Necessary: No reasonable alternative(s) exists to prevent or minimize degradation.

Non-Degrading Alternative: A reasonable alternative to a proposed or existing discharge that would not result in degradation of existing water quality.

Notice of Intent (NOI): A form or application that applicants must submit to EPA when seeking coverage under a general permit.

Outstanding Resource Water (ORW): A surface water body that the Idaho legislature has designated as an outstanding national or state resource water in the water quality standards. An ORW receives Tier 3 antidegradation protection. This term is defined in rule (IDAPA 58.01.02) as:

> A high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been designated by the legislature and subsequently listed in this chapter. ORW constitutes an outstanding national or state resource that requires protection from point and nonpoint source activities that may lower water quality.

Parameter: A characteristic of water quality relevant to a beneficial use. Parameters may be a pollutant or something affected by pollutants, e.g. dissolved oxygen is a parameter often adversely affected by discharge of oxygen demanding organic waste (pollutant) , but also indirectly by nutrient enrichment (pollutant).

Presumed Use Protection: A level of water quality protection for undesignated waters based on presumption they can support of cold water aquatic life and primary or secondary contact recreation.

Regulated Activity: A regulated activity is an activity or discharge that requires a permit or license and is subject to CWA § 401 certification, e.g. CWA § 402 (NPDES permits), CWA § 404 (dredge and fill permits), or a FERC license.

Social or Economic Importance (SEI) (also socioeconomic justification or SEJ): An evaluation of whether the project causing degradation provides social or economic benefits important to the community in the area in which it occurs.

Short-term or Temporary Activity: An activity which is as short as possible but lasts for no more than one (1) year is limited in scope and is expected to have only minimal impact on water quality. This term is defined in rule (IDAPA 58.01.02) as:

> An activity which is as short as possible but lasts for no more than one (1) year, is limited in scope and is expected to have only minimal impact on water quality as determined by the Director. Short-term or temporary activities include, but are not limited to, those activities described in Subsection 080.02.

Special Resource Water (SRW): A surface water that has been designated as a special resource water in Idaho's water quality standards. This term is defined in rule (IDAPA 58.01.02) as:

> Those specific segments or bodies of water which are recognized as needing intensive protection:
>
> **a.** To preserve outstanding or unique characteristics; or

6 General Permits, Dredge and Fill Permits, and FERC Licenses

A number of relatively similar discharges to surface waters may be authorized under a single general NPDES permit issued by Region 10 EPA. Such discharges include aquaculture facilities and storm water runoff from industrial facilities, mining and processing facilities, confined animal feeding operations, and construction sites that are one acre or larger. These NPDES permits are currently issued by EPA and thus subject to §401 certification by the State of Idaho. Section 401 certification is also required for individual and general §404 dredge and fill permits and FERC operation licenses. These permits and licenses must meet antidegradation requirements.

Except as described below, regulated activities authorized by existing general permits (that are currently in effect, not expired) are not required to undergo a Tier 2 antidegradation review as part of the Notice of Intent process. New and reissued general permits after July 1, 2011, must be evaluated to consider the potential for degradation as a result of new or expanded permitted discharges they cover.

6.1 Antidegradation Review of General Permits

All NPDES general permits require that permit conditions be met, including the general requirement that permitted discharges must ensure that water quality standards are not violated and best management practices contained in the permit are implemented. Compliance with the terms of the general permits issued by EPA and certified by DEQ is required to maintain authorization to discharge under the general permit. Discharges that might be covered by a general permit but cannot comply with general permit conditions or antidegradation requirements will be required to seek coverage under an individual permit.

Existing General Permits

For regulated activities currently authorized by general permits issued prior to July 1, 2011, such activities are not required to undergo a Tier 2 antidegradation review as part of the Notice of Intent (NOI) process. However, such a discharge would need to comply with the existing general permit conditions and any associated antidegradation requirements that were put in place when the general permit was issued. This includes new or expanded activities or discharges regulated by existing general permits. For example, an NOI being submitted for a new discharge covered by the existing construction stormwater general permit would not undergo a Tier 2 antidegradation review. Where DEQ has denied water quality certification (e.g., some of the nationwide 404 permits), a Tier 2 antidegradation review may be necessary to obtain individual certification. As of January 11, 2011, there are eleven general permits that are currently effective in Idaho and two general permits that are in draft form. Table 1 summarizes whether a Tier 2 antidegradation review could be required for new or increased discharges or activities seeking coverage under the existing general permits.

Table 7. Summary of whether new or increased discharges are required to undergo a Tier 2 antidegradation review when seeking coverage under existing EPA and ACOE general permits in Idaho

Federal Agency	Existing General Permit	Tier 2 Analysis Required for New or Increased Discharges?
EPA	Aquaculture Facilities in Idaho Subject to Wasteload Allocations under Selected TMDLs	No
	Cold Water Aquaculture Facilities in Idaho (Not Subject to Wasteload Allocations)	No
	Fish Processors Associated with Aquaculture Facilities	No
	Groundwater Remediation Facilities	No
	Concentrated Animal Feeding Operations	No
	Construction Stormwater	No
	Industrial Stormwater	Potentially. The decision is at EPA's discretion per Section 2.2.3 of the permit
	Vessel Discharges	No
	DRAFT General Permits Small Suction Dredge Mining Pesticide General Permit	 No No
ACOE	Nationwide Permits (NWP)	Yes for activities covered under NWPs denied certification (NWP 12, 14, 16, 17)
	Regional General Permit 27	No
	Regional Permit	No

New or Reissued General Permits

For general permits issued or reissued after July 1, 2011, antidegradation reviews will be conducted for the entire class of general permittees at the time DEQ reviews the permit to decide whether or not to certify the general permit complies with state water quality standards. Antidegradation reviews will focus on pollutants that may contribute to water quality degradation, and will examine whether water quality criteria are met, whether degradation is likely to occur, and whether the permit conditions or permit record satisfies the requirements of the Tier 2 analysis. This review will also include whether or not the potential activity or discharge will have a limited effect on water quality and as such be an insignificant activity or discharge. If DEQ finds that the general permit adequately addresses antidegradation at the time the permit is issued, then DEQ will not need to include conditions specific to antidegradation in its §401 certification of the permit.

