



## Idaho Department of Environmental Quality Draft § 401 Water Quality Certification

July 7, 2021

**Project Title:** BNSF Railway Bridge 0045-0003.9E Span Replacement Project

**Federal Permit:** U.S. Coast Guard Bridge Permit

**Applicant/Authorized Agent:** Alan Bloomquist, Assistant Director Structures Design, BNSF Railway Company/Scott Swarts, Project Manager/Senior Biologist, Jacobs

**Project Location:** BNSF Railway Bridge 0045-0003.9E near the City of Sandpoint in Bonner County; 48°15'25.33436"N, 116°31'40.12401"W

**Receiving Water Body:** Pend Oreille Lake; Pend Oreille River

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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 federal permits and to issue water quality certification decisions.

Based on its review of the 401 water quality certification request, the US Coast Guard (USCG) Bridge Permit Application, and related project documents, received on May 17, 2021, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit, and the conditions set forth in this water quality certification, then it is reasonable for DEQ to conclude that the project 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.

## 1 Project Description

### Overview

This project is located near the City of Sandpoint in Bonner County (48°15'25.33436"N, 116°31'40.12401"W), at the Pend Oreille Lake outlet and mouth of the Pend Oreille River. BNSF proposes repairs to the existing rail bridge over the Pend Oreille River. BNSF Railway Bridge 0045-000309E (Bridge 3.9E) is located 50 feet east of the new BNSF bridge crossing (Bridge 3.9W), which is currently under construction. The purpose of this project is to replace Spans 64 through 71 (8 spans) and to add bearing blocks to Piers 64 through 71 and the pivot pier (9

spans). Pier work will involve adding bearing blocks to the top of the existing piers, and adding epoxy or cement to the existing upper portion of piers where they are degraded. The existing swing span will be replaced by two through plate girders. The project will involve concrete demolition using saws, and cast-in-place over water concrete pouring, and will include the following activities: (1) extend and dismantle existing work trestle, (2) assemble bridge spans, (3) remove existing bridge spans, (4) implement pier repairs and install bearing blocks, and (5) install new bridge spans.

The project length spans approximately 715 feet of the bridge. Extension of the existing work trestle at Dog Beach, (48°15'56.96" N, 116°32'16.35" W) will occur prior to the start of the project, over approximately 5 weeks from September 2022 through March 2023. The temporary work trestle will be removed after project completion, between November and December 2023. Work trestle piles will be installed with a barge-mounted crane, while removal will occur with a land-based crane. Bridge spans will be assembled and temporarily stored in uplands at Dog Beach beginning in June 2023.

Span work will take place during full pool, over 30 days, from August through September 2023. A total of 12 modular, interconnecting barge "sections" may be used to create work platforms to support materials, equipment, and machinery.

The project proponent is proposing 36 BMPs to reduce and/or eliminate potential construction-related impacts to water quality, including potential impacts from concrete (pH) and sediment. These 36 BMPs can be found in Appendix A.

### **Regulatory Background**

The applicant currently has coverage under the U.S. Environmental Protection Agency's Construction General Permit (CGP). Coverage was obtained prior to the start of construction of Bridge 3.9W. Because the same upland construction, staging, and work areas will be used for the proposed Bridge 3.9E work, and because the project will be completed before Bridge 3.9W construction is complete, the provisions of the CGP also apply in this case. DEQ issued a Final § 401 water quality certification for the CGP on December 22, 2016 with conditions that apply to project activities on land where discharges from the construction site could enter waters of the U.S. The USCG permit will include this final 401 certification, as well as the applicable provisions of the CGP and DEQ's associated 2016 certification, as conditions to be met for Bridge 3.9E work. This certification can be found in Appendix B.

## **2 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).

## **2.1 Pollutants of Concern**

The primary pollutants of concern for this project are sediment and pH (from uncured concrete). As part of the Section 401 water quality certification, DEQ is requiring the applicant comply with various conditions to protect water quality and meet Idaho WQS, including the water quality criteria applicable to sediment and pH.

