Small Suction Dredge Mining in Idaho

The Clean Water Act (NPDES) General Permit

Presented April 13, 2016
Topics Covered

EPA’s Small Suction Dredge Mining General Permit

• Clean Water Act Section 402
• General Permit History and Current Status
• Eligibility and Restrictions
• Ongoing and Future Efforts
• Compliance Strategy
• Planned Improvements
Clean Water Act § 402

National Pollutant Discharge Elimination System (NPDES) Permitting Program

Is it unlawful to discharge a pollutant from a point source into waters of the U.S. without an NPDES permit.

Material separated from gold and released into a stream, during placer mine activity, constitutes a pollutant; and even though “the material discharged originally [came] from the streambed itself, [its] re-suspension [in the stream] may be interpreted to be an addition of a pollutant under the Act. (Rybachek v. U.S. EPA, 904 F.2d 1276, 1285-86 (9th Cir. 1990)).
Multiple Authorities

EPA Region 10
CWA § 402
Develops NPDES permits in Idaho, conducts inspections, enforces permit violations.

U.S. Fish & Wildlife Service
NOAA Fisheries (“Services”)
Endangered Species Act (ESA) § 7
Federal agencies consult with the Services to ensure actions they authorize (suction dredging), don’t jeopardize listed species or the ecosystems they depend on.

Idaho DEQ
CWA § 401
Sets state water quality standards (WQS), develop plans (TMDLs) to rectify impaired waters, and certifies EPA NPDES permits meet state WQS (401 Cert).

Idaho Dept. of Water Resources
Idaho Code § 42-3803,
IDAPA 37.03.07
Regulates the use of small suction dredge mining equipment within the mean high water mark of a channel (stream alteration).

U.S. Army Corps of Engineers
CWA § 404,
1899 Rivers and Harbors Act § 10
Regulates the discharge of dredged or fill material into waters of the U.S.* (CWA § 404) and structures and/or work in or affecting navigable waters of the U.S. (RHA § 10). *Except if the discharge is considered “de minimis”.

*
# Types of NPDES Permits

<table>
<thead>
<tr>
<th>1</th>
<th>Individual Permit</th>
<th>1+</th>
<th>General Permit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>For a single facility or individual at a specific location.</td>
<td></td>
<td>For a similar category of activities across a large geographic area (statewide).</td>
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<tr>
<td></td>
<td><strong>Lengthier process.</strong> Public Notice, ESA + Tribal Consultation, 401 Cert carried out in response to each permit application.</td>
<td></td>
<td><strong>Faster permit mechanism.</strong> Public Notice, ESA + Tribal Consultation, 401 Cert completed upfront, in advance of permit requests. Activity can be covered if terms &amp; conditions are met.</td>
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<tr>
<td></td>
<td>Examples: Municipal wastewater treatment plants, food processing plants, large mines.</td>
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<td>Examples: Pesticide applications, large CAFOs, aquaculture facilities, stormwater (industrial and construction).</td>
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General Permit History

2010
- Public Notice for 1st draft of permit, took comments, held public meetings in Idaho.

2011
- Public Notice issued for 2nd draft permit. *EPA received 122 different comments.
- Completed informal ESA and Tribal consultation, received 401 Cert from IDEQ.

2013
- Notified 1000+ miners about the proposed permit.
- Outreach to Tribes, State and Federal agencies, Congressional Staff.
- Final permit published in the Federal Register.
- Notified 1000+ miners about the final permit. *No appeals were filed.
- Mining Community webinar, presented to ID Gold Prospector’s Association, (Boise Chapter).
- Outreach-focused inspections.
- ESA Consultation by the Forest Service results in suction dredging allowed on Lolo and Moose Creeks—previously closed due to critical habitat for bull trout and steelhead.
2013
• Public Notice for proposed permit modification, addressing typos, minor corrections.
  *2 commenters responded.

2014
• Presented to the Gold Prospectors Association of America (Nampa Chapter).
• Permit modification became effective in March, 2014.
• Spring meeting with state and federal land management agencies, IDWR, IDEQ, Tribes to discuss 2014 permit season.
• Random, unannounced inspections.

2015
• Continue to support ESA consultation efforts to open additional waters.

