



Idaho Department of Environmental Quality Draft §401 Water Quality Certification

July 28, 2016

NPDES Permit Number(s): General Permit for Stormwater Discharge from Construction Activities (CGP) IDR100000

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 National Pollutant Discharge Elimination System (NPDES) permits and issue water quality certification decisions.

Based upon its review of the draft Construction General Permit (CGP) and associated fact sheet, received from EPA on April 1, 2016, 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, 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.

The draft CGP authorizes discharges associated with construction activity, including clearing, grading, and excavation, if the construction activity:

- Will result in the disturbance of 1 or more acres of land; or
- Will result in the disturbance of less than one acre of land but is part of a common plan of development or sale that will ultimately disturb 1 or more, acres of land; or
- Has been designated by EPA as needing permit coverage under 40 CFR 122.26(a)(1)(v) or 40 CFR 122.26(b)(15)(ii)

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 associated with storm water discharges from construction activities are sediment (as total suspended solids) and turbidity. Other potential pollutants include the following: phosphorus, nitrogen, pesticides, organics, metals, PCBs, petroleum products, construction chemicals, and solid wastes.

Receiving Water Body Level of Protection

The CGP provides coverage to construction activities throughout the entire State of Idaho. Because of the statewide applicability, all of the jurisdictional waters within Idaho could potentially receive discharges either directly or indirectly from activities covered under the CGP. As previously mentioned, DEQ uses a water body by water body approach when determining the level of antidegradation protection a water body will receive.

All waters in Idaho that receive discharges from activities authorized under the CGP 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.

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 of Idaho's antidegradation policy.

To determine the support status of the receiving water body, persons filing a Notice of Intent (NOI) for coverage under this general permit must use the most recent EPA-approved Integrated Report, available on Idaho DEQ's website: <http://www.deq.idaho.gov/water-quality/surface-water/monitoring-assessment/integrated-report/>.

High quality waters are identified in Categories 1 and 2 of the Integrated Report. If a water body is in either Category 1 or 2, it is a Tier 2 water body.

Unassessed waters are identified in Category 3 of DEQ's Integrated Report. These waters require a case-by-case determination to be made by DEQ based on available information at the time of the application for permit coverage. If a water body is unassessed, the applicant is directed to contact DEQ for assistance in filing the NOI.

Impaired waters are identified in Categories 4 and 5 of the Integrated Report. Category 4(a) contains impaired waters for which a TMDL has been approved by EPA. Category 4(b) contains impaired waters for which controls other than a TMDL have been approved by EPA. Category 5 contains waters which have been identified as "impaired", for which a TMDL is needed. These waters are Tier 1 waters, for the use which is impaired. With the exception, if the aquatic life uses are impaired for any of these three pollutants—dissolved oxygen, pH, or temperature—and the biological or aquatic habitat parameters show a healthy, balanced biological community, then the water body shall receive Tier II protection, in addition to Tier I protection, for aquatic life uses (IDAPA 58.01.02.052.05.c.i)

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://www.deq.idaho.gov/assistance-resources/maps-data/>.

Water bodies can be in multiple categories for different causes. If assistance is needed in using these tools, or if additional information/clarification regarding the support status of the receiving water body is desired, the applicant is directed to make contact with the appropriate DEQ regional office or the State Office (Table 1).

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. 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. The numeric and narrative criteria in the WQS are set at levels that ensure protection of existing and designated beneficial uses. The effluent limitations and associated requirements contained in the CGP are set at levels that ensure compliance with the narrative and numeric criteria in the WQS.

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 (WLA) 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.

The non-numeric effluent limitation requirements in the CGP address erosion and sediment controls, soil stabilization requirements, de-watering procedures, pollution prevention measures, prohibited discharges and surface outlets. Further, the 2017 CGP imposes the same additional requirements for construction activities where the discharge will occur on water bodies identified as “impaired” for sediment or a sediment-related parameter, such as total suspended solids (TSS) or turbidity, and/or nutrients, including impairments for nitrogen and/or phosphorus as in the 2012 CGP. The permittee will be responsible for identifying such waters in the NOI. As a condition of the State’s certification, the permittee must also notify the appropriate DEQ regional office (Table 1) of any potential discharges to impaired waters.

