

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

**AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act",

Magic Valley Produce, Inc.
322 North Main Street
Paul, Idaho

is authorized to discharge from the **Magic Valley Produce** facility located in **Paul, Idaho**, at the following location:

<u>Outfall</u>	<u>Receiving Water</u>	<u>Latitude</u>	<u>Longitude</u>
001	Main Drain	42° 36' 38"	113° 47' 01"

in accordance with discharge point, effluent limitations, monitoring requirements and other conditions set forth herein. The Main Drain discharges to the Snake River.

This permit shall become effective **November 6, 2003**.

This permit and the authorization to discharge shall expire at midnight, **November 6, 2008**.

The permittee shall reapply for a permit reissuance on or before 180 days before the expiration of this permit, if the permittee intends to continue operations and discharges at the facility beyond the term of this permit.

Signed this 31st day of October, 2003.

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I. LIMITATIONS AND MONITORING REQUIREMENTS

During the effective period of this permit, the permittee is authorized to discharge pollutants from the outfall specified herein to the Main Drain in Paul, Idaho, within the limits and subject to the conditions set forth herein. The Main Drain is operated by the Minidoka Irrigation District and discharges to the Snake River. This permit authorizes the discharge of only those pollutants resulting from facility processes, waste streams, and operations that have been clearly identified in the permit application process.

A. Effluent Limitations and Monitoring

1. The permittee must limit and monitor discharges from outfall 001 as specified in Table 1 below. All limitations represent maximum effluent limits, unless otherwise indicated. The permittee must comply with the effluent limitations in Table 1 at all times, unless otherwise indicated, regardless of the frequency of monitoring or reporting required by other provisions of this permit.

Table 1 - Effluent Limitations and Monitoring Requirements from Outfall 001					
Parameter	Units	Effluent Limitations		Monitoring Requirements	
		Maximum Daily	Average Monthly	Sample Frequency	Sample Type
Total Suspended Solids (TSS)	mg/l	44	22	1/week	grab
	lbs/day	10.6	5.3	–	--
pH	s.u.	within the range of 6.5 - 9.5		daily	grab
Total Phosphorus	mg/l	--	--	monthly	grab
Biochemical oxygen demand (BOD) ₅	mg/l	–	--	quarterly	grab
Total Kjeldahl Nitrogen (TKN)	mg/l	–	--	quarterly	grab
Total Ammonia (NH ₃)	mg/l	–	--	quarterly	grab
Nitrate-Nitrite (NO ₃ -NO ₂) as N	mg/l	–	--	quarterly	grab
Nitrite as N	mg/l	–	--	quarterly	grab
<i>E. coli</i> bacteria	#/100 ml	–	--	quarterly	grab
Outfall Flow	gpd	–	–	daily	recording

Table 1 - Effluent Limitations and Monitoring Requirements from Outfall 001					
Parameter	Units	Effluent Limitations		Monitoring Requirements	
		Maximum Daily	Average Monthly	Sample Frequency	Sample Type
1. Mass loading (lbs/day) = Concentration (mg/l) x flow (MGD) x 8.34 lbs/gallon 2. Monitoring for these parameters may be discontinued after the five year expiration date if this permit is administratively extended beyond that date. After 3 years of monitoring, the permittee may request reduced monitoring for these parameters.					

2. There shall be no discharge of hazardous materials in concentrations found to be of public health significance or to impair designated beneficial uses.
3. There shall be no discharge of toxic substances in concentrations that impair designated beneficial uses.
4. There shall be no discharge of deleterious materials in concentrations that impair designated beneficial uses.
5. There shall be no discharge of floating, suspended, or submerged matter of any kind in concentrations causing nuisance or objectionable conditions or that may impair designated beneficial uses.
6. There shall be no discharge of excess nutrients that can cause visible slime growths or other nuisance aquatic growths impairing designated beneficial uses.
7. There shall be no discharge of oxygen-demanding materials in concentrations that would result in an anaerobic water condition.
8. There shall be no discharge of sediment in quantities which impair designated beneficial uses.
9. The permittee must collect effluent samples from the effluent stream after the last treatment unit prior to discharge into the Main Drain.
10. Method Detection Limits. For all effluent monitoring, the permittee must use methods that can achieve a method detection limit (MDL) less than the

effluent limitation. For parameters that do not have effluent limitations, the permittee must use methods that can achieve MDLs less than or equal to those specified in Table 2 (Part I.B.3.).

