



Idaho Department of Environmental Quality

Draft § 401 Water Quality Certification

Army Corps of Engineers Regional General Permit - Emergency (RGP-E)

Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended; 33 U.S.C. Section 1341(a)(1); and Idaho Code §§ 39-101 et seq. and 39-3601 et seq., the Idaho Department of Environmental Quality (DEQ) has authority to review activities receiving Section 404 dredge and fill permits and issue water quality certification decisions.

Based upon its review of the Regional General Permit - Emergency (RGP-E), publicly noticed on June 11, 2021, DEQ certifies that if the permittee complies with the terms and conditions imposed by the Army Corps of Engineers permit along with the conditions set forth in this water quality certification, then it is reasonable for DEQ to conclude that the activity will comply with water quality requirements, including 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.

1 Description

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

- Repair, construction or re-construction of linear transportation features;
- Protection, repair and/or replacement of utility structures;
- Debris removal;
- Temporary levee construction;
- Levee repair, including breach closures;

- Placement of suitable material for bank stabilization or revetment repair;
- Construction of temporary drainage ditches;
- Pile driving or repair;
- Dam repair; and
- Sandbagging.

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 pollutant of concern for all activities permitted under the RGP-E is sediment. As part of the Section 401 water quality certification, DEQ is requiring the applicant to comply with various conditions to protect water quality and to meet Idaho WQS, including the water quality criteria applicable to sediment.

2.2 Receiving Water Body Level of Protection

The proposed RGP-E provides coverage for activities occurring on all jurisdictional waters in the state of Idaho. As set out below, because of the statewide applicability, DEQ must conduct both

a Tier I and a Tier II antidegradation protection review.

All waters covered by the RGP-E receive, at minimum, Tier I antidegradation protection because a Tier I review is performed for all new or reissued permits or licenses, and applies to all waters subject to the jurisdiction of the Clean Water Act. DEQ will also perform a Tier II review, because activities authorized by the RGP-E permit may occur on those high quality waters subject to Tier II antidegradation protection.

2.3 Protection and Maintenance of Existing Uses (Tier 1 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.

The RGP-E authorizes temporary work only, and does not authorize significant, permanent, and/or adverse impacts to waters in the state. The proposed RGP-E requires the implementation of a number of best management practices (BMPs) aimed at protecting water quality. In addition, DEQ has included in its certification conditions required BMPs that will further ensure compliance with state WQS.

During the construction phase, the applicant will implement, install, maintain, monitor, and adaptively manage BMPs directed toward reducing erosion and minimizing turbidity levels in receiving water bodies downstream of the project. In addition, permanent erosion and sediment controls will be implemented, which will minimize or prevent future sediment contributions from the project area. DEQ also requires that any mitigation efforts conducted are consistent with approved TMDLs. DEQ (Regional Office, Table 1) will be notified of the potential activities and will have the opportunity to comment. Finally, the Corps has the discretion to add additional conditions or require an individual permit if an activity will have more than a minimal adverse effect.

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

Given the requirements and conditions contained in RGP-E and this certification, DEQ concludes that activities authorized under RGP-E will comply with water quality requirements and ensure that the level of water quality necessary to protect both designated and existing uses is maintained and protected in compliance with IDAPA 58.01.02.051.01 and IDAPA 58.01.02.052.07.

2.4 High-Quality Waters (Tier II Protection)

The RGP-E may authorize activities on high quality waters. In such waters, water quality for parameters relevant to applicable beneficial uses must be maintained and protected under Tier II, unless a lowering of water quality is deemed necessary to accommodate important social or

economic development.

To determine whether degradation will occur, DEQ must evaluate how the permit issuance will affect water quality for pollutants that are relevant to aquatic life and recreation uses of the receiving water body (IDAPA 58.01.02.052.06). The primary pollutant of concern is sediment. Sediment is relevant to aquatic life uses, but not recreational uses. DEQ must determine whether the RGP-E and the conditions in the certification will ensure that sediment will not degrade water quality such that aquatic life uses are affected.