## **2.2 Receiving Water Body Level of Protection**

This project is located on the approximate boundary of two assessment units. The affected water bodies include Pend Oreille Lake and the Pend Oreille River, within the Pend Oreille Lake Subbasin assessment unit (AU), 17010214PN018L\_0L (Pend Oreille Lake) and 17010214N002\_08 (Pend Oreille River – Pend Oreille Lake to Priest River), respectively. These AUs are designated for cold water aquatic life, primary contact recreation, and domestic water supply. The Pend Oreille Lake AU (17010214PN018L\_0L) is also designated for salmonid spawning. In addition to these uses, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100).

According to DEQ's 2018/2020 Integrated Report, the cold water aquatic life use is not fully supported. Causes of impairment in Pend Oreille Lake include flow regime modification, mercury, and total phosphorus. Causes of impairment in the Pend Oreille River include temperature and dissolved gas supersaturation. As such, DEQ will provide Tier I protection (IDAPA 58.01.02.051.01) for the aquatic life use. The contact recreation beneficial use in Pend Oreille Lake is not fully supported. The cause of impairment is mercury. The contact recreation use in the Pend Oreille River is unassessed. DEQ must provide an appropriate level of protection for the contact recreation use using information available at this time (IDAPA 58.01.02.052.05.c). *Escherichia coli* (*E. coli*) data is often used to make tiering decisions for recreation when a water body is unassessed. However, DEQ has not collected surface water *E.*

*coli* samples from the Pend Oreille River, so other data sources were considered in the tiering decision for this project.

Fecal coliform samples were collected by USGS at their monitoring station near Newport, WA from 1990-1995. The maximum value reported was 17 cfu/100mL and the average was 4 cfu/100mL. *E. coli* samples were collected by the City of Sandpoint Wastewater Treatment Plant upstream of their discharge outfall in 2008-2009 to establish background concentrations for their NPDES permit. A background concentration of 4 cfu/100 mL was used in the antidegradation tiering decision in DEQ's water quality certification for that permit based on the USGS and City of Sandpoint sample results. Discharge monitoring reports for the City of Sandpoint's Wastewater Treatment Plant indicate that *E. coli* exceedances have not occurred during the most recent permit cycle. This information suggests the Pend Oreille River is high quality for recreation uses. Idaho's water quality standards provide surface water quality criteria for *E. coli* bacteria for recreation use designations. All available *E. coli* data considered in this review was below the numeric thresholds described in the water quality standards.

Fish tissue mercury concentrations are also used to make tiering decisions. While DEQ has not collected fish tissue samples from the Pend Oreille River, DEQ has collected fish tissue samples from Pend Oreille Lake. These fish tissue samples<sup>1</sup> justified listing the lake as impaired for recreation. It is reasonable for DEQ to assume that fish containing high levels of mercury in their tissues regularly migrate between the river and lake at the project location. Additionally, Washington State issued a fish consumption advisory in 2012 for the Pend Oreille River based on elevated mercury levels in fish tissue. Given that these data are more recent than most of the available bacteria data, and given that mercury data for the lake were collected by DEQ<sup>2</sup> and were used to make a beneficial use support determination for the agency's Integrated Report, the river may not be fully supporting its recreation use. As such, DEQ will provide Tier I protection for both the aquatic life and contact recreation uses (IDAPA 58.01.02.051.01).

### **2.3 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. The numeric and narrative criteria in the WQS are set at levels that ensure protection of existing and designated beneficial uses.

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. Once a TMDL is developed, discharges of causative pollutants shall be consistent with the allocations in the TMDL (IDAPA 58.01.02.055.05). Prior to the development of the TMDL, the WQS require the application of the antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04). The EPA

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<sup>1</sup> Idaho Department of Environmental Quality. 2008. *Arsenic, Mercury, and Selenium in Fish Tissue from Idaho Lakes and Reservoirs: A Statewide Assessment*.

