



Idaho Department of Environmental Quality Draft Section 401 Water Quality Certification

March 21, 2025

Permit Name and Number: Regional General Permit No. 27 (RGP-27), NWW-2007-00475

Applicant: US Army Corps of Engineers (Corps)

Project Location and Receiving Water Bodies: Lake Pend Oreille, Pend Oreille River, and specific tributaries inundated by the summer pool elevation of 2062.5 feet (NGV Datum) including navigable waters of the United States located upstream of the Albeni Falls Dam in Bonner and Kootenai counties, Idaho

Excluded Water Bodies: Tributaries to Lake Pend Oreille and the Pend Oreille River, including (1) mouths of Gold Creek, West Gold Creek, Granite Creek, Trestle Creek, Lightning Creek, Strong Creek (near Hope, Idaho) and the Priest River for a radius of 100 yards; (2) the Clark Fork Delta from the confluence of Lightning Creek and the Clark Fork River; (3) Denton Slough; (4) the Pack River including the Pack River Flats, north of Trestle Creek on the east and north of Sunnyside Sportsman Access (Hawkins Point) on the west; (5) Morton Slough, including the left bank (east shoreline) of the Pend Oreille River; (6) Cocolalla Slough/Creek, upstream from the Spokane International Railroad Bridge across the slough; and (7) Scenic Bay

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); 40 CFR § 121; 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 federal regulations at 40 CFR § 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 February 15, 2025. To facilitate early engagement and project coordination, DEQ accepted an opportunity to host a prefiling meeting which was conducted on February 21, 2025, to seek clarification as well as to discuss the project and potential information needs.

DEQ reviewed the regional general permit information presented in the public notice for the proposed reissuance of the permit with modifications, published February 18, 2025. DEQ has also reviewed and considered other materials and information related to the proposed activity,

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including, but not limited to, the Idaho Lake Protection Act, Idaho Code § 58-1301; the Idaho Department of Lands' Rules for the Regulation of the Beds, Waters, and Airspace over Navigable Lakes in the State of Idaho, IDAPA 20.03.04; the existing Regional General Permit No. 27 (RGP-27), effective April 1, 2020; and the draft 2025 RGP-27.

Based on our review and consideration of the information listed above, readily available water quality related materials, and certification request in accordance with 40 CFR §§ 121.5 (b) and (c) and 121.7 (c), received on, February 21, 2025, 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 40 CFR § 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 3/21/2025 through 4/11/2025. Any public comments received during the 21-day comment period were 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

Regional General Permit No. 27 is for the construction, repair or replacement of non-commercial piers and floating docks with a total deck area of 700 square feet or less for a single-use and 1,100 square feet or less for a joint-use pier or floating dock. This permit also covers the construction, repair or replacement of non-commercial marine launching rails, mooring piles, portable boat or jet ski lift stations, small diameter waterline intakes, and mooring buoys.

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 pollutant of concern for this project is sediment. 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 sediment.

2.2 Receiving Water Body Level of Protection

Activities authorized under RGP-27 will be located on three main assessment units (AUs) within the Pend Oreille Lake Subbasin (IDAPA 58.01.02.110.05).

Projects authorized under the proposed permit may be located on Pend Oreille Lake assessment unit (AU) ID17010214PN018L_0L (Pend Oreille Lake). This AU has the following designated beneficial uses: cold water aquatic life, salmonid spawning, primary contact recreation, and domestic water supply (IDAPA 58.01.02.110.05). According to DEQ's 2022 *Integrated Report*, this AU is not fully supporting its cold water aquatic life, salmonid spawning, and recreation uses. Causes of impairment include flow regime modification, mercury, and total phosphorus. As such, DEQ will provide Tier I protection for both the aquatic life and contact recreation uses within the Pend Oreille Lake Subbasin (IDAPA 58.01.02.051.01).

Projects may also be located on the Pend Oreille River AU ID17010214PN002_08 (Pend Oreille River - Pend Oreille Lake to Priest River) or AU ID17010214PN001_08 (Pend Oreille River- Priest River to Albeni Falls Dam). These AUs have the following designated beneficial uses: cold water aquatic life, primary contact recreation, and domestic water supply (IDAPA 58.01.02.110.05). According to DEQ's 2022 *Integrated Report*, these AUs are not fully supporting one of their assessed uses. The cold water aquatic life use is not fully supported due to temperature and dissolved gas supersaturation. The contact recreation beneficial use 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.b). DEQ has determined that the quality of water in the Pend Oreille River exceeds levels necessary to support recreation in and on the water. As such, DEQ will provide Tier I protection (IDAPA 58.01.02.051.01) for the aquatic life beneficial use and Tier II protection (IDAPA 58.01.02.051.02), in addition to Tier I, for the contact recreation use.

