STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706 • (208) 373-0502

C.L. "Butch" Otter, Governor
Curt Fransen, Director

July 5, 2012

Mr. David Barrows, Chief
Regulatory Division
Walla Walla District
201 North Third
Walla Walla, Washington 99362-1876

Subject: FINAL §401 Water Quality Certification for the 2012 Nationwide Permits (NWPs)

Dear Mr. Barrows:

The Idaho Department of Environmental Quality (DEQ) submitted its final certification for the 2012 Nationwide Permits on May 30, 2012. Concerns regarding several conditions contained in said certification were brought to our attention by your staff at the Boise Outreach Office. DEQ worked with your staff to clarify these conditions and offered a second public comment period on the revised certification; no comments were received and no additional changes were made to the revised certification.

Please find the enclosed final certification. Questions or comments regarding this certification should be directed to Miranda Adams at 208-373-0574.

Sincerely,

Barry N. Burnell
Water Quality Division Administrator

BNB:MA:jt

c: Leroy Philips, USACE – Boise Outreach Office
DEQ Regional Administrators

Idaho Department of Environmental Quality

FINAL §401 Water Quality Certification

July 5, 2012

2012 U.S. Army Corps of Engineers §404 Nationwide Permits (NWPs)

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 activities receiving Section 404 dredge and fill permits and issue a water quality certification decision.

Based upon its review of the 2012 Nationwide Permits published to the Federal Register on February 21, 2012, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit, including the regional conditions set forth by the Army Corps of Engineers, along with the conditions contained 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, 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

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 (IDAPA 58.01.02.052.05). 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.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 projects permitted under the 2012 Nationwide Permits (NWPs) administered by the U.S. Army Corps of Engineers (USACE), is sediment. In some cases, heavy metals can be of concern, especially in areas of the State where mining activities occur, or have occurred. 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 considerations may be necessary for projects taking place in areas where heavy metals are of concern.

Receiving Water Body Level of Protection

The USACE NWPs provide 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 authorized under the NWPs. 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 a NWP 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 additionally receive Tier 2 antidegradation protections. 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 these permits. 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 ("impaired"), and a total maximum daily load (TMDL) must be prepared for those pollutants causing the 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. Permits 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 limitations in the NWPs and associated Regional Conditions for the Walla Walla District address best management practices aimed at minimizing impacts to the aquatic environment, especially sediment and turbidity impacts including: vegetation protection and restoration, de-watering requirements, erosion and sediment controls, soil stabilization requirements, pollution prevention measures, prohibited discharges and wildlife considerations. The NWPs do not contain specific (numeric) effluent limitations for sediment or turbidity.

In order to ensure compliance with Idaho WQS, 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). For Waters of the State which have been identified as impaired due to sedimentation/siltation, DEQ will require the permittee to conduct turbidity monitoring to ensure that no further sediment loading will occur on these impaired waters. Monitoring is required when project activities are disturbing the stream bed and/or stream banks (below the ordinary high water mark) and/or when there are discharges into flowing water. DEQ will not require the permittee to conduct turbidity monitoring where projects are done in the dry or during site preparation when no discharges are actively occurring. (See "Conditions" section below for more details).

The USACE has agreed to notify the appropriate DEQ Regional Office (Table 1) of any 404 project covered under any NWP where waters of the State have been identified in DEQ's Integrated Report as impaired due to sedimentation/siltation. A copy of the verification letter will be sent electronically to DEQ. (See "Conditions" section below for more details).

The limitations and associated requirements in the 2012 NWPs and associated Regional Conditions, coupled with the conditions set forth in this certification, provide DEQ reasonable assurance of compliance with State WQS and that existing and designated uses will be maintained and protected in compliance with IDAPA 58.01.02.051.01.

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 protections, in addition to Tier 1 protections. 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 new permit, 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 (IDAPA 58.01.02.052.06.a).

