



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

2110 Ironwood Parkway, Coeur d'Alene, ID 83814 • (208) 769-1422
www.deq.idaho.gov

Brad Little, Governor
John H. Tippetts, Director

October 16, 2019

Troy Tymesen, City Administrator
City of Coeur d'Alene
710 E. Mullan Avenue
Coeur d'Alene, ID 83814

RE: FINAL §401 Water Quality Certification for the Atlas Waterfront Project, NWW-2018-00296

Dear Mr. Tymesen,

Enclosed is the final water quality certification for the above referenced Army Corps of Engineers project, which was verified under Nationwide Permit #3: Maintenance, #13: Bank Stabilization, and #42: Recreational Facilities. No comments were received during the 21-day period that the document was available on our website for public comment. Please make sure that your staff and contracted individuals read the document and are familiar with conditions of the certification (pages 5-8).

If you have questions or concerns, please contact Thomas Herron at (208) 666-4631 or via email at Thomas.herron@deq.idaho.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel Redline".

Daniel Redline
Regional Administrator
Coeur d'Alene Regional Office

Enclosure

c: Jeremy Roberts, Corps of Engineers – Coeur d'Alene Field Office



Idaho Department of Environmental Quality Final §401 Water Quality Certification

October 16, 2019

404 Permit Application Number: NWW-2018-00296, City of Coeur d'Alene - Atlas Waterfront Development

Applicant: City of Coeur d'Alene

Nationwide Permit Number: #3: Maintenance, #13: Bank Stabilization, and #42: Recreational Facilities

Project Location: Latitude 47°41'54" N, Longitude -116°49'22" – in Riverstone Park off Tilford Lane in Kootenai County in Coeur d'Alene, ID

Receiving Water Body: Spokane River

Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended; 33 U.S.C. 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 activities receiving Section 404 dredge and fill permits and issue water quality certification decisions.

Based upon its review of the joint application for permit, received on August 19, 2019, 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 activity will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, 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.

Project Description

This project includes bank stabilization on the Spokane River as well as installing pedestrian river access, performing maintenance work on an existing boat ramp, and reestablishing a public beach. The project will discharge 1,381 cubic yards of riprap fill material over 2,039 linear feet of the Spokane River to stabilizing eroding and undercut banks. Structured pedestrian river access points will require the discharge of 33 cubic yards of riprap and concrete fill material over 110 linear feet of shoreline. The structured access will include a beach area, which will require the discharge of 38 cubic yards of cobble and sand fill material over 40 linear feet at the river shoreline. Additionally, another 72 cubic yards of cobble/gravel will be discharged at the shoreline beach location. An existing boat ramp will be maintained and armored within the

project area and includes the discharge of 58 cubic yards of riprap and 48 cubic yards of grout fill material over 60 linear feet of shoreline.

Sediments from the Coeur d'Alene Basin are often contaminated with metals from the Bunker Hill Superfund site. The City of Coeur d'Alene is currently working with DEQ to investigate soil and sediment contamination on-site and at the shoreline. The City also proposes to test soils (in accordance with DEQ-approved protocols) throughout the project so that contaminated soils will be handled appropriately. Coeur d'Alene will manage and dispose of excavated material, based on the level of contaminants from sediment testing. Project work is scheduled for completion in April 2020.

Approximately 0.2 acres of mitigation are required for this project. The City of Coeur d'Alene has proposed the restoration and enhancement of river riparian areas as compensatory mitigation for the project's proposed impacts to the Spokane River.

Antidegradation Review

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

- Tier I 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 I review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).
- Tier II 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; 58.01.02.052.08).
- Tier III 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; 58.01.02.052.09).

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.a). Any water body not fully supporting its beneficial uses will be provided Tier I protection for that use, unless specific circumstances warranting Tier II 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

The primary pollutants of concern for this project are sediment, and heavy metals related to the Bunker Hill Superfund site, particularly cadmium, lead and zinc. As part of the Section 401 water quality certification, DEQ is requiring the applicant comply with various conditions to

protect water quality and to meet Idaho WQS, including the water quality criteria applicable to these pollutants.

