



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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Brad Little, Governor
John H. Tippets, Director

April 7, 2020

Susan Poulosom, Section Manager
NPDES Permitting Section
U.S. EPA, Region 10
Mail Code WD-19-C04
Seattle, WA 98101-3188

RE: Final 401 Water Quality Certification, NPDES General Permit for Concentrated Animal Feeding Operations in Idaho

Dear Ms. Poulosom:

The Idaho Department of Environmental Quality (DEQ) has reviewed the U.S. Environmental Protection Agency's final NPDES permit for the above-referenced General Permit, which was received March 16, 2020. Comments received during the public comment period did not result in significant modifications to the draft certification. The final 401 certification (attached) includes conditions necessary to comply with Idaho's Water Quality Standards and other state and federal laws intended to protect water quality.

Thank you for your time and consideration. If you have any questions or concerns, please direct your inquiries to Loren Moore by email (loren.moore@deq.idaho.gov) or at (208) 373-0158.

Sincerely,

A handwritten signature in blue ink that reads "Mary Anne Nelson".

Mary Anne Nelson, PhD
Surface and Wastewater Division Administrator
Idaho Department of Environmental Quality

MAN:LM:lf

Enclosed: Final 401 Certification for Concentrated Animal Feeding Operations in Idaho, General Permit

cc: Nick Peak, USEPA Region 10, Boise Office
Jason Pappani, DEQ Surface Water Bureau Chief
Mark Cecchini-Beaver, Idaho Attorney General's Office
DEQ Regional Administrators



Idaho Department of Environmental Quality Final §401 Water Quality Certification

April 7, 2020

NPDES Permit Number(s): IDG010000, Concentrated Animal Feeding Operations in Idaho

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 our 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.

The Concentrated Animal Feeding Operation (CAFO) General Permit (GP) provides permit coverage for discharges from facilities in the state of Idaho that meet the definition of a small, medium or large concentrated animal feeding operation, as defined in 40 CFR § 122.23(b)(2).

The following facilities and discharges are not eligible for coverage under this GP:

- 1) CAFOs that EPA have determined to be ineligible for coverage due to a past history of non-compliance;
- 2) CAFOs that will adversely affect endangered or threatened federally-listed Endangered Species Act species or will modify critical habitat for those species;
- 3) CAFOs that have the potential to negatively impact historic properties;
- 4) CAFOs that discharge to a designated Outstanding Resource Water; and
- 5) CAFOs located in Indian Country.

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

CAFO facilities discharge pollutants attributed to animal manure, litter, or process wastewater generated by confined animals or the production of those animals. The following pollutants of concern are associated with discharges from animal feeding operations: five-day biochemical oxygen demand (BOD₅), total suspended solids (TSS), nutrients (phosphorus and nitrogen), ammonia, pH, temperature, and *Escherichia coli* (*E. coli*).

The general permit contains requirements for operations to comply with the CAFO effluent limitation guidelines (ELGs) outlined in 40 CFR § Part 412, which prohibit the discharge of manure, litter, and process wastewater from production areas and land application areas, unless in accordance with the ELGs.

Effluent Limitations & Discharge Standards: Production Area

The CAFO production area includes animal confinement areas, manure storage areas, raw materials storage areas and waste containment areas. Discharges from the production area are not allowed, except under circumstances specified in Part II.A of the permit. Additionally, the permit provides provisions for regular visual inspections to ensure that the design storage requirements are actively being met at each facility.

Effluent Limitations & Discharge Standards: Land Application Area

Technology-based effluent limits are proposed for the land application of manure, litter, or process wastewater. The permit includes the implementation of Best Management Practices (BMPs) for effluent land application (40 CFR § 412.4).

Receiving Water Body Level of Protection

All waters in Idaho that receive discharges authorized under the CAFO GP will receive, at minimum, Tier I antidegradation protection because Idaho's antidegradation policy applies to all state waters. Water bodies that fully support their aquatic life or recreational uses are considered *high quality waters* and will receive Tier II antidegradation protection, in addition to Tier I protection. 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).

Although Idaho does not currently have any designated outstanding resource waters (ORWs) eligible for Tier III protection, it is possible for a water body to be designated as an ORW during the life of this permit. Because of this potential, this antidegradation review will also assess whether the permit complies with the Tier III requirements of Idaho's antidegradation policy.

To determine the support status of the receiving water body, the most recent EPA-approved Integrated Report, available on Idaho DEQ's website, must be used:

<http://www.deq.idaho.gov/water-quality/surface-water/monitoring-assessment/integrated-report/>.

High quality waters are identified in Categories 1 and 2 of the Integrated Report. If a water body is in either Category 1 or 2, it is a Tier II water body.

Unassessed waters are identified in Category 3 of DEQ's Integrated Report. These waters require a case-by-case determination to be made by DEQ based on available information at the time of the application for permit coverage.

