2110 Ironwood Parkway
Coeur d'Alene, ID 83814 • (208) 769-1422

Brad Little, Governor
Jess Byrne, Director

May 31, 2024

By email: Speterson@ponderay.org

Mayor Steve Geiger
City of Ponderay
P.O. Box 500 Ponderay, ID 83852

Subject: Final Section 401 Water Quality Certification for the Former Panhandle Smelting and Refining Site Remediation and Lakeshore Enhancement Project.

Dear Mr. Geiger:

The Idaho Department of Environmental Quality (DEQ) has issued a Section 401 Water Quality Certification for the U.S. Army Corps of Engineers Nationwide Permit 14: Linear Transportation, NWW-2023-00319. The final certification is enclosed.

The draft certification was available on the DEQ website for a 21-day public comment period. One comment letter was received, and the changes have been incorporated into the final certification.

Please ensure that you and anyone performing work covered by the certification read the document and understand the conditions of the certification prior to beginning work. Notify the DEQ Regional Office when work begins. If there are questions, contact Chantilly Higbee at 208-769-1422 or via email at Chantilly.Higbee@deq.idaho.gov.

Sincerely,

Dan McCracken
Regional Administrator
Idaho Department of Environmental Quality, Coeur d'Alene Regional Office

Encl. 1: Final Section 401 Water Quality Certification

c: Josh Moore, U.S. Army Corps of Engineers, Joshua.M.Moore@usace.army.mil
Tambra Phares, DEQ State Office, Tambra.Phares@deq.idaho.gov
Chase MacPherson, Alta Science and Engineering, Chase.Macpherson@alta-se.com

Idaho Department of Environmental Quality
Final Section 401 Water Quality Certification

May 31, 2024

Project Name: Former Panhandle Smelting and Refining Site Remediation and Lakeshore Enhancement

Permit Name and Number: NWW-2023-00319, Nationwide Permit 14 - Linear Transportation Projects

Applicant/Authorized Agent: Mayor Steve Geiger, City of Ponderay/Chase MacPherson, Alta Science and Engineering

Project Location: The former Panhandle Smelting and Refining Company site, City of Ponderay in Bonner County; approximately 48°18'3.75"N, 116°31'51.15"W

Receiving Water Body: Pend Oreille Lake

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 or licenses and issue water quality certification decisions.

In accordance with the Clean Water Act § 121.4, all project proponents must submit a request for a prefiling meeting at least thirty days in advance of submitting a certification request. A prefiling meeting request was received by DEQ on 3/8/2024. DEQ reviewed the prefiling meeting request and determined that necessary project information submitted with advance notice was sufficient to evaluate potential water quality impacts to act on the certification request within a reasonable period of time.

Based upon review of the federal permit application, readily available water quality related materials, and certification request in accordance with the Clean Water Act § 121.5 (b) and (c) and 121.7 (c), received on 4/9/2024, DEQ certifies that if the permittee complies with the terms and conditions imposed by the federal permit and 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 the Clean Water Act §§ 301, 302, 303, 306, and 307, Idaho's "Water Quality Standards" (IDAPA 58.01.02), and other appropriate water quality requirements of state law.

Pursuant to Clean Water Act §§ 401 (a)(1) and 121.7 (d); and IDAPA 58.01.02.052.08, DEQ issued a 21-day public notice to solicit comments on the draft certification on 4/19/2024 through 5/10/2024. Any public comments received during the 21-day comment period will be considered by DEQ to inform the certification decision and conditions.

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

The certification covers part of the work proposed for an EPA-funded voluntary brownfields remediation action. The activity is located at the former Panhandle Smelting and Refining Company (PRSC) site, where past smelting activities have left behind contaminated materials. A large remnant of the PRSC is a slag pile named “Blackrock”. The activity will clean up the contaminated site, isolate Blackrock with shoreline protection, and provide a public recreational area. The entire activity—scheduled to occur in three phases— involves: development of a beach area for public access, preservation and stabilization of Blackrock including a breakwater to protect the slag from wave action, construction of an onsite repository for consolidation of contaminated soils and smelter waste, preservation of the remains of the historic smelter building, reclamation of the area of the former smelter, and connectivity to the Pend d’Oreille Bay Trail. This certification, together with Nationwide Permit 14, addresses only the first phase of the activity, hereafter referred to as the “project”.

