



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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C.L. "Butch" Otter, Governor
Curt Fransen, Director

July 31, 2012

Mr. Michael Bussell, Director
USEPA, Region 10
Office of Water and Watersheds
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Subject: FINAL §401 Water Quality Certification for the re-issuance of the NPDES Vessel General Permit (VGP) and Small Vessel General Permit (sVGP)

Dear Mr. Bussell:

The Idaho Department of Environmental Quality (DEQ) has reviewed the draft NPDES permits covering discharges incidental to the normal operation of commercial, non-recreational vessels. DEQ has included several conditions necessary to comply with Idaho Water Quality Standards and other laws intended to protect water quality. All of the conditions set forth in the state's certification apply to both the VGP and the sVGP.

DEQ offered a 30-day public comment period, during which time no comments were received. Please find the enclosed final certification for inclusion with the VGP and sVGP for the State of Idaho.

If you have any questions or concerns, please feel free to contact Miranda Adams at 208-373-0574 or via email at miranda.adams@deq.idaho.gov.

Sincerely,

A handwritten signature in blue ink that reads "Barry N. Burnell".

Barry N. Burnell
Water Quality Division Administrator

BNB:MA:ls

c: Michael Lidgard, USEPA Region 10
Cindi Godsey, USEPA Region 10



Idaho Department of Environmental Quality FINAL §401 Water Quality Certification

July 31, 2012

NPDES Permit(s): Vessel General Permit (VGP), Small Vessel General Permit (sVGP)

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 (NPDES) 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, 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.

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). 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

EPA has established effluent limitations to control a variety of pollutants associated with discharges from vessels. These pollutants have been classified into 7 major groups: Aquatic Nuisance Species (ANS), nutrients, pathogens (including *E. coli* & fecal coliform), oil and grease, metals, most conventional pollutants (Biochemical Oxygen Demand, pH, Total Suspended Solids), and other toxic and non-conventional pollutants with toxic effects.

Receiving Water Body Level of Protection

All waters in Idaho that receive discharges from vessels 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. For waters which have not yet been assessed, DEQ must evaluate on a case-by-case basis whether to apply tier 2 protections, in addition to tier 1 protections. Although Idaho does not currently have any outstanding resource waters (ORWs) designated, 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) 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 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.

Currently, there are no TMDLs in the state of Idaho that contain WLAs for discharges from vessels. Furthermore, EPA has determined that numeric effluent limits for discharges authorized under the VGP and sVGP are impracticable to calculate due to the varied nature of discharges from vessels, therefore non-numeric effluent limits contained in both permits speak to best management practices (BMPs) for dischargers to comply with. DEQ has reviewed the BMPs and has added further conditions on discharges to water bodies which are expected to receive discharges from vessels and are currently not meeting Idaho WQS.

Owners or operators of large vessels, covered under the VGP, are required to know whether they are discharging to impaired waters. Under the High Priority Provision of Section 055 of Idaho's WQS, in absence of a TMDL, there must not be additional loading of a pollutant where an impairment caused by that pollutant exists (IDAPA 58.01.02.055.04). Therefore, special considerations will need to be taken when discharging to these waters to ensure that discharges will not contribute to the impairment. For example, where a water body is impaired by metals, the discharger must not engage in activities (i.e. releasing contaminated bilgewater) where those pollutants are discharged to the water body, thereby contributing to the existing impairment (see Table 1).

Idaho state law prohibits discharges of graywater and/or sewage/graywater mixtures in certain regions, which are otherwise authorized under this general permit (see "Conditions" section).

The limitations and associated requirements in the 2013 VGP, coupled with other applicable state laws, and the conditions set forth in this certification provide DEQ reasonable assurance of compliance with IDAPA 58.01.02.051.01 and 58.01.02.052.07.

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 58.01.02.052.06.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 58.01.02.052.06.a).

With respect to vessels currently operating in Idaho and discharging to waters of the State, DEQ believes that as long as discharges are not increasing, there will be no

degradation or adverse change in water quality because the new permits are more stringent than the previous permits. New or increased discharges however, must be evaluated on a case-by-case basis.

As a condition of this certification, DEQ is requiring that owners/operators of vessels proposing to increase their discharges or number of vessels in their fleet, or those who are seeking coverage under the VGP for the first time, contact the appropriate DEQ Regional Office (Table 2) to determine whether additional controls are necessary in order to ensure that high quality waters are not degraded. This condition shall ensure compliance with Idaho's tier 2 antidegradation requirements.

In sum, as long as the vessel operators comply with the terms of the NPDES permit and §401 certification then 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 as required under IDAPA 58.01.02.051.02 and IDAPA 58.01.02.052.06.