<sup>2</sup> Data collected by DEQ is subject to quality assurance and quality control measures.

approved DEQ's *Total Maximum Daily Load (TMDL) for Nutrients for the Nearshore Waters of Pend Oreille Lake* (2002). This TMDL has set a target reduction for phosphorus (end point of 9 µg/L) in the nearshore areas of the lake; the project must comply with this target. DEQ has not yet written a TMDL for the Pend Oreille River.

During the construction phase, the applicant will implement, install, maintain, monitor, and adaptively manage best management practices (BMPs) directed toward minimizing turbidity and pH impacts to receiving water bodies downstream of the project. As long as the project is conducted in accordance with the provisions of the project plans and proposed BMPs, federal permit, and conditions of this certification, then it is reasonable for DEQ to conclude that the project will comply with the state's numeric and narrative criteria, and the applicable TMDL. These criteria are set at levels that protect and maintain existing and designated beneficial uses.

There is no available information indicating the presence of any existing beneficial uses aside from those that are already designated and discussed above; therefore, the permit ensures that the level of water quality necessary to protect both existing and designated uses is maintained and protected in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

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

The following conditions are necessary to ensure the BNSF Railway Bridge 0045-0003.9E Span Replacement Project complies with Idaho water quality standards and other appropriate water quality requirements of State law applicable to Pend Oreille Lake and the Pend Oreille River.

#### **3.1 General Conditions**

This certification is based on the certification request submitted by BNSF on May 17, 2021 and is conditioned upon the requirement that any modification (e.g., change in work windows) of the permitted activity shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401. Such modifications may not be implemented until DEQ has determined whether additional certification is necessary.

*Because DEQ is certifying only the activity described in the certification request, this condition is necessary to ensure that discharges under circumstances that differ from those described in the certification request will comply with 33 U.S.C. § 1341, 40 CFR Part 121, and other applicable water quality requirements, including without limitation 33 U.S.C. § 1311(a), Idaho Code § 39-108, IDAPA 58.01.02.051, IDAPA 58.01.02.052, IDAPA 58.01.02.080, IDAPA 58.01.02.200, IDAPA 58.01.02.210, IDAPA 58.01.02.250, IDAPA 58.01.02.251, IDAPA 58.01.02.252, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.*

1. DEQ reserves the right to modify, amend, or revoke this certification if DEQ determines that, due to changes in relevant circumstances—including without limitation, changes in project activities, the characteristics of the receiving water bodies, or state WQS—there is no longer reasonable assurance of compliance with WQS or other appropriate requirements of state law.

*Because DEQ is certifying only the activity described in the certification request based on information available at the time of certification, this condition is necessary to ensure that discharges from activities not described in the certification request, or where there has been a change in the characteristics of or WQS applicable to the receiving water body, will comply with 33 U.S.C. § 1341, 40 CFR Part 121, and other applicable water quality requirements, including without limitation 33 U.S.C. § 1311(a), Idaho Code § 39-108, IDAPA 58.01.02.051, IDAPA 58.01.02.052, IDAPA 58.01.02.080, IDAPA 58.01.02.200, IDAPA 58.01.02.210, IDAPA 58.01.02.250, IDAPA 58.01.02.251, IDAPA 58.01.02.252, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.*

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.

*This condition is necessary to ensure that, in the event of an ownership change, DEQ has the minimum information to support ongoing compliance with 33 U.S.C. § 1341, 40 CFR Part 121, this water quality certification, and other applicable water quality requirements, including without limitation Idaho Code § 39-108, IDAPA 58.01.02.080, and IDAPA 58.01.02.400.*

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.

*This condition is necessary to ensure all responsible parties, including onsite contractors, are aware of and comply with this water quality certification and other applicable water quality requirements, including without limitation Idaho Code § 39-108, IDAPA 58.01.02.080, and IDAPA 58.01.02.400.*

4. 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 federal permit.