2016
• Continue to support ESA consultation efforts to open additional waters.

Weekly Goals
Manage calls, emails, drop-in visits from applicants
Mail permit information to individuals without internet access
Process applications as quickly as possible (< 45 days)
To qualify for coverage under the General Permit, a suction dredge must:

1. Have an intake nozzle size of 5 inches or less,

2. Use an engine rated at 15 horsepower or less, and

3. Be operated in EPA’s open or “allowed” areas only.

No Permit Required For

- Non-motorized operations (hand panning)
- Techniques preventing sediment discharge
Prohibitions

Areas Excluded From General Permit Coverage

1. Nationally Protected Areas

   UNLESS THE LAND MANAGER APPROVES

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

   UNLESS APPROVED THROUGH CONSULTATION WITH THE SERVICES

3. State Protected Waters
   Withdrawn River Segments, State Protected Rivers, Sediment/Mercury Impaired Streams.

   NO EXCEPTIONS

4. Tribal Reservations
   Kootenai, Coeur d’Alene, Nez Perce, Duck Valley, Fort Hall

   NO EXCEPTIONS
# Best Management Practices (BMPs)

### Biological
- 800 feet between operations.
- Stay 500 feet away from where fish are spawning, fish eggs exist, and allow for fish passage.
- Decontaminate dredge equipment to prevent spread of invasive species.
- Screen over pump intake.

### Chemical
- Avoid silt/clay areas to reduce increase in turbidity.
- Mercury: stop work, collect and dispose of properly.
- Fuel, hazardous material must be stored 100 feet from mean high water; report spills.
- 500 foot sediment plume max.

### Physical
- May not alter stream channel.
- Erosion, undercutting of stream bank not allowed.
- No dams or diversions (not authorized under Section 402).
- Obstructions must be moved by hand only, no mechanized equipment in the water.

**Permit requires visual monitoring only, no sampling.**
## Permit Numbers

Application may have 1+ location(s) listed → EPA reviews each location → Authorization or denial letter prepared for each location

<table>
<thead>
<tr>
<th>Year</th>
<th>People Applied for Permit Coverage</th>
<th>Requested Locations Denied Coverage</th>
<th>Requested Locations Authorized</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>162</td>
<td>264</td>
<td>81</td>
</tr>
<tr>
<td>2014</td>
<td>39</td>
<td>35</td>
<td>56</td>
</tr>
<tr>
<td>2015</td>
<td>56</td>
<td>38</td>
<td>75</td>
</tr>
</tbody>
</table>

*Grimes, Mores, Elk Creek + tributaries ……… permitted annually

*All other open waters ……… permitted up to 5 years
Notice of Intent

APPENDIX A
Notice of Intent (NOI) Information Sheet
NPDES General Permit IDG370000
Small Suction Dredge

<table>
<thead>
<tr>
<th>Applicant (Owner/Operator):</th>
</tr>
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<tbody>
<tr>
<td>Owner Name:</td>
</tr>
<tr>
<td>Winter Address:</td>
</tr>
<tr>
<td>Summer Address:</td>
</tr>
<tr>
<td>Check if same</td>
</tr>
<tr>
<td>Telephone Number:</td>
</tr>
<tr>
<td>Email address:</td>
</tr>
<tr>
<td>Operator Name:</td>
</tr>
<tr>
<td>Check if same as owner</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Operation Name (if applicable):</th>
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<tbody>
<tr>
<td>Size of Suction Dredge Nozzle:</td>
</tr>
<tr>
<td>5 inches or less</td>
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<tr>
<td>Equipment rating:</td>
</tr>
<tr>
<td>15 hp or less</td>
</tr>
<tr>
<td>Land Management Agency:</td>
</tr>
<tr>
<td>Contact:</td>
</tr>
<tr>
<td>Phone number:</td>
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</tbody>
</table>

| 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. |

<table>
<thead>
<tr>
<th>Waterbody Information</th>
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<tbody>
<tr>
<td>Waterbody*</td>
</tr>
<tr>
<td>Nearest Town</td>
</tr>
<tr>
<td>Latitude</td>
</tr>
<tr>
<td>Longitude</td>
</tr>
<tr>
<td>Dates of Operation</td>
</tr>
<tr>
<td>Hours of Operation**</td>
</tr>
</tbody>
</table>

*Include a map noting each location.

