Idaho Department of Environmental Quality

Final §401 Water Quality Certification

April 3, 2012

Army Corps of Engineers Regional General Permit – Emergency (RGP-E)

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 Regional General Permit – Emergency (RGP-E), publicly noticed on February 8, 2012, DEQ certifies that if the permitee complies with the terms and conditions imposed by the Army Corps of Engineers 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, 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

In March 2011, Idaho incorporated new provisions in Idaho Code § 39-3603 addressing antidegradation implementation. At the same time, Idaho adopted antidegradation implementation procedures in the Idaho WQS. DEQ submitted the antidegradation implementation procedures to the US Environmental Protection Agency (EPA) for approval on April 15, 2011. On August 18, 2011, EPA approved the implementation procedures.

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 58.01.02.052.05).

- 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; 58.01.02.052.06).
- 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; 58.01.02.052.07).

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 (Idaho Code § 39-3603(2)(b)(i)). 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 (Idaho Code § 39-3603(2)(b)(iii)). The most recent federally approved Integrated Report and supporting data are used to determine support status and the tier of protection (Idaho Code § 39-3603(2)(b)).

Pollutants of Concern

The primary pollutant of concern, for all projects permitted under the RGP-E, is sediment. In some cases, heavy metals may also be of concern, especially in areas of the State where mining activities occur. As part of the Section 401 water quality certification, DEQ is requiring the applicant to comply with various conditions to protect water quality and to meet Idaho WQS, including the criteria applicable to sediment. Additional requirements may be necessary for projects taking place in areas where heavy metals are a concern.

Receiving Water Body Level of Protection

The proposed RGP-E provides coverage for activities occurring on all jurisdictional waters in the state of Idaho. As set out below, because of the statewide applicability, DEQ must conduct both a Tier 1 and a Tier 2 antidegradation review of the RGP-E.

All waters covered by the RGP-E receive, at minimum, Tier 1 antidegradation protection because a Tier 1 review is performed for all new or reissued permits or licenses, and applies to all waters subject to the jurisdiction of the Clean Water Act. DEQ will also perform a Tier 2 review, because activities authorized by the RGP-E permit may occur on those high quality waters subject to Tier 2 antidegradation protection.

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 designated beneficial uses.

The RGP-E only authorizes temporary work, and does not authorize significant, permanent and/or adverse impacts to waters in the state. The proposed RGP-E requires the implementation of a number of Best Management Practices (BMPs) aimed at protecting water quality. In addition, DEQ has included in its certification required BMPs that also will help to ensure compliance with state WQS.

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. DEQ also requires that any mitigation efforts conducted are consistent with approved TMDLs. DEQ will be notified of the potential activities and will have the opportunity to comment. Finally, the Corps has the discretion to add additional conditions or require an individual permit if an activity will have more than a minimal adverse effect.

In sum, the requirements and conditions contained in RGP-E and the certification provide reasonable assurance of compliance with the narrative and numeric criteria in the WQS and therefore will ensure that the level of water quality necessary to protect both designated and existing uses is maintained and protected in compliance with IDAPA 58.01.02.051.01 and IDAPA 58.01.02.052.05.

Protection of High-Quality Waters (Tier 2 Protection)

As noted, the RGP-E may authorize activities on high quality waters. As such, the water quality relevant to beneficial uses to be protected under Tier 2 uses of the receiving water body must be maintained and protected, unless a lowering of water quality is deemed necessary to accommodate important social or economic development.

To determine whether degradation will occur, DEQ must evaluate how the permit issuance will affect water quality for each pollutant that is relevant to beneficial uses to be protected under Tier 2 uses of the receiving water body (IDAPA 58.01.02.052.04). The only pollutant of concern is sediment. Sediment is relevant to aquatic life uses, but not recreational uses. Therefore, DEQ must determine whether the RGP-E and the conditions in the certification will provide reasonable assurance that there will be no degradation from sediment relating to aquatic life uses.