Protection of Outstanding Resource Waters (Tier 3 Protection)

Idaho's antidegradation policy requires that the quality of outstanding resource waters be maintained and protected from the impacts of point source discharges. No water bodies in Idaho have been designated as outstanding resource waters to date; however, it is possible that waters may become designated during the term of these permits. Because of this possibility, DEQ has evaluated whether the proposed draft VGP and sVGP comply with the ORW antidegradation provision.

As a condition of this certification, DEQ is requiring any applicant proposing to discharge to an ORW, under either permit, to obtain an individual NPDES permit from EPA. This requirement complies with Idaho's antidegradation provisions concerning ORWs (IDAPA 58.01.02.052.09).

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

Applicable to Both the Vessel GP and the Small Vessel GP

Permittee Responsibility

Owners and operators of vessels covered by the Vessel General Permit (VGP) and/or the Small Vessel General Permit are responsible for knowing the current support status of the waters in which they operate on and may discharge to. The most current EPA-approved IR must be used to determine the support status of the affected water body and can be found online: <http://www.deq.idaho.gov/water-quality/surface-water/monitoring-assessment/integrated-report.aspx>.

DEQ's webpage also has a link to the state's map-based Integrated Report which presents information from the Integrated Report in a searchable, map-based format:
<http://mapcase.deq.idaho.gov/wq2010/>.

The information provided in Table 1 (below) is based on the 2010 Integrated Report and is subject to change. As previously stated, discharges must not contain pollutants where the receiving water body is identified as "impaired" due to those pollutants (IDAPA 58.01.02.055.04).

Table 1. Water bodies expected to receive discharges from vessels, current support status (*Integrated Report, 2010*)

Region	Water Body	HUC	Support Status	Pollutants of Concern
Coeur d'Alene	Clark Fork River	17010213	Impaired	Cadmium, Copper, Zinc, Dissolved Gas Supersaturation, Temperature
	Coeur d'Alene Lake	17010303	Impaired	Cadmium, Lead, Zinc
	Kootenai River	17010104	Impaired	Temperature
	Lake Pend Oreille	17010214	Impaired	Mercury, Temperature, Dissolved Gas Supersaturation
	Pend Oreille River	17010214 17010216	Impaired	Temperature, Dissolved Gas Supersaturation
	Priest Lake	17010215	Unassessed	N/A
	Spokane River	17010305	Impaired	Cadmium, Lead, Zinc, Phosphorus
Lewiston	Clearwater River	17060304	Multiple Categories	Dissolved Gas Supersaturation, Sedimentation, Temperature
		17060306		
		17060308		
	Dworshak Reservoir	17060308	Unassessed	N/A

Reporting New or Increased Discharges, or Increased Fleet Size, to Tier 2 (High-Quality) Waters

As a condition of this certification, DEQ is requiring that owners/operators of vessels proposing to increase their discharges or number of vessels in their fleet, or those who are seeking coverage under the VGP for the first time, contact the appropriate DEQ Regional Office (Table 2) to determine whether additional controls are necessary in order to ensure that high quality waters are not degraded.

Rules Prohibiting Discharges on Certain Water Bodies

Owners and operators of vessels covered by these general permits must be aware of and comply with the Panhandle Health District Rules governing discharges from vessels. The discharge of graywater or a sewage/graywater mixture otherwise authorized under this general permit is prohibited in certain regions of the state pursuant to IDAPA 41.01.01.200.01(c). Those areas include Boundary, Bonner, Kootenai, Benewah, and Shoshone counties in Northern Idaho (IDAPA 41.01.01.200.01 *et seq.*).

Reporting of Discharges Containing Hazardous Materials or Petroleum Products

Any spill of hazardous materials must be immediately reported to the appropriate DEQ Regional Office (Table 2). Spills of petroleum products that exceed 25 gallons or that cause a visible sheen on nearby surface waters should be reported to DEQ within 24-hours. Petroleum product spills of less than 25 gallons or spills that do not cause a sheen

on nearby surface waters shall be reported to DEQ if clean-up cannot be accomplished within 24-hours (IDAPA 58.01.02.850, 58.01.02.851, 58.01.02.852).

Table 2. DEQ Regional Office contact information

<i>Regional Office</i>	<i>Contact Name</i>	<i>Phone Number</i>	<i>Email</i>
Coeur d'Alene	June Bergquist	208-769-1422	june.bergquist@deq.idaho.gov
Lewiston	John Cardwell	208-799-4370	john.cardwell@deq.idaho.gov

Outside of regular business hours, qualified spills should be reported to the State Communications Center (1-800-632-8000 or 208-846-7610).

Invasive Species

Owners and operators of vessels covered by these general permits must be aware of and comply with the Idaho State Department of Agriculture Rules Governing Invasive Species (IDAPA 02.06.09).

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.



Barry N. Burnell
Water Quality Division Administrator
IDEQ State Office