Those additional control measures to be taken if the affected water body is impaired for sediment and/or nutrients are:

- Increased frequency of site inspections;
- Compliance with the deadline for complete stabilization; and
- Any additional State or Tribal requirements

In order to ensure compliance with Idaho WQS, DEQ requires the permittee(s) to comply with Idaho’s numeric turbidity criteria, developed to protect aquatic life uses. The criterion states, “Turbidity shall not exceed background turbidity by more than 50 NTU instantaneously or more than 25 NTU for more than 10 consecutive days” (IDAPA 58.01.02.250.02.e). For Waters of the State which have been identified as impaired due to sedimentation/siltation, DEQ is requiring the permittee to conduct turbidity monitoring as described below in the “Conditions” section of this certification.

As written in the CGP, if EPA determines that the controls outlined in Parts 2, 3, and 9 of the permit will not be sufficient to control discharges in a manner which is consistent with the assumptions and requirements of any applicable wasteload allocation set forth in an applicable TMDL, then additional water quality-based limitations will be imposed on a site-specific basis, or EPA will require the permittee to obtain an individual permit. An individual permit necessitates an individual certification by the state.

The effluent limitations, including non-numeric technology based and water quality-based effluent limits, frequent site inspections, visual monitoring requirements, and associated requirements contained in the CGP, coupled with the conditions in this certification, ensure compliance with the narrative and numeric criteria in the Idaho WQS. In addition, the permit ensures compliance with any applicable WLA in any applicable TMDL. Therefore, DEQ has determined the permit will protect and maintain existing and designated uses in compliance with the Tier 1 provisions of Idaho’s WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

High-Quality Waters (Tier 2 Protection)

As indicated previously, water bodies that fully support their beneficial uses are recognized as high-quality waters and are provided Tier 2 protection, in addition to Tier 1 protection. In such waters, water quality for parameters relevant to applicable beneficial uses must be maintained and protected under Tier 2, unless a lowering of water quality is deemed necessary to accommodate important economic or social development. Although EPA is not proposing any

significant modifications to the draft CGP as compared to the 2012 CGP, they are including several minor new or modified requirements that will further protect water quality. Such modifications include, but are not limited to:

1. Implementing the 2014 amendments to the Construction and Development Rule (C&D rule);
2. Including information on public notices on how to contact EPA if stormwater pollution is observed in the discharge;
3. Requiring all inactive stockpiles and land clearing debris piles be covered or temporarily stabilized;
4. Requiring waste containers remain covered when not in use and;
5. Implementing controls to minimize the release of PCBs from demolition.

Further, the draft CGP will continue to provide additional protection for high quality waters. Those additional protection measures include: maintaining natural buffers in riparian areas, more frequent site inspections, and a more stringent timeline for implementing stabilization measures. In cases where information submitted with the NOI, or available from other sources, indicates that further Tier 2 analysis is necessary and/or additional conditions are needed, either for a new project or an existing project with a significantly increased discharge, EPA will conduct this review and require any appropriate additional controls. DEQ is requiring, as a condition of this certification, that EPA consult DEQ during any such review. If during this review, EPA and DEQ decide that an additional Tier 2 protection is warranted, then EPA may either change the terms of coverage or terminate coverage under the CGP and require an individual permit. This individual permit will then necessitate an individual review and certification by the state.

With respect to existing sites that were covered under the 2012 CGP, the 2017 CGP imposes permit limits at least as stringent as the 2012 permit. Therefore, there will be no lowering of water quality as a result of existing sites covered under the new CGP.

For new sites, DEQ believes the effluent limitations and associated requirements in the CGP, coupled with the conditions set forth in this certification, provide reasonable assurance that there will be no lowering of water quality in any high quality waters. Therefore, DEQ concludes that the activities authorized will comply with the provisions of IDAPA 58.01.02.051.02 and IDAPA 58.01.02.052.08

Protection of Outstanding Resource Waters (Tier 3 Protection)

Idaho's antidegradation policy requires that the quality of outstanding resource waters (ORWs) be maintained and protected from the impacts of point and nonpoint source activities (IDAPA 58.01.02.051.03). To date, no water bodies in Idaho have been designated as ORWs. In the event that water bodies are designated as ORWs during the term of this permit, DEQ believes that the terms of the CGP and the conditions in this 401 Certification, provide reasonable assurance there will be no lowering of water quality. In addition to the requirements that apply to all work covered by the CGP, Part 3.2 of the CGP requires more frequent site inspections and a more stringent timeline for implementing stabilization measures for activities on ORWs. In addition, on a case-by-case basis, EPA may require additional analyses, stormwater controls, or other permit conditions that are necessary to comply with applicable antidegradation requirements, or require an individual permit be obtained. As a condition of this certification, DEQ is requesting

that EPA coordinate with the appropriate DEQ Regional Office prior to authorizing any work on an ORW to ensure there is no lowering of water quality.