*This condition is necessary to ensure all responsible parties, including onsite contractors, comply with this water quality certification and applicable water quality requirements, including without limitation Idaho Code § 39-108, IDAPA 58.01.02.080, and IDAPA 58.01.02.400.*

5. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation and be replaced or augmented if they are not effective. BMPs shall be replaced or augmented if they are not effective.

*This condition is necessary for the protection of beneficial uses in accordance with Idaho water quality requirements including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.200.08, IDAPA 58.01.02.250.01.a, IDAPA 58.01.02.250.02.e, IDAPA 58.01.02.253, IDAPA 58.01.02.400.*

### **3.2 In-water Work**

*The following conditions 1-4 are necessary for the protection of beneficial uses in accordance with Idaho water quality requirements including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.250, IDAPA 58.01.02.253, IDAPA 58.01.02.400*

1. Work in waters of the state shall be restricted to areas specified in the application.
2. Measures shall be taken to prevent wet concrete from entering waters of the state.
3. All demolition and construction fragments, debris, scraps, particles, and other associated materials shall be captured and not allowed to fall into the lake or river. Containment BMPs shall be deployed to capture such materials during demolition and construction.
4. If additional work boats or barges must be brought in from out of state, they must be inspected for invasive species and cleaned prior to deployment into Pend Oreille Lake or the Pend Oreille River. Cleaning shall be adequate to remove all life stages of aquatic invasive species.

### **3.3 Turbidity**

*The following conditions 1-4 are necessary for the protection of beneficial uses in accordance with Idaho water quality requirements including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.200.08, IDAPA 58.01.02.250.02.e, IDAPA 58.01.02.253, IDAPA 58.01.02.400.*

1. Sediment resulting from this activity must be mitigated to prevent violations of Idaho's turbidity standard. *Any violation of this standard must be reported to the DEQ regional office immediately.*
2. Containment measures such as silt curtains (turbidity curtains) must be implemented and properly maintained to minimize in-water sediment suspension and resulting turbidity.
3. Silt curtains shall be reliable and function correctly. Curtain design and materials must have been previously and scientifically field tested to determine effectiveness in water quality protection. The manufacturer's specifications and deployment instructions shall be followed. If there is flowing water, curtains must have been designed, tested, and recommended by the manufacturer for this condition (velocity rating). Curtains that drag back and forth along the bottom of the lake/river due to wave action are incorrectly installed and are a violation of this certification, unless a manufacturer who has scientifically field tested this design recommends this type of placement. The silt curtain shall function in such a manner as to meet WQS. Silt curtains shall be deployed so as to minimize the area within the curtain while still maintaining optimum function. Curtains shall hang so the fabric is smooth, allowing sediment to slide down its face rather than becoming trapped in folds.

4. All practical BMPs must be implemented to minimize turbidity. Visual observation is acceptable to determine whether BMPs are functioning properly unless a plume is observed. If a plume is observed, the project may be causing an exceedance of WQS and the permittee must inspect the condition of the project’s BMPs and initiate turbidity sampling consistent with Table 1, with a properly and regularly calibrated turbidimeter. Turbidity sampling must be conducted, recorded, and reported as described below. *A properly and regularly calibrated turbidimeter is required.*
- a. Turbidity sampling location. Choose, identify, and document the following locations for each plume observed:
    - i. Background locations: The 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.
    - ii. Compliance locations: Choose a location in the plume that is immediately outside of any containment measures such as silt curtains. The turbidity, latitude/longitude, date, and time must be recorded for each sample. The downstream sample must be taken immediately following the upstream sample.
  - b. Turbidity samples must be representative of lake/river turbidity when the activity is being conducted. *Measurements cannot be taken during a cessation of activity.*
  - c. Results from the down-current sampling point must be compared to the up-current or background level to determine whether project activities are causing an exceedance of state WQS. If the downstream turbidity is 50 NTUs or more greater than the upstream turbidity, then the project is causing an exceedance of the WQS.