11. For purposes of reporting on the discharge monitoring report (DMR), if a value is greater than the MDL, the permittee must report the actual value. If a value is less than the MDL, the permittee must report “less than {numeric MDL}” on the DMR. For purposes of calculating monthly averages, zero may be used for values less than the MDL.

B. Surface Water Monitoring. The permittee must perform the following receiving water monitoring program.

1. The permittee must conduct surface water (ambient) monitoring four times per year during January, April, July, and October as close in time as possible to the time that it conducts effluent sampling; ambient samples must be taken at a location in the Main Drain immediately upstream of Outfall 001 but out of the influence of the discharge from Magic Valley Produce. The location of the sampling must be approved by IDEQ.
2. All ambient samples must be grab samples.
3. All samples must be analyzed for the parameters listed in Table 2 to achieve method detection limits (MDLs) that are equivalent to or less than those listed in Table 2. The permittee may request different MDLs. Such a request must be in writing and must be approved by EPA before becoming applicable.
4. In the event that this permit is administratively extended beyond its five year expiration date, ambient monitoring may be discontinued after that date. After 3 years of monitoring, the permittee may request reduced ambient monitoring.

Table 2: Receiving Water Monitoring Parameters and Method Detection Limits		
Parameter	Units	Method Detection Limit (MDL)
Canal flow	cfs	--
TSS	mg/l	2
Total Phosphorus	mg/l	0.01
pH	s.u.	--
Total Kjeldahl Nitrogen (TKN)	mg/l	0.05
Total Ammonia (NH ₃)	mg/l	0.01
Nitrate-Nitrite (NO ₃ ,-NO ₂) as N	mg/l	0.01
Nitrite as N	mg/l	0.01
<i>E. coli</i> bacteria	#/100 ml	--

5. Flow of the Main Drain directly upstream of outfall 001 must be monitored weekly in cubic feet per second.
6. Quality assurance/quality control plans for all monitoring must be documented in the Quality Assurance Plan required under Part I.C., “Quality Assurance Plan”.
7. Surface water monitoring results must be submitted to EPA, to the Idaho Department of Environmental Quality (IDEQ), and to the Minidoka Irrigation District by January 31 of each year for the previous calendar year. At a minimum, the report must include the following:
 - a. Location of sample collection.
 - b. Dates of sample collection and analyses.
 - c. Results of sample analyses.
 - d. Relevant quality assurance/quality control (QA/QC) information.

C. Quality Assurance Plan (QAP). The permittee must develop a quality assurance plan (QAP) for all monitoring required by this permit. The plan must be submitted to EPA and the IDEQ for review within 60 days of the effective date of this permit and be implemented within 120 days of the effective date of

this permit. Any existing QAPs may be modified for submittal under this section.

1. The QAP must be designed to assist in planning for the collection and analysis of effluent and receiving water samples in support of the permit and in explaining data anomalies when they occur.
2. Throughout all sample collection and analysis activities, the permittee must use the EPA-approved QA/QC and chain-of-custody procedures described in the most recent edition of *Requirements for Quality Assurance Project Plans (EPA/QA/R-5)*¹ and *Guidance for Quality Assurance Project Plans (EPA/QA/G-5)*². The QAP must be prepared in the format which is specified in these documents.
3. The permittee must amend the QAP whenever there is a modification in sample collection, sample analysis, or other procedure addressed by the QAP.
4. Copies of the QAP must be kept on site and made available to EPA and/or to IDEQ upon request.

