



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

1445 North Orchard • Boise, Idaho 83706 • (208) 373-0550  
www.deq.idaho.gov

Governor Brad Little  
Director John H. Tippetts

March 29, 2019

Mike Lidgard  
U.S. EPA Region 10  
Office of Water and Watersheds  
NPDES Permits Unit (OWW-191)  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101-3140

Subject: Final 401 Water Quality Certification for Darigold, Inc. ID-0024953

Dear Mr. Lidgard:

The Boise Regional Office of the Department of Environmental Quality (DEQ) has reviewed the above-referenced proposed final permit for Darigold, 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 expressively, 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 that reads "Aaron Scheff".

Aaron Scheff  
Regional Administrator  
Boise Regional Office

cc: John Drabek, EPA Region 10  
Susan Poulson, EPA Region 10

ec: Loren Moore, DEQ State Office  
CM#: 2019AKF25



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

March 29, 2019

**NPDES Permit Number(s):** ID-0024953, Darigold, Inc.

**Receiving Water Body:** Boise 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***

The Darigold facility discharges the following pollutants of concern: BOD<sub>5</sub>, TSS, pH, ammonia, temperature, *E. coli*, bromide, fluoride, nitrate-nitrite, total phosphorus, total iron, and total magnesium. Effluent limits have been developed for BOD<sub>5</sub>, TSS, pH, temperature, *E. coli*, and total phosphorus. No effluent limits are proposed for ammonia, bromide, fluoride, nitrate-nitrite, total iron, and total magnesium.

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

The Darigold facility discharges to the Boise River within the Lower Boise Subbasin assessment unit (AU) 17050114SW005\_06b (Boise River-Middleton to Indian Creek). The designated beneficial uses include: salmonid spawning, cold water aquatic life, 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 low flow alterations, physical substrate habitat alterations, temperature, total phosphorus, and sedimentation/siltation. The contact recreation beneficial use is also not fully supported. The cause of impairment is fecal coliform bacteria. 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 Darigold facility permit are set at levels that provide reasonable assurance of 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).

As previously stated, the beneficial uses in this AU are not fully supported due to low flow alterations, physical substrate habitat alterations, temperature, total phosphorus, sedimentation/siltation, and fecal coliform. In 1986, EPA updated its criteria to protect the recreational use of water by recommending an *E. coli* criterion as a better indicator than fecal coliform of bacteria levels that may cause gastrointestinal distress in swimmers. In 2000, DEQ changed its bacteria criterion from fecal coliform to *E. coli*. The *E. coli* limits are in the existing permit to reflect the bacteria criterion that DEQ adopted to protect the contact recreation beneficial use (IDAPA 58.01.02.251.01). The EPA-approved *Lower Boise River TMDL* (1999), TMDL Addendum (2008), and TMDL addendum (2015) established wasteload allocations for sediment and bacteria; while the EPA-approved *Total Phosphorus TMDL Addendum to the Lower Boise River Subbasin Assessment and Total Maximum Daily Loads TP TMDL* (2015) established wasteload allocations for total phosphorus. The wasteload allocations that were established in the TMDLs have resulted in new limits for phosphorus and *E. coli* in the proposed permit and are designed to ensure the Boise River 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.

In addition to the total phosphorus and bacteria wasteload allocations, the *Sediment and Bacteria Allocations Addendum to the Lower Boise River TMDL* (2008) established a TSS reserve for growth allocation. Table 15 in the addendum will be revised by DEQ to include Darigold's allocation of 100 lbs/day monthly average and 143 lbs/day for the weekly average limits. The effluent limitations and associated requirements contained in the Darigold facility permit are set at levels that comply with the wasteload allocations and reserve for growth that were established in the sediment, bacteria and total phosphorus TMDLs, which were calculated to ensure the protection of beneficial uses.

## Temperature

This AU of the Boise River, where the Darigold facility discharges, is impaired for temperature; however a TMDL has not yet been completed. Prior to the development of the TMDL, the Idaho WQS require the application of Idaho's antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04). New temperature limits of 13° C have been added from November 1<sup>st</sup> to May 31<sup>st</sup> to protect salmonid spawning. The temperature limits included in the final permit are designed to be protective of both salmonid spawning and cold water aquatic life uses. The facility's effluent is not expected to contribute to flow alteration or substrate habitat alterations.

In sum, the effluent limitations and associated requirements contained in the Darigold facility permit are set at levels designed to ensure compliance with the narrative and numeric criteria in the WQS and the wasteload allocations established in the TMDLs mentioned above for sediment, bacteria, and total phosphorus. Therefore, DEQ has determined the permit will protect and

maintain existing and designated beneficial uses in the Boise 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

### Mixing Zones

Pursuant to IDAPA 58.01.02.060, DEQ authorizes a 10% mixing zone for ammonia.

### 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**, and [Kati.Carberry@deq.idaho.gov](mailto:Kati.Carberry@deq.idaho.gov).

  
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Aaron Scheff  
Boise Regional Administrator  
Boise Regional Office



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1410 North Hilton • Boise, Idaho 83706 • (208) 373-0502  
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Governor Brad Little  
Director John H. Tippetts

March 29, 2019

Mr. Scott Algate  
Sr. EHS Manager  
Darigold  
520 Albany Street  
Caldwell, ID 83605

Subject: Darigold – TSS Reserve for Growth Load Allocation for the Lower Boise River TMDL

Dear Mr. Algate:

The Boise Regional Office of the Department of Environmental Quality (DEQ) has received your request, on behalf of Darigold, to be granted a portion of the total suspended solids (TSS) reserve for growth allocation. This reserve was set aside in the *Sediment and Bacteria Allocations Addendum to the Lower Boise River TMDL (2008)*.

Although Darigold did not receive an individual waste load allocation in the 2008 TMDL, DEQ understands that Darigold is in the process of applying for an NPDES Permit and that a TSS waste load allocation from the reserve for growth is now necessary.

Based on Darigold's reduced production flow from 1.7 million gallons per day (MGD) to 0.38 MGD, and the facility's capability to meet secondary treatment regulations in 40 CFR 133, DEQ will apply a technology based effluent limit of 30 mg/l monthly average and 45 mg/l weekly average concentrations to develop a wasteload allocation.

This letter is to inform you that DEQ is revising Table 15 of the *Sediment and Bacteria Allocations Addendum to the Lower Boise River TMDL (2008)* to allow Darigold 100 lbs/day and 143 lbs/day for the monthly average and weekly average limits, respectively. The resulting total remaining reserve for growth in the sediment TMDL will be 1.18 tons/day.

Please contact Kati Carberry at the DEQ Boise Regional Office at (208) 373-0434 to discuss any questions or concerns regarding the wasteload allocation.

Sincerely,

A handwritten signature in black ink that reads "Barry N. Burnell".

Barry N. Burnell  
Water Quality Division Administrator

Mr. Scott Algate

Darigold - TSS Reserve for Growth Load Allocation for the Lower Boise River TMDL

March 29, 2019

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BNB:KC:tg

c: Darigold  
Kati Carberry, DEQ Boise Regional Office  
Aaron Scheff, DEQ Boise Regional Office  
Graham Freeman, DEQ State Office