Receiving Water Body Level of Protection

This project is located on the Spokane River within the Upper Spokane Subbasin assessment unit (AU) ID17010305PN004_04 (Spokane River – Coeur d’Alene Lake to Post Falls Dam). This AU has designated for cold water aquatic life, salmonid spawning, primary contact recreation, and domestic water supply beneficial uses. In addition to these uses, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100).

According to DEQ’s 2016 Integrated Report, this receiving water body AU is not supporting one or more of its assessed uses. The aquatic life use in this receiving water body AU is not fully supported. Causes of impairment include lead, phosphorus, and zinc. As such, DEQ will provide Tier I protection for the cold water aquatic life and salmonid spawning beneficial uses (IDAPA 58.01.02.051.01). The contact recreation use in this receiving water body is fully supported; therefore, DEQ will provide Tier II protection (IDAPA 58.01.02.051.02), in addition to Tier I, for the primary contact recreation beneficial use.

The pollutants of concern associated with this project are sediment, cadmium, lead and zinc. Sediment is not relevant to recreational uses since sediment will not degrade water quality necessary to support recreation uses; however, there are human health criteria for zinc that relate to recreational use. Cadmium and lead are toxic metals regulated in the WQS, which prevent the impairment of beneficial uses (IDAPA 58.01.02.200.02 and 58.01.02.210). Therefore it is necessary for DEQ to conduct a Tier II analysis for this AU because the project may create impacts that could affect the recreation beneficial use.

Protection and Maintenance of Existing Uses (Tier I Protection)

A Tier I review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. The numeric and narrative criteria in the WQS are set at levels that ensure protection of existing and designated beneficial uses.

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. Once a TMDL is developed, discharges of causative pollutants shall be consistent with the allocations in the TMDL (IDAPA 58.01.02.055.05). Prior to the development of the TMDL, the WQS require the application of the antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04). The Spokane River is classified in Category 5: Waters of the State for Which a TMDL is Needed. Prior to the completion of a TMDL or equivalent process for water quality limited water bodies, IDAPA 58.01.02.055.04 requires DEQ to take actions required by the Antidegradation Policy (section 051), the Antidegradation Implementation Procedures (section 052), and the provisions in Idaho Code §39-3610.

During the construction phase, the applicant will implement, install, maintain, monitor, and adaptively manage best management practices (BMPs) directed toward reducing erosion and minimizing turbidity levels in receiving water bodies downstream of the project. In addition, permanent erosion and sediment controls will be implemented, which will minimize or prevent future sediment contributions from the project area. As long as the project is conducted in accordance with the provisions of the project plans, Section 404 permit, and conditions of this certification, then there is reasonable assurance the project will comply with the state's numeric and narrative criteria. These criteria are set at levels that protect and maintain existing and designated beneficial uses.

The applicant will utilize the following BMPs to reduce sediment mobilization and further reduce erosion on-site to protect water quality in the receiving waters. Construction below the ordinary high water mark (OHWM) will take place during winter pool (low water). Fiber wattles; geotextile fabric; and foundation rock, riprap and backfill stone will be installed below the OHWM inside the work zone as necessary to reduce/eliminate sediment from leaving the work area. All fill materials will be free of fines. Staging areas will be located upland with silt fence installed on the downstream side and the contractor will utilize an approved Spill Prevention Plan.

There is no available information indicating the presence of any existing beneficial uses aside from those that are already designated and discussed above; therefore, the permit ensures that the level of water quality necessary to protect both existing and designated uses is maintained and protected in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

High-Quality Waters (Tier II Protection)

The Spokane River is considered high quality for recreational uses. As such, the water quality relevant to this use must be maintained and protected, unless a lowering of water quality is deemed necessary to accommodate important social or economic development.

To determine whether degradation will occur, DEQ must evaluate how the permit issuance will affect water quality for zinc which is relevant to recreational uses of the Spokane River (IDAPA 58.01.02.052.06). There will be no degradation of water quality due to zinc because all construction activities will occur during low water levels with erosion control barriers between the low water line and the construction area. All dredged sediments with elevated metal concentrations will be hauled off-site and disposed of appropriately. As such, the project complies with IDAPA 58.01.02.051.02 and IDAPA 58.01.02.052.06.

