



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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

December 22, 2016

Mr. Daniel Opalski, Director
USEPA Region 10
Office of Water and Watersheds
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

Subject: FINAL §401 Water Quality Certification for the Draft NPDES General Permit for Discharges from Construction Activities (CGP); NPDES IDR100000

Dear Mr. Opalski:

The Idaho Department of Environmental Quality (DEQ) has reviewed the above-referenced draft permit and associated fact sheet, which was received in our office on April 13, 2016. DEQ offered a 46-day public comment period beginning on July 28 and ending on September 12, 2016. DEQ received comments from the following individuals:

1. Austin Hopkins, Idaho Conservation League, received August 30, 2016
2. Dave Yorgason, Building Contractors Association of Southwestern Idaho, received September 12, 2016

DEQ has reviewed these comments and made several modifications from the draft certification to the final certification. The modifications include:

1. Removed the provision that the permittee must notify the appropriate DEQ regional office of any potential discharges to impaired waters because this information is already captured in the NOI;
2. Revised the turbidity monitoring condition to include all waters of the United States where there is a direct discharge causing a visible plume;
3. Clarified when turbidity monitoring is to be conducted;
4. Included six steps for the permittee to follow to ensure compliance with the turbidity standard;
5. Authorized the use of the Equivalent Analysis Waiver; and
6. Revised the language for reporting discharges containing hazardous materials or petroleum products.

Please find enclosed the final certification for inclusion with the final CGP for the State of Idaho. If the final CGP 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,

A handwritten signature in blue ink that reads "Barry N. Burnell". The signature is written in a cursive style with a large initial 'B'.

Barry N. Burnell
Water Quality Division Administrator

BNB:ND:er

e: Final 401 Certification for the Construction General Permit

c: Michael Lidgard – USEPA, Region 10
Margaret McCauley – USEPA, Region 10
DEQ Regional Administrators
Don Essig, DEQ, Surface Water Program Manager



Idaho Department of Environmental Quality Final §401 Water Quality Certification

December 22, 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 I 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 I review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).

- Tier II 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 III 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 I protection for that use, unless specific circumstances warranting Tier II 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 associated with storm water discharges from construction activities is sediment, typically measured 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. DEQ applies a water body by water body approach to determine 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 I antidegradation protection because Idaho's antidegradation policy applies to all waters of the state. Water bodies that fully support their aquatic life or recreational uses are considered to be *high quality waters* and will receive Tier II antidegradation protection.

Although Idaho does not currently have any Tier III designated outstanding resource waters (ORWs) designated, it is possible for a water body to be designated as an ORW during the life of the CGP. Because of this potential, the antidegradation review also assesses 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 II 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 I 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).

Table 1. Idaho DEQ Regional and State Office Contacts

<i>Regional and State 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 83706	208-373-0502	nicole.deinarowicz@deq.idaho.gov

Protection and Maintenance of Existing Uses (Tier I Protection)

A Tier I 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 I 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.

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 has included a condition requiring that the permittee(s) must 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). When there is a direct discharge from an unstabilized portion of the site to a water of the United States, 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.

Lastly, per section 3.2 of the CGP, if a discharge to a water body that is impaired for a parameter other than a sediment-related parameter or nutrients, EPA will inform the permittee if any

additional limits or controls are necessary for the discharge to be controlled as necessary to meet water quality standards.

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 I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

Protection of High-Quality Waters (Tier II Protection)

Water bodies that fully support their beneficial uses are recognized as high-quality waters and are provided Tier II protection in addition to Tier I protection. Water quality parameters applicable to existing or designated beneficial uses must be maintained and protected under Tier II, 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 II 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 II 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 III 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

The permittee must conduct turbidity monitoring during construction activities and thereafter on days when there is a direct discharge of pollutants from an unstabilized portion of the site which is causing a visible plume to a water of the United States.

A properly and regularly calibrated turbidimeter is required for measurements analyzed in the field (preferred method), but grab samples may be collected and taken to a laboratory for analysis. If the permittee can demonstrate that there will be no direct discharge from the construction site, then turbidity monitoring is not required. When monitoring is required, a sample must be taken at an undisturbed area immediately upstream of the project area to establish background turbidity levels for the 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 immediately downstream from any point of discharge and *within* any visible plume. The turbidity, location, date and time must be recorded. The downstream sample must be taken immediately following the upstream sample 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. *Any exceedance of the turbidity standard must be reported to the appropriate DEQ regional office within 24 hours. The following six (6) steps should be followed to ensure compliance with the turbidity standard:*

1. If a visible plume is observed, quantify the plume by collecting turbidity measurements from within the plume and compare the results to Idaho's instantaneous numeric turbidity criterion (50 NTU over the background).
2. If turbidity is less than 50 NTU instantaneously over the background turbidity; continue monitoring as long as the plume is visible. If turbidity exceeds background turbidity by more than 50 NTU instantaneously then stop all earth disturbing construction activities and proceed to Step 3.
3. Take immediate action to address the cause of the exceedance. That may include inspecting 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 exceedance.
4. Notify the appropriate DEQ regional office within 24 hours.
5. Possibly increase monitoring frequency until state water standards are met.
6. Continue earth disturbing construction activities once turbidity readings return to within 50 NTU instantaneously and 25 NTU for more than ten consecutive days over the background turbidity.

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.

High Quality Waters

For any high quality waters that require a further Tier II 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 as ORWs during the term of the CGP, DEQ is requiring 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.

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).

Equivalent Analysis Waiver

Prior to granting a waiver from the permitting requirements of the CGP, EPA must coordinate with the appropriate DEQ regional office to conduct a joint review of the equivalent analysis waiver submitted by the permittee to ensure there will be no lowering of water quality.

Reporting of Discharges Containing Hazardous Materials or Petroleum Products

All spills of hazardous material, deleterious material or petroleum products which may impact waters (ground and surface) of the state shall be immediately reported. Call 911 if immediate assistance is required to control, contain or clean up the spill. If no assistance is needed in cleaning up the spill, contact the appropriate DEQ regional office in Table 2 during normal working hours or Idaho State Communications Center after normal working hours. If the spilled volume is above federal reportable quantities, contact the National Response Center.

For immediate assistance: Call 911

National Response Center: (800) 424-8802

Idaho State Communications Center: (800) 632-8000

Table 2. Idaho DEQ Regional Contacts

<i>Regional Office</i>	<i>Toll Free Phone Number</i>	<i>Phone Number</i>
Boise	888-800-3480	208-373-0550
Coeur d'Alene	877-370-0017	208-769-1422
Idaho Falls	800-232-4635	208-528-2650
Lewiston	877-541-3304	208-799-4370
Pocatello	888-655-6160	208-236-6160
Twin Falls	800-270-1663	208-736-2190

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 via email at nicole.deinarowicz@deq.idaho.gov.



Barry N. Burnell
Water Quality Division Administrator