All projects authorized under a Nationwide Permit must be carried out in a manner that will not cause or contribute to an exceedance of water quality standards. The Corps does not authorize projects which have more than "minimal impacts" on the aquatic environment. DEQ recognizes that short term impacts may occur with respect to sediment, but are not expected to cause long term adverse changes to water quality. 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 occur without violating Tier 2 protections.

The limitations and associated requirements contained in the 2012 NWPs and associated Regional Conditions, coupled with the conditions set forth in this certification, are designed to minimize adverse effects to the aquatic environment, and ensure compliance with the narrative and numeric criteria in the WQS. Therefore, DEQ has determined that as long as permitted activities are carried out in compliance with these requirements, there is reasonable assurance that the existing and designated beneficial uses will be maintained and protected and there will be no degradation or adverse change in water quality as required under with 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 2012 NWPs. Because of this possibility, DEQ has evaluated whether the NWPs comply with the ORW antidegradation provision.

DEQ does not have the required reasonable assurance that the Tier 3 protection for ORWs will be met. Therefore, DEQ denies certification for any activities authorized by the NWPs that may result in a discharge to an ORW. Applicants will be required to obtain an individual certification from DEQ prior to the authorization of the activity.

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

Best Management Practices

Best Management Practices (BMPs) must be designed, implemented, and maintained by the permittee to fully protect and maintain the beneficial uses of waters of the state and to prevent exceedances of state WQS. BMPs shall be selected and installed prior to commencing construction. The permittee must monitor and evaluate BMP effectiveness each day during project activities to determine if water quality standards are being met.

Approved BMPs for specific activities (mining, forestry, stream channel alteration, etc.) are codified in IDAPA 58.01.02.350. Additionally, DEQ has a catalog of Stormwater best management practices that is available at: *http://www.deq.idaho.gov/media/494058-entire.pdf*. This catalog presents a variety of BMPs that can be used to control erosion and sediment during and after construction. Other sources of information are also available and may be used for selecting project appropriate BMPs.

Notification - Activities on Waters Impaired by Sediment

The USACE has agreed to notify the appropriate DEQ Regional Office (Table 1) of all NWP activities that require a pre-construction notification (PCN) and that occur on waters not meeting state water quality standards ("impaired waters") due to excess sedimentation/siltation. A copy of the verification letter will be sent to the appropriate DEQ regional office as soon as possible, following the verification of the permitted activity.

The most current EPA-approved DEQ Integrated Report at the time of the proposed activity must be used for determining whether the affected water body is impaired. Impaired waters are found in Categories 4 and 5 of the Integrated Report. 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*.

IDEQ'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/*.

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. The permittee is responsible for contacting the appropriate regional office to determine if their project will be in compliance with the TMDL. 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*.

Waiver Consultation

The Corps will not waive any condition contained within any NWP or within the associated Regional Conditions without consulting the appropriate DEQ Regional Office to determine that such an action will not result in more than minimal impacts to the aquatic environment or contribute to an exceedance of Idaho's water quality standards (IDAPA 58.01.02). If

DEQ, in consultation with the Corps, determines that the waiver request will result in more than minimal impacts, then the Corps will prepare an individual permit for the proposed activity and will request an individual §401 certification from DEQ.

Turbidity

All projects must be carried out in a manner that does not violate Idaho's numeric criterion for turbidity which states, "Turbidity shall not exceed background turbidity by more than 50 NTU instantaneously or more than 25 NTU for more than 10 consecutive days" (IDAPA 58.01.02.250.02.e). For waters of the state which have been identified as impaired due to sedimentation/siltation, DEQ may require the permittee to conduct turbidity monitoring to ensure that no further sediment loading will occur on these impaired waters. Monitoring is required when project activities are disturbing the stream bed and/or stream banks (below the ordinary high water mark) and/or when there are discharges into flowing water. DEQ will not require the permittee to conduct turbidity monitoring where projects are done in the dry or during site preparation when no discharges are actively occurring.

