



Idaho Department of Environmental Quality **DRAFT §401 Water Quality Certification**

April 12, 2012

NPDES Permit Number(s): IDG-37-0000 Small Placer Miners General Permit for Idaho

Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended, 33 USC Section 1341 (a)(1), and Idaho Code §§ 39-101 et.seq., and 39-3601 et.seq., the Idaho Department of Environmental Quality (DEQ) has authority to review National Pollutant Discharge Elimination System (NDPES) permits and issue water quality certification decisions.

Based upon its review of the above-referenced permit and associated fact sheet, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification, then there is reasonable assurance the discharge will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, including the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02) and other appropriate water quality requirements of State law.

This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations or permits.

Antidegradation Review

The WQS contain an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051).

- **Tier 1 Protection.** The first level of protection applies to all water bodies subject to Clean Water Act jurisdiction and ensures that existing uses of a water body and the level of water quality necessary to protect those existing uses will be maintained and protected (IDAPA 58.01.02.051.01; 58.01.02.052.01). Additionally, a Tier 1 review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.05).
- **Tier 2 Protection.** The second level of protection applies to those water bodies considered high quality and ensures that no lowering of water quality will be allowed unless deemed necessary to accommodate important economic or social development (IDAPA 58.01.02.051.02; 58.01.02.052.06).

- Tier 3 Protection. The third level of protection applies to water bodies that have been designated outstanding resource waters and requires that activities not cause a lowering of water quality (IDAPA 58.01.02.051.03; 58.01.02.052.07).

DEQ is employing a water body by water body approach to implementing Idaho's antidegradation policy. This approach means that any water body fully supporting its beneficial uses will be considered high quality (IDAPA 58.01.02.052.05). Any water body not fully supporting its beneficial uses will be provided Tier 1 protection for that use, unless specific circumstances warranting Tier 2 protection are met (IDAPA 58.01.02.052.05.c). The most recent federally approved Integrated Report and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

Pollutants of Concern

Sediment and Mercury are the only two pollutants of concern associated with discharges authorized under the Small Placer Miners General Permit (GP). These pollutants are relevant only with respect to aquatic life beneficial uses, not to recreational beneficial uses; therefore, the review of this permit is focused toward maintaining and protecting aquatic life uses in Idaho streams.

Receiving Water Body Level of Protection

The Small Placer Miners GP provides coverage to small placer miners throughout the State of Idaho except for the following: National Protected Areas; Critical Habitat designated under the Endangered Species Act; National Wild and Scenic Rivers; specific river segments withdrawn by the State Board of Land Commissioners including sections of the Boise, Payette, Priest, Salmon and Snake Rivers; State Protected Rivers; and Waters of the State which are 303(d) listed ("impaired") for sediment.

All waters in Idaho that receive discharges from small suction dredges authorized under the Small Placer Miners GP will receive, at minimum, Tier 1 antidegradation protection because Idaho's antidegradation policy applies to all state waters. Water bodies that fully support their aquatic life or recreational uses are considered to be "high quality waters" and will receive Tier 2 antidegradation protection, in addition to Tier 1 protection. Although Idaho does not currently have any outstanding designated resource waters (ORWs), it is possible that a water body could be designated as an ORW during the life of this permit. Because of this potential, this antidegradation review will also assess whether the permit complies with the outstanding resource water requirements (Tier 3 protections) of Idaho's antidegradation policy.

Protection and Maintenance of Existing Uses (Tier 1 Protection)

As noted above, a Tier 1 review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the CWA, and requires a showing that existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. In order to protect and maintain designated and existing beneficial uses, a permitted discharge must comply with narrative and numeric criteria of the Idaho WQS, as well as other provisions of the WQS such as Section 055, which addresses water quality limited waters.

Water bodies not supporting existing or designated beneficial uses must be identified as water quality limited, and a total maximum daily load (TMDL) must be prepared for those pollutants causing impairment. A central purpose of TMDLs is to establish wasteload allocations (WLA) for point source discharges, which are set at levels designed to help restore the water body to a condition that supports existing and designated beneficial uses. Discharge permits must contain limitations that are consistent with wasteload allocations in the approved TMDL. A permit with effluent limitations consistent with TMDL wasteload allocations will provide the level of water quality necessary to support existing and designated uses and therefore satisfies Tier 1 antidegradation requirements.

The water quality-based effluent limitations and requirements contained in the Small Placer Miners GP are designed to ensure compliance with the narrative and numeric criteria in the Idaho WQS. Specifically, the permit requires operators to comply with Idaho's numeric turbidity standards (IDAPA 58.01.02.250.e) which were established to protect aquatic life. The permit also authorizes a 500 foot mixing zone for turbidity, which is consistent with state WQS (IDAPA 58.01.02.060) . Additionally, the permit prohibits recreational dredging in waters that have been identified by DEQ as impaired due to sedimentation/siltation, except for where an existing TMDL has an established wasteload allocation for discharges associated with recreational dredging. The permit references two specific TMDLs which contain wasteload allocations for small suction dredging, and the responsibility of the permittee to operate in compliance with those allocations through monitoring. EPA has set restrictions on the number of operators allowed on these waters in order to comply with the established WLAs. For these reasons, the permit ensures compliance with WLAs in the applicable TMDLs, as well as the provisions of Section 055 of Idaho's WQS.