The project covers the lakeshore cleanup and shoreline protection components of the activity. Lakeshore cleanup will involve: clearing of vegetation, excavation of the top 12 inches (330 cubic yards) of the beach using a front-end loader, screening and removal of debris and large pieces of slag, and regrading of the excavated area. Shoreline protection will span 440 linear feet and include riprap installation and trail construction. The project will discharge 769 cubic yards of gravel, rock, or stone below the ordinary high water mark (OHWM) and/or into wetlands, in addition to the placement of 431 cubic yards of riprap. The impacts will affect 0.652 acres and 660 linear feet of waters of the United States, including wetlands.

2 Antidegradation Review

As part of its water quality standards program, Idaho has an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051). DEQ adopted regulations to implement the antidegradation policy (IDAPA 58.01.02.052).

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 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 do not lower water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ employs 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 DEQ 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 pollutants of concern for this project are sediment and metals, including arsenic, cadmium, lead, mercury, and zinc. As part of the § 401 water quality certification, DEQ requires the applicant to comply with various conditions to protect water quality and meet Idaho's water quality standards, including the water quality criteria applicable to these pollutants.

2.2 Receiving Water Body Level of Protection

This project is located on Pend Oreille Lake within the Pend Oreille Lake subbasin assessment unit (AU) 17010214PN018L_0L. This AU is designated for cold water aquatic life, salmonid spawning, primary contact recreation, and domestic water supply. In addition to these uses, all waters within the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100).

According to DEQ's 2022 Integrated Report, this AU is not fully supporting its aquatic life and recreation uses. Flow regime modification, mercury, and total phosphorus are causing the aquatic life impairment. Mercury is also causing the recreation impairment. 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 water quality standards 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). Before developing the TMDL, the water quality standards require applying the antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04).

The U.S. Environmental Protection Agency (EPA) approved DEQ's *Total Maximum Daily Load (TMDL) for Nutrients for the Nearshore Waters of Pend Oreille Lake, Idaho* (2002). This TMDL has set a target reduction for phosphorus (end point of 9 micrograms per liter) in the nearshore areas of the lake. Throughout the life of the project, the applicant will implement, install, maintain, monitor, and adaptively manage best management practices (BMPs) to reduce erosion and minimize turbidity levels in receiving water bodies downstream of the project. Permanent erosion and sediment controls will be implemented that will minimize or prevent future sediment contributions from the project area. Erosion and sediment control will prevent phosphorus contributions to the lake. BMPs proposed by the applicant include dust control measures, clearing and grading to occur outside of the growing season, performing work below the OHWM during low pool, stabilization of the construction entrance/exit, installation of silt fencing, straw wattles, erosion control blankets, and revegetation of the site after project completion. Construction access will be obtained via a temporary railroad crossing rather than extensive use of the Pend d'Oreille Bay Trail to prevent sedimentation to tributaries and wetland areas along the trail. Approximately 0.5 mile of the trail will be used for construction access.

A TMDL has not been developed to address the mercury exceedance in Pend Oreille Lake, so mercury loading to this water body has not been formally characterized. However, over 90% of the water in Lake Pend Oreille flows from Flathead Lake and other lakes and reservoirs in Montana (IDHW 2006). While environmental mercury comes from many sources, atmospheric deposition is well-known as a ubiquitous source to Idaho's water bodies. Further, lakes and reservoirs are well-known for providing conditions that promote methylation, the key process leading to environmental availability of the more toxic form of the element. Given this context, the post-remediation contribution of mercury loading from the project area to Pend Oreille Lake is likely to be nominal relative to upstream sources. The nature and intent of the project itself is preventative of future mercury contributions to the lake.

