall not be binding on the state of Idaho unless **authorized by enactment of a statute -** **Not Implemented**



NPDES Primacy – Legislation

Idaho Code § 39-175C

APPROVAL OF STATE NPDES PROGRAM

- Implementation of a state NPDES program shall not occur prior to **statutory enactment of implementing Legislation** and authorization of a Memorandum of Agreement
- Water Rights are protected
- Nothing in this section is intended to supersede any existing agreements between federal, state or local agencies regarding authority over inspections, enforcement or other obligations under the clean water act.



Questions?



NPDES Primacy - BENEFITS

What do you get w/ an Idaho NPDES program?

- DEQ Writing and Issuing Permits
- DEQ Conducting Annual Inspections
- DEQ Managing the Required Data
- DEQ Maintaining Compliance & Enforcement
- DEQ Program Administration



NPDES Primacy - BENEFITS

- Innovative Cost Effective Solutions to water quality issues such as temperature, nutrients, & metals
- Idaho interprets Water Quality Standards
- Greater coordination with the REUSE program, Total Maximum Daily Loads, & Loan Program
- Streamlined Endangered Species Act Process
- Opportunity for Variances
- Site Specific Criteria, or water quality based effluent limits
- Directed research for program changes or water quality standard development

NPDES Primacy - Benefits

- EPA Enforcement Penalties
 - Penalties \$27,500/violation/day
 - Administrative \$10,000/day
- DEQ Focus on Compliance before Enforcement



NPDES Primacy – Schedule

NPDES Primacy Schedule

	2000	2001	2002	2003	2004	2005
Background Study (6/00-11/00)	••••					
Steering Committee Recommendation (7/00-12/00)	••••					
Legislative Approval for Resources for Phase 4 (1/01-4/01)		••••				
Develop Implementation Package (4/01 – 12/02)		••••	••••			
Decision Analysis Report 2 (12/02)			••••			
2005 Decision Analysis Report (1/06)						••••

What's Been Done



NPDES Primacy – Schedule UPDATE

Steps to Obtain Primacy

NPDES Primacy Schedule	Year 1	Year 2	Year 3	Year 4	Year 5
Develop Funding Strategy Municipal Sector Commercial/Industrial Sector ✓ Fee ? Fee?				
Funding for Start Up (\$300K/yr)				
Develop Rules and Guidance/Application Package		
Present Rules/MOA/Statutes to Legislature			
Phase in Program (multiple years)				

Clean Water Act Requirements to Obtain Primacy

Application Demonstrating:

- State legal authority sufficient for state permits to comply with federal rules
- Legal authority to inspect, monitor, enter and require reports from point sources
- Public Notice of Permits and opportunity for a public hearing
- Notice to EPA of Permits
- Adequate resources to run the program

Example:

Alaska's Application Components

- Alaska Pollutant Discharge Elimination System Program Regulations
- Attorney General Statement (legal authority)
- Program Description
- Continuing Planning Process
- Memorandum of Agreement



Timeline for Approving Alaska Application

- October 15, 2007 – ADEC submitted revised draft NPDES Program application
- January 15, 2008 – EPA provided written comments to ADEC
- May 1, 2008, ADEC submits application
- May – November 2008 – EPA reviews and makes final NPDES Program approval determination



Alaska Implementation - Phased Approach

- Phase I: Domestic Discharges, Timber Harvesting, Seafood Processing - (Transferred October 2008)
- Phase II: Federal Facilities, Stormwater Program, Pretreatment Program - (Transferred October 2009)
- Phase III: Mining - (Transferred October 2010)
- Phase IV: Oil and Gas, cooling water, and all other remaining facilities - (Scheduled October 31, 2012)

EPA's Role after Authorization

- EPA will have oversight of State's Program:
 - conduct periodic program reviews
 - discretion to review any permit
 - authority to object to permits that are not protective
- EPA retains enforcement authority over all dischargers (NPDES permittees or not)
- Memorandum of Agreement will outline guidelines for EPA oversight of State program
- <http://yosemite.epa.gov/R10/water.nsf/npdes+permits/apdes>



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NPDES Primacy - Rules

- Not Yet Formulated
- Negotiate with Stakeholders
- Follow Legislative Intent
- Board Review and Adoption
- **Legislative Approval via
Concurrent Resolution**



NPDES Primacy Funding

Funding Estimates

- 2002 21 FTEs \$1.9M
- 2005 23 FTEs \$2.2M
- 2009 23 FTEs ~\$2.6M

Startup Funding Years 1-3

- \$300K/year
 - 2 to 3 years
 - Staff to Build Idaho NPDES Program
- 

NPDES Primacy Funding

How Would We Fund it?

- NO New Federal Funding
- NO State General Funding (Assumed)
- **100% Fees**

NPDES Primacy Funding

- NPDES
 - 23 FTEs
 - \$2.6 Million (2009)
- Drinking Water
 - 42.5 FTEs
 - \$4.3 Million
- Work Load
 - ~900 permits
 - 2100 PWS



NPDES Primacy Costs by Group (2005*)

Cities	Industry	Aqua-culture	Storm-water	CAFO	TOTAL
\$982K	\$356K	\$212K	\$554K	\$20K	\$2,124K
138	81	94	590	1 GP	904
**\$3.66/yr/ connection	?	?	?	?	

*Decision Analysis Report #3, 2005 page 13

** AIC Resolution 2009-03 – December 2009

Questions?



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