This Section 404 permit authorizes temporary work associated with emergency conditions and does not authorize significant, permanent and/or adverse impacts. Authorized work is limited to the repair, rehabilitation and/or stabilization of features which have been damaged by discrete events or otherwise pose a significant threat to human life, loss of property and/or significant economic hardship. All projects authorized under the RGP-E are temporary, limited to 90 days or less, and potential impacts to water quality will also be temporary and insignificant in nature. As a general principle, DEQ believes degradation of water quality should be viewed in terms of permanent or long-term adverse changes. Therefore, short-term and temporary reductions in water quality, if reasonable measures are taken to minimize them, may be considered in the context of emergency actions.

As noted above, the permit only authorizes activities that will have temporary, insignificant impacts to water quality. The permit requires notification of DEQ, and DEQ has the opportunity to comment regarding whether the activity meets the criteria defined in the permit. If the activity is authorized, the permit and the certification contain conditions and requirements that will ensure that WQS relating to sediment are met, and that therefore, existing uses are protected. Although this project may result in minimal short-term sediment impacts to the water body, DEQ does not expect long-term impacts or degradation to the waters of the State. Therefore, DEQ concludes that this project complies with the provisions of 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 the RGP-E. Because of this possibility, DEQ has evaluated whether the proposed general permit complies with the ORW antidegradation provision.

As a condition of this certification, DEQ is requiring any applicant proposing to discharge to an ORW to obtain an individual 404 permit from the Corps. This requirement complies with Idaho's antidegradation provisions concerning ORWs.

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

Required Notification

Upon verification that the emergency condition and remedies described comply with the RGP-E requirements and prior to authorizing work, the Corps will notify the appropriate DEQ Regional Office (Table 1, below). This notification may be in writing or by phone and must contain a project description, location, name of the affected water body, estimate of the start and completion dates, a description of planned best management practices (e.g. methods that will be used to prevent/control turbidity), and permitee contact information.

Upon completion of the emergency measure, or termination of the emergency condition, the "After-the-Fact" (ATF) Consultation initiated by the Corps must include a notification to the appropriate DEQ Regional Office in addition to US Fish and Wildlife Service and/or NOAA Fisheries Service, as required under the Emergency Programmatic Consultation.

Additionally, coordination with the appropriate DEQ Regional Office is necessary to ensure that ATF restoration measures will successfully restore the water body to a satisfactory condition.

DEQ will use the most current EPA-approved Integrated Report to determining the support status of the affected water body and to define what measures shall be taken by the permittee to mitigate impacts that may have occurred during the temporarily authorized activity. A copy of the most current, EPA-approved Integrated Report can be viewed at:

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/.

Mitigation activities on impaired waters with a total maximum daily load (TMDL) must be implemented in a manner that is consistent with the TMDL. Waters with an EPA-approved TMDL are included in Category 4a of the Integrated Report. A list of EPA-approved TMDLs is available online at: http://www.deq.idaho.gov/water-quality/surface-water/tmdls/table-of-sbas-tmdls.aspx.

Table 1. Idaho DEQ Regional Office Contacts

DEQ Regional Office	*Contact Name*	*Phone Number*
Boise	Lance Holloway	208-373-0550
Coeur d'Alene	June Bergquist	208-769-1422
Idaho Falls	Troy Saffle	208-528-2650
Lewiston	John Cardwell	208-799-4370
Pocatello	Greg Mladenka	208-236-6160
Twin Falls	Balthasar Buhidar	208-736-2190

General Conditions

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.

6. 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.
7. All activities authorized by this permit must comply with state WQS, IDAPA 58.01.02.

Fill Material

1. Fill material shall be free of organic and easily suspendable fine material. The fill material to be placed shall include clean earth fill, sand, and stone only.
2. Fill material shall not be placed in a location or in a manner that impairs surface or subsurface water flow into or out of any wetland area.
3. Placement of fill material in existing vegetated wetlands shall be minimized to the greatest extent possible.
4. All temporary fills and riprap shall be removed in their entirety on or before construction completion.
5. 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 uncontrolled.