If the project is conducted according to the provisions of the project plans, 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. 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. 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 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 ensure the project complies with Idaho's water quality standards and other appropriate water quality requirements of state law applicable to Pend Oreille Lake.

3.1 General Conditions

This certification is based on review of the federal permit application, readily available water quality related materials, and certification request submitted by the applicant on 4/9/2024 and is conditioned upon the requirement that any modification (e.g., change in work windows, etc.) of the permitted activity shall first be provided to DEQ for review to determine compliance with Idaho's water quality standards.

Because DEQ is certifying only the activity described in the certification request, this condition ensures that discharges under circumstances that differ from those described in the certification request will comply with 33 U.S.C. § 1341, 40 CFR 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 this certification in accordance with the Clean Water Act § 121.10 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 water quality standards—there is no longer reasonable assurance of compliance with the water quality standards 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 ensures that discharges from activities not described in the certification request, or where there has been a change in the characteristics of or water quality standards applicable to the receiving water body, will comply with 33 U.S.C. § 1341, 40 CFR 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 the new name. This condition ensures that, if ownership changes, DEQ has the minimum information to support ongoing compliance with 33 U.S.C. § 1341, 40 CFR 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 ensures all responsible parties, including on-site 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 ensures all responsible parties, including on-site 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.

3.2 Fill Material

The following conditions 3.2.1 through 3.2.3 are necessary for the protection of beneficial uses according to Idaho's water quality standards, 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, and IDAPA 58.01.02.400.

1. Fill material subject to suspension will be free of easily suspended fine material. Only clean material may be placed as fill.
2. Temporary fills will be removed in their entirety on or before construction completion.
3. 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 United States.

3.3 Erosion and Sediment Control

The following conditions 3.3.1 through 3.3.9 are necessary for the protection of beneficial uses according to Idaho's water quality standards, including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.250, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

1. BMPs for sediment and erosion control suitable to prevent exceedances of Idaho's water quality standards and TMDLs shall be selected and installed before starting construction at the site. One resource to evaluate appropriate BMPs is the *Idaho Catalog of Storm Water Best Management Practices* (DEQ 2020). Other resources may also be used for selecting appropriate BMPs.
2. Permanent erosion and sediment control measures will be installed to provide long-term sediment and erosion control and prevent excess sediment from entering waters of the United States.

3. Permanent erosion and sediment control measures will be installed at the earliest practicable time consistent with good construction practices and will be maintained as necessary throughout project operation.
4. Structural fill or bank protection will consist of materials that are placed and maintained to withstand predictable high flows in the waters of the United States.
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 replaced or augmented if they are not effective.
6. All construction debris, scraps, particles, and other associated materials will be captured and properly disposed of so they cannot enter waters of the United States or cause water quality degradation.
7. Disturbed areas suitable for vegetation will be seeded or revegetated to prevent subsequent soil erosion (EPA 2000).
8. Maximum fill slopes will be material that is structurally stable once placed and does not slough into the waterbody during construction, during periods before revegetation, or after vegetation is established.
9. Sediment from disturbed areas or sediment that can be tracked by vehicles onto pavement must not leave the site in amounts reasonably expected to enter waters of the United States. Placement of clean aggregate at all construction entrances or exits and other BMPs such as truck or wheel washes, if needed, must be used when earth-moving equipment will be leaving the site and traveling on paved surfaces to prevent track-out.

3.4 Turbidity

The following conditions 3.4.1 through 3.4.4 are necessary for the protection of beneficial uses according to Idaho's water quality standards, 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, and IDAPA 58.01.02.400.

1. Sediment resulting from this activity must be mitigated to prevent violations of the turbidity standards stipulated in Idaho's water quality standards. 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. One resource to evaluate appropriate BMPs is the *Idaho Catalog of Storm Water Best Management Practices* (DEQ 2020). Other resources may also be used for selecting appropriate BMPs.
3. All practical BMPs on disturbed banks and within the waters of the United States must be implemented to minimize turbidity. Visual observation is acceptable to determine whether BMPs are functioning properly. If a sediment plume is observed, the project may be causing an exceedance of water quality standards, and the permittee must inspect the condition of the project BMPs. If the BMPs appear to be functioning improperly, then corrective action must be taken, and the permittee must modify the activity or implement additional BMPs (this may also include modifying existing BMPs).

