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Opening Remarks

**Jim Werntz, Director
Idaho Operations Office**



Small Suction Dredge Mining in Idaho: EPA's National Pollutant Discharge Elimination System General Permit

Presented April 2013



Overview of Section 402 of the Clean Water Act and Permit Basics

Tracy DeGering

Why is the EPA involved?

Clean Water Act (CWA)

Promulgated in 1972 | Amended in 1987

Goal: "To restore and maintain the chemical, physical, and biological integrity of the nation's waters."

- Sec 301(a): Except as in compliance with this section and sections 302, 306, 307, 318, 402 and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.
 - **Section 301 requires that point source discharges of pollutants to waters of the United States have an National Pollutant Discharge Elimination System (NPDES) permit**
 - **Section 402 contains the NPDES Permitting Program**
 - **The EPA implements the NPDES Program in Idaho**
 - Issues permits
 - Conducts compliance inspections
 - Carries out enforcement

Definition of a Pollutant



"But I'm not adding anything new to waters."

- **The term "pollutant" is defined in CWA § 502(6):**

The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, **rock**, **sand**, cellar dirt and industrial, municipal, and agricultural waste discharged into water (emphasis added).

- **Presently, there is no case law changing the requirement for an NPDES permit.**

Pollutant, continued:

"What if I don't believe my operation will negatively impact fish or fish habitat?"

- The CWA does not say that only discharges having an impact need a permit. It says that the discharge itself is unlawful without the permit.

"It feels like the EPA is specifically targeting those of us who enjoy suction dredging."

- Not a newly regulated activity—Alaska, Oregon have had permits in place for several years; activity is presently banned in California.



History of the NPDES GP

2010 - Published 1st draft of permit, took comments, held public meetings around Idaho.

2012 - Incorporating comments from 2010, drafted 2nd permit.
- Public Notice issued May 1, 2012, 30-day comment period.

Completed Since June 2012:

- **Endangered Species Act (ESA) consultation with U.S. Fish & Wildlife Service (USFWS), National Marine Fisheries Service (NMFS)**
- **Coordination with Tribes**
 - Formal Government to Government Consultation with Nez Perce Tribe
- **401 Certification from IDEQ**
 - Coeur d'Alene and Shoshone-Bannock Tribes denied w/out prejudice water quality certification.
- **Response to 122 different comments**

Outreach Efforts

2012 – Postcards and emails (+/- 1,000) sent announcing the proposed permit with link to the Public Notice online.

2013 – Planned Meetings:

- **March 20th – Tribal Partners**
- **March 26th – Congressionals/Governor's Office**
- **March 28th – Interagency Meeting (IDL, BLM, IDEQ, IDWR, IDFG, USACE, USFS, USFWS, NMFS)**
- **Week of April 1st – More postcards and emails announcing the final permit and webpage with additional information**
- **April 9th – Webinar for Mining Community, presenting to Idaho Gold Prospectors Association, Boise Chapter**

What to expect?

"Is this a done deal?"

- Yes, as of April 4, 2013, the permit is final.

"How long is the permit good for"

- This general permit is valid for 5 years, until 2018, at which point the permit will be up for reissuance.

"Is there a cost to apply?"

- No, the permit is free.

"Are there any age requirements, and can multiple people apply at a time?"

- There are no age restrictions. Multiple people who intend to operate the same dredge may apply together, however the owner is responsible for all parties involved.



What to expect, continued:

"What if I have multiple claims? Do I need to file a permit application for each?"

- Permit authorization is necessary for each dredge and location/waterway (e.g., 1 dredge x 3 locations = 3 separate approvals).

"Can you move around in the State under the one permit?"

- Authorization from EPA is only good for the specific waterbody/waterbodies and location applied for. To operate in another drainage requires authorization for that new location.

"How long does it take to receive authorization?"

- The EPA anticipates approval could take up to 45 days, depending upon the number of applications we receive and our need to coordinate with land management agencies.



When can I apply?