**An NOI is required on an annual basis for facilities on Morce, Grimes and Elk creeks along with the number of dredge hours planned. (See Permit Parts I.C.1 and II.B.3.)

<table>
<thead>
<tr>
<th>Printed Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature:</td>
</tr>
<tr>
<td>Date:</td>
</tr>
</tbody>
</table>

Certifications. 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.
Other Important Information

- No fee, simple 1-page application form (enter lat/long)
- Permit linked to dredge size and location, not number of people operating
- Approval : Denial ratio improving as public becomes familiar with the permit
- EPA and IDWR do share some common open areas
- EPA regularly coordinates with Services, land managers, state/federal partners
- General Permits are reissued every 5 years, incorporating new data (e.g., ESA)
Planned Improvements

Continually provide the most current information on our website.

Highlight, upfront, open and closed waters that are the most popular.

Create an online mapping tool to allow the public to view the same GIS data layers EPA uses for permit decisions.

Website: http://yosemite.epa.gov/r10/water.nsf/NPDES+Permits/idsuction-gp
Online Mapping Tool

Legend

- Impaired Streams: Mercury ID305B 2010
- Impaired Streams: Sedimentation/Siltation/TSS ID305B 2010
- Withdrawn River Segments
- State Protected Waters
- National Wild and Scenic Rivers
- Critical Habitat/Presence for White Sturgeon
- Critical Habitat for Steelhead
- Occupied by Bull Trout (Critical Habitat/Presence)
- National Wildlife Refuge
- National Wilderness Areas
- National Parks
- Snail Occupancy
- Tribes
- Chinook Salmon ESU
- Rivers (for reference & labels only)

14 data layers reduced to 3

No Exceptions = red
Nationally Protected + ESA Areas = yellow
All other waters = green
Contact Information

Boise, ID

Local Contact – Implementation
Tracy DeGering
(208) 378-5756
degering.tracy@epa.gov

EPA Idaho Operations Office Director
Jim Werntz
(208) 378-5746
werntz.james@epa.gov

Seattle, WA

Permit Compliance/Enforcement
Jeff KenKnight
(206) 553-6641
kenknight.jeff@epa.gov

Permit Writer
Cindi Godsey
(206) 553-1676
godsey.cindi@epa.gov

U.S. Environmental Protection Agency - Idaho Operations Office
950 W Bannock St, Suite 900 | Boise, ID 83702
Individual Permit Process

1. Review completeness of application, assign based on staff availability, workload.

2. Consult with the Services under ESA § 7 and Indian tribes if direct effect on a tribe (Executive Order 13175).

3. Prepare and share Draft Fact Sheet (technical, legal basis for permit conditions) with State for preparation of draft Water Quality Certification (401 Cert).

4. Announce 30-day public comment period (minimum), opportunity to request a hearing.

5. Prepare Response to Comments document, shaped by number, complexity of comments received.

6. Prepare, transmit Preliminary Final Permit to State for final 401 Cert, complete ESA and tribal consultation.

7. Upon receipt of 401 Cert, issue Final Permit, becomes effective after 30 days (appeals must be filed during this same 30-day period).

8. Appealed permits do not go into effect. Appeals are handled by Environmental Appeals Board, Ninth Circuit Court of Appeals.

Individual Permit Application

| Form 1 | http://www.epa.gov/npdes/pubs/form_1.pdf |
| Form 2D | http://www.epa.gov/npdes/pubs/3510-2D.pdf |
Individual Permit Process

START

Individual Permit Application

EPA Develops Draft Permit + Fact Sheet

Request ESA/Tribal Consultation (ESA § 7, E.O. 13175)

EPA/State/Tribe Review Draft Permit, Fact Sheet

Public Hearing

Public Notice (30 day min)

Prepare Final Permit, Response to Comments, Admin. Record

EPA/State/Tribe Review Preliminary Final Permit

Complete ESA Consultation, State issues 401 Cert

Issue Final Permit, effective after 30 days

Appeals Process

Final Agency Action

STOP

18 months, minimum

Individual Permit Application

Form 2D - http://www.epa.gov/npdes/pubs/3510-2D.pdf