4. If the project continues to have a visual sediment plume after BMPs have been inspected and modified, turbidity monitoring consistent with Table 1, is required.
    a. A properly and regularly calibrated turbidimeter is required for sample collection measurements to be analyzed in the field. The turbidimeter should be calibrated before each use or according to the manufacturer's recommendations. The calibration log should be maintained and made available to DEQ upon request. Instantaneous grab samples may be collected for field analysis and taken to a laboratory for analysis as needed. When turbidity monitoring is required, a grab sample must be collected at an undisturbed area immediately upstream from the in-water disturbance or discharge to establish background turbidity levels. Background turbidity, latitude/longitude, date, and time must be recorded before monitoring downstream. A sample must be collected immediately downstream from the in-water disturbance or point of discharge and within the visible sediment plume. The turbidity, latitude/longitude, date, and time must be recorded for each sample. The downstream sample must be taken immediately following the upstream sample to obtain meaningful and representative results.
    b. Results from the downstream sampling location must be compared to the upstream sample location or background turbidity to determine whether project activities are causing an exceedance of Idaho's water quality standards. If the downstream turbidity is 50 nephelometric turbidity units (NTUs) or greater than the upstream turbidity, then the project is causing an exceedance of the water quality standards. Any exceedance of the turbidity standard must be reported to the appropriate DEQ regional office within 24-hours of the sample event.
    c. Earth-disturbing activities may continue once turbidity readings return to within 50 NTU over background instantaneously, or if turbidity has exceeded 25 NTU over background for more than 10 consecutive days, once turbidity readings have no longer exceeded 25 NTU over background for at least 24 consecutive hours.
    d. Copies of daily logs for turbidity monitoring must be available to DEQ upon request. The report must describe all exceedances and subsequent corrective actions taken, including the effectiveness of the action.

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

Turbidity Above Background[a]	Monitoring/Sampling Frequency[a]	Additional Actions Required
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[b]	STOP work and follow instructions[b]; notify DEQ regional office
50 NTU or more	Sample before and after following instructions[c]	STOP work and follow instructions[c]; notify DEQ regional office

a. Sample and report turbidity three times at each location. Use the maximum value of three samples to determine compliance following Table 1 directions.
b. Instructions: If BMPs appear to be functioning properly, then the permittee must modify the activity or implement corrective action such as installing additional BMPs (this may include modifying existing BMPs) until additional sampling indicates turbidity standards are met. Sampling can cease when a sediment plume is no longer observed. Work can commence when a sediment plume is no longer observed, and measurements are consecutively below 25 NTU.

c. Instructions: If BMPs appear to be functioning properly, then the permittee must modify the activity or implement corrective action such as installing additional BMPs (this may include modifying existing BMPs) until additional sampling indicates turbidity standards are met. Sampling can cease when a sediment plume is no longer observed. Work can commence when a sediment plume is no longer observed, and measurements are below 50 NTU.

3.5 In-Water Work

The following conditions 3.5.1 through 3.5.3 are necessary for the protection of beneficial uses according to Idaho's water quality standards, including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.250, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

1. Work in open water must be kept to a minimum and only when necessary. Equipment shall work from an upland site to minimize disturbance of waters of the United States. If this is not practicable, take appropriate measures to ensure disturbance to the waters of the United States is minimized.
2. Construction affecting the bed or banks shall occur only during periods of low pool.
3. Heavy equipment working in wetlands shall be placed on mats or suitably designed pads to prevent damage to the wetlands.

3.6 Vegetation Protection and Restoration

The following conditions 3.6.1 through 3.6.3 are necessary for the protection of beneficial uses according to Idaho's water quality standards, including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.250, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

1. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
2. Fencing and other protective barriers should be used to mark the construction areas.
3. If authorized work results in unavoidable vegetative disturbance, native riparian and wetland vegetation shall be successfully reestablished to benefit water quality at pre-project levels or improved at the completion of authorized work.