In sum, DEQ concludes that the authorized activities will comply with Idaho antidegradation provisions should waters become designated ORWs during the term of the CGP.

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

Turbidity Monitoring

For Waters of the State which are identified in the Integrated Report as impaired for sedimentation/siltation, the permittee must conduct turbidity monitoring each day during construction activities when the project is not stabilized per Part 2.2.14 or shut down per Part 4.4.3 of the CGP. A properly and regularly calibrated turbidimeter is required.

A sample must be taken twice daily at an undisturbed area immediately upstream of the project area to establish background turbidity levels for each monitoring event. Background turbidity, location, date and time must be recorded prior to monitoring downstream of the project area.

A sample must also be taken twice daily immediately downstream from any point of discharge, and within any visible plume. The turbidity, location, date and time must be recorded. The downstream sample(s) must be taken immediately following the upstream sample(s) in order to obtain meaningful and representative results.

Results from the compliance point sampling or observation¹ must be compared to the background levels to determine whether project activities are causing an exceedance of state WQS. If the downstream turbidity is 50 NTUs or more than the upstream turbidity, then the project is causing an exceedance of the WQS. The permittee must inspect the condition of project BMPs. If the BMPs are functioning to their fullest capability, then the permittee must modify project activities and/or BMPs to correct the violation.

Copies of daily logs for turbidity monitoring must be available to DEQ upon request. The report must describe all exceedances and subsequent actions taken, including the effectiveness of the action.

Impaired Waters

The permittee must notify the appropriate DEQ regional office of any potential discharges to impaired waters.

¹ A visual observation is only 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 collect turbidity data and inspect the condition of the projects BMPs. If the BMPs appear to be functioning to their fullest capability and the turbidity is 50 NTUs or more than the upstream turbidity, then the permittee must modify the activity or implement additional BMPs (this may also include modifying existing BMPs).

High Quality Waters

For any high quality waters that require a further Tier 2 analysis and or additional conditions, either for a new project or an existing project with a significantly increased discharge, DEQ requires that EPA consult with the appropriate DEQ regional office during any such review.

Outstanding Resource Waters

Should waters become designated outstanding resource waters (ORWs) during the term of the CGP, DEQ is requesting that EPA coordinate with the appropriate DEQ regional office prior to authorizing any work on an ORW to ensure there is no lowering of water quality.

Equivalent Analysis Waiver

Use of the “Equivalent Analysis Waiver” in Appendix C of the Permit is not authorized.

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 1) (IDAPA 58.01.02.850.03). 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 only be reported to DEQ if clean-up cannot be accomplished within 24-hours (IDAPA 58.01.02.851.04).

Table 1. Idaho DEQ Contacts

<i>Regional Office</i>	<i>Address</i>	<i>Phone Number</i>	<i>Email</i>
Boise	1445 N. Orchard Rd., Boise 83706	208-373-0550	kati.carberry@deq.idaho.gov
Coeur d’Alene	2110 Ironwood Parkway, Coeur d’Alene 83814	208-769-1422	june.bergquist@deq.idaho.gov
Idaho Falls	900 N. Skyline, Suite B., Idaho Falls 83402	208-528-2650	troy.saffle@deq.idaho.gov
Lewiston	1118 “F” St., Lewiston 83501	208-799-4370	mark.sellet@deq.idaho.gov
Pocatello	444 Hospital Way, #300 Pocatello 83201	208-236-6160	lynn.vanevery@deq.idaho.gov
Twin Falls	650 Addison Ave. W., Suite 110, Twin Falls 83301	208-736-2190	balthasar.buhidar@deq.idaho.gov
State Office	1410 N. Hilton Rd., Boise, ID 83706	208-373-0502	nicole.deinarowicz@deq.idaho.gov

Other Conditions

This certification is conditioned upon the requirement that any material modification of the permit or the permitted activities—including without limitation, significant changes to the draft CGP, any modifications of the permit to reflect new or modified TMDLs, wasteload allocations, site-specific criteria, variances, or other new information—shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401.

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 Nicole Deinarowicz, DEQ State Office, at 208-373-0591 or at email nicole.deinarowicz@deq.idaho.gov.

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Barry N. Burnell

Administrator, Water Quality Division