The RGP-E authorizes temporary work and/or the temporary discharge of dredged or fill material associated with emergency conditions and does not authorize significant, permanent and/or adverse impacts. Authorized work is limited to the repair, rehabilitation and/or stabilization of features which have been damaged by discrete events or otherwise pose a significant threat to human life, loss of property and/or significant economic hardship. All activities authorized under the RGP-E are temporary and potential impacts to water quality will also be temporary. As a general principle, DEQ believes degradation of water quality should be viewed in terms of permanent or long-term adverse changes. Therefore, short-term and temporary reductions in water quality, if reasonable measures are taken to minimize them, may be allowed in the context of emergency actions. The permit only authorizes activities that will have temporary impacts to water quality.

The permit requires notification to DEQ, and DEQ will have the opportunity to comment regarding if the activity is authorized and if the permit and the certification contain conditions and requirements that will ensure that WQS relating to sediment are met such that designated and existing uses are protected. Although the authorized activities may result in minimal short-term sediment impacts to a water body, DEQ does not expect long-term impacts or degradation to the waters of the State. Therefore, DEQ concludes that the activities authorized will comply with the provisions of Idaho's WQS (IDAPA 58.01.02.051.02; 58.01.02.052.06, and IDAPA 58.01.02.052.08).

2.5 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. Since the RGP-E only authorizes activities that will have temporary impacts to water quality, and the antidegradation provisions are aimed at preventing permanent or long term adverse changes, DEQ concludes that the authorized activities will comply with Idaho's antidegradation provisions should waters become designated ORWs during the term of the RGP-E (IDAPA 58.01.02.051.03; 58.01.02.052.06, and IDAPA 58.01.02.052.09).

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

3.1 Required Notification

The following conditions 3.1.1 to 3.1.3 are necessary to ensure DEQ has notice of activities eligible for authorization under RGP-E and the opportunity to ensure any activities authorized under RGP-E will protect beneficial uses and comply with Idaho water quality requirements, including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.052, IDAPA 58.01.02.054.

1. Upon verification that the emergency condition and remedies described comply with the RGP-E requirements and prior to authorizing work, the Corps must notify the [DEQ Regional Office](#) (Table 1) as soon as possible. This notification may be in writing or by phone and must contain a project description, location, name of the affected water body, estimate of the start and completion dates, a description of planned best management practices (e.g. methods that will be used to prevent/control turbidity), and permittee contact information.
2. If the Corps initiates a formal consultation under the Endangered Species Act with US Fish and Wildlife Service and/or National Marine Fisheries Service in connection with any activity authorized under RGP-E, the Corps must notify the [DEQ Regional Office](#) as soon as possible when the formal consultation is initiated.
3. Mitigation activities on impaired waters with a total maximum daily load (TMDL) must be implemented in a manner that is consistent with the TMDL. Waters with an EPA-approved TMDL are included in Category 4a of the Integrated Report. A list of EPA-approved TMDLs is available online at: <https://www.deq.idaho.gov/water-quality/surface-water/total-maximum-daily-loads/>.

Table 1. Idaho DEQ Regional Office Contact

| <i>Regional Office</i> | <i>Address</i> | <i>Phone Number</i> | <i>Email</i> |
|------------------------|---|---------------------|---|
| <i>Boise</i> | <i>1445 N. Orchard Rd., Boise 83706</i> | <i>208-373-0550</i> | <i>kati.carberry@deq.idaho.gov</i> |
| <i>Coeur d'Alene</i> | <i>2110 Ironwood Parkway, Coeur d'Alene 83814</i> | <i>208-769-1422</i> | <i>chantilly.hiqbee@deq.idaho.gov</i> |
| <i>Idaho Falls</i> | <i>900 N. Skyline, Suite B., Idaho Falls 83402</i> | <i>208-528-2650</i> | <i>troy.saffle@deq.idaho.gov</i> |
| <i>Lewiston</i> | <i>1118 "F" St., Lewiston 83501</i> | <i>208-799-4370</i> | <i>sujata.connell@deq.idaho.gov</i> |
| <i>Pocatello</i> | <i>444 Hospital Way, #300 Pocatello 83201</i> | <i>208-236-6160</i> | <i>matthew.schenk@deq.idaho.gov</i> |
| <i>Twin Falls</i> | <i>650 Addison Ave. W., Suite 110, Twin Falls 83301</i> | <i>208-736-3877</i> | <i>sean.woodhead@deq.idaho.gov</i> |
| <i>State Office</i> | <i>1410 N. Hilton Rd., Boise 83706</i> | <i>208-373-0158</i> | <i>elizabeth.spelsberg@deq.idaho.gov</i> |