3.7 Management of Hazardous or Deleterious Materials

The following conditions 3.7.1 through 3.7.10 are necessary for the protection of beneficial uses according to Idaho's water quality standards, 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, and IDAPA 58.01.02.850.

1. Screened slag pieces that are removed from the lakeshore will be placed in an established repository near the existing slag pile or other appropriate upland location, and managed in a way that they will not enter waters of the United States.
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 United States. Adequate measures and controls must ensure that those materials will not enter waters of the United States because of high water, precipitation runoff, wind, storage facility failure, accidents in operation, or unauthorized third-party activities.
3. Secondary containment is required for chemical materials.

4. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the channel if this fluid is available.
5. Daily inspections of all fluid systems on equipment to be used in or near waters of the United States shall ensure no leaks or potential leaks exist before equipment use. A logbook of daily equipment inspections shall be kept on site and provided to DEQ upon request.
6. Equipment and machinery shall be removed from the vicinity of the waters of the United States before refueling, repair, and/or maintenance.
7. Equipment and machinery shall be steam cleaned of oils and grease in an upland location or staging area with appropriate wastewater controls and treatment capability before entering waters of the United States. Any wastewater or wash water must not enter waters of the United States.
8. Emergency spill response procedures shall be in place and include a spill response kit (e.g., oil absorbent booms or other equipment).
9. If an unauthorized release of hazardous material to waters of the United States or to land occurs and there is a likelihood it will enter waters of the United States, 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 so it will not reach surface or ground waters of the United States.
    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 Coeur d'Alene Regional Office: (208) 769-1422.
10. Collect, remove, and properly dispose of spill and cleanup materials in a manner approved by DEQ.

3.8 Culverts

The following conditions 3.8.1 through 3.8.5 to control erosion, sediment, and turbidity are necessary for the protection of beneficial uses according to Idaho's water quality standards, including without limitation IDAPA 58.01.02.200 and IDAPA 58.01.02.250.

1. To prevent road surface and culvert bedding material from entering a waterbody, culvert crossings must include BMPs to retain road base and culvert bedding material. For perennial waters, the permittee should consider Idaho's "Stream Channel Alterations Rules" (IDAPA 37.03.07). Another source of BMPs for culvert installation are found in the "Rules Pertaining to the Idaho Forest Practices Act" (IDAPA 20.02.01). Examples of BMPs include, but are not limited to: parapets, wing walls, inlet and outlet rock armoring, compaction, suitable bedding material, antiseep barriers such as bentonite clay, or other acceptable roadway retention systems.

2. The culvert must not constrict the stream channel and shall not be angled so the outflow is directed toward the streambank. The culvert's flow line shall match the existing stream invert at its entrance and exit. Adequate grade control must be installed to prevent channel down cutting or excessive deposition from occurring.
3. The culvert shall be installed so it does not impede fish passage.
4. 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.
5. Culverts shall be sized appropriately to maintain the natural drainage patterns.

3.9 Excavated Material Management

Upland disposal of excavated material must prevent the material from reentering waters of the United States.

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

3.10 Pollutants/Toxins

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 United States.

4 Required Notification

The permittee must notify the Coeur d'Alene Regional Office when authorized work begins and if the applicant or organization is transferred or changes.

5 Right to Appeal Final Certification

The final § 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 at 208-666-4605 or via email at Chantilly.Higbee@deq.idaho.gov.

Dan McCracken
Regional Administrator
Coeur d'Alene Regional Office

References

DEQ (Idaho Department of Environmental Quality). 2020. *Idaho Catalog of Storm Water Best Management Practices*. Boise, ID: DEQ. https://www.deq.idaho.gov/water-quality/wastewater/storm-water/

DEQ (Idaho Department of Environmental Quality). 2022. *Idaho Department of Environmental Quality 2022 Integrated Report*. Boise, ID: DEQ. https://www2.deq.idaho.gov/admin/LEIA/api/document/download/16619

DEQ (Idaho Department of Environmental Quality). 2002. *Total Maximum Daily Load (TMDL) for Nutrients for the Nearshore Waters of Pend Oreille Lake, Idaho*. Boise., ID: DEQ. https://www2.deq.idaho.gov/admin/LEIA/api/document/download/12000.

