



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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C.L. "Butch" Otter, Governor
John H. Tippetts, Director

December 18, 2015

Erie Properties, LLC
1712 Pioneer Ave
Cheyenne, WY 82001

RE: Final §401 Water Quality Certification Memaloose Island Riprap Pend Oreille
Lake; NWW-2015-479

Dear Erie Properties, LLC,

Enclosed is the final water quality certification for the above referenced project. The draft certification was advertised for public comment for 21 days from November 20 to December 11, 2015. One comment was received but no substantive changes have been made to the final certification. If you have any questions or concerns, please contact June Bergquist at 208.666.4605 or via email at june.bergquist@deq.idaho.gov.

Sincerely,

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

Daniel Redline
Regional Administrator
Coeur d'Alene Regional Office

c: Shane Slate, Corps of Engineers – Coeur d'Alene Field Office 1910 Northwest
Blvd, Suite 210 Coeur d'Alene ID 83814
Nicole Deinarowicz, DEQ State Office



Idaho Department of Environmental Quality Final §401 Water Quality Certification

December 18, 2015

404 Permit Application Number: NWW-2015-00479; Memaloose Island Riprap

Applicant/Authorized Agent: Erie Properties, LLC 1712 Pioneer Ave, Cheyenne, WY 82001; authorized agent: Dan McMahon, McMahon & Easterbrook, 47392B Highway 200 Hope, ID 83836

Project Location: Latitude 48 12' 13.92"N Longitude 116 17' 51.70"W; T57N, R1E section 14; Boat access only island on northern end of Pend Oreille Lake near the City of Hope.

Receiving Water Body: Pend Oreille Lake

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 October 21, 2015, the revised Biological Assessment received on November 9, 2015 and additional information received on November 16, 2015, 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

The applicant proposes to discharge 875 cubic yards of angular riprap below the ordinary high water mark of Pend Oreille Lake to stabilize 1,475 feet of eroding shoreline. To accomplish this work there will be 80-90 cubic yards of dredging to create a toe trench for riprap placement. The dredged material, comprised mostly of gravel and rock, will be utilized as part of the bank stabilization. Dump trucks will travel from a commercial borrow source near the City of Clark Fork to the water's edge where they will drive onto a barge. After transport to the island by tug boat, the dump truck will drive off the barge onto the shoreline at the location marked on the application for a dock that will be installed after the riprap project. The lakebed at this location is

rock and gravel and no turbidity is expected at this off-loading point based on the contractor's experience at a similar location on Pend Oreille Lake. The dump truck will drive to where the riprap will be placed and unloaded by an excavator as it places material on the eroded banks. The dump truck and excavator will work from the upland except in areas where access would cause the mature riparian trees to be cut. Rather than cut the trees, a rubber tracked (low ground pressure) dump truck and tracked excavator will travel on the dewatered shoreline. Work will be done in the dry, so there will be no placement of riprap directly into the water and no equipment travel in the water. Work will be attempted during a fair weather window to minimize the chance of sediment laden runoff from the fill material and low winds to prevent barge upset. A row of straw wattles will be placed between the riprap and the water's edge to capture any spilled or eroded material. If staging of the material on the island is necessary it will be circled with straw wattles. Willow bundles will be incorporated in the riprap.

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 58.01.02.052.07).
- 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; 58.01.02.052.08).
- 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; 58.01.02.052.09).

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 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

The primary pollutants of concern for this project are sediment and phosphorus. 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 sediment and phosphorus.

Receiving Water Body Level of Protection

This project is located on Pend Oreille Lake within the Pend Oreille Lake Subbasin assessment unit (AU) ID17010214PN018L_0L (Freshwater Lake). This AU has the following designated beneficial uses: cold water aquatic life, domestic water supply, salmonid spawning, and primary contact recreation. 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 2012 Integrated Report, this AU is not fully supporting one or more of its assessed uses. The aquatic life and secondary contact recreation uses are not fully supported. Causes of impairment include mercury, other flow regimes alterations, and phosphorus. As such, DEQ will provide Tier 1 protection only (IDAPA 58.01.02.051.01) for both the aquatic life and contact recreational uses.

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 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 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).

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 designated and existing beneficial uses. In addition, the project will be consistent with the *Total Maximum Daily Load (TMDL) for Nutrients for the Nearshore Waters of Pend Oreille Lake, Idaho*. The project will comply with this TMDL by using best management practices that minimize erosion and spillage of dredged and fill material below the ordinary high water mark of Pend Oreille Lake.

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 designated and existing uses is maintained and protected in compliance with the Tier 1 provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

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.

Fill Material

8. Fill material shall be free of organic and easily suspended fine material.
9. All temporary fills shall be removed in their entirety on or before construction completion.
10. 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 through erosion or sloughing.

Erosion and Sediment Control

11. 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.
12. Permanent erosion and sediment control measures shall be installed in a manner that will provide long-term sediment and erosion control to prevent sediment from entering waters of the state.
13. 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.
14. At a minimum, BMPs must be inspected and maintained daily during project implementation.
15. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
16. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.

Turbidity

17. **Sedimentation and associated turbidity of Pend Oreille Lake resulting from this activity, which includes the transport, loading and unloading of materials**, 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 (if condition 19 doesn't resolve the sedimentation issue) must be reported to the DEQ regional office immediately by calling (208) 666-4605, leaving a message is acceptable.*
18. 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).
19. Containment measures such as straw wattles must be properly installed and maintained to block sediment movement and prevent resulting turbidity in the lake.

In-water Work

20. In-water work is not authorized by this certification.

Vegetation Protection and Restoration

21. Disturbance of existing native vegetation shall be kept to a minimum.
22. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
23. Fencing and other barriers should be used to mark the construction areas.

24. 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.

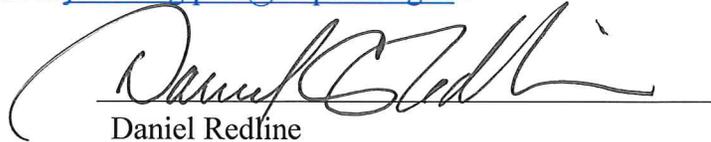
Management of Hazardous or Deleterious Materials

25. 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.
26. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the channel if this fluid is available.
27. 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.
28. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
29. 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. Cleaning should be sufficient to remove any invasive species including larval stages, seeds and plant and animal parts. Any wastewater or wash water must not be allowed to enter a water of the state.
30. Emergency spill procedures shall be in place and include a spill response kit (e.g., oil absorbent booms or other equipment).
31. 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. Immediately notify DEQ of the spill by calling the Idaho State Communications Center at 1-800-632-8000.
32. Collect, remove, and dispose of the spilled material in a manner approved by DEQ. Any release that causes a sheen (of any size) in waters of the state must be reported *immediately* to the National Response Center at 1-800-424-8802 and DEQ by calling the Idaho State Communications Center at 1-800-632-8000.
33. In accordance with IDAPA 58.01.02.851.04, any aboveground spill or overflow of petroleum that results in a release less than 25 gallons *and does not cause a sheen on nearby surface water* shall be reported to DEQ by calling the Idaho State Communications Center at 1-800-632-8000 if cleanup cannot be accomplished within 24 hours.

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 June Bergquist at 208-666-4605 or via email at june.bergquist@deq.idaho.gov.

A handwritten signature in black ink, appearing to read "Daniel Redline", is written over a horizontal line.

Daniel Redline
Regional Administrator
Coeur d'Alene Regional Office