Impaired waters are identified in Categories 4 and 5 of the Integrated Report. Category 4(a) contains impaired waters for which a Total Maximum Daily Load (TMDL) has been approved by EPA. Category 4(b) contains impaired waters for which controls other than a TMDL have been approved by EPA. Category 5 contains waters which have been identified as "impaired", for which a TMDL is needed. These waters are Tier I waters for the impaired use. However, an impaired water body will receive Tier II protection for its aquatic life uses if the following conditions are met: (1) the aquatic life impairment is due to dissolved oxygen, pH, or temperature and (2) the biological or aquatic habitat parameters show a healthy, balanced biological community (IDAPA 58.01.02.052.05.c.i). Additionally, an impaired water body will receive Tier II protection for recreational use if water quality data demonstrates compliance with the general surface water, toxics, and site-specific criteria of the WQS (IDAPA 58.01.02.052.05.c.ii).

DEQ's webpage also has a link to the state's map-based Integrated Report which presents information from the Integrated Report in a searchable, map-based format:

<http://www.deq.idaho.gov/assistance-resources/maps-data/>.

Water bodies can be in multiple categories for different causes. If assistance is needed in using these tools, or if additional information/clarification regarding the support status of the receiving water body is desired, please feel free to contact your nearest DEQ regional office or the State Office (Table 1).

Table 1. Idaho DEQ regional and state office contacts.

Regional and State Office	Address	Phone Number	Email
Boise	1145 N. Orchard St., Boise 83706	208-373-0550	kati.carberry@deq.idaho.gov
Coeur d'Alene	2110 Ironwood Parkway, Coeur d'Alene 83814	208-769-1422	chantilly.higbee@deq.idaho.gov
Idaho Falls	900 N. Skyline Dr., Suite B, Idaho Falls 83402	208-528-2650	troy.saffle@deq.idaho.gov
Lewiston	1118 F St., Lewiston 83501	208-799-4370	sujata.connell@deq.idaho.gov
Pocatello	444 Hospital Way, #300, Pocatello 83201	208-236-6160	lynn.vanevery@deq.idaho.gov
Twin Falls	650 Addison Avenue West, Suite 110, Twin Falls 83301	208-736-2190	sean.woodhead@deq.idaho.gov
State Office	1410 North Hilton St., Boise 83706	208-373-0502	loren.moore@deq.idaho.gov

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.

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 (WLAs) 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. A permit with effluent limitations consistent with TMDL wasteload allocations will provide the level of water quality necessary to support existing and designated uses and therefore satisfies Tier I antidegradation requirements.

The technology-based effluent limitations, water quality-based effluent limitations, and requirements contained in the CAFO GP, coupled with the conditions set for this in this certification, are designed to ensure compliance with the narrative and numeric criteria in Idaho WQS. As a condition of the general permit (Part III) and CAFO regulations specified in 40 CFR § 412.4, applicants will be required to develop and implement a Nutrient Management Plan (NMP) to operate and maintain the facility to prevent discharge and limit nutrient and sediment transport to surface waters. Additionally, BMPs for land application will be utilized to minimize or eliminate the generation and potential release of pollutants from the facility to waters of the United States. Facilities covered under this permit must certify that both a Nutrient Management

Plan (NMP) and Best Management Practices (BMPs) have been developed and are being implemented.

Specific terms and conditions of the permit aimed at providing a Tier I level of protection and compliance include:

- A prohibition on discharges of manure, litter, or process wastewater to surface water, except in circumstances specified in Part II.A of the permit;
- A prohibition on land application closer than 100 feet to any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters, unless the permittee exercises one of the compliance alternatives specified in permit Part II.B.8;
- Prevention of dry weather discharges of manure, litter, or process wastewater as the result of land application;
- Prohibition on land application of manure, litter, or process wastewater when land is frozen, snow-covered, the top two inches of soil are saturated, or when current or predicted weather is capable of producing such conditions; and
- Requirements to develop and implement a NMP with, among other required elements, the following control measures:
 - Plans for proper form, source, amount, timing, and method of application of nutrients on each individual field to achieve realistic production goals while minimizing nitrogen and phosphorus movement to surface waters;
 - Utilizing the best available data/tools to determine land application rates for manure, litter, and process wastewater to specific crops. Site specific nutrient management practices will ensure appropriate agricultural utilization of nutrients present in the manure, litter, or process wastewater;
 - Identification of appropriate site-specific conservation practices to be implemented, which may include buffers or equivalent practices, to control runoff of pollutants and sediment to surface waters;
 - Annual soil and manure testing (minimum requirement) for nitrogen and phosphorus content; and
 - Periodic inspection of equipment used for land application and waste storage structures for the presence of leaks.