II. BEST MANAGEMENT PRACTICES PLAN

- A. Purpose.** Through implementation of the best management practices (BMP) plan the permittee must prevent or minimize the generation of and the potential for the release of pollutants from the facility to the Waters of the United States through normal and ancillary activities.
- B. Development and Implementation Schedule.** The permittee must develop and implement a BMP Plan which achieves the objectives and the specific requirements listed below. A copy of the BMP Plan must be submitted to EPA and to IDEQ within 120 days of the effective date of the permit. Any existing BMP plans may be modified for submittal and approval under this section. The permittee must implement the provisions of the plan as conditions of this permit

¹<http://www.epa.gov/Region10/offices/oea/epaqar5.pdf>

²<http://www.epa.gov/swerust1/cat/epaqag5.pdf>

within 180 days of the effective date of this permit.

C. Objectives. The permittee must develop and amend the BMP Plan consistent with the following objectives for the control of pollutants.

1. The number and quantity of pollutants and the toxicity of effluent generated, discharged or potentially discharges at the facility must be minimized by the permittee to the extent feasible by managing each waste stream in the most appropriate manner.
2. Under the BMP Plan and any Standard Operating Procedures included in the BMP Plan, the permittee must ensure proper operation and maintenance of water management and wastewater treatment systems. BMP Plan elements must be developed in accordance with good engineering practices.
3. Each facility component or system must be examined for its waste minimization opportunities and its potential for causing a release of significant amounts of pollutants to Waters of the United States due to equipment failure, improper operation, and natural phenomena, such as rain or snowfall, etc. The examination must include all normal operations and ancillary activities including material storage areas, storm water, in-plant transfer, material handling and process handling areas, loading or unloading operations, spillage or leaks, sludge and waste disposal, or drainage from raw material storage.

D. Elements of the BMP Plan. The BMP Plan must be consistent with the objectives above and the general guidance contained in *Guidance Manual for Developing Best Management Practices* (EPA 833-B-93-004, October 1993) and *Storm Water Management For Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices* (EPA 832-R-92-006) or any subsequent revision to these guidance documents. The BMP Plan must include, at a minimum, the following items:

1. Plan Components.
 - a. Statement of BMP policy. The BMP Plan must include a

statement of management commitment to provide the necessary financial, staff, equipment, and training resources to develop and implement the BMP Plan on a continuing basis.

- b. Structure, functions, and procedures of the BMP Committee. The permittee must establish a BMP Committee responsible for developing, implementing, and maintaining the BMP Plan.
- c. Description of potential pollutant sources.
- d. Risk identification and assessment.
- e. Standard operating procedures to achieve the above objectives and specific best management practices (see below) and
- f. Reporting of BMP incidents. The reports must include a description of the circumstances leading to the incident, corrective actions taken and recommended changes to operating and maintenance practices to prevent recurrence.
- g. Materials compatibility.
- h. Good housekeeping.
- i. Inspections.
- j. Preventative maintenance and repair.
- k. Security.
- l. Employee training.
- m. Recordkeeping and reporting.
- n. Prior evaluation of any planned modifications to the facility to ensure that the requirements of the BMP plan are considered as part of the modifications.

- o. Final constructed site plans, drawings and maps (including detailed storm water outfall/culvert configurations).
2. Specific Best Management Practices. The BMP Plan must establish specific BMPs or other measures to achieve the objectives under part II.C. and which ensure that the following specific requirements are met:
 - a. Solids, sludges, or other pollutants removed in the course of treatment or control of water and wastewaters must be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.
 - b. Ensure proper management of solid and hazardous waste in accordance with regulations promulgated under the Resource Conservation and Recovery Act (RCRA). Management practices required under RCRA regulations must be referenced in the BMP Plan.
 - c. Ensure proper management of materials in accordance with Spill Prevention, Control, and Countermeasure (SPCC) plans under Section 311 of the Act and 40 CFR Part 112. The BMP Plan may incorporate any part of such plans into the BMP Plan by reference.
3. Review and Certification. The BMP Plan must be reviewed and certified as follows:
 - a. Annual review by the plant manager and BMP Committee.
 - b. Certified statement that the above reviews have been completed and that the BMP Plan fulfills the requirements set forth in this permit. The statement must be certified by the dated signatures of each BMP Committee member. The statement must be submitted to EPA and to IDEQ on or before January 31st of each year of operation under this permit after the initial BMP submittal.