- **Final permit was published in the Federal Register on April 4, 2013. The GP becomes effective 30 days after, on May 6, 2013.**

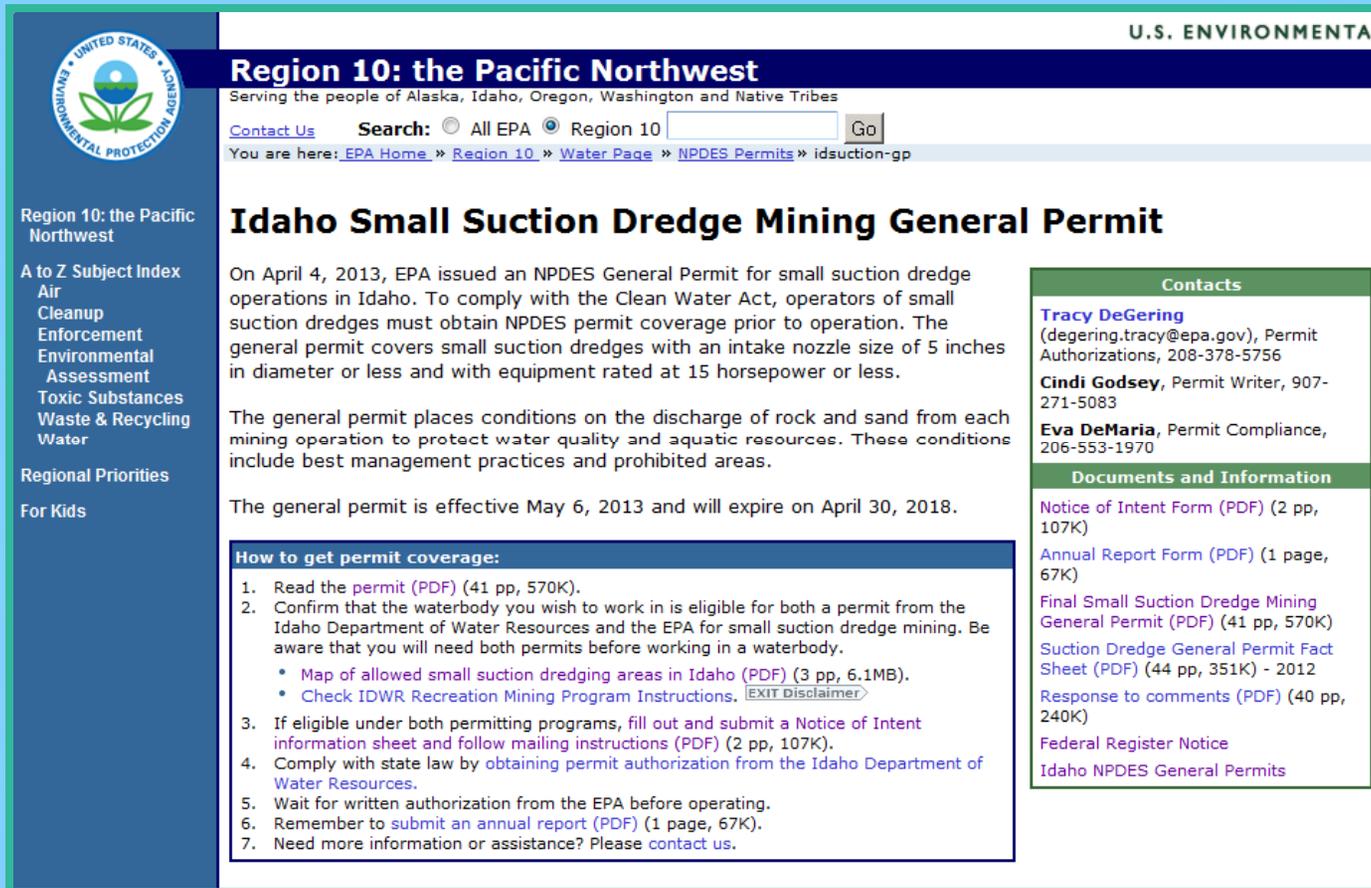


EPA can begin accepting applications or Notices of Intent (NOIs) in April, but coverage under the permit cannot be granted until May.