3.2 General Conditions

1. DEQ reserves the right to modify, amend, or revoke this certification if DEQ determines that activities authorized under the final RGP-E will not comply with the WQS or other appropriate water quality requirements of state law, due to changes in relevant circumstances including without limitation, significant changes to the final RGP-E relative to the draft DEQ has reviewed, changes in authorized activities, the characteristics of the receiving water body, or state WQS.

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. To the extent possible, the applicant shall provide the appropriate DEQ Regional Office pre-construction photographs of the bed and banks. The applicant shall provide access to the project site and all mitigation sites upon request by DEQ personnel for site inspections, monitoring, and/or to ensure that conditions of this certification are being met.

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 Section 404 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.

3.3 Fill Material

The following conditions 3.3.1 to 3.3.4 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 58.01.02.210, IDAPA 58.01.02.250, IDAPA 58.01.02.251, IDAPA 58.01.02.252, IDAPA 58.01.02.253, IDAPA 58.01.02.400.

1. Fill material shall be free of organic and easily suspended fine material. The fill material to be placed shall include clean earth fill, sand, and stone only.
2. Fill material shall not be placed in a location or in a manner that impairs surface or subsurface water flow into or out of any wetland area.
3. Placement of fill material in existing vegetated wetlands shall be minimized to the greatest extent possible.
4. Excavated or staged fill material must be placed so it is isolated from the water edge or wetlands and not placed where it could re-enter waters of the state uncontrolled.

3.4 Erosion and Sediment Control

The following conditions 3.4.1 to 3.4.7 are necessary for the protection of beneficial uses in accordance with Idaho water quality requirements including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.250, IDAPA 58.01.02.253, IDAPA 58.01.02.400.

1. BMPs for sediment and erosion control suitable to prevent exceedances of state WQS shall be selected and installed before starting construction at the site. One resource that may be used in evaluating appropriate BMPs is DEQ's *Idaho Catalog of Storm Water Best Management Practices*¹. Other resources may also be used for selecting appropriate BMPs.
2. One of the first construction activities shall be placement of permanent and/or temporary erosion and sediment control measures to protect water resources.
3. Permanent erosion and sediment control measures shall be installed in a manner that will provide long-term sediment and erosion control to prevent excess sediment from entering waters of the state.
4. Erosion and sediment control measures shall be installed at the earliest practicable time consistent with good construction practices and shall be maintained as necessary throughout project operation.
5. Structural fill or bank protection shall consist of materials that are placed and maintained to withstand predictable high flows in the waters of the state.
6. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
7. Maximum fill slopes shall be such that material is structurally stable once placed and

¹ Idaho Catalog of Storm Water Best Management Practices, *Prepared by* the State of Idaho Department of Environmental Quality, April 2020.

does not slough into the stream channel during construction, during periods prior to revegetation, or after vegetation is established.

3.5 Turbidity

The following conditions 3.5.1 to 3.5.3 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 authorized activities must be mitigated to prevent violations of the turbidity standard as stipulated under the Idaho WQS. *Any violation of this standard must be reported to the DEQ regional office immediately.*
2. Containment measures such as silt curtains, geotextile fabrics, and silt fences must be implemented and properly maintained to minimize instream sediment suspension and resulting turbidity.
3. All practical BMPs on disturbed banks and within the waters of the state must be implemented to minimize turbidity during in-water work. Visual observation is acceptable to determine whether BMPs are functioning properly.

