Idaho Department of Environmental Quality

FINAL §401 Water Quality Certification

May 11, 2007

2007 Army Corps of Engineers Section 404 Nationwide Permits

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 (IDEQ) has authority to review Section 404 permits and issue a water quality certification decision.

IDEQ certifies that if the permittees comply with the terms and conditions imposed by the above-referenced permits, the regional conditions set forth by the Army Corps of Engineers Walla Walla District (Corps) and the conditions set forth in this water quality certification, then there is reasonable assurance the discharges 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 *et seq.*).

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, including without limitation, the approval from the owner of a private water conveyance system, if one is required, to use the system in connection with the permitted activities.

CONDITIONS THAT ARE NECESSARY TO ASSURE COMPLIANCE WITH WATER QUALITY STANDARDS

Activities on Impaired Waters

Prior to commencing work, the permittee must notify the appropriate Regional IDEQ Office of all activities that occur on waters not meeting state water quality standards ("impaired waters"), regardless of whether the Corps requires a pre-construction notification. This notification must be in writing and must contain a project description, location, name of affected water body, start and completion dates, a description of planned best management practices (e.g. methods that will be used to control turbidity), and permittee contact information.

The most current EPA-approved IDEQ Integrated Report at the time of the proposed activity must be used for determining whether the affected water is considered an impaired water. A copy of the current, EPA-approved final 2002 Integrated Report can be viewed at: http://www.deq.idaho.gov/water/data_reports/surface_water/monitoring/2002.cfm.

This URL also has a link to IDEQ's map-based Integrated Report which presents information from the Integrated Report in a searchable, map-based format.

Activities on impaired waters with a total maximum daily load (TMDL) must be implemented by the permittee in a manner that is consistent with the TMDL. IDEQ believes that if the permittee fully complies with the conditions of this certification (most notably the best management practices and bank stabilization conditions), then the project will likely comply with the TMDL. The permittee is advised to contact the appropriate regional office to determine if their project will be in compliance with the TMDL. A list of EPA-approved TMDLs is available online at: http://www.deq.idaho.gov/water/data_reports/surface_water/tmdls/sba_tmdl_master_list.cfm.

Best Management Practices
Best management practices (BMPs) must be designed, implemented, and maintained by the permittee to fully protect and maintain the beneficial uses of waters of the state. Furthermore, the permittee must monitor and evaluate BMP effectiveness during project construction to determine if water quality standards are being met. If there are indications that water quality standards are not being met (such as a plume of suspended material), then the BMPs must be modified as necessary to ensure compliance with water quality standards.

Approved BMPs for specific activities (such as mining, forestry, stream channel alteration) are codified in IDAPA 58.01.02.350. In addition, IDEQ has a catalog of stormwater best management practices that is available on line at:
http://www.deq.idaho.gov/water/data_reports/storm_water/catalog/index.cfm. This catalog presents a variety of BMPs that can be used to control erosion and sediment during and after construction. Other sources of information are also available and may be used for selecting appropriate BMPs.

Wood Preservatives
Any use of treated wood materials in the aquatic environment must be conducted in accordance with IDEQ Policy # PM97-1, "Water Quality and Wood Preservatives Policy Memoranda." This is available on-line at: http://www.deq.idaho.gov/rules/policies/pm97_1.cfm.

Hazardous and Deleterious Materials
Hazardous and deleterious materials (e.g. oil, gasoline, chemicals, trash, and sawdust) must not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of waters of the state unless adequate measures and controls are provided to ensure that those materials will not enter waters of the state.

Bank Stabilization
Any projects involving bank stabilization must incorporate, wherever practicable, bioengineering techniques (using root wads and vegetation) in the bank stabilization design.

PROJECTS NOT COVERED UNDER THIS CERTIFICATION

IDEQ believes that some projects have the potential to adversely impact water quality, and additional activity-specific conditions, beyond those included in this certification, may be necessary to ensure compliance with Idaho WQS. Therefore the following NWPs are denied certification at this time and individual certifications will be required for these activities:

NWP 12 – Utility Line Activities
NWP 14 – Linear Transportation Projects
NWP 16 – Return Water from Upland Contained Disposal Areas
NWP 17 – Hydropower Projects

This certification is conditioned upon the requirement that any material modification of the April 4, 2007 proposed regional conditions for the Walla Walla District shall be provided to IDEQ for review to determine compliance with Idaho WQS and if necessary, to provide additional certification pursuant to CWA Section 401.

RIGHT TO APPEAL FINAL CERTIFICATION

This 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 this certification.

Questions or comments regarding the actions taken in this certification should be directed to Johnna Sandow, State Office IDEQ at (208) 373-0163 or Johnna.Sandow@deq.idaho.gov.

Barry N. Burnell

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Administrator
IDEQ Water Quality Division