**Table 1. Turbidimeter monitoring and sampling when a plume is observed.**

<b>Turbidity above background<sup>1</sup></b>	<b>Monitoring/sampling frequency<sup>1</sup></b>	<b>Additional actions required</b>
0 to 24 NTU	Visual monitoring every 2 hours	None
25 to 49 NTU	Sample every 2 hours	STOP work after 8 hours in every 24-hour period
25 NTU for 10 or more consecutive days	Sample before and after following instructions <sup>2</sup>	STOP work and follow instructions <sup>2</sup> ; Notify DEQ Regional Office at (208) 666-4605
50 NTU or more	Sample before and after following instructions <sup>3</sup>	STOP work and follow instructions <sup>3</sup> ; Notify DEQ Regional Office at (208) 666-4605

<sup>1</sup>Turbidity shall be sampled three times at each location and reported. Use the maximum value of three samples for determining compliance and following Table 1 direction.

<sup>2</sup>Instructions: If BMPs appear to be functioning to their fullest capacity, then the permittee must modify the activity or implement additional BMPs (this may include modifying existing BMPs) until additional sampling indicates turbidity standards are met. Sampling can cease when a plume is no longer observed. Work can continue when a plume is no longer observed, and measurements are below 25 NTU.

<sup>3</sup>Instructions: If BMPs appear to be functioning to their fullest capacity, then the permittee must modify the activity or implement additional BMPs (this may include modifying existing BMPs) until additional sampling indicates turbidity standards are met. Sampling can cease when a plume is no longer observed. Work can continue when a plume is no longer observed, and measurements are below 50 NTU.

- d. **Reporting:** Copies of daily logs for turbidity meter calibration and turbidity sampling must be made available to DEQ and other local, state and federal regulatory agencies upon request. Beginning with the observation of a plume, provide the following information:
  - i. **Calibration log** must include instrument serial number, date, time, and calibration result.
  - ii. **Turbidity sampling log** must include instrument manufacturer information and serial number, background NTUs, compliance point NTUs, comparison of the points in NTUs, and location, time, and date for each reading.
  - iii. **Turbidity sampling log** submitted to DEQ must include a narrative discussing all exceedances, controls applied and their effectiveness, changes made to controls, subsequent sampling, work stoppages, and any other actions taken.

### **3.4 Treated Wood**

*The following condition is necessary to meet water quality requirements including without limitation IDAPA 58.01.02.200 and IDAPA 58.01.02.210.*

DEQ's [Guidance for the Use of Wood Preservatives and Preserved Wood Products In or Around Aquatic Environments](#) must be considered when using treated wood materials in the aquatic environment. Within this guidance document DEQ references the [Best Management Practices for the Use of Treated Wood in Aquatic and Wetland Environments](#). This best management practices document provides recommended guidelines for the production and installation of treated wood products destined for use in sensitive environments. This condition is necessary to ensure that toxic chemicals are not introduced into waters of the state. These documents are available on DEQ's website or by contacting the Coeur d'Alene Regional Office.

### **3.5 Pollutants/Toxics**

In conformance with IDAPA 58.01.02.200, 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.

### **3.6 Management of Hazardous or Deleterious Materials**

*The following conditions 1-7 are necessary for the protection of beneficial uses in accordance with Idaho water quality requirements including without limitation IDAPA 58.01.02.051, IDAPA*

58.01.02.080, IDAPA 58.01.02.200, IDAPA 58.01.02.400, IDAPA 58.01.02.800, IDAPA 58.01.02.850.