- **EPA has a webpage specific to this GP, with links to:**
 - Final Permit
 - Maps
 - EPA Point of Contacts
 - Notice of Intent
 - Annual Report
 - EPA's Response to Comments
- **Applicants must submit the original NOI to EPA, and send a copy to the Idaho Department of Environmental Quality and land manager.**
 - Land management agencies have 30 days to request EPA deny coverage.

How do I apply for permit coverage?



The screenshot shows the EPA Region 10 website. At the top right, it says "U.S. ENVIRONMENTAL". The main header is "Region 10: the Pacific Northwest" with the tagline "Serving the people of Alaska, Idaho, Oregon, Washington and Native Tribes". Below the header is a search bar with "Search:" and radio buttons for "All EPA" and "Region 10" (which is selected). There is a "Go" button. Below the search bar is a breadcrumb trail: "You are here: EPA Home » Region 10 » Water Page » NPDES Permits » idsuction-gp".

On the left side, there is a navigation menu with the EPA logo and the following items: "Region 10: the Pacific Northwest", "A to Z Subject Index", "Air", "Cleanup", "Enforcement", "Environmental Assessment", "Toxic Substances", "Waste & Recycling", "Water", "Regional Priorities", and "For Kids".

The main content area is titled "Idaho Small Suction Dredge Mining General Permit". It contains the following text:

On April 4, 2013, EPA issued an NPDES General Permit for small suction dredge operations in Idaho. To comply with the Clean Water Act, operators of small suction dredges must obtain NPDES permit coverage prior to operation. The general permit covers small suction dredges with an intake nozzle size of 5 inches in diameter or less and with equipment rated at 15 horsepower or less.

The general permit places conditions on the discharge of rock and sand from each mining operation to protect water quality and aquatic resources. These conditions include best management practices and prohibited areas.

The general permit is effective May 6, 2013 and will expire on April 30, 2018.

Below this text is a box titled "How to get permit coverage:" containing a numbered list of 7 steps:

1. Read the [permit \(PDF\)](#) (41 pp, 570K).
2. Confirm that the waterbody you wish to work in is eligible for both a permit from the Idaho Department of Water Resources and the EPA for small suction dredge mining. Be aware that you will need both permits before working in a waterbody.
 - [Map of allowed small suction dredging areas in Idaho \(PDF\)](#) (3 pp, 6.1MB).
 - [Check IDWR Recreation Mining Program Instructions](#). [EXIT Disclaimer](#)
3. If eligible under both permitting programs, fill out and submit a [Notice of Intent information sheet and follow mailing instructions \(PDF\)](#) (2 pp, 107K).
4. Comply with state law by [obtaining permit authorization from the Idaho Department of Water Resources](#).
5. Wait for written authorization from the EPA before operating.
6. Remember to [submit an annual report \(PDF\)](#) (1 page, 67K).
7. Need more information or assistance? Please [contact us](#).

On the right side of the page, there are two sections: "Contacts" and "Documents and Information".

Contacts

- Tracy DeGering** (degering.tracy@epa.gov), Permit Authorizations, 208-378-5756
- Cindi Godsey**, Permit Writer, 907-271-5083
- Eva DeMaria**, Permit Compliance, 206-553-1970