Protection of High-Quality Waters (Tier 2 Protection)

As indicated previously, water bodies that fully support their beneficial uses will be provided Tier 2 protection. As such, the quality of these waters must be maintained and protected, unless it is deemed necessary to accommodate important economic or social development. For a reissued permit or license, the effect on water quality is determined by looking at the difference in water quality that would result from the activity or discharge as authorized in the current permit and the water quality that would result from the activity or discharge as proposed in the reissued permit or license (IDAPA 58.01.02.052.04.a). For a new permit or license, the effect on water quality is determined by reviewing the difference between the existing receiving water quality and the water quality that would result from the activity or discharge as proposed in the new permit or license (IDAPA 58.01.02.052.04.a).

The permit sets restrictions on when and where these activities will be allowed to occur. The permit also sets limits on the number of operations allowed on certain water bodies. The permit sets restrictions on turbidity and requires the use of best management practices (BMPs) aimed at limiting impacts to the aquatic environment including stream channel and fish habitat alterations. For these reasons, DEQ believes that the permit is

protective of water quality and any short-term sediment impacts associated with recreational dredging are not likely to cause long-term degradation of the affected water body. Furthermore, EPA may decide that an individual permit is needed and will require the applicant to obtain an individual water quality certification from the state.

In sum, the effluent limitations, associated requirements and restrictions contained in the Small Placer Miners GP were developed and designed to ensure compliance with the narrative and numeric criteria in Idaho's WQS, as well as other state and federal regulations. Therefore, DEQ has determined that as long as permittees operate consistent with the terms of the NPDES permit, there is reasonable assurance that existing and designated beneficial uses will be protected and maintained and there will be no degradation or adverse change in water quality.

Protection of Outstanding Resource Waters (Tier 3 Protection)

As a condition of this certification, DEQ is requiring any applicant proposing to discharge to an ORW, should one become designated during the term of this permit, to obtain an individual NPDES permit from EPA. This requirement complies with Idaho's antidegradation provisions concerning ORWs.

CONDITIONS THAT ARE NECESSARY TO ASSURE COMPLIANCE WITH WATER QUALITY STANDARDS OR OTHER APPROPRIATE WATER QUALITY REQUIREMENTS OF STATE LAW

Stream Channel Alteration Permit Requirements

Pursuant to IDAPA 37.03.07, operators must also obtain a stream alteration permit for recreational dredging from the Idaho Department of Water Resources. A permit application may be obtained from the following web page:

<http://www.idwr.idaho.gov/WaterManagement/StreamsDams/Streams/AlterationPermit/AlterationPermit.htm>

MIXING ZONE

Pursuant to IDAPA 58.01.02.060, DEQ authorizes the use of a mixing zone that extends 500 lineal feet downstream of the discharge. There shall be no observable turbidity plume extending beyond the limits of the mixing zone. This limit applies even where multiple suction dredgers are operating at the same time and at the same location; the combined mixing zone shall not exceed 500 feet.

ALTERNATIVE LIMITATIONS

The following subsection(s) discusses how the permit can be made less stringent and still comply with Idaho WQS or other appropriate water quality requirements of state law.

Distance between Suction Dredge Operations

The draft permit indicates that suction dredges shall not operate within 800 feet of another active suction dredge operation or a location where suction dredging occurred within the past month. The permit can specify a distance of 100 linear feet of stream between active suction dredge operations and comply with Idaho's Stream Alteration Rules (IDAPA 37.03.07.064.07), this is in keeping with DEQ's Approved Best Management Practices for Rules Governing Nonpoint Source Activities (IDAPA 58.01.02350.03.d).

OTHER CONDITIONS

This certification is conditioned upon the requirement that any material modification of this permit or the permitted activities including without limitation, any modifications of the permit to reflect new or modified TMDL wasteload allocations or other new information, shall first be provided to DEQ for review to determine compliance with WQS and to provide additional certification pursuant to Section 401.

RIGHT TO APPEAL FINAL CERTIFICATION

The final Section 401 Water Quality Certification may be appealed by submitting a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5), and the Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23, within 35 days of the date of the final certification.

Questions regarding the actions taken in this certification should be directed to Miranda Adams, IDEQ State Office, at (208) 373-0574 or miranda.adams@deq.idaho.gov.

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Barry N. Burnell
Water Quality Division Administrator
IDEQ State Office