1. Portable toilets and garbage containers placed on bridge, barges, and work areas near or over water shall be regularly maintained and securely anchored to prevent tipping.
2. 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.
3. Daily inspections of all fluid systems on equipment to be used in, over, or near waters of the state shall be done to ensure no leaks or potential leaks exist prior to equipment use. A log book of these inspections shall be kept on site and provided to DEQ upon request. If equipment leaks fluids as a normal part of operation, it shall have an absorbent drip pad (diaper) or other appropriate containment to capture all leaks.
4. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance. Exceptions to this condition are for large stationary equipment and machinery that reasonably cannot be rolled on rails or otherwise driven to an upland location for refueling, repair, or maintenance. Stationary equipment and machinery shall have adequate secondary containment to prevent spills from entering waters of the state.
5. Equipment and machinery shall be steam cleaned of oils and grease in an upland location or staging area with appropriate wastewater controls and treatment prior to entering a water of the state. Waste/wash water must not be allowed to enter waters of the state.
6. Emergency spill procedures shall be in place and include spill response kits (e.g., oil absorbent booms or other equipment) located where heavy equipment is being operated.
7. In the event of an unauthorized release of hazardous material to state waters or to land such that there is a likelihood that it will enter state waters, the responsible persons in charge must:
  - a. Make every reasonable effort to abate and stop a continuing spill.
  - b. Make every reasonable effort to contain spilled material in such a manner that it will not reach surface or ground waters of the state.
  - c. 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 during normal working hours or Idaho State Communications Center after normal working hours (1-800-632-8000). If the spilled volume is above federal reportable quantities, contact the National Response Center (1-800-424-8802). Coeur d'Alene Regional Office: 208-769-1422 / 877-370-0017.
  - d. Collect, remove, and dispose of the spilled material in a manner approved by DEQ.

## 4 Required Notification

The permittee must notify the Coeur d'Alene Regional Office when authorized work begins.

## 5 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 Chantilly Higbee, Coeur d’Alene Regional Office at 208-666-4605 or via email at [Chantilly.Higbee@deq.idaho.gov](mailto:Chantilly.Higbee@deq.idaho.gov).

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Dan McCracken  
Regional Administrator  
Coeur d'Alene Regional Office

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**Appendix A**

**Best Management Practices Proposed by BNSF for the Bridge 3.9E Span  
Replacement Project**

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The following BMPs are listed by BNSF in the Joint Permit Application that was submitted to DEQ on May 17, 2021 with the request for certification:

### ***Overwater Concrete Management***

- **BMP 1:** The construction environmental manager will inspect the equipment and BMPs prior to commencing the concrete pour to prevent drips, leaks, or failure of hoses, fittings, containers, or other systems that contain or transfer hazardous materials in order to prevent spills. Improperly functioning equipment or damaged BMPs will be immediately replaced or repaired before work can commence.
- **BMP 2:** The construction foreman or superintendent will monitor concrete transfers, placement, and clean-up to ensure that the proper methods are implemented and conduct a site briefing at the start of the day to prepare works and inspectors for the pour.
- **BMP 3:** Empty water-tight containment tubs with an approximate one cubic yard capacity will be on hand for use as containment for excess concrete or washouts. The containment tubs will be placed on 10-mil poly for additional containment.
- **BMP 4:** Barges will be covered with a spill barrier consisting of 20mil thick impermeable plastic and ¾-inch plywood positioned under the span to capture any drips.
- **BMP 5:** Diapers will be used to shield any drips from the laydown buckets from landing on the barge decks as an additional secondary containment. Diapers shall be 10mil (or other similar material) of sufficient size to envelop the bottom of the laydown bucket to capture any drips while it is being moved with a crane. The poly sheeting is affixed to the laydown bucket using bungee cords that are easy to fasten and unfasten during the process.
- **BMP 6:** Concrete will not be poured during rain events, foggy weather, high winds, or when it is snowing.
- **BMP 7:** Clean laydown buckets of dried concrete daily in a designated upland area away from the water.
- **BMP 8:** Poly sheeting will be placed under concrete trucks when transferring concrete from land onto the laydown buckets on a barge.
- **BMP 9:** Watertight secondary containment forms will be constructed on/under piers where uncured concrete is being poured to pier tops and where concrete will be removed and applied to pier faces. This is in addition to the forms constructed for the pier tops.