Documents and Information

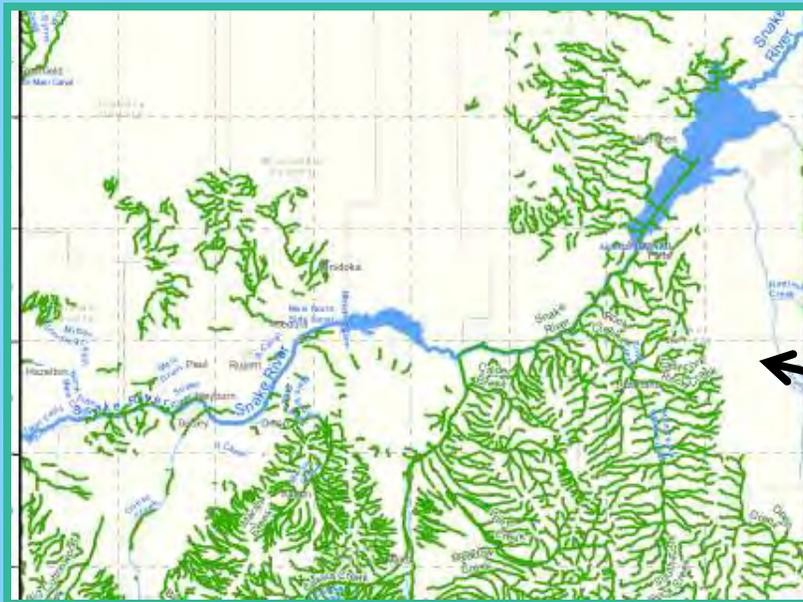
- [Notice of Intent Form \(PDF\)](#) (2 pp, 107K)
- [Annual Report Form \(PDF\)](#) (1 page, 67K)
- [Final Small Suction Dredge Mining General Permit \(PDF\)](#) (41 pp, 570K)
- [Suction Dredge General Permit Fact Sheet \(PDF\)](#) (44 pp, 351K) - 2012
- [Response to comments \(PDF\)](#) (40 pp, 240K)
- [Federal Register Notice](#)
- [Idaho NPDES General Permits](#)

Website Address:

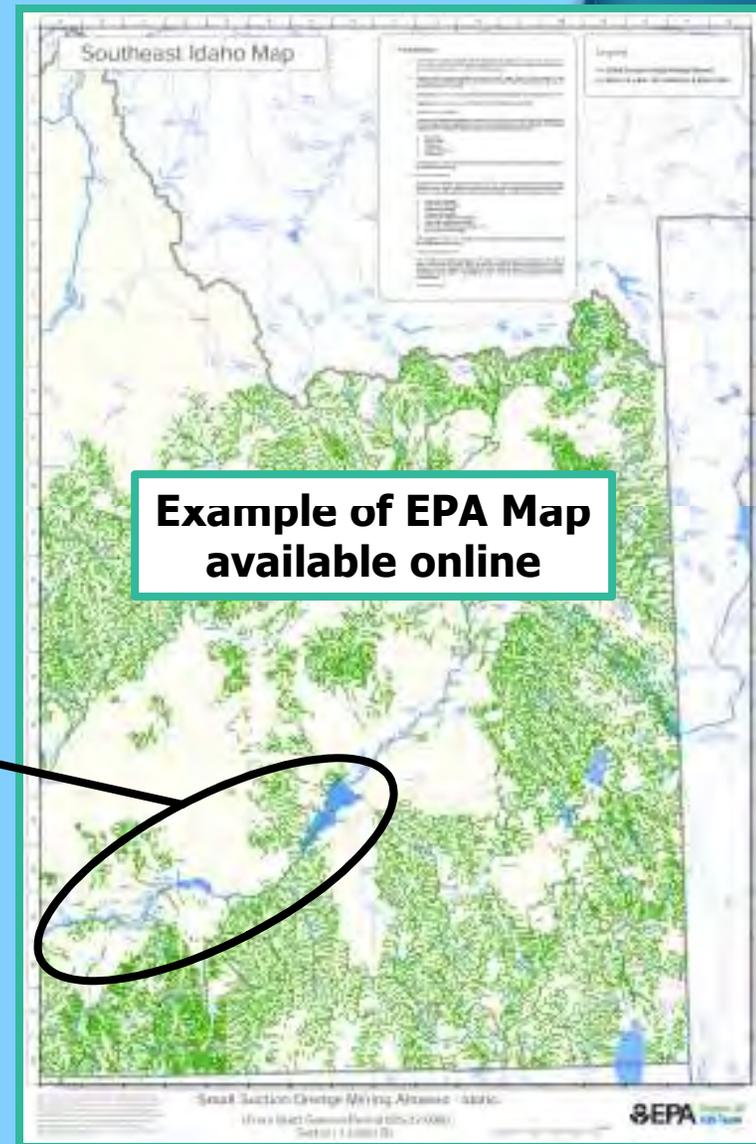
<http://yosemite.epa.gov/r10/water.nsf/NPDES+Permits/idsuction-gp>

Instructions

1. Read the permit.
2. Confirm that the waterbody you wish to work in is eligible for both a permit from IDWR and EPA.



Green Areas = Dredging Allowed
Blue Areas = Dredging Prohibited



**Example of EPA Map
available online**

Instructions, continued:

3. If eligible under both permitting programs, fill out and submit a Notice of Intent form & follow mailing instructions.
4. Comply with state law by obtaining permit authorization from the IDWR.
5. Wait for written authorization from the EPA before operating.
6. Remember to submit an annual report.

