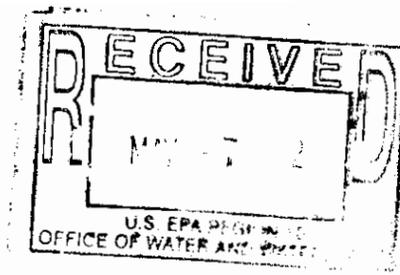




STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY



1363 Fillmore Street • Twin Falls, Idaho 83301 • (208) 736-2190

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

May 3, 2012

Michael J. Lidgard, Unit Manager  
NPDES Permits Unit  
E.P.A. – Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101-3140

Re: OWW-130, Pre-Certification of NPDES Permit No.ID00260-0, Jerome Cheese Company

Dear Mr. Lidgard:

The Idaho Department of Environmental Quality (DEQ) has reviewed the EPA's draft NPDES permit for the above referenced facility (dated March 15, 2012). Based on its review the DEQ proposes to issue a draft Section 401 water quality certification for the discharge authorization characterized in the draft NPDES permit. The DEQ Antidegradation Review is included in the Pre-Certification for the draft NPDES permit.

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

Sincerely,

Bill Allred  
Regional Administrator

BA:BBB:gl

Enclosures: Draft 401 Water Quality Certification  
Antidegradation Review

C: John Drabek, EPA Region 10, Seattle

Ec: Dave Anderson, DEQ-Twin Falls Regional Office  
Dr. Balthasar Buhidar, DEQ-Twin Falls Regional Office  
Sue Switzer, TMDL Specialist, DEQ-Twin Falls Regional Office  
Miranda Adams, DEQ-State Office



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

May 3, 2012

**NPDES Permit Number(s):** IDG002760-0, Jerome Cheese Company

**Receiving Water Body:** Lateral 12 (discharges to N Canal and to 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, including without limitation, the approval from the owner of a private water conveyance system, if one is required, to use the system in connection with the permitted activities.

### 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 58.01.02.052.05).
- 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; 58.01.02.052.06).

- 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; 58.01.02.052.07).

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). 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.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 Jerome Cheese Company discharges the following pollutants of concern: BOD5; total suspended solids (TSS); Escherichia coli bacteria (E. coli); total phosphorus (TP); nitrite as nitrogen; total ammonia as nitrogen; temperature; and pH. Effluent limits have been developed for BOD5; TSS; Escherichia coli bacteria; TP; nitrite as nitrogen; total ammonia as nitrogen; temperature; and pH. Flow is also being monitored and reported for informational purposes.

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

The Jerome Cheese Company discharges to a private man-made canal, Lateral 12, that eventually discharges into the Snake River assessment unit (AU) ID17040212SK007\_07 (Snake River – Rock Creek to Box Canyon Creek). The Lateral 12 is considered a man-made waterway in the Idaho WQS. For this reason, DEQ only affords protections adequate to protect the use for which it was developed, that is agricultural water conveyance (IDAPA 58.01.02.101.02). Because man-made canals are not protected for aquatic life or recreational uses, DEQ provides only tier 1 antidegradation protection.

### ***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.

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.

The EPA-approved *Mid-Snake TMDL (1997) and the Upper Snake Rock Watershed Management Plan (2000 and Modification 2005)* establishes wasteload allocations for TSS and

TP. These wasteload allocations are designed to ensure the Snake 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. The effluent limitations and associated requirements contained in the Jerome Cheese Company NPDES permit are set at levels that are more stringent than necessary to comply with these wasteload allocations and therefore may be made less stringent and still comply with state WQS.

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

### ***Pollutant Trading***

Pursuant to IDAPA 58.01.02.055.06, DEQ authorizes pollutant trading for TP. Trading must be conducted in a manner that is consistent with the most recent version of DEQ's *Water Quality Pollutant Trading Guidance*, available at: [http://www.deq.idaho.gov/media/488798-water\\_quality\\_pollutant\\_trading\\_guidance\\_0710.pdf](http://www.deq.idaho.gov/media/488798-water_quality_pollutant_trading_guidance_0710.pdf).

### **Alternative Limitations**

The following subsection(s) discusses how the permit can be made less stringent and still comply with Idaho WQS or other appropriate water quality requirements of state law.

#### ***Man-Made Waters***

Pursuant to IDAPA 58.01.02.101.02, man-made waterways which have not been designated for any specific use in Sections 110 through 160 of Idaho's WQS, are protected for the use for which they were created. Therefore, standards established to protect aquatic life and contact recreation uses do not apply to Lateral 12. (DEQ's interpretation of the man-made waterway provision as it applies to Jerome Cheese is set out in detail in the attached June 10, 2011 letter to Michael Lidgard). The draft permit, however, contains limits for ammonia, temperature and E. coli, all based upon aquatic life or primary contact recreation. These limits also are not required to protect the agricultural water supply use for the canal, or needed in order to meet WQS applicable to downstream waters, e.g., the Snake River. Therefore, the permit can be made less stringent and still meet WQS by removing the ammonia, E. coli and temperature limits.

#### ***Limits Based Upon TMDLs***

The draft permit includes limits of zero (0) for both TSS and TP based upon EPA's interpretation of the Mid-Snake and Upper Snake/Rock TMDLs. EPA believes a wasteload allocation of zero was provided to Jerome Cheese in the applicable TMDLs for these pollutants. DEQ does not agree with this interpretation. Instead, the TMDLs provide an allocation to Jerome Cheese that reflects the discharge levels as of 1997. (See the attached June 10, 2011 letter to Michael Lidgard in which DEQ explains the allocations for Jerome Cheese in the TMDLs). As of 1997, Jerome Cheese was discharging an average of 0.254 lbs/day, and an average of 5.14 lb/day TSS. The permit can be made less stringent and still comply with WQS by replacing the zero TSS and TP limits with limits based upon the above-described allocations.

## 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 regarding the actions taken in this certification should be directed to Dr. Balthasar Buhidar, Twin Falls Regional Office, (208) 736-2190, or at [balthasar.buhidar@deq.idaho.gov](mailto:balthasar.buhidar@deq.idaho.gov).

DRAFT

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Bill Allred

Regional Administrator

Twin Falls Regional Office