



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

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

June 2, 2017

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

Subject: FINAL 401 Water Quality Certification for the North Idaho Correctional Institute Wastewater Treatment Plant, #ID0025887

Dear Mr. Lidgard:

The Lewiston Regional Office of the Department of Environmental Quality (DEQ) has reviewed the above-referenced permit for the North Idaho Correctional Institute Wastewater Treatment Plant. Section 401 of the Clean Water Act requires that states issue certifications for activities that are authorized by a federal permit and may result in the discharge to surface waters. In Idaho, the 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) 799-4370 to discuss any questions or concerns regarding the content of this certification.

Sincerely,

A handwritten signature in black ink that reads "John Cardwell". The signature is written in a cursive style.

John Cardwell  
Regional Administrator  
Lewiston Regional Office

c: Ashley Grompe, EPA Region 10  
Nicole Deinarowicz, DEQ State Office





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

June 2, 2017

**NPDES Permit Number(s):** North Idaho Correctional Institute Permit  
#ID0025887

**Receiving Water Body:** Unnamed tributary to Lawyer Creek

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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 North Idaho Correctional Institute discharges the following pollutants of concern: BOD<sub>5</sub>, TSS, *E. coli* bacteria, total residual chlorine (TRC), pH, temperature, ammonia, phosphorous, and dissolved oxygen (DO). Effluent limits have been developed for BOD<sub>5</sub>, TSS, *E. coli* bacteria, TRC, pH, and ammonia. No effluent limits are proposed for temperature, phosphorous, or DO, although monitoring is required.

**Table 1. Comparison of current and proposed permit limits for pollutants of concern.**

Pollutant	Units	Current Permit			Proposed Permit			Change <sup>a</sup>
		Average Monthly Limit	Average Weekly Limit	Single Sample Limit	Average Monthly Limit	Average Weekly Limit	Single Sample Limit	
<b>Pollutants with limits in both the current and proposed permit</b>								
Biochemical Oxygen Demand (BOD <sub>5</sub> )	mg/L	30	45	—	30	45	—	NC
	lb/day	8	11	—	8	11	—	
	% removal	—	—	—	85%	—	—	
Total Suspended Solids (TSS)	mg/L	30	45	—	30	45	—	NC
	lb/day	8	11	—	8	11	—	
	% removal	—	—	—	85%	—	—	
<i>E. coli</i> bacteria	#/100 mL	126	—	406	126	—	406	NC
pH	Standard units	Between 6.5 – 9.0			Between 6.5 – 9.0			NC
Total Residual Chlorine	mg/L	0.05	—	0.01	0.009	—	0.019	D
	lb/day	0.01	—	0.03	0.002	—	0.005	
<b>Pollutants with new limits in the proposed permit</b>								
Total Ammonia (as N)	mg/L	—	—	—	3.4	—	14	New
	lb/day	—	—	—	0.9	—	3.5	
Total Ammonia (as N) Interim Limit	mg/L	—	—	—	12	—	38	New
	lb/day	—	—	—	3.0	—	9.5	
<b>Pollutants with no limits in both the current and proposed permit</b>								
Temperature	°C	—	—	—	Report	—	Report	NC
Dissolved Oxygen	Mg/L	—	—	—	Report	—	Report	NC
Phosphorous	Mg/L	—	—	—	Report	—	Report	NC

<sup>a</sup> NC = no change; D = decrease

### Receiving Water Body Level of Protection

The North Idaho Correctional Institute discharges via an open ditch to an unnamed tributary to Lawyer Creek within the Clearwater Subbasin assessment unit (AU) ID17060306CL024\_02 (Lawyer Creek – source to mouth). This AU has the following designated beneficial uses: cold water aquatic life, salmonid spawning, 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 2012 Integrated Report, this AU is in Category 5 and not fully supporting the cold water aquatic life, salmonid spawning, and contact recreation beneficial uses. Listed impairments are ammonia, nutrients, dissolved oxygen, sediment, temperature, and fecal bacteria. The receiving water body is a headwater tributary to Lawyer Creek. The headwater tributary is ephemeral and flows naturally only in direct response to precipitation in the immediate watershed and whose channel is at all times above the water table. In the Idaho water quality standards, Lawyer Creek is included in water body identification number ID17060306CL024 (Lawyer Creek – source to mouth). As such, DEQ will provide Tier I protection for the cold water aquatic life, salmonid spawning, and contact recreation uses (IDAPA 58.01.02.051.01).

### ***Protection and Maintenance of Existing Uses (Tier I Protection)***

As noted above, 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 designated and existing uses and the level of water quality necessary to protect designated and 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 and existing beneficial uses. The effluent limitations and associated requirements contained in the North Idaho Correctional Institute 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. This water body is in Category 5 of Idaho's 2012 Integrated Report and does not have a TMDL completed for it. Prior to the development of a TMDL, the WQS require the application of the antidegradation policy and implementation provisions to maintain and protect uses through compliance with narrative and numeric criteria. (IDAPA 58.01.02.055.04). The effluent limitations and associated requirements contained in the North Idaho Correctional Institute permit are set at levels that 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 in the unnamed tributary to Lawyer Creek 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**

### **Compliance Schedule**

Pursuant to IDAPA 58.01.02.400.03, DEQ may authorize compliance schedules for water quality-based effluent limits issued in a permit for the first time. The North Idaho Correctional Institute cannot immediately achieve compliance with the effluent limits for ammonia; therefore, DEQ authorizes a compliance schedule. This compliance schedule provides the permittee an

interim ammonia limit and a reasonable amount of time to achieve the final effluent limits as specified in the permit, while still ensuring compliance as soon as possible. The permittee must achieve compliance with the ammonia limitations of Part I.B, Table 1 in the permit, *Effluent Limitations and Monitoring Requirements*, within five years from the effective date of the permit.

## 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 Sujata Connell, Lewiston Regional Office at 208-799-4370 or [Sujata.Connell@deq.idaho.gov](mailto:Sujata.Connell@deq.idaho.gov).

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John Cardwell  
Regional Administrator  
Lewiston Regional Office