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).

The only pollutant of concern associated with this project is sediment. Given that sediment primarily affects aquatic life at concentrations significantly lower than recreational uses and does not degrade water quality necessary to support contact recreation uses, DEQ focuses its sediment evaluations on aquatic life protections. Consequently, DEQ does not conduct a Tier II antidegradation analysis for contact recreation uses when sediment is the sole pollutant of concern, as aquatic life protections inherently address the more sensitive endpoints (IDAPA 58.01.02.052.08).

2.2.1 Excluded Water Bodies

The following areas have been excluded from RGP-27 permit coverage and the scope of this certification:

1. A 100-yard radius from the mouths of:
 - a) Gold Creek (ID17010214PN021_03)
 - b) North Gold Creek (ID17010214PN025_03)
 - c) Granite Creek (ID17010214PN027_03)
 - d) Trestle Creek (ID17010214PN030_02)
 - e) Lightning Creek (ID17010213PN010_04)
 - f) Strong Creek (near Hope) (ID17010214PN029_02)
 - g) Lower Priest River (ID17010215PN001_05)
2. Areas that provide important bull trout habitat and forage areas:
 - a) Clark Fork Delta, from the confluence of Lightning Creek and the Clark Fork River, west to the range line between Range 1E and Range 2E (ID17010213PN001_08)
 - b) Denton Slough, located in Sections 7, 18 & 19, T 56N, R 2E (ID17010214PN018L_0L)
 - c) Pack River including the Pack River Flats, north of Trestle Creek on the east, and north of Sunnyside Sportsman Access (Hawkins Point) on the west (ID17010214PN031_04)

- d) Morton Slough, including the east shoreline of the Pend Oreille River from the half section line of Section 16, T 56N, R 3W, south to the south section line of Sec. 21, T 56N, R 3W (1D17010214PN002_02L)
- e) Cocolalla Slough/Creek, upstream from the Spokane International Railroad Bridge across the slough (1D17010214PN012_04)
- f) Scenic Bay of Lake Pend Oreille that provides kokanee spawning habitat (1D17010214PN018_02)

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. Narrative limitations in RGP-27 address best management practices (BMPs) aimed at minimizing impacts to the aquatic environment and are focused on sediment and turbidity impacts including shoreline and riverbank vegetation protection and restoration, erosion and sediment controls, soil stabilization requirements, pollution prevention measures, prohibited discharges, and wildlife and habitat considerations. Most excavation and fill work must be performed in the dry, including the installation of piers, floating docks, launching rails and mooring piles. Working in a dry setting will minimize the project's impacts to surface waters and ensure the conditions for sediment stabilization are met in the certification and support compliance with the Tier I provisions of Idaho's water quality standards.

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). A TMDL is in the process of being developed for the Boyer Slough and its tributaries (AU ID17010214PN018_02). Objectives of the developing TMDL encompass reducing nutrient levels, specifically targeting total phosphorus and ammonia. 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 AUs in which these activities are authorized to occur are not impaired for sediment; therefore, there are no relevant sediment TMDLs for the water bodies covered by this permit.

Throughout the life of the project, the applicant will implement, install, maintain, monitor, and adaptively manage BMPs to reduce erosion and minimize turbidity levels in receiving water bodies downstream of the project. In addition, permanent erosion and sediment controls will be implemented that will minimize or prevent future sediment contributions from the project area.

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 water quality 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 conditions in this certification ensure 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 activities authorized under RGP-27 comply with Idaho's water quality standards and other appropriate water quality requirements of state law applicable to Pend Oreille Lake (AU ID17010214PN018L_01) and Pend Oreille River (AU ID17010214PN002_08 and AU ID17010214PN001_08).