The limitations and requirements contained in the CAFO GP will ensure compliance with the narrative and numeric criteria in the Idaho WQS. The permit also provides for an additional opportunity for comments to further ensure compliance with WQS. In addition to submitting a Notice of Intent (NOI) to EPA, Idaho State Department of Agriculture, and DEQ, all applicants will be required to submit a NMP to EPA for approval. This plan must be certified by a specialist and shall consider all potential sources of nutrients. The NOI, NMP, and draft terms of the NMP to be incorporated into the permit will be made available for a thirty (30) day public comment

period, providing interested parties with an opportunity to further address potential impacts to waters of the state. Additionally, EPA will seek input from the appropriate DEQ regional office in determining whether a new discharger, or new source seeking coverage to discharge to an impaired water body, will contribute to the existing impairment and whether additional limits or controls are necessary for the discharger to comply with the impaired waters and TMDL provisions in Idaho WQS. Therefore, the permit is designed to ensure compliance with appropriate wasteload allocations in any applicable TMDL.

In summary, the terms and conditions contained in the CAFO GP, coupled with the conditions in this certification, ensure compliance with the narrative and numeric criteria in the WQS. Therefore, DEQ has determined the permit will protect and maintain existing and designated beneficial uses and is in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

Protection of High-Quality Waters (Tier II Protection)

Water bodies that fully support their beneficial uses are recognized as high quality waters and are provided Tier II protection in addition to Tier I protection. Water quality parameters applicable to existing or designated beneficial uses must be maintained and protected under Tier II, unless a lowering of water quality is deemed necessary to accommodate important economic or social development. For general permits, the Department conducts an antidegradation review, including any Tier II analysis, at the time at which general permits are certified (IDAPA 58.01.02.052.03).

For a new permit, 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 (IDAPA 58.01.02.052.03). Discharges of manure, litter, or process wastewater from CAFO facilities are not allowed under the terms and conditions of this general permit, except in limited circumstances provided in Part II.A.1.

DEQ believes the new CAFO GP is at least as stringent as the existing CAFO GP. Therefore, existing activities or discharges currently covered by the existing GP should not cause degradation, provided the activity or discharge is not increasing. As long as CAFO operations are in compliance with the effluent limitation guidelines found at 40 CFR Part 412, the effluent limitations and standards in the permit, and the NMP requirements in the permit, and conditions of this certification, DEQ believes that the prohibitions on discharges from CAFO facilities in this permit ensure that CAFO operations are not likely to cause adverse changes in water quality. DEQ has concluded that as long as permittees operate consistent with the terms of the NPDES discharge permit and the requirements set forth in this certification, there is reasonable assurance that existing and designated beneficial uses will be protected and maintained and there will be no lowering of water quality in any high quality waters (IDAPA 58.01.02.051.02 and IDAPA 58.01.02.052.08).

Protection of Outstanding Resource Waters (Tier III Protection)

Idaho's antidegradation policy requires that the quality of ORWs be maintained and protected from the impacts of point and nonpoint source activities (IDAPA 58.01.02.051.03). As mentioned previously, no water bodies in Idaho have been designated as ORWs.

As a condition of this certification, DEQ is requiring any applicant proposing to discharge to an ORW, should one become designated during the term of this permit, to obtain an individual IPDES permit from DEQ. This condition will ensure compliance with Idaho's antidegradation provisions concerning ORWs.

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

Unauthorized Discharge Procedures

In the event of an unauthorized discharge, the permittee shall notify DEQ within five working days of the discharge (permit Part IV.C and D). Immediate notification allows state and/or federal agencies the opportunity to assist in remediation actions and may reduce the magnitude of environmental impact and the extent of permit violations.

For DEQ regional contacts, see Table 1. Spills that occur outside of normal business hours should be reported to the DEQ 24-hour reporting hotline at 1-833-IPDES24 or 1-833-473-3724.

Best Management Practices

Best management practices must be designed, implemented, and maintained by the permittee to fully protect and maintain the beneficial uses of waters of the United States and to prevent exceedances of the state water quality standards.

When selecting best management practices, the permittees must consider and, if practicable, utilize practices identified in the *Compendium of BMPs to Control Polluted Runoff* (DEQ 2003) https://www.deq.idaho.gov/media/458917-compendium_report_2003_entire.pdf and the *Idaho Agricultural Best Management Practices Field Guide for Evaluating BMP Effectiveness* (ISCC and DEQ 2013) https://swc.idaho.gov/media/1114/bmp_april2013-sml.pdf.

Outstanding Resource Waters

Any permittee proposing to discharge to an ORW, as defined in IDAPA 58.01.02.010.72, is required to obtain an individual IPDES permit from DEQ.

Hazardous and Deleterious Material Storage

Hazardous and deleterious materials must not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of state waters unless adequate measures and controls are provided to ensure that those materials will not enter state waters as a result of high water, precipitation runoff, wind, storage facility failure, accidents in operation, or unauthorized third party activities (IDAPA 58.01.02.800).

Other Conditions

This certification is conditioned upon the requirement that any material modification of the permit or the permitted activities—including without limitation, significant changes to the Concentrated Animal Feeding Operation General Permit, 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 Loren Moore, DEQ State Office, at (208) 373-0158 or via email at loren.moore@deq.idaho.gov.



Mary Anne Nelson, PhD
Surface and Wastewater Division
Administrator
DEQ State Office