APPENDIX A Notice of Intent (NOI) Information Sheet NPDES General Permit IDG-37-0000 Small Suction Dredge					
Applicant (Owner/Operator):					
Owner Name:					
Winter Address:			Summer Address <input type="checkbox"/> Check if same		
Telephone Number:			Email address:		
Operator Name <input type="checkbox"/> Check if same as owner					
Operation Name (if applicable):					
Size of Suction Dredge Nozzle: (5 inches or less)			Equipment rating: (15 hp or less)		
Land Management Agency:			Contact:		
			Phone number:		
Permit Part I.D.1. requires copies of certain land management approvals be submitted with the NOI					
Permit Part I.E. requires that you contact the Idaho Department of Water Resources to obtain a permit and determine whether additional restrictions may apply.					
Waterbody Information					
Waterbody*	Nearest Town	Latitude	Longitude	Dates of Operation	Hours of Operation**
*Include a map noting each location.					
**An NOI is required on an annual basis for facilities on Mores, Grimes and Elk creeks along with the number of dredge hours planned (See Permit Parts I.G.1. and II.B.3.)					
Printed Name:					
Signature:				Date:	
Certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.					

Questions and Answers: Overview and Permit Basics

(10 minutes)

General Permit Requirements & Common Questions

Cindi Godsey

Permit Requirements

- **Submit NOI**
- **Visual Monitoring**
- **Best Management Practices**
- **Annual Report**



Best Management Practices (BMPs)

– Chemical

- Silt and Clay Areas –avoid to reduce increase in turbidity
- Mercury –Instructions for collection, disposal
- Refueling and Hazardous/Deleterious Material Storage –100' distance
- Sediment Plume –must not exceed 500' in length

– Biological

- Spacing between operations – 800' distance
- Fish Passage, Spawning Fish and Spawning Habitat – 500' distance from
- Invasive Species – cannot house, must decontaminate
- Screening Requirements (intake)

Best Management Practices (BMPs)

– Physical

- Stream Channel – may not alter
- Erosion, undercutting of stream bank not allowed
- Dams or Diversions (not authorized under Section 402)
- Boulders and Natural Obstructions –move by hand only
- Mechanized Equipment –not allowed below Ordinary High Water
- Refueling and Hazardous/Deleterious Material Storage –100' distance
- Silt and Clay Areas –avoid to reduce increase in turbidity

Areas not covered by the General Permit, unless...*

1. Nationally Protected Areas:

- National Parks System Units (i.e., Parks and Preserves)
- National Monuments,
- National Sanctuaries,
- National Wildlife Refuges,
- National Conservation Areas,
- National Wilderness Areas,
- National Wild and Scenic Rivers System

***...unless the land manager grants permission, and such documentation is provided with the NOI.**

Areas not covered by the General Permit, unless...*

- 2. Areas designated as critical habitat under the Endangered Species Act (ESA),** and additional areas listed in the permit where species that are either listed as threatened or endangered are known to occur.



***...unless the USFWS or NMFS have provided a determination to another agency for suction dredging in a specific area, and a miner includes that determination with the NOI.**

Areas not covered by the General Permit

3. State Protected Waters:

- Withdrawn River Segments,
- State Protected Rivers,
- Sediment Impaired Streams

4. All Tribal Reservations

5. Impaired Streams (mercury, sedimentation)

NO EXCEPTIONS FOR THESE AREAS

Q: What if I want to operate a larger dredge?



- If an operator can not meet the requirements of this general permit, s/he can apply for an individual permit from EPA.
- Individual permit applications require additional review and evaluation with significant wait times before an individual permit can be issued.



Q: What if I already have a permit from the Idaho Department of Water Resources or from another agency?