Permanent erosion and sediment controls must be implemented, which will minimize or prevent future sediment contributions from the project area. The provisions in the 404 permit, coupled with the conditions of this certification, ensure that degradation to the Spokane River will not occur. Therefore, DEQ concludes that this project complies with the Tier II provisions of Idaho's WQS (IDAPA 58.01.02.051.02; 58.01.02.052.06 and 58.01.02.052.08).

Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law

General Conditions

1. This certification is conditioned upon the requirement that any modification (e.g., change in BMPs, work windows, etc.) of the permitted activity shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401. Such modifications may not be implemented until DEQ has determined whether additional certification is necessary.
2. DEQ reserves the right to modify, amend, or revoke this certification if DEQ determines that, due to changes in relevant circumstances—including without limitation, changes in project activities, the characteristics of the receiving water bodies, or state WQS—there is no longer reasonable assurance of compliance with WQS or other appropriate requirements of state law.
3. If ownership of the project changes, the certification holder shall notify DEQ, in writing, upon transferring this ownership or responsibility for compliance with these conditions to another person or party. The new owner/operator shall request, in writing, the transfer of this water quality certification to his/her name.
4. A copy of this certification must be kept on the job site and readily available for review by any contractor working on the project and any federal, state, or local government personnel.
5. Project areas shall be clearly identified in the field prior to initiating land-disturbing activities to ensure avoidance of impacts to waters of the state beyond project footprints.
6. The applicant shall provide access to the project site and all mitigation sites upon request by DEQ personnel for site inspections, monitoring, and/or to ensure that conditions of this certification are being met.
7. The applicant is responsible for all work done by contractors and must ensure the contractors are informed of and follow all the conditions described in this certification and the Section 404 permit.
8. If this project disturbs more than 1 acre and there is potential for discharge of stormwater to waters of the state, coverage under the EPA Stormwater Construction General Permit *must* be obtained. More information can be found at <https://www.epa.gov/npdes-permits/stormwater-discharges-construction-activities-region-10>.

Fill Material

9. Fill material subject to suspension shall be free of easily suspended fine material. The fill material to be placed shall be clean material only.
10. Fill material shall not be placed in a location or in a manner that impairs surface or subsurface water flow into or out of any wetland area.
11. Placement of fill material in existing vegetated wetlands shall be minimized to the greatest extent possible.

12. All temporary fills shall be removed in their entirety on or before construction completion.
13. Excavated or staged fill material must be placed so it is isolated from the water edge or wetlands and not placed where it could re-enter waters of the state uncontrolled.

Erosion and Sediment Control

14. BMPs for sediment and erosion control suitable to prevent exceedances of state WQS shall be selected and installed before starting construction at the site. One resource that may be used in evaluating appropriate BMPs is DEQ's *Catalog of Stormwater Best Management Practices for Idaho Cities and Counties*, available online at <http://www.deq.idaho.gov/media/494058-entire.pdf>. An updated version of DEQ's Stormwater Catalog is currently out for public comment. Other resources may also be used for selecting appropriate BMPs.
15. One of the first construction activities shall be placing permanent and/or temporary erosion and sediment control measures around the perimeter of the project or initial work areas to protect the project water resources.
16. Permanent erosion and sediment control measures shall be installed in a manner that will provide long-term sediment and erosion control to prevent excess sediment from entering waters of the state.
17. Permanent erosion and sediment control measures shall be installed at the earliest practicable time consistent with good construction practices and shall be maintained as necessary throughout project operation.
18. Structural fill or bank protection shall consist of materials that are placed and maintained to withstand predictable high flows in the waters of the state.
19. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation.
20. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective.
21. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
22. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.
23. Sediment from disturbed areas or able to be tracked by vehicles onto pavement must not be allowed to leave the site in amounts that would reasonably be expected to enter waters of the state. Placement of clean aggregate at all construction entrances or exits and other BMPs such as truck or wheel washes, if needed, must be used when earth-moving equipment will be leaving the site and traveling on paved surfaces.
24. The use of silt fences below the ordinary high water mark is not authorized by this certification. Other erosion best management practices that do not require excavation of riverbed sediments, such as fiber wattles, are acceptable.

