

Idaho Department of Environmental Quality (IDEQ) Primacy Construction General Permit (CGP) Implications for ITD



Regulatory Background

Clean Water Act Section 402 requires the National Pollutant Discharge Elimination System (NPDES) permit program, under EPA regulation (40 CFR 122.26).

NPDES General Permit for Stormwater Discharges from Construction Activities in Idaho (Permit #IDR10000). Otherwise known as the "Construction General Permit" or "CGP".

2017 Construction General Permit

The current permit is EPA issued. It expires Feb 16, 2022. It will transfer to IDEQ's authority on July 1, 2021, so the EPA permit => IDEQ permit.

The requirements of the permit remain in effect and will not change. Essentially, the IDEQ is administering a Federal permit, so all Federal requirements still pertain. All operators as defined in the permit must still submit an NOI for coverage. The waiting period under the permit remains at 14 days. The SWPPP is not required to be submitted with the NOI. All active NOIs at the time of transfer will remain effective (no refiling).

What is changing on July 1, 2021?

Filing NOIs after the transfer to IDEQ will be done through IDEQ's IPDES E-Permitting System. There will be no more use of the CDX or the EPA website. Any existing NOIs on CDX should automatically move to IDEQ's system. IDEQ is hosting training over summer 2021 to educate users on this process.

Application fee must be paid upon submittal of the NOI, which triggers the 14 day review period. If a project lasts more than one year, an annual fee is to be paid in the year following the submittal date of the NOI. Annual fees will be pro-rated for less 12 months of coverage. IDEQ's preferred payment method is through Access Idaho. ITD Purchasing Cards can be used for permit fees. The fee is eligible for Federal reimbursement and can be charged to the project cost, not the District Operating Budget.

CGP Fee structure, under IDAPA 58.01.25.110.

Project Size	Application	Annual
1-10 Acres	\$200	\$0
10-50 Acres	\$400	\$75
50-100 Acres	\$750	\$100
100-500 Acres	\$1,000	\$400
>500 Acres	\$1,250	\$400
Low Erosivity Waiver	\$125	\$0

DEQ Enforcement

IDEQ's goal is to inspect 10% of the regulated construction sites annually, including permitted, unpermitted, and Low Erosivity Waiver projects. We can expect 10% of ITD projects inspected.

IDEQ thinks they will perform 130-150 inspections/year across all construction projects, public and private statewide. We will see IDEQ more than we saw the EPA. IDEQ Regional offices will perform inspections. IDEQ inspectors have first-hand knowledge of their regions and the activities within them.

Enforcement actions will be both informal and formal, similar to the EPA.

Penalties

Up to \$10,000 per single violation. \$5,000 per day for a continuing violation; whichever is greater. Penalties will be issued through a Notice of Violation. Consent Orders will be used if requested or required.

2022 Construction General Permit

IDEQ is drafting the 2022 Idaho CGP. There will be public notice of a draft permit and a 30 day comment period. The final permit will include a response to comments. ITD is a stakeholder in the Construction General Permit development and will be included in the process.

We can predict similar requirements to the 2017 CGP. IDEQ is subject to Idaho Code §39-175B, meaning it must be no more stringent or broader in scope than the Federal permit. It must meet both the CWA requirements and Idaho Water Quality Standards under IDAPA 58.01.25.109. The monitoring and turbidity requirements are expected to be the same as 2017 CGP.