3.1 General Conditions

This certification is based on review of the regional general permit information presented in the public notice for the proposed reissuance of the permit with modifications, published February 18, 2025. DEQ also reviewed and considered additional readily available water quality related materials, information related to the proposed activity, including, but not limited to, the Idaho Lake Protection Act, Idaho Code § 58-1301; the Idaho Department of Lands' Rules for the Regulation of the Beds, Waters, and Airspace over Navigable Lakes in the State of Idaho, IDAPA 20.03.04; the existing Regional General Permit No. 27 (RGP-27), effective April 1, 2020; the draft 2025 RGP-27; and certification request submitted by the US Army Corps (Corps) on February 21, 2025. This certification is conditioned upon the requirement that any modification (e.g., change in BMPs, work windows, etc.) of the permitted activity shall first be provided to DEQ for review to determine compliance with Idaho's water quality standards and to provide additional review pursuant to 40 CFR § 121. Such modifications may not be implemented until DEQ has determined whether additional certification is necessary.

Activities not specifically authorized by RGP-27 may require review and separate certification. 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 40 CFR § 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 activities 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.

5. If project activities disturb more than 1-acre and there is potential for discharge of storm water to waters of the United States, then coverage under the [IPDES Construction General Permit Program](#) may be required.

This condition ensures that work authorized under the federal permit complies with water quality requirements prohibiting unauthorized storm water discharges, including without limitation 33 U.S.C. § 1311(a), 33 U.S.C. § 1342(p), IDAPA 58.01.02.080, and IDAPA 58.01.02.400.

6. The applicant shall provide access to the project site upon request by DEQ personnel for site inspections, monitoring, and/or to ensure that conditions of this certification are being met.

3.2 Fill Material

The following conditions 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. When sand is utilized as fill material, appropriate BMPs shall be implemented to ensure sand will not be easily dispersed (e.g., filter fabric anchored over the sand or other confinement).
3. Temporary fills will be removed in their entirety on or before construction completion.
4. 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.
5. Placement of fill material in existing vegetated wetlands shall be minimized to the greatest extent possible.
6. 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 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 consistency with 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. Temporary and permanent erosion and sediment control measures shall be installed around the perimeter of the project or initial work areas to control and prevent excess sediment from entering waters of the United States.
3. Temporary and permanent 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 the project.

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 stream channel 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 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 DEQ's Coeur d'Alene Regional Office at (208) 769-1422 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 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 flow and/or corresponding with appropriate in-water work periods for aquatic life.
3. Forging the channel is not permitted. Build temporary bridges or other structures if crossings are necessary. Temporary crossings must be perpendicular to channels and located in areas with the least impact. The temporary crossings must be supplemented with clean gravel or treated with other mitigation methods at least as effective in reducing impacts. Temporary crossings must be removed as soon as possible after the project is completed or the crossing is no longer needed.
4. Heavy equipment working in wetlands shall be placed on mats or suitably designed pads to prevent damage to the wetlands.
5. In-water activities in spawning areas shall be avoided to the maximum extent practicable during spawning and incubation periods.
6. Prior to project commencement, the applicant should consider contacting the Idaho Department of Lands (IDL) and Idaho Department of Fish and Game (IDFG) offices for potential permit applicability.
7. Prior to the start of in-water work, the applicant shall contact the local IDFG Panhandle Regional Office at (208) 769-1414 (<https://idfg.idaho.gov/offices>) to determine if spawning areas are present in the work area, and if so, the applicant will work with IDFG to determine an appropriate work window so as not to disturb spawning fish, incubating fish eggs, or newly emerged fry.
8. Work in waters of the United States shall be restricted to areas specified in RGP-27.
9. In -or overwater concrete pouring is not authorized by this water quality certification. Measures shall be taken to prevent wet concrete from entering waters of the United States when placed in forms and/or from truck washing.
10. Activities that construct and maintain intake structures must include adequate fish exclusion screening devices in accordance with the National Marine Fisheries Services *Fish Screening Criteria for Anadromous Salmonids* (NMFS 1997) to minimize and prevent fish entrainment or capture. For technical questions, contact the US Fish and Wildlife Service's Idaho Fish and Wildlife Office Coeur d'Alene at (208) 918-2155 or the local IDFG Panhandle Regional Office at (208) 769-1414. Stranded fish found in dewatered segments should be moved to a location with water (preferably downstream) by IDFG. A

collection permit must be obtained from IDFG, and the applicant may consult with IDFG to coordinate fish salvage.

11. To minimize sediment transport, stream channel or streambank stabilization must be completed before returning water to a dewatered segment.
12. Equipment operating over water or directly adjacent to the channel must replace hydraulic fluid with vegetable or mineral, which is less toxic to fish and other aquatic organisms.