EPA (US Environmental Protection Agency). 2000. *National Menu of Best Management Practices (BMPs) for Stormwater. https://www.epa.gov/npdes/national-menu-best-management-practices-bmps-stormwater*

IDHW (Idaho Department of Health and Welfare). 2006. *Health Consultation: Evaluation of Mercury in Trout and White Fish From Lake Pend Oreille, Idaho*. https://www.atsdr.cdc.gov/hac/pha/lakependoreille/lakependoreillehc.pdf

Response to Public Comments

After the draft certification was issued for public comment, DEQ received comments from one party. Small changes were made to the document to provide clarity and ensure water quality protection. DEQ's responses to individual comments is as follows:

1. *We appreciate the strong emphasis in the draft Water Quality Certification on minimizing sediment loading into the nearshore area of Lake Pend Oreille during excavation activities. However, there is lack of clarity on how toxins such as mercury, cadmium, lead, arsenic and zinc will be contained and kept out of the water.*

Response:

It is important to note that the cost-benefit analysis that was performed for the project is outside the scope of § 401 review, but it is helpful to understand in the context of addressing water quality concerns associated with the project. The purpose of the project is to reduce the presence of the existing contaminated remnant slag material and the opportunity for environmental exposure. The removal of as much of this material as possible is the primary method to reduce the likelihood of human exposure and future entry of these materials into the water column.

There is no practical way to contain the smallest slag materials that will remain after excavation has occurred without making the project cost-prohibitive. While the project aims to remove as much material and risk as possible, not all material or risk will be completely removed. Best management practices aimed at minimizing erosion and sediment loading into the lake during and after construction will also limit the movement of contaminated materials around the site, as these materials are associated with the existing substrate. Proposed practices include performing work during low pool and in dry conditions, and installing silt fencing and temporary covers over exposed slopes.

2. *The draft Water Quality Certification Section 2.1,* Pollutants of Concern*, lists arsenic, lead and zinc as well as sediment and metals. Mercury and cadmium should also be specifically listed, as the levels of these pollutants in the subject material are significant.*

Response:

Mercury and cadmium will be explicitly listed as pollutants of concern in the final certification.

3. *It is especially concerning that the preferred plan is to sift contaminated materials and leave the smallest rocks and particles that are least than 1x1 inch in place on the beach. The possibility of these finer fragments further impairing water quality with mercury is high, as well as with lead, cadmium, arsenic and zinc.*

Response:

The management of Blackrock and decision to remove some, but not all of the slag material from the shoreline is outside the scope of § 401 review.

4. *Section 3.7 of the draft Water Quality Certification* – Management of Hazardous or Deleterious Materials*, Section 3.9* – Excavated Material Management *and Section 3.10* – Pollutants/Toxins *should all include additional measures to ensure that mercury, lead, arsenic, cadmium and zinc do not leach into Lake Pend Oreille.*

Response:

The following condition has been added to Section 3.7 to address the handling of slag pieces that are to be removed*: Screened slag pieces that are removed from the lakeshore will be placed near the existing slag pile or other appropriate upland location, and managed in a way that they will not enter waters of the United States.*

5. *The Final Analysis document also states (p.5) that results from Synthetic Precipitation Leachate Procedure tests and wall wash samples suggest that metals have the potential to leach or mobilize from slag materials to nearby surface water. The proposal to leave contaminated slag in place is therefore note appropriate for this location.*

Response:

The management of Blackrock and decision to remove some, but not all of the slag material from the shoreline is outside the scope of § 401 review.

6. *We ask that DEQ require that all contaminated materials be removed from the site.*

Response:

The management of Blackrock and decision to remove some, but not all of the slag material from the shoreline is outside the scope of § 401 review.