



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

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C.L. "Butch" Otter, Governor  
John H. Tippetts, Director

November 27, 2018

Michael Lidgard  
Manager, NPDES Permits Unit  
EPA Region 10  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101-3140

Subject: Final 401 Water Quality Certification for Dickinson Frozen Foods, Inc., ID-0028479

Dear Mr. Lidgard:

The Boise Regional Office of the Department of Environmental Quality (DEQ) has reviewed the above-referenced proposed Final Permit for Dickinson Frozen Foods, Inc. Section 401 of the Clean Water Act requires that states issue certifications for activities which are authorized by a federal permit and which may result in the discharge to surface waters. In Idaho, DEQ is responsible for reviewing these activities and evaluating whether the activity will comply with Idaho's Water Quality Standards, including any applicable water quality management plans (e.g., total maximum daily loads). A federal discharge permit cannot be issued until DEQ has provided certification or waived certification either expressly, or by taking no action.

This letter is to inform you that DEQ is issuing the attached Final 401 certification subject to the terms and conditions contained therein.

Please contact me directly at (208) 373-0420 or via email at [Aaron.Scheff@deq.idaho.gov](mailto:Aaron.Scheff@deq.idaho.gov) to discuss any questions or concerns regarding the content of this final certification.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Scheff".

Aaron Scheff  
Regional Administrator  
Boise Regional Office

c: John Drabek

ec: Loren Moore, DEQ State Office



## Idaho Department of Environmental Quality Final §401 Water Quality Certification

November 27, 2018

**NPDES Permit Number(s):** ID-0028479, Dickinson Frozen Foods, Inc.

**Receiving Water Body:** Payette River

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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 National Pollutant Discharge Elimination System (NPDES) permits and issue water quality certification decisions.

Based upon its review of the above-referenced permit and associated fact sheet, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification, then there is reasonable assurance the discharge will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02), and other appropriate water quality requirements of state law.

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.

### Antidegradation Review

The WQS contain an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051).

- 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 deemed 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 not cause a lowering of water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ is employing 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 Integrated Report and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

### ***Pollutants of Concern***

Dickinson Frozen Foods discharges the following pollutants of concern: BOD<sub>5</sub>, TSS, pH, temperature, ammonia, and phosphorus. Effluent limits have been developed for BOD<sub>5</sub>, TSS, pH, temperature, and phosphorus during the summertime. No effluent limits are proposed for ammonia.

### ***Receiving Water Body Level of Protection***

Dickinson Frozen Foods discharges to the Payette River within the Payette River Subbasin assessment unit (AU) 17050122SW001\_06 (Black Canyon Reservoir Dam to Mouth). This AU has the following designated beneficial uses: Salmonid Spawning, Cold Water Aquatic Life, Domestic Water Supply, and Primary Contact Recreation. 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).

According to DEQ's 2014 Integrated Report, this AU is not fully supporting one or more of its assessed uses. The aquatic life use in this receiving water body AU is not fully supported. Causes of impairment include temperature. The contact recreation beneficial use is also not fully supported. Causes of impairment include *Escherichia Coli*. As such, DEQ will provide Tier I protection for both the aquatic life and contact recreation uses (IDAPA 58.01.02.051.01).

### ***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 and designated uses and the level of water quality necessary to protect existing and designated uses shall be maintained and protected. In order to protect and maintain existing and designated beneficial uses, a permitted discharge must comply with narrative and numeric criteria of the Idaho WQS, as well as other provisions of the WQS such as Section 055, which addresses water quality limited waters. The numeric and narrative criteria in the WQS are set at levels that ensure protection of existing and designated beneficial uses. The effluent limitations and associated requirements contained in the Dickinson Frozen Foods permit are set at levels that ensure compliance with the narrative and numeric criteria in the WQS.

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. A central purpose of TMDLs is to establish wasteload allocations for point source discharges, which are set at levels designed to help restore the water body to a condition

that supports existing and designated beneficial uses. Discharge permits must contain limitations that are consistent with wasteload allocations in the approved TMDL.

Prior to the development of the TMDL, the WQS require the application of the antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04).

Although the Payette River is not impaired for nutrients, the Payette River received a total phosphorus wasteload allocation in the approved *Snake River Hells Canyon TMDL* (June 2004) of .07 mg/L to be measured at the mouth from May through September. Because the *Snake River Hells Canyon TMDL* did not include a wasteload allocation for Dickinson, and there is no reserve for growth or assimilative capacity in the Payette River, the effluent limitations for total phosphorus contained in the final permit are set at levels that comply with the .07 mg/L wasteload allocation for the Payette River that was developed in the *Snake River Hells Canyon TMDL* (June 2004). The *Lower Payette River Subbasin Assessment and TMDL* (December 1999) identified temperature, nutrients and bacteria as pollutants of concern for HUC 17050122. Dickinson Frozen Foods is not a suspected source of *E. coli*, which is the only constituent that included a wasteload reduction in the watershed for this TMDL. This TMDL did not include wastelaod allocations for temperature or total phosphorus.

The limits in the proposed permit were developed to achieve the water quality necessary to support the Payette River's existing and designated aquatic life beneficial uses and comply with the applicable numeric and narrative criteria. In sum, the effluent limitations and associated requirements contained in the Dickinson Frozen Foods permit are set at levels that ensure compliance with the narrative and numeric criteria in the WQS and the wasteload allocation established in the *Snake River Hells Canyon TMDL*. Therefore, DEQ has determined the permit will protect and maintain existing and designated beneficial uses in the Payette River in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

## **Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law**

### ***Plans and Specifications Submittal***

Prior to discharge the permittee must submit to DEQ for approval plans and specifications including stamped engineering calculations and design to support the effluent limits in the permit including the BOD<sub>5</sub> and TSS limits. An engineering design basis and preliminary engineering report must be submitted to address the solids potential as well as all effluent requirements. The engineering packages shall be complete with calculations for all process engineering and unit process sizing and that this information must be submitted and approved by DEQ. The construction of the upgrades to the treatment plant in the approved plans and preliminary engineering report are required to be completed prior to discharge.

## Mixing Zones

Pursuant to IDAPA 58.01.02.060, DEQ authorizes a mixing zone that utilizes 2% of the critical flow volumes. This mixing zone is to be used in EPA's reasonable potential to exceed analysis for ammonia in the Payette River.

## Other Conditions

This certification is conditioned upon the requirement that any material modification of the permit or the permitted activities—including without limitation, any modifications of the permit to reflect new or modified TMDLs, wasteload allocations, site-specific criteria, variances, or other new information—shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401.

## Right to Appeal Final Certification

The final Section 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 Kati Carberry, Boise Regional Office, 208-373-0434 [Kati.Carberry@deq.idaho.gov](mailto:Kati.Carberry@deq.idaho.gov).



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Aaron Scheff  
Boise Regional Administrator  
Boise Regional Office