3.6 Vegetation Protection and Restoration

The following conditions 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. Where possible, alternative equipment should be used (e.g., spider hoe or crane).
4. Disturbance of existing wetlands and native vegetation shall be protected to the extent possible to minimize soil disturbance, erosion, delivery of sediment to the waterway, and minimize the effect of construction activities on aquatic biota, including bull trout.
5. 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 within the current or next appropriate planting season.

3.7 Management of Hazardous or Deleterious Materials

The following conditions 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. 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, or unauthorized third-party activities.
2. Secondary containment is required for chemical materials.
3. Any hydraulic boat or waterski lifts are required to replace hydraulic fluid with environmentally acceptable lubricants.
4. Equipment operating over water or directly adjacent to the channel must replace hydraulic fluid with vegetable or mineral oil, which is less toxic to fish and other aquatic organisms.
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 and be properly disposed.
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 Coeur d'Alene 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 accordance with all federal, state, and local regulations.

3.8 Treated Wood

The following condition meets Idaho's water quality standards, including without limitation IDAPA 58.01.02.200 and IDAPA 58.01.02.210.

This condition ensures that toxic chemicals are not introduced into waters of the United States. The *Guidance for the Use of Wood Preservatives and Preserved Wood Products In or Around Aquatic Environments* (DEQ 2008) must be considered when using treated wood materials in the aquatic environment. The DEQ guidance references the *Best Management Practices for the Use of Treated Wood in Aquatic and Wetland Environments* (Western Wood Preservers Institute et al. 2011). This BMP document provides recommended guidelines for producing and installing treated wood products for use in sensitive environments.

All treated wood must be treated in a manner consistent with the pesticide's EPA-approved labeling. As a matter of good industry practice, pressure-treated wood ties are also to be treated in accordance with standards established by the American Wood Protection Association. Additionally, only wood treated with ACQ, ACZA, CA-B, and copper naphthenate may be used. Any wood treated with creosote, CCA, Penta, or any other type of chemical will not be covered under this water quality certification without a completed individual Endangered Species Act (ESA) consultation.

The following conditions 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.

1. Adhere to the manufacturer's guidelines for proper storage, handling, and usage.
2. Materials should be stored out of direct soil or standing water, away from drainage conveyances adjacent to waters of the United States and covered until needed for use.
3. Set up a controlled workspace or designated work area with barriers to capture and contain debris to prevent it from spreading.
4. Collect and properly dispose of sawdust and wood scraps in accordance with federal, state, and local regulations. Treated wood waste should not be burned or composted.

3.9 Dredge Material Management

Upland disposal of dredged 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 sterilants, growth inhibitors, fertilizers, and deicing salts during construction 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

Permittees constructing activities under RGP-27 must notify the Coeur d'Alene Regional Office when authorized work begins and if the applicant or organization is transferred or changes.

Coeur d'Alene Regional Office
2110 Ironwood Parkway
Coeur d'Alene, Idaho 83814
Attn: Robert Steed
Surface Water Quality Manager
Email: robert.steed@deq.idaho.gov
Phone: (208) 666-4625

DEQ State Office
1410 North Hilton Street
Boise, Idaho 83706
Attn: Tambra Phares
401 Certification Lead
Email: tambra.phares@deq.idaho.gov
Phone: (208) 373-0187

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 Tandra Phares, Boise State Office at (208) 373-0187 or by email at tandra.phares@deq.idaho.gov.

DRAFT

Mary Anne Nelson, PhD
Surface & Wastewater Division Administrator
Idaho Department of Environmental Quality

References

- DEQ (Idaho Department of Environmental Quality). 2008. *Guidance for the Use of Wood Preservatives and Preserved Wood Products in or Around Aquatic Environments*. Boise, ID: DEQ. <https://www2.deq.idaho.gov/admin/LEIA/api/document/download/4838>
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- RSET (Northwest Regional Sediment Evaluation Team). 2018. *Sediment Evaluation Framework for the Pacific Northwest*. Prepared by the RSET Agencies.
- Western Wood Preservers Institute, Wood Preservation Canada, Southern Pressure Treaters' Association, and Southern Forest Products Association. 2011. *Best Management Practices: For the Use of Treated Wood in Aquatic and Wetland Environments*. Vancouver, WA: Western Wood Preservers Institute. [BMP Specifiers Guide](#)