However, if DEQ cannot determine that the general permit adequately addresses antidegradation at the time the permit is issued, DEQ must include conditions in the §401 certification that provide reasonable assurance activities covered under the general permit will comply with the antidegradation policy. Depending on the type of activities covered

under the general permit and the conditions and requirements of the general permit, conditions that DEQ may incorporate into the §401 certification include:

- Requiring additional or more stringent effluent limitations and any other limitations and monitoring requirements necessary to ensure compliance with the antidegradation provisions.
- Retaining DEQ's authority to, after reviewing submitted NOIs, require all or a subset of new or expanding discharges to undergo a Tier 2 analysis if it is determined that degradation may occur as a result of cumulative impacts from multiple discharges to a water body, or as of result of impacts from a single discharger over time, or as a result of other individual circumstances.

Existing activities or discharges currently covered under an effective general permit will be deemed to comply with the antidegradation policy when seeking coverage under a reissued general permit as long as the activity or discharge is not expanding. Such activities or discharges will not be required to undergo a Tier 2 antidegradation review as part of the NOI process. However, if the activity or discharge is expanding, it must comply with any new antidegradation requirements of the reissued general permit.

Existing activities or discharges that are required to be permitted for the first time under a new general permit will be deemed to not cause degradation because the mere fact of becoming regulated will limit their discharge for the first time and will be a step toward reducing their degradation of water quality.

New activities or discharges seeking coverage under a new or reissued general permit for the first time will be required to comply with the antidegradation requirements of that general permit and associated §401 certification.

6.2 §404 Dredge and Fill Permits

Section 404 of the Clean Water Act regulates the placement of dredged or fill material into "waters of the United States." The U.S. Army Corps of Engineers (ACOE or the Corps) administers the §404 permit program dealing with these activities (e.g., wetland fills, in-stream sand/gravel work, etc.) in cooperation with the EPA and in consultation with other public agencies.

To ensure that antidegradation and other water quality protection requirements are considered, reviewed, and met in a comprehensive and efficient manner, these requirements will be addressed and implemented through DEQ's §401 water quality certification processes. Under this approach, applicants who fulfill the terms and conditions of applicable §404 permits and the terms and conditions of the corresponding §401 water quality certification will have fulfilled the antidegradation requirements. Additional antidegradation considerations may be incorporated into §404 permits and the corresponding §401 certifications at the time of permit issuance.

For activities covered under §404 general permits (e.g., "nationwide" or "regional" permits), the antidegradation review will be conducted at the time DEQ is reviewing the

general permit for §401 certification. Similar to the process for general NPDES permits, the antidegradation review will focus on pollutants that may contribute to water quality degradation and will examine whether water quality criteria are met, whether degradation is likely to occur, and whether the permit conditions or the permit administrative record satisfies the requirements of any required Tier 2 analysis

If a §404 general permit is for a short-term or temporary activity, then DEQ may conclude that because of the limited duration and scope of the discharge no degradation of water quality will occur. This would happen if, in DEQ's evaluation, we can determine that all appropriate and reasonable BMPs related to erosion and sediment control, project stabilization, and prevention of water quality degradation will be applied and maintained (e.g., preserving vegetation, stream bank stability, and basic drainage). ~~As part of this evaluation, DEQ will consider cumulative impacts from other sources or impacts that result from an activity over a long period of time.~~

For discharges of dredged or fill material covered under an individual §404 permit, the ACOE must ensure that the §404(b)(1) guidelines have been met (40 CFR Part 230). These guidelines require that all appropriate alternatives to avoid and minimize degradation be evaluated. DEQ will coordinate with the Corps and the applicant to ensure that the analysis conducted to fulfill the 404(b)(1) guidelines will also fulfill the antidegradation review requirements.

6.3 Federal Energy Regulatory Commission Licenses

The Federal Energy Regulatory Commission (FERC) licenses the operation of dams that generate hydroelectric power. Applicants for these licenses are required to obtain §401 water quality certification. DEQ's certification will look at conditions that are necessary to comply with Idaho water quality standards, including antidegradation provisions.

Although dams merely impound water rather than adding anything to it, they may affect water quality in the impoundment and downstream. Water quality certification and antidegradation review thus are focused not on the effect of a traditional discharge but on the changes in water quality that may result from the dam and its impoundment and how operations may alter that quality.

DEQ may place conditions on operations or require other actions to ensure compliance with the antidegradation provisions. Applicants who fulfill the terms and conditions of an applicable FERC license and the terms and conditions of the corresponding §401 water quality certification will have fulfilled antidegradation requirements. Where there will be significant degradation, DEQ will evalute whether the project is necessary to accommodate important social or economic development.

Antidegradation is concerned with any adverse change in water quality that may occur due to an activity or discharge. When a project undergoes relicensing with FERC, the relicensing certification process will compare the calculated water quality now under the current FERC license with calculated water quality in the future under the proposed FERC license. If this comparison shows there will be no degradation in water quality, then no Tier 2 antidegradation analysis is necessary.