- E. Documentation.** The permittee must maintain a copy of the BMP Plan at the facility and make it available to EPA, IDEQ, or an authorized representative upon request.
- F. BMP Plan Modification.**
1. The permittee must amend the BMP Plan whenever there is a change in the facility or in the operation of the facility which materially increases the generation of pollutants or their release or potential release to surface waters.
 2. The permittee must amend the BMP Plan whenever it is found to be ineffective in achieving the general objective of preventing and minimizing the generation and the potential for the release of pollutants from the facility to the waters of the United States and/or the specific requirements above.
 3. Any changes to the BMP Plan must be consistent with the objectives and specific requirements listed above. All changes in the BMP Plan must be reported to EPA with the annual certification required under Part II.D.3., above.

III. MONITORING, RECORDING AND REPORTING REQUIREMENTS

- A. Representative Sampling (Routine and Non-Routine Discharges).** Samples and measurements must be representative of the volume and nature of the monitored discharge.

In order to ensure that the effluent limits set forth in this permit are not violated at times other than when routine samples are taken, the permittee must collect additional samples at the appropriate outfall whenever any discharge occurs that may reasonably be expected to cause or contribute to a violation that is unlikely to be detected by a routine sample. The permittee must analyze the additional samples for those parameters limited in Part I.A. of this permit that are likely to be affected by the discharge.

The permittee must collect such additional samples as soon as the spill, discharge,

or bypassed effluent reaches the outfall. The samples must be analyzed in accordance with paragraph III.C (“Monitoring Procedures”). The permittee must report all additional monitoring in accordance with paragraph III.D (“Additional Monitoring by Permittee”).

- B. Reporting of Monitoring Results.** The permittee must summarize monitoring results each month on the Discharge Monitoring Report (DMR) form (EPA No. 3320-1) or equivalent. The permittee must submit DMRs monthly, postmarked by the 10th day of the following month. Annual reports on surface water monitoring and BMP certification are due by January 31. The permittee must sign and certify all DMRs and all other reports, in accordance with the requirements of Part V.E. of this permit (“Signatory Requirements”). The permittee must submit the legible originals of these documents to the Director, Office of Water, EPA Region 10, with copies to IDEQ and the Minidoka Irrigation District at the following addresses:

original to: United States Environmental Protection Agency
Region 10
1200 Sixth Avenue, OW-133
Seattle, Washington 98101

copies to: Idaho Department of Environmental Quality
601 Pole Line Road, Suite 2
Twin Falls, Idaho 83301-3035

and to: Minidoka Irrigation District
98 West 50 South
Rupert, ID 83350

- C. Monitoring Procedures.** Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedures have been specified in this permit.
- D. Additional Monitoring by Permittee.** If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the permittee must include the results of this monitoring in the calculation and reporting of the data submitted in

the DMR.

Upon request by the Director, the permittee must submit results of any other sampling, regardless of the test method used.

E. Records Contents. Records of monitoring information must include:

1. the date, exact place, and time of sampling or measurements;
2. the name(s) of the individual(s) who performed the sampling or measurements;
3. the date(s) analyses were performed;
4. the names of the individual(s) who performed the analyses;
5. the analytical techniques or methods used; and
6. the results of such analyses.

F. Retention of Records. The permittee must retain records of all monitoring information, including all calibration and maintenance records, all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of DMRs, a copy of the NPDES permit, and records of all data used to complete the application for this permit, for a period of at least five years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time.

G. Twenty-four Hour Notice of Noncompliance Reporting

1. The permittee must report the following occurrences of noncompliance by telephone to EPA (206-553-1846) and to IDEQ (208-736-2190) as soon as possible, but at least within 24 hours of the time the permittee becomes aware of the circumstances:
 - a. any noncompliance that may endanger health or the environment;
 - b. any unanticipated bypass that exceeds any effluent limitation in the permit (See Part IV.F., "Bypass of Treatment Facilities");
 - c. any upset that exceeds any effluent limitