



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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

August 2, 2016

Ms. Kelly J. Urbanek, Chief
Regulatory Division, Corps of Engineers
Boise Field Office
720 Park Blvd., Suite 245
Boise, Idaho 83712

Subject: FINAL §401 Water Quality Certification for the Draft Regional General Permit for
Emergency Activities (RGP-E)

Dear Ms. Urbanek:

The Idaho Department of Environmental Quality (DEQ) has reviewed the above-referenced draft permit, which was received May 24, 2016. DEQ offered a twenty-one (21) day public comment period beginning on July 9, and ending on July 29, 2016. DEQ received no comments.

Enclosed is the Final §401 Water Quality Certification for the draft Regional General Permit-Emergency (RGP-E). If the Final RGP-E is substantially different from the draft permit upon which this certification is based, DEQ reserves the right to revise the enclosed final certification.

If you have any questions or concerns, please feel free to contact Nicole Deinarowicz at (208) 373-0591 or via email at nicole.deinarowicz@deq.idaho.gov.

Sincerely,

TAW FOR BNB

Barry N. Burnell
Water Quality Division Administrator

BNB:ND:tg

- e: Final 401 Certification for the Draft Regional General Permit for Emergency Activities
- c: Duane Mitchell, ACOE Walla Walla Regulatory Office
DEQ Regional Administrators
Don Essig, DEQ Surface Water Program Manager



Idaho Department of Environmental Quality Final §401 Water Quality Certification

August 2, 2016

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 May 24, 2016, DEQ certifies that if the permittee 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 authorized 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.

The RGP-E authorizes temporary work and/or the temporary discharge of dredged or fill material associated with emergency conditions and is restricted to those necessary during the emergency to prevent the loss of life, significant loss of property, and significant economic hardship. These activities will occur to restore, repair, and or stabilize features that have been damaged, destroyed or are in imminent danger of failing. Any work authorized by this RGP-E must be the minimum necessary to alleviate the immediate emergency. Authorized activities include, but are not limited to:

1. Repair, construction or re-construction of linear transportation features;
2. Protection, repair and/or replacement of utility structures;
3. Debris removal;
4. Temporary levee construction;
5. Levee repair, including breach closures;
6. Placement of suitable material for bank stabilization or revetment repair;
7. Construction of temporary drainage ditches;
8. Pile driving or repair;
9. Dam repair; and
10. Sandbagging

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 pollutant of concern for all activities permitted under the RGP-E is sediment. 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 water quality criteria applicable to sediment.

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 stateside applicability, DEQ must conduct both a Tier 1 and a Tier 2 antidegradation protection review.

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 will further ensure compliance with state WQS.

During the construction phase, the applicant will implement, install, maintain, monitor, and adaptively manage 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.

Once the emergency has been deemed over, the permit requires all work or discharges of dredged or fill material be removed within 90 days of the end of the emergency, further assuring no permanent harm to water quality and beneficial uses occur.

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 58.01.02.052.07.

High-Quality Waters (Tier 2 Protection)

As noted, the RGP-E may authorize activities on high quality waters. 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 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 58.01.02.052.06). The primary 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 and/or the temporary discharge of dredged or fill material 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 activities authorized under the RGP-E are temporary and potential impacts to water quality will also be temporary. 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 allowed in the context of emergency actions.

As noted above, the permit only authorizes activities that will have temporary impacts to water quality. The permit requires notification to 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, both designated and existing uses are protected. Although the authorized activities may result in minimal short-term sediment impacts to a water body, DEQ does not expect long-term impacts or degradation to the waters of the State. 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. Since the RGP-E only authorizes activities that will have temporary impacts to water quality, and as noted above the antidegradation provisions are aimed at preventing permanent or long term adverse changes, DEQ concludes that the authorized activities will comply with Idaho's antidegradation provisions should waters become designated ORWs during the term of the RGP-E.

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 permittee contact information.

Upon completion of the emergency measure, or termination of the emergency condition, if the Corps initiates a formal consultation with US Fish and Wildlife Service (USFWS) and/or National Marine Fisheries Service (NMFS), the Corps must include a notification to the appropriate DEQ Regional Office in addition to USFWS and NMFS, as required under the emergency consultation procedures in 50 CFR §402.05.

Additionally, coordination with the appropriate DEQ Regional Office is necessary to ensure that restoration measures, if warranted, will successfully restore the water body to a satisfactory condition. DEQ will use the most current EPA-approved Integrated Report to determine 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://www.deq.idaho.gov/assistance-resources/maps-data/>.

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>. The interactive, map-based source of information mentioned above also displays approved TMDLs on impaired waters.

Table 1. Idaho DEQ Regional Office 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 | julia.achabal@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 | cynthia.barrett@deq.idaho.gov |
| Pocatello | 444 Hospital Way, #300 Pocatello 83201 | 208-236-6160 | greg.mladenka@deq.idaho.gov |
| Twin Falls | 650 Addison Ave. W., Suite 110, Twin Falls 83301 | 208-736-2190 | balthasar.buhidar@deq.idaho.gov |

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, significant changes to the final RGP-E, 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. To the extent possible, the applicant shall provide the appropriate DEQ Regional Office pre-construction photographs of the bed and banks.
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.
8. 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 suspended 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. 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 in a manner that will provide long-term sediment and erosion control to prevent excess sediment from entering waters of the state.
4. 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.

5. 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.
6. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
7. 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 authorized activities 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 instream 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. Visual observation is acceptable to determine whether BMPs are functioning properly.

In-water Work

1. Work in open water is to be kept at a minimum and performed 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 release that causes a sheen (of any size) in waters of the state or spill of hazardous material that cannot be immediately controlled or contained must be reported by calling 911 and the local DEQ office.

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 or comments regarding the actions taken in this certification should be directed to Nicole Deinarowicz, DEQ State Office, at 208-373-0591 or nicole.deinarowicz@deq.idaho.gov.

Handwritten signature of Barry N. Burnell in cursive, with the text "For BNB" written below it.

Barry N. Burnell

Water Quality Division Administrator

State Office