Turbidity

25. Sediment resulting from this activity must be mitigated to prevent violations of the turbidity standard as stipulated under the Idaho WQS (IDAPA 58.01.02). *Any violation of this standard must be reported to the DEQ regional office immediately.*
26. All practical BMPs on disturbed banks and within the waters of the state must be implemented to minimize turbidity. Visual observation is acceptable to determine whether BMPs are functioning properly. If a plume is observed, the project may be causing an exceedance of WQS and the permittee must inspect the condition of the projects BMPs. If the BMPs appear to be functioning to their fullest capability, then the permittee must modify the activity or implement additional BMPs (this may also include modifying existing BMPs).
27. Containment measures such as silt curtains, geotextile fabrics, and silt fences must be implemented and properly maintained to minimize instream sediment suspension and resulting turbidity.
28. Monitoring must occur each day during project implementation when project activities may result in turbidity increases above background levels. *A properly and regularly calibrated turbidimeter is required.*

In-water Work

29. Work in open water is to be kept at a minimum and only when necessary. Equipment shall work from an upland site to minimize disturbance of waters of the state. If this is not practicable, appropriate measures must be taken to ensure disturbance to the waters of the state is minimized.
30. Construction affecting the bed or banks shall take place only during periods of low flow.
31. Heavy equipment working in wetlands shall be placed on mats or suitably designed pads to prevent damage to the wetlands.
32. Work in waters of the state shall be restricted to areas specified in the application.

Vegetation Protection and Restoration

33. Disturbance of existing wetlands and native vegetation shall be kept to a minimum.
34. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
35. Fencing and other barriers should be used to mark the construction areas.
36. Where possible, alternative equipment should be used (e.g., spider hoe or crane).
37. If authorized work results in unavoidable vegetative disturbance, riparian and wetland vegetation shall be successfully reestablished to function for water quality benefit at pre-project levels or improved at the completion of authorized work.

Dredge Material Management

38. Upland disposal of dredged material must be done in a manner that prevents the material from re-entering waters of the state.

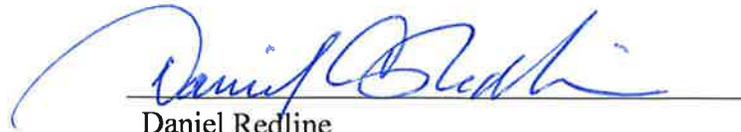
Management of Hazardous or Deleterious Materials

39. Petroleum products and hazardous, toxic, and/or deleterious materials shall not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of waters of the state. Adequate measures and controls must be in place to ensure that those materials will not enter waters of the state as a result of high water, precipitation runoff, wind, storage facility failure, accidents in operation, or unauthorized third-party activities.
40. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the channel if this fluid is available.
41. Daily inspections of all fluid systems on equipment to be used in or near waters of the state shall be done to ensure no leaks or potential leaks exist prior to equipment use. A log book of these inspections shall be kept on site and provided to DEQ upon request.
42. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
43. Equipment and machinery shall be steam cleaned of oils and grease in an upland location or staging area with appropriate wastewater controls and treatment prior to entering a water of the state. Any wastewater or wash water must not be allowed to enter a water of the state.
44. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
45. In accordance with IDAPA 58.01.02.850, in the event of an unauthorized release of hazardous material to state waters or to land such that there is a likelihood that it will enter state waters, the responsible persons in charge must
 - a. Make every reasonable effort to abate and stop a continuing spill.
 - b. Make every reasonable effort to contain spilled material in such a manner that it will not reach surface or ground waters of the state.
 - c. Call 911 if immediate assistance is required to control, contain, or clean up the spill. If no assistance is needed in cleaning up the spill, contact the appropriate DEQ regional office during normal working hours or Idaho State Communications Center after normal working hours (1-800-632-8000). If the spilled volume is above federal reportable quantities, contact the National Response Center (1-800-424-8802).
 - Coeur d'Alene Regional Office: 208-769-1422 / 877-370-0017
 - d. Collect, remove, and dispose of the spilled material in a manner approved by DEQ.

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 or comments regarding the actions taken in this certification should be directed to Tom Herron at (208) 666-4631 or at Thomas.herron@deq.idaho.gov.



Daniel Redline

Regional Administrator

Coeur d'Alene Regional Office