Erosion and Sediment Control

1. BMPs for sediment and erosion control suitable to prevent exceedances of state WQS shall be selected and installed before starting construction at the site. One resource that may be used in evaluating appropriate BMPs is DEQ's *Catalog of Stormwater Best Management Practices for Idaho Cities and Counties*, available online at http://www.deq.idaho.gov/media/494058-entire.pdf. Other resources may also be used for selecting appropriate BMPs.
2. One of the first construction activities shall be placing permanent and/or temporary erosion and sediment control measures to protect the project water resources.
3. Permanent erosion and sediment control measures shall be installed at the earliest practicable time consistent with good construction practices and in a manner that will provide long-term sediment and erosion control to prevent excess sediment from entering waters of the state. Sediment and erosion controls shall be maintained as necessary throughout project operation.
4. Structural fill or bank protection shall consist of materials that are placed and maintained to withstand predictable high flows in the waters of the state.
5. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
6. Maximum fill slopes shall be such that material is structurally stable once placed and does not slough into the stream channel during construction, during periods prior to revegetation, or after vegetation is established.

Turbidity

1. Sediment resulting from this activity must be mitigated to prevent violations of the turbidity standard as stipulated under the Idaho WQS (IDAPA 58.01.02.250.02.e). Any violation of this standard must be reported to the DEQ regional office immediately.

2. Containment measures such as silt curtains, geotextile fabrics, and silt fences must be implemented and properly maintained to minimize in-stream sediment suspension and resulting turbidity.
3. All practical BMPs on disturbed banks and within the waters of the state must be implemented to minimize turbidity during in-water work.

In-water Work

1. Work in open water is to be kept at a minimum and only when necessary. Equipment shall work from an upland site to minimize disturbance of waters of the State. If this is not practicable, appropriate measures must be taken to ensure disturbance to the waters of the State is minimized.
2. Heavy equipment working in wetlands shall be placed on mats or suitably designed pads to prevent damage to the wetlands.
3. Activities in spawning areas must be avoided to the maximum extent practicable.
4. Work in waters of the state shall be restricted to areas specified in the application.
5. Activities that include constructing and maintaining intake structures must include adequate fish screening devices to prevent fish entrainment or capture.
6. Stranded fish found in dewatered segments should be moved to a location (preferably downstream) with water.
7. To minimize sediment transport, stream channel or stream bank stabilization must be completed prior to returning water to a dewatered segment.

Pollutants/Toxics

1. The use of chemicals such as soil stabilizers, dust palliatives, sterilants, growth inhibitors, fertilizers, and deicing salts during construction and operation should be limited to the best estimate of optimum application rates. All reasonable measures shall be taken to avoid excess application and introduction of chemicals into waters of the State.

Vegetation Protection and Restoration

1. Disturbance of existing wetlands and native vegetation shall be kept to a minimum.
2. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
3. Fencing and other barriers should be used to mark the construction areas.
4. Where possible, alternative equipment should be used (e.g., spider hoe or crane).
5. 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.

Dredge Material Management

1. Upland disposal of dredged material must be done in a manner that prevents the material from re-entering waters of the state.

Management of Hazardous or Deleterious Materials

1. 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.
2. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
3. Any spill less than 25 gallons must be cleaned up within 24 hours of the release but does not require reporting to DEQ. If the spill is less than 25 gallons and is not cleaned up within 24 hours, then it becomes a reportable quantity.
4. Any spill greater than or equal to 25 gallons must be cleaned up within 24 hours of the release and reported to DEQ by calling 1-800-632-8000 (Idaho State Communications Center). Any spill equal to or greater than 25 gallons is reportable immediately.
5. 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 the Idaho State Communication Center (1-800-632-8000).

Culverts

1. The culvert shall not constrict the stream channel and shall not be angled such that the outflow is directed toward the stream bank. The culvert's flow line shall match the existing stream invert at its entrance and exit. Adequate grade control shall be installed to prevent channel down cutting or excessive deposition from occurring.
2. The culvert shall be installed such that it does not impede fish passage.
3. The culvert outflow shall be armored with riprap to provide erosion control. This riprap will be clean, angular, dense rock that is free of fines and resistant to aquatic decomposition.
4. Culverts shall be sized appropriately to maintain the natural drainage patterns.

Treated Wood

1. Any use of treated wood materials in the aquatic environment must be conducted in accordance with DEQ's "Guidance for the Use of Wood Preservatives and Preserved Wood Products In or Around Aquatic Environments." This guidance is available online at http://www.deq.idaho.gov/media/488795-wood_products_guidance_final.pdf.

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

Barry N. Burnell
Water Quality Division Administrator
State Office