### ***Upland Concrete Management***

- **BMP 10:** All participants will be taught that concrete ready-mix trucks are not allowed to

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discharge excess concrete or washout water on the ground and that they must use the trucks onboard clean out system and/or dispose of waste into tubs located at the designated location.

- **BMP 11:** If a concrete pump truck is used it will be placed inside a metal containment tub. The tub will be placed onto a sheet of 10-mil poly sheeting that is underneath the concrete pump hopper to double as containment for inadvertent leaks or an accidental overspill from the truck to the pump.
- **BMP 12:** All metal containment tubs will be replaced or cleaned out when 75 percent full at any edge. The end of the pump hose will be kinked upward and secured to prevent leaks.
- **BMP 13:** When testing concrete a metal containment tub will be placed on 10-mil poly sheeting to provide inspection staff a secure location to test, dispose of samples, and wash equipment. The tub may also be used for construction workers to clean concrete tools.
- **BMP 14:** An established on-site upland concrete cleanout station will be used for all concrete truck washouts, temporary hardened concrete storage, and discharge of extra concrete or like activities.
- **BMP 15:** Ready-mix truck operators will wash their chutes at the designated concrete cleanout station located greater than 50 feet from the OHWM. A sign will be posted, and the operators will be instructed as to the location of the concrete cleanout station. All readymix truck wash water will be captured in the truck onboard cleanout system or other suitable containment.
- **BMP 16:** No ready-mi trucks will be allowed to discharge excess concrete or wash water onto the ground. This will be ensured by requiring secondary containment measures be implemented such as laying poly sheeting on the ground underneath any activity where liquid transfers take place. Additional absorbent materials such as PIG® Heavy Weight Pads and Socks (or equivalent products) will be readily available to be placed around the perimeter of the poly sheeting as needed.
- **BMP 17:** Extra concrete in pump hoppers or laydown buckets will be transferred back into the concrete truck or discharged into metal containment tub. The pump hose and hopper will also be washed out into the metal containment tub and the water discharged into a ready-mix truck.
- **BMP 18:** Any concrete remaining in containment tubs will be allowed to harden.
- **BMP 19:** At the end of each workday any slurry found on the surface of the hardening concrete in tubs will be pumped into the last remaining concrete truck for off-site disposal by the concrete supplier.

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- **BMP 20:** Any remaining concrete contained inside the metal tubs will be allowed to harden and then the tub will be taken to the concrete management area. Excess concrete, wash water, or slurry will not be retained on site or unsupervised or overnight with the exception that concrete contained inside leak proof tubs at designated upland management area may be left unsupervised or overnight for the purposes of hardening prior to disposal.

### ***Pile Installation, Removal, and Overwater Work***

- **BMP 21:** A turbidity curtain will be installed around each pile during full installation and extraction. This shall include periods when a vibratory driver, impact hammer, and/or bubble curtain is in use. The turbidity curtain will be monitored during use. If turbid water is not contained within the curtain the construction contractor will cease installing or removing piles and any area of leakage will be addressed. The turbidity curtain will stay in place throughout the pile installation/removal process and waters within have cleared to the satisfaction of the inspecting CESCL.
- **BMP 22:** Equipment and machinery on the project work site will be inspected daily to check for leaks or problems.
- **BMP 23:** Equipment working on the work trestle and/or barges will utilize biodegradable products when possible.
- **BMP 24:** Full, secondary containment will be under equipment that uses fuels or other hazardous materials on the work trestle and/or barges and within 100 feet of LPO.
- **BMP 25:** Fuel containers or other hazardous materials will not be stored unsecured at the Project site during nonwork hours.
- **BMP 26:** Fully stocked petroleum containment spill kits will be kept on each project barge, work trestle, and upland fuel storage or refueling areas. Spill containment systems will be adequate to contain one and a half times the volume of fuel or fluids associated with each piece of equipment or machinery staged at the work trestle or on the work barges.
- **BMP 27:** Turbidity monitoring per Idaho water quality standards will be conducted to ensure the silt curtains are functioning as designed and turbidity levels do not exceed the standards.
- **BMP 28:** All debris accumulated on the temporary work trestle and barges will be contained and restricted from entering waters of the United States.
- **BMP 29:** A debris boom will be deployed around areas of active maintenance to capture floating debris.
- **BMP 30:** Larger floating debris will be removed by hand and pulled into a work skiff. Smaller debris will be collected with nets. Collected debris will be transferred to the

