



Air Quality Permitting Response to Public Comments

August 26, 2013

**Permit to Construct No. P-2012.0020
Project 61031**

**Idahoan Foods LLC
Idaho Falls, Idaho**

Facility ID No. 019-00038

 Prepared by:
Dan Pitman, P.E., Permit Writer
AIR QUALITY DIVISION

Final

Table of Contents

1. BACKGROUND	3
2. PUBLIC COMMENTS AND RESPONSES	3

BACKGROUND

The Idaho Department of Environmental Quality (DEQ) provided for public comment on the proposed permit to construct for Idahoan to convert a Permit to Construct/Tier II operating permit to a permit to construct and to add several new dryers from June 12, 2013 through July 12, 2013, in accordance with IDAPA 58.01.01.209.01.c. During this period, comments were submitted in response to DEQ's proposed action. Each comment and DEQ's response is provided in the following section.

PUBLIC COMMENTS AND RESPONSES

Public comments regarding the technical and regulatory analyses and the air quality aspects of the proposed permit are summarized below. Questions, comments, and/or suggestions received during the comment period that did not relate to the air quality aspects of the permit application, the Department's technical analysis, or the proposed permit are not addressed. For reference purposes, a copy of the Rules for the Control of Air Pollution in Idaho can be found at:

<http://adm.idaho.gov/adminrules/rules/idapa58/0101.pdf>.

Comment 1:

In 2009, when Idahoan Foods updated the facility name, DEQ transferred this facility's Tier II permit to a Tier II/PTC permit. No public comment period was provided at the time because DEQ treated this transfer as a name change only, and did not address the permit type change. In the future, we would ask DEQ offer public comment opportunities in the case of a permit conversion during a permit transfer action. Such a conversion, because it impacts facility oversight, should include a public comment period.

Response 1:

On April 13, 2009 DEQ issued a PTC/Tier II operating permit to replace the existing PTC/Tier II operating permit for Idahoan Foods LLC. The permit was not converted from a Tier II permit to a Tier II/PTC. The facility did not propose a modification and permitted emissions did not change. The only changes to the permit were the facility's name and the listed responsible official.

In accordance with IDAPA 58.01.01.209.04 the Director may approve a revision of any permit to construct, provided the source continues to meet Sections 200 through 228, and not provide for a comment period if emissions authorized by the permit do not increase. With regard to the April 13, 2009 permit revision, the provisions of Section 200 through 228 were not triggered because the facility did not propose a modification and DEQ was not required to hold a comment period. However it should be noted that IDAPA 58.01.01.209.04 specifies that DEQ may hold a comment period if determined appropriate by the Director (even if allowable emissions do not increase). In the case of the April 13, 2009 permit revision application, DEQ determined that a public comment period was not warranted because the only changes to the permit were the facility's name and the responsible official change. No process or emission changes were requested.

Comment 2:

"With regard to the permit at hand, ICL contends that Idahoan Foods is required to have a Tier II operating permit under Idaho's Air Rules and we believe the conversion of this permit, both in 2009 and in this proposed action, to be inconsistent with state and federal law.

"Idaho's Air Rules require synthetic minor sources to obtain Tier II operating permits. Section 401.02.a.i of Idaho's Air Rules provides that a Tier II Operating Permit

"is *required* for any stationary source or facility which . . . [i]s not subject to [Tier I

permitting] with a permit to construct which establishes any emission standard different from those in these rules." IDAPA 58.01.01.401.02.a.i (emphasis added).

An owner or operator of a synthetic minor source that does not hold a Tier II operating permit is in violation of Idaho's Air Rules, and because Idaho's Air Rules have been federally approved under the Clean Air Act, is in violation of federal law. Furthermore, DEQ may be violating Idaho's Air Rules and federal law when it issues a PTC to a new or modified synthetic minor without requiring a Tier II operating permit and when it converts an existing Tier II operating permit to a Tier II/PTC or a PTC.

Converting Tier II permits into a PTCs allow synthetic minor facilities to evade important requirements in Idaho's Air Rules for facilities with Tier II operating permits. Tier II operating permits are limited to a five-year term (IDAPA 58.01.01.405.03). When a Tier II operating permit comes up for renewal, "[a]n opportunity for public comment *shall* be provided." IDAPA 58.01.01.404.01.c (emphasis added). And "[n]o Tier II operating permit shall be granted unless the applicant shows" that the stationary source would "comply with all applicable local, state or federal emission standards" and "would not cause or significantly contribute to a violation of any ambient air quality standard." (IDAPA 58.01.01.403) Because PTCs never expire, permitting a synthetic minor source with only a PTC runs afoul of these five-year requirements that there shall be an opportunity for public comment and that the facility must demonstrate to DEQ that it will meet all applicable air quality standards.

We urge DEQ to issue a Tier II operating permit for Idahoan Foods, LLC rather than converting the existing Tier II/PTC to a PTC. We look forward to your response to these comments. Air standards are revised to protect public health and respond to the best available science. Conversions of Tier II permits reduces DEQs ability to assess how state air quality is impacted by stationary sources. It is in the public interest to have permits for synthetic minor sources reapply for appropriate permits every 5 years. These revisions update modeling analysis of ambient air impacts and assess whether a relatively large pollution source is in compliance with the most up to date NAAQS."

Response 2:

DEQ disagrees with ICL's interpretation that Idahoan Foods would be in violation of state and federal law if they do not hold a Tier II operating permit. IDAPA 58.01.01.402.a.i. states a Tier II permit is required for a minor source with a PTC which establishes any emission standard different from those in these rules. Idahoan Foods proposed PTC contains all applicable emissions standards (including, but not limited to the NAAQS per Section 203.02) for this facility and it is not clear as to what other emission standards would be included in a Tier II permit and for what reason. DEQ has reviewed all terms and conditions of the proposed PTC and has determined that there are no other emission standards that would need to be established any differently than what can be established in the PTC Rules found in Sections 200-225. In addition, the Idaho Rules do not contain any prohibitory language that would prevent a permit transfer from a Tier II to a PTC. Idaho's PTC's are state and federally enforceable and are considered a permanent element to the SIP.

ICL also commented that issuing a PTC instead of a Tier II would evade important requirements in Idaho's Rules because the Tier II permit expires every 5 years. More specifically, ICL contends that modeling is required to assess the facility's compliance with the most up to date NAAQS. It should be noted that the Clean Air Act (CAA) does not require air quality permits for stationary sources be reviewed every 5 years to determine compliance with existing or newly promulgated NAAQS. Stationary sources are typically required to conduct NAAQS demonstrations for newly constructed or modified sources. However, the CAA does provide states the authority to submit State Implementation Plans for nonattainment areas, or maintenance plans for areas seeking redesignation to attainment, that include emission reductions for certain stationary sources based upon NAAQS compliance demonstrations. Idaho's Rules at IDAPA 58.01.01.403.03 do provide DEQ the authority to require a facility-wide NAAQS compliance demonstration when emission reductions are necessary to attain or maintain any ambient air quality standard.