3.6 In-water Work

The following conditions 3.6.1 to 3.6.7 are necessary for the protection of beneficial uses in accordance with Idaho water quality requirements including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.250, IDAPA 58.01.02.253, IDAPA 58.01.02.400.

1. Work in open water is to be kept at a minimum and only when necessary. Equipment shall work from an upland site to minimize disturbance of waters of the state. If this is not practicable, appropriate measures must be taken to ensure disturbance to the waters of the state is minimized.
2. Heavy equipment working in wetlands shall be placed on mats or suitably designed pads to prevent damage to the wetlands.
3. Activities in spawning areas must be avoided to the maximum extent practicable.
4. Work in waters of the state shall be restricted to areas specified in the application.
5. Activities that include constructing and maintaining intake structures must include adequate fish screening devices to prevent fish entrainment or capture.
6. Stranded fish found in dewatered segments should be moved to a location (preferably downstream) with water.
7. To minimize sediment transport, stream channel or stream bank stabilization must be completed prior to returning water to a dewatered segment.

3.7 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.

3.8 Vegetation Protection and Restoration

The following conditions 3.8.1 to 3.8.5 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. Disturbance of existing wetlands and native vegetation shall be kept to a minimum.
2. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
3. Fencing and other barriers should be used to mark the construction areas.
4. Where possible, alternative equipment should be used (e.g., spider hoe or crane).
5. If authorized work results in unavoidable vegetative disturbance, riparian and wetland vegetation shall be successfully reestablished to function for water quality benefit at pre-project levels or improved at the completion of authorized work.

3.9 Dredge Material Management

Upland disposal of dredged material must be done in a manner that prevents the material from re-entering waters of the state.

This condition is necessary to ensure that there is no unauthorized discharge from upland disposal sites in accordance with 33 U.S.C. § 1311(a) and Idaho water quality requirements, including without limitation Idaho Code § 39-108, IDAPA 58.01.02.080, and IDAPA 58.01.02.400

3.10 Management of Hazardous or Deleterious Materials

The following conditions 3.10.1 to 3.10.3 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. Petroleum products and hazardous, toxic, and/or deleterious materials shall not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of waters of the state. Adequate measures and controls must be in place to ensure that those materials will not enter waters of the state as a result of high water, precipitation

runoff, wind, storage facility failure, accidents in operation, or unauthorized third-party activities.

2. Emergency spill procedures shall be in place and may include a spill response kit(e.g., oil absorbent booms or other equipment).
3. 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).
 - d. Contact the region in which the spill occurred (Table 1).

3.11 Culverts

The following conditions 3.11.1to 3.11.4 are necessary to control erosion, sediment, and turbidity for the protection of beneficial uses in accordance with Idaho water quality requirements, including without limitation IDAPA 58.01.02.200, IDAPA 58.01.02.250.

1. The culvert shall not constrict the stream channel and shall not be angled such that the outflow is directed toward the stream bank. The culvert's flow line shall match the existing stream invert at its entrance and exit. Adequate grade control shall be installed to prevent channel down cutting or excessive deposition from occurring.
2. The culvert shall be installed such that it does not impede fish passage.
3. The culvert outflow shall be armored with riprap to provide erosion control. This riprap will be clean, angular, dense rock that is free of fines and resistant to aquatic decomposition.
4. Culverts shall be sized appropriately to maintain the natural drainage patterns.

3.12 Treated Wood

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.

This condition is necessary to meet Idaho water quality requirements including without limitation IDAPA 58.01.02.200 and IDAPA 58.01.02.210.

4.0 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 Beth Spelsberg, DEQ State Office, at 208-373-0158 or elizabeth.spelsberg@deq.idaho.gov.

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Mary Anne Nelson
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State Office