



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

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C.L. "Butch" Otter, Governor  
John H. Tippetts, Director

June 17, 2016

Mr. Michael J. Lidgard  
NPDES Permits Unit Manager  
EPA Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101-3140

Subject: Final 401 Water Quality Certification for the New Plymouth WWTF Permit  
ID-0020389

Dear Mr. Lidgard:

On March 31, 2016, the Environmental Protection Agency (EPA) provided the Department of Environmental Quality (DEQ) with a Final Permit and requested DEQ provide a certification of the permit pursuant to section 401 of the Clean Water Act. Upon review of the Final permit, DEQ would like to provide the following recommendation for incorporation into the permit.

The proposed permit requires New Plymouth to conduct surface monitoring in the unnamed man-made drainage. The permit should acknowledge that New Plymouth WWTF does not own the drainage ditch and does not currently have access to collect the required information. Therefore, the permit should be modified to clearly reflect this.

Upon review of the Final permit, DEQ prepared and now submits the enclosed Final 401 certification for the permit.

Please contact Kati Carberry at (208) 373-0434 to discuss any questions or concerns regarding the content of this certification.

Sincerely,

  
for Aaron Scheff  
Regional Administrator  
Boise Regional Office

c: Susan Poulson

ec: Nicole Deinarowicz, DEQ 401 Program Coordinator  
Justin Hayes, Idaho Conservation League



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

June 16, 2016

**NPDES Permit Number(s):** ID-0020389, City of New Plymouth

**Receiving Water Body:** Unnamed Drainage Ditch to Payette 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 58.01.02.052.07).
- 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 City of New Plymouth discharges the following pollutants of concern: BOD<sub>5</sub>, total suspended solids (TSS), pH, *E. coli* bacteria, total ammonia as nitrogen, total phosphorus (TP), temperature, total Kjeldahl nitrogen (TKN), nitrate + nitrite, total dissolved solids and oil & grease. Effluent limits have been developed for BOD<sub>5</sub>, TSS, pH and *E. coli*. No effluent limits are proposed for total ammonia as nitrogen, TP, temperature, TKN, nitrate + nitrite, total dissolved solids or oil & grease; however, monitoring requirements are included in the permit for these pollutants.

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

The City of New Plymouth discharges to an unnamed drainage ditch which ultimately flows into the Payette River within the Payette Subbasin after passing through wetlands located within the Payette River Wildlife Management Area. The unnamed drainage ditch is a man-made waterway, not designated in sections 110 through 160 of Idaho's WQS. As such, this waterway is protected for the use for which it was developed; in this case, agricultural water supply (IDAPA 58.01.02.101.02). In addition, existing uses must be maintained and protected (IDAPA 58.01.02.050.02.b; IDAPA 58.01.02.0051.01). DEQ currently has no information indicating any existing use beyond agricultural water supply. Thus, DEQ will provide Tier 1 protection to this waterway (IDAPA 58.01.02.051.01).

Effluent limits and monitoring requirements are included in the permit to protect any existing and or designated beneficial uses of the downstream Payette River Wildlife Management Area wetland ponds and the Payette River. This AU has the following designated beneficial uses: cold water aquatic life, salmonid spawning, primary contact recreation, and domestic water supply. The cold water aquatic life and salmonid spawning uses in the Payette River (AU ID17050122SW001\_06) are not fully supported due to excess temperature (2012 Integrated Report). In addition to exceedances in temperature, the biological and habitat data for the AU does not indicate a healthy cold water community. The primary contact recreation beneficial use is not fully supported due to excess *E. coli* (2012 Integrated Report).

Additionally, all waters of the state are protected for industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100).

## ***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 City of New Plymouth 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).

While the downstream receiving waterbody (Payette River) is impaired for temperature, the sources of the impairment are contributed to flow and habitat modification and not point source dischargers. A temperature TMDL is not planned for the Lower Payette River because the impairment is not due to point source or nonpoint sources. Although the WWTF is not expected to impact temperatures in the Payette River, the draft permit includes continuous temperature monitoring requirements for the effluent and receiving water to ensure there is no thermal load increase.

This discharge has been previously permitted at the current design flow so there is no increase in thermal load to the water body. Further, the WWTF historically discharged into the adjacent unnamed drainage ditch from June through November each year when their lagoons were at full capacity, but with the upgrade to the facility's major collection system in 2009 the lagoons are now able to provide sufficient surface area and storage for evaporation of the annual influent flow volumes. Because of the reduced influent flows the City has not discharged, with one exception in March 2010.

The Payette River, at the point where the unnamed drainage ditch and wetlands converge (AU 17050122SW001\_06), is not fully supporting its designated contact recreation beneficial uses due to *E. coli* exceedances. The *Lower Payette River TMDL Implementation Plan and Addendum to the Lower Payette River Subbasin Assessment and TMDL* (2003) establishes wasteload allocations (WLAs) for *E. coli* which replace the WLAs for fecal coliform originally set forth in the EPA-approved *Lower Payette River Subbasin Assessment and TMDL* (2000). These WLAs are designed to ensure the Lower Payette River will achieve the water quality necessary to support its existing and designated contact recreation beneficial uses and comply with the applicable numeric and narrative criteria. The effluent limitations and associated requirements contained in the City of New Plymouth permit are set at levels that comply with these WLAs.

In sum, the effluent limitations and associated requirements contained in the City of New Plymouth permit are set at levels that ensure compliance with the narrative and numeric criteria in the WQS and the wasteload allocations established in the *Lower Payette River TMDL Implementation Plan and Addendum*. Therefore, DEQ has determined the permit will protect and maintain existing and designated beneficial uses in the unnamed drainage ditch and the Payette River in compliance with the Tier 1 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

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.

### ***Surface Water Monitoring Requirements***

The permit requires surface water monitoring of the receiving water, unnamed drainage ditch. The requirement in the permit for monitoring is not dependent upon whether the City of New Plymouth has access to the ditch. The permit should reflect the fact that New Plymouth does not own the drainage ditch and does not currently have access to collect the required information. Therefore, the permit should be modified (a) to require New Plymouth to make a good faith effort to obtain access to gather the surface water information, (b) so that it is not a violation of the permit if, after the good faith effort, access is denied so that the information cannot be collected, and (c) so that the obligation to collect the surface water data information is contingent upon the ability to safely access the ditch.

## 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, at 208-373-0434 or via email at [kati.carberry@deq.idaho.gov](mailto:kati.carberry@deq.idaho.gov).



Aaron Scheff

Regional Administrator  
Boise Regional Office