

IDG370000  
Response to Comments  
Idaho Small Suction Dredge Mining General Permit

EPA, Region 10  
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General Information

In December of 2013, EPA proposed a “major” modification to the National Pollutant Discharge Elimination System (NPDES) General Permit (GP) for placer mining operations in Idaho involving small suction dredges (intake nozzle size of 5 inches in diameter or less and with equipment rated at 15 horsepower or less). When the 2013 GP was first issued in April 2013, the language of the GP contained a discrepancy regarding the total maximum daily load (TMDL) for the Boise-Mores Creek Watershed Subbasin. Specifically, the GP did not include any reference to the tributaries of Mores, Elk or Grimes creeks that are included in the loading allocations of the TMDL. EPA permits must comply with all existing TMDLs. This modification rectifies that discrepancy by including a reference to the tributaries within the GP requirements for Mores, Grimes and Elk creeks and listing the specific tributaries in a new Appendix F to the GP.

EPA has also removed from GP Part I.E. the sentence: “The Notice of Intent (NOI) in Appendix A requires verification that the IDWR has been contacted”. This change is considered a “minor” modification since the NOI does not actually require verification that IDWR has been contacted. Rather, applicants are instructed to contact the Idaho Department of Water Resources (IDWR), since both a permit from IDWR and EPA are required to operate small suction dredges in Idaho.

EPA published a Federal Register notice for a 45 day comment period on December 20, 2013. Notice was also published in the Lewiston Tribune on December 23, 2013. EPA sent over 1,000 postcards and 1,000 e-mails announcing the comment period to permittees and interested parties on our mailing lists.

Written comments were received from the following:

Scott Cureton (hotwheelsboise@juno.com)

Brad Smith for Idaho Conservation League

## General Comments

1. Comment: Mr. Cureton disagrees with the timing and inclusion of NOIs for Mores, Grimes and Elk creeks. Because he believes the Forest Service responds within 14 days of any NOI request, he expects the EPA to be at least as timely. He suggests that setting limited application dates and a month for EPA to respond will not work well and continues, “If you want the EPA to be successful in its involvement with suction dredging AND get public support with compliance then, you need to make it as simple/fast as buying a fishing license.”

Response: Only EPA’s proposal to comply with the Boise-Mores Creek Total Maximum Daily Load (TMDL) and extension of the application deadline for Mores, Grimes, and Elk creeks and their tributaries were open for comment in this permit modification action. Whether NOIs should be required under the GP was not proposed for modification and therefore not open for comment. However, EPA understands the comment regarding the timeliness of NOI process. While EPA attempts to process NOIs as quickly as possible, the GP is complex and several factors must be considered, especially when applicants apply for waterbodies that require a more complex authorization process than merely issuing an authorization letter.

This is especially true for Mores, Grimes and Elk creeks and their tributaries. In order to implement the TMDL for these creeks, EPA had to determine a method to allocate the limited number of hours that are available to dredging each year. When the draft permit was published in 2012, a specific request was made for comments on how to do this. The only suggestion submitted was to do it on a first come-first serve basis. EPA did not think that was an equitable way of allocating the available hours, as was evidenced by a review of last year’s NOIs where many applicants each requested the maximum number of hours.

The intent of the modification was to extend the deadline by which people could apply for coverage in Mores, Grimes and Elk creek drainages, including their tributaries. The process of collecting NOIs over the new timeframe or length of time it takes to allocate the hours each year was not open to public comment. Therefore, no change has been made to the general permit based on this comment although EPA will continue efforts to process NOI’s as quickly as possible.

2. Comment: Mr. Cureton comments that more NOIs are not needed if rules and regulations are published, since it is only about recreational sized equipment.

Response: To clarify, the “major” modification action does not create more NOIs for the permit. Instead, it changes the timing to submit NOIs for dredging in Mores, Grimes and Elk Creeks and their tributaries, and which waters receive allocated hours to dredge each year.

EPA understands that many applicants are already familiar with IDWR's permitting process and historic list of open/closed waters. EPA speculates that Mr. Cureton meant that the GP is duplicative and therefore unnecessary, or that EPA should, at minimum, adopt the same permit stipulations and process as IDWR. EPA appreciates this concept and understands this reaction, but operates under different regulatory authorities than IDWR (i.e., Federal vs. State). Section 402 of the Clean Water Act requires that individuals obtain an NPDES permit from EPA for any point source discharges of pollutants to waters of the U.S. The GP must also comply with the Endangered Species Act and Section 303(d) of the Clean Water Act, resulting in additional waters being closed or limited to dredging under the GP that may not be under IDWR's permit.

### Comments not pertinent to the Modification

3. Comment: ICL is concerned that confusion may result with respect to state protected or withdrawn waterways where there is an exemption for suction dredge mining but critical habitat designations exist. For example, on page 3 of the Statement of Basis, the EPA notes that although the South Fork Payette River is withdrawn, there is an exemption for suction dredge mining. This may be true, but the South Fork Payette River is designated as critical habitat for bull trout. Noting the exemption granted by the State may result in the illusion that coverage may be granted to dredge mine in the South Fork Payette and other waterways where similar circumstances exist. To rectify this issue, we recommend that the EPA also make note of the waterways where critical habitat designations or Section 303(d) listings override any exemptions granted by the State of Idaho.

Response: Although this comment is outside of the scope of the permit modification, EPA provides the following response. EPA understands that the assertions made in the Statement of Basis may look like they are stand-alone provisions. However, the Statement of Basis provides a discussion on the limited modification action that EPA is proposing to take, as well as minor modifications of the Permit. The permit itself remains essentially unchanged. When taken in context with the entire general permit, EPA believes that the sections limiting permit coverage are clear enough that one would understand that a specific waterbody is not included in the general permit. EPA is also updating our mapping tool showing which waters are available for permit coverage under the general permit. Hopefully, this tool will be available in the future so potential applicants can further clarify the status of the waterbody with respect to the terms of the permit.

4. Comment: ICL believes that it is imperative to begin enforcing the general permit this year. This is the second year in a permit program with a lifespan of five years. It is critical that the EPA monitor and enforce its implementation. Otherwise, operators will continue to suction dredge mine in waterways inhabited by listed fish or impaired by unnaturally high levels of sediment.

Response: Although this comment is outside of the scope of the modification, EPA provides the following response. EPA has included the suction dredge inspections in its compliance monitoring plans and will enforce the permit per our enforcement response guidance.