



Idaho Department of Environmental Quality **FINAL §401 Water Quality Certification**

April 3, 2012

NPDES Permit Number(s): General Permit for Stormwater Discharges from Construction Activities (CGP) IDR10-0000

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

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 pollutants of concern associated with Stormwater discharges from construction activities are sediment and turbidity (as Total Suspended Solids). Other potential pollutants include the following: phosphorus, nitrogen and other nutrients from fertilizers; pesticides; petroleum products; construction chemicals; and solid wastes.

Receiving Water Body Level of Protection

The Construction General Permit (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.

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 (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 general (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. The CGP imposes 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. 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.

To determine the support status of the affected water body, the permittee must use the most current EPA-approved Integrated Report, available on Idaho DEQ’s website: <http://www.deq.idaho.gov/water-quality/surface-water/monitoring-assessment/integrated-report.aspx>. Impaired waters are identified in Categories 4 and 5 of the Integrated Report. Category 4(a) reflects impaired waters for which a TMDL has been approved by EPA. Category 5 contains waters which have been identified as “impaired” but do not yet have an EPA-approved TMDL.

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/>.

EPA is requiring additional control measures to be taken if the affected water body is 303(d) listed for sediment and/or nutrients. These requirements include:

- 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 will also require 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 58.01.02250.02.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 2012 CGP, if EPA determines that the controls outlined in Part 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 the applicable TMDL, or to prevent the project site from contributing to the existing impairment, 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, which will necessitate an individual certification by the state.

The limitations and 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.

Protection of High-Quality Waters (Tier 2 Protection)

As indicated previously, water bodies that fully support their beneficial uses are recognized as high-quality waters and will be provided Tier 2 protection, in addition to tier 1 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 58.01.02.052.04.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 58.01.02.052.04.a).

EPA has made significant modifications to the CGP in order to provide improved protections for both impaired and high-quality waters. Some of the significant permit modifications in the CGP include new requirements for: soil and erosion controls, natural buffers in riparian areas, an increase in site inspection frequency, improvements in SWPPPs and timing of corrective actions. EPA is requiring that the permittee identify in the NOI whether the project may discharge to a high-quality water body. High-quality waters are identified in Categories 1 and 2 of the Integrated Report as “fully supporting”. To determine the support status of the affected water body, the permittee must use the most current EPA-approved Integrated Report, available on Idaho DEQ’s website: <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/>.

DEQ retains the authority to determine that a 303(d) listed water body is actually a high-quality water body if there is biological, chemical or physical data to support such a determination. As stated in the CGP, EPA believes that the permit requirements and conditions will generally be sufficient enough to provide Tier 2 protections. 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.

DEQ believes that the new CGP is more stringent than the existing CGP and there will likely be no degradation associated with new or expanded activities seeking coverage under the CGP as a result of the new, more stringent, permit requirements.

In sum, the effluent limitations and associated requirements contained in the CGP, coupled with the conditions set forth in this certification, are designed to ensure compliance with the narrative and numeric criteria in the WQS and are more protective than the previous permit. Therefore, DEQ has determined that as long as the facilities operate consistent with the terms of the NPDES permit and 401 Certification, there is reasonable assurance that the permit will protect and maintain existing and designated beneficial uses and there will be no degradation or adverse change in water quality.

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 CGP. Because of this possibility, DEQ has evaluated whether the proposed final CGP 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 NPDES permit from EPA. Through an individual certification, DEQ will ensure there is no lowering of water quality. 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

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 or shut down per Part 4.1.4.3 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 observation 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, or a plume is observed, 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.

Equivalent Analysis Waiver

Use of the “Equivalent Analysis Waiver” in Appendix C 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. DEQ Regional Office contact information

<i>DEQ Regional Office</i>	<i>Contact Name</i>	<i>Phone Number</i>
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

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

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.



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IDEQ Water Quality Division