



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

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C.L. "Butch" Otter, Governor  
Curt Fransen, Director

September 11, 2014

Dusty Galliher, Environmental Supervisor  
McCain Foods USA – Burley Factory  
218 West Highway 30  
Burley, Idaho 83318

Re: Section 401 Water Quality Certification for NPDES ID0-00062 / McCain Foods USA-  
Burley Factory

Dear Mr. Galliher:

The Idaho Department of Environmental Quality (DEQ) has reviewed the above referenced NPDES permit and associated Fact Sheet, which was received in our office on August 19, 2014.

A 30-day public comment period was noticed until August 15, 2014. Only one public comment was received by DEQ in Twin Falls, Idaho (through the U. S. Environmental Protection Agency) and none in our State Office in Boise. The comment was incorporated into the permit by EPA.

Therefore, we are pleased to issue this final certification for this NPDES permit.

If you have any questions or concerns, please contact Dr. Balthasar Buhidar at 208-736-2190 or [Balthasar.buhidar@deq.idaho.gov](mailto:Balthasar.buhidar@deq.idaho.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "David Anderson".

David Anderson  
Acting Regional Administrator

DA:BBB:gl

c: John Drabek, EPA- Region 10, Seattle w/ enc.  
Miranda Adams, DEQ-State Office w/ enc.



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

September 11, 2014

**NPDES Permit Number(s):** ID0000612, McCain Foods USA – Burley Factory

**Receiving Water Body:** Snake 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 1 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 1 review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).
- Tier 2 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 3 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 1 protection for that use, unless specific circumstances warranting Tier 2 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***

The McCain Foods USA facility discharges the following pollutants of concern: BOD<sub>5</sub>, TSS, pH, total phosphorus (TP), total ammonia as nitrogen, total residual chlorine (TRC), *Escherichia coli* (*E. coli*), temperature, and oil & grease. Effluent limits have been developed for BOD<sub>5</sub>, TSS, pH, TP, total ammonia as nitrogen, TRC, temperature and *E. coli*.

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

The McCain Foods USA facility discharges to the Snake River (Heyburn/Burley Bridge to Milner Dam) within the Lake Walcott Subbasin assessment unit (AU) ID17040209SK001\_07 (2010 Integrated Report). This AU has the following designated beneficial uses: warm water aquatic life and primary contact recreation. Although not designated as such, DEQ presumes that cold water aquatic life is also a beneficial use in this AU. 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 2010 Integrated Report, this AU is not fully supporting one or more of its assessed uses. The warm and cold water aquatic life uses are not fully supported. Causes of impairment include nutrient eutrophication and sedimentation/siltation. As such, DEQ will provide Tier 1 protection (IDAPA 58.01.02.051.01) for the aquatic life uses. 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.c). DEQ reviewed the water quality data for *E. coli* (2007-2011) and determined that *E. coli* is meeting the primary contact recreation standard. Therefore, DEQ will provide Tier 2 protection for this use (IDAPA 58.01.02.051.02).

### ***Protection and Maintenance of Existing Uses (Tier 1 Protection)***

As noted above, a Tier 1 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. In order to protect and maintain designated and existing 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 designated beneficial uses. The effluent limitations and associated requirements contained in the McCain Foods USA facility 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).

The EPA-approved *Lake Walcott TMDL* (2000) establishes wasteload allocations for TP and TSS. These wasteload allocations are designed to ensure the Snake River (Heyburn/Burley Bridge to Milner Dam) will achieve the water quality necessary to support its existing and designated aquatic life beneficial uses and comply with the applicable numeric and narrative criteria. The effluent limitations and associated requirements contained in the McCain Foods USA facility permit are set at levels that comply with these wasteload allocations.

In sum, the effluent limitations and associated requirements contained in the McCain Foods USA facility permit are set at levels that ensure compliance with the narrative and numeric criteria in the WQS and the wasteload allocations established in the *Lake Walcott TMDL*. Therefore, DEQ has determined the permit will protect and maintain existing and designated beneficial uses in the Snake River (Heyburn/Burley Bridge to Milner Dam) in compliance with the Tier 1 provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

### ***High-Quality Waters (Tier 2 Protection)***

The Snake River (Heyburn/Burley Bridge to Milner Dam) is considered high quality for primary contact recreation. As such, the water quality relevant to primary contact recreation uses of the Snake River (Heyburn/Burley Bridge to Milner Dam) must be maintained and protected, unless a lowering of water quality is deemed necessary to accommodate important social or economic development.

To determine whether degradation will occur, DEQ must evaluate how the permit issuance will affect water quality for each pollutant that is relevant to primary contact recreation uses of the Snake River (Heyburn/Burley Bridge to Milner Dam) (IDAPA 58.01.02.052.05). These include the following: bacteria as *E. coli*. Effluent limits are set in the proposed and existing permit for this pollutant.

For a reissued permit or license, the effect on water quality is determined by looking at the difference in water quality that would result from the activity or discharge as authorized in the current permit and the water quality that would result from the activity or discharge as proposed in the reissued permit or license (IDAPA 58.01.02.052.06.a). For a new permit or license, the effect on water quality is determined by reviewing the difference between the existing receiving water quality and the water quality that would result from the activity or discharge as proposed in the new permit or license (IDAPA 58.01.02.052.06.a).

## Pollutants with Limits in the Current and Proposed Permit

For pollutants that are currently limited and will have limits under the reissued permit, the current discharge quality is based on the limits in the current permit or license (IDAPA 58.01.02.052.06.a.i), and the future discharge quality is based on the proposed permit limits (IDAPA 58.01.02.052.06.a.ii). For the McCain Foods USA facility permit, this means determining the permit's effect on water quality based upon the limits for *E. coli* in the current and proposed permits. Table 1 provides a summary of the current permit limits and the proposed or reissued permit limits.

**Table 1. Comparison of current and proposed permit limits for pollutants of concern relevant to uses receiving Tier 2 protection.**

Pollutant	Units	Current Permit			Proposed Permit			Change <sup>a</sup>
		Average Monthly Limit	Average Weekly Limit	Max. Daily Limit	Average Monthly Limit	Average Weekly Limit	Max. Daily Limit	
<b>Pollutants with limits in both the current and proposed permit</b>								
<i>E. coli</i>	no./100 mL	126	---	406	126	---	406	NC

<sup>a</sup> NC = no change.

In sum, DEQ concludes that this discharge permit complies with the Tier 2 provisions of Idaho's WQS (IDAPA 58.01.02.051.02 and IDAPA 58.01.02.052.06).

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

### Mixing Zones

Pursuant to IDAPA 58.01.02.060, DEQ authorizes a mixing zone that utilizes 25% of the critical flow volumes of Snake River (Heyburn/Burley Bridge to Milner Dam) for ammonia and chlorine.

### 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 Dr. Balthasar Buhidar, Twin Falls Regional Office, (208) 736-2190, [balthasar.buhidar@deq.idaho.gov](mailto:balthasar.buhidar@deq.idaho.gov).



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David Anderson  
Acting Regional Administrator  
Twin Falls Regional Office