A properly and regularly calibrated turbidimeter is required. Grab samples may be collected and taken to a laboratory for analysis. When monitoring is required a sample must be taken at an undisturbed area immediately up-current from in-water disturbance or discharge to establish background turbidity levels. Background turbidity, latitude/longitude, date, and time must be recorded prior to monitoring down-current. When monitoring is required, sampling must occur immediately down-current from the in-water disturbance or point of discharge and within any visible plume. The turbidity, latitude/longitude, date, and time must be recorded for each sample.

Results from the down-current sampling point must be compared to the up-current or background level sampled during each monitoring event. If the down-current turbidity exceeds up-current or background turbidity by 50 nephelometric turbidity units (NTU) or more, then the project is causing an exceedance of the WQS. If an exceedance occurs, the applicant must inspect the condition of the projects BMPs. If the BMPs appear to be functioning to their fullest capability, then the applicant must modify the activity (this may include modifying the existing BMPs).

Copies of turbidity monitoring records or logs must be available to DEQ upon request. The log must include background measurements (in NTUs); down-current measurements; comparison of background and down-current monitoring as a numeric value (in NTUs); and latitude/longitude, time and date for each sampling event. Monitoring records or logs must describe all exceedances and subsequent actions taken to correct the violations, including monitoring and the effectiveness of the action(s) taken.

Wood Preservatives

Any use of treated wood materials in the aquatic environment must be conducted in accordance with IDEQ Policy #PM97-1, "Water Quality and Wood Preservatives Policy Memoranda"; available on at: *http://www.deq.idaho.gov/media/488795-wood_products_guidance_final.pdf*.

Reporting of Discharges Containing Hazardous Materials or Deleterious Materials

Hazardous and deleterious materials (e.g. oil, gasoline, chemicals, trash, sawdust, flocculants, etc.) must not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of waters of the state unless adequate measures and controls are provided to ensure that those materials will not enter waters of the state. Spills must be immediately reported to the appropriate DEQ regional office (Table 1). Spills of petroleum products that exceed 25 gallons or that cause a visible sheen on nearby surface waters should be reported 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 58.01.02.850, 58.01.02.851, 58.01.02.852). Outside of regular business hours, qualified spills should be reported to the State Communications Center (1-800-632-8000 or 208-846-7610).

Table 1. DEQ Regional Office contact information

Regional Office	*Contact Name*	*Phone Number*	*Email*
Boise	Lance Holloway	208-373-0550	*lance.holloway@deq.idaho.gov*
Coeur d'Alene	June Bergquist	208-769-1422	*june.bergquist@deq.idaho.gov*
Idaho Falls	Troy Saffle	208-528-2650	*troy.saffle@deq.idaho.gov*
Lewiston	John Cardwell	208-799-4370	*john.cardwell@deq.idaho.gov*
Pocatello	Greg Mladenka	208-236-6160	*greg.mladenka@deq.idaho.gov*
Twin Falls	Balthasar Buhidar	208-736-2190	*balthasar.buhidar@deq.idaho.gov*

Projects for Which Certification Is Denied

DEQ does not have the required reasonable assurance that the following activities will comply with State WQS and other appropriate requirements of state law. Therefore, DEQ denies certification with respect to the activities listed below. The applicant will be required to obtain an individual certification before the activity can be conducted.

- NWP 12 – Utility Line Activities; except for activities occurring on man-made waters, activities requiring a Pre-Construction Notification (PCN) are not authorized.
- NWP 13 – Bank Stabilization; activities requiring a Pre-Construction Notification (PCN) are not authorized.
- NWP 14 – Linear Transportation Projects; except for activities occurring on man-made waters, activities requiring a Pre-Construction Notification (PCN) are not authorized.
- NWP 16 – Return Water from Upland Contained Disposal Areas
- NWP 17 – Hydropower Projects
- NWP 51 – Land-Based Renewable Energy Generation Facilities
- NWP 52 – Water-Based Renewable Energy Generation Pilot Projects

- Outstanding Resources Waters (ORWs) – DEQ denies certification for any activities authorized by the NWPs that may result in a discharge to an ORW.

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, State Office IDEQ, at (208) 373-0574 or *miranda.adams@deq.idaho.gov*.

Barry Burnell
Water Quality Division Administrator
IDEQ State Office