- The EPA is the only agency that issues NPDES permits in Idaho. Miners wishing to operate a dredge in Idaho need to acquire an NPDES permit.
- Permits issued by other agencies do not provide the necessary legal authorization for operators to discharge into surface water that is required under the CWA.

Q: Why are waterbodies with TMDLs handled differently?



- The Idaho Department of Environmental Quality established a Total Maximum Daily Load (TMDL) for the Mores Creek Drainage and the SF Clearwater River. To meet specific turbidity and sediment criteria, the State set an annual wasteload allocation.
- **The Mores Creek TMDL** allocates the following:
 - Grimes Creek: 84 four hour dredge days
 - Mores Creek: 60 four hour dredge days
 - Elk Creek: 11 four hour dredge daysPermit coverage for these waterbodies is for 1 year only and new allowances will be calculated annually.
- **The SF Clearwater TMDL** contains an allocation for 15 dredges. Facilities would not be covered unless an ESA determination has been made.

**Questions and Answers:
Permit Requirements,
Common Questions**

(10 minutes)

Compliance & Enforcement

Eva DeMaria

EPA's Enforcement Strategy



Statutory Penalty Factors

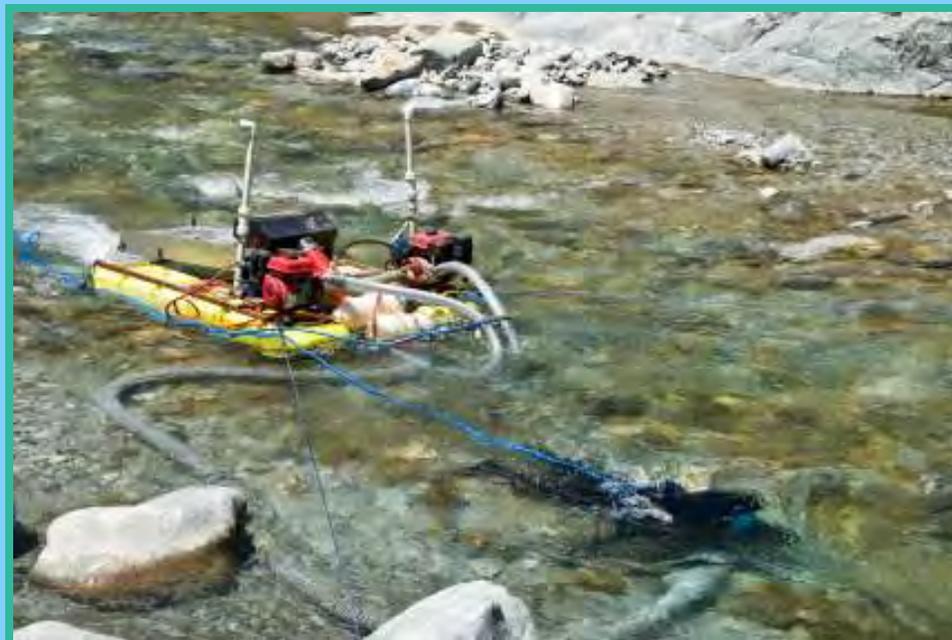
- **Seriousness or Gravity – nature, level of contamination, sensitivity of receiving water**
- **Economic Benefit – what is the cost of compliance?**
- **Prior History of Violations**
- **Degree of Culpability – sophistication of operator**
- **Ability to Pay**
- **“Such Other Factors as Justice May Require”**



Serious Violations

- **Operating in restricted waters**
- **Operating without a permit**
- **Turbidity observed beyond 500 feet downstream**

Violators can be penalized up to \$37,500 per day per violation



Questions and Answers: Compliance and Enforcement

(10 minutes)

Questions?

- **Technical Contact –Permit Writer (Anchorage)**
Cindi Godsey
(907) 271-6561
godsey.cindi@epa.gov
- **Local Contact –Implementation (Boise)**
Tracy DeGering
(208) 378-5756
degering.tracy@epa.gov
- **NPDES Compliance Unit (Seattle)**
Eva DeMaria
(206) 553-1970
demaria.eva@epa.gov



Thank You!