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materials barge.

- **BMP 31:** Debris booms will be fully cleaned of materials by the end of the shift. No materials will be left in the boom overnight.
- **BMP 32:** A skiff will be on-site to retrieve any debris that may inadvertently fall into the LPO.
- **BMP 33:** The work trestle, barges, and the work area under and immediately adjacent to the bridge will be inspected daily for loose debris, which is to be secured immediately upon notification by the CESCL.
- **BMP 34:** Barges and tugboats will be locally sourced when possible from the on-going bridge construction project such that no new or additional barges are imported to the project site.
- **BMP 35:** A bubble curtain will be used when piles are proofed with an impact hammer when water depth exceeds 2 feet. The bubble curtain shall be tested prior to use to confirm calculated pressures and flow rates at each manifold ring.
- **BMP 36:** Work boats or barges will be inspected for and be certified free of invasive species prior to deployment into Lake Pend Oreille.

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**Appendix B**

**DEQ Final § 401 Water Quality Certification for the Draft NPDES General Permit for Discharges  
from Construction Activities (CGP)**



STATE OF IDAHO  
DEPARTMENT OF ENVIRONMENTAL  
QUALITY

1410 North Hilton • Boise, Idaho 83706 • (208) 373-0502  
www.deq.idaho.gov

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 IDRI00000

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](mailto:nicole.deinarowicz@deq.idaho.gov).

Sincerely,



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

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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	<a href="mailto:kati.carberry@deq.idaho.gov">kati.carberry@deq.idaho.gov</a>
Coeur d’Alene	2110 Ironwood Parkway, Coeur d’Alene 83814	208-769-1422	<a href="mailto:june.bergquist@deq.idaho.gov">june.bergquist@deq.idaho.gov</a>
Idaho Falls	900 N. Skyline, Suite B., Idaho Falls 83402	208-528-2650	<a href="mailto:troy.saffle@deq.idaho.gov">troy.saffle@deq.idaho.gov</a>
Lewiston	1118 “F” St., Lewiston 83501	208-799-4370	<a href="mailto:mark.sellet@deq.idaho.gov">mark.sellet@deq.idaho.gov</a>
Pocatello	444 Hospital Way, #300 Pocatello 83201	208-236-6160	<a href="mailto:lynn.vanevery@deq.idaho.gov">lynn.vanevery@deq.idaho.gov</a>
Twin Falls	650 Addison Ave. W., Suite 110, Twin Falls 83301	208-736-2190	<a href="mailto:balthasar.buhidar@deq.idaho.gov">balthasar.buhidar@deq.idaho.gov</a>
State Office	1410 N. Hilton Rd., Boise 83706	208-373-0502	<a href="mailto:nicole.deinarowicz@deq.idaho.gov">nicole.deinarowicz@deq.idaho.gov</a>

## ***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 observation<sup>1</sup> 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.

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<sup>1</sup> 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@deg.idaho.gov](mailto:nicole.deinarowicz@deg.idaho.gov).



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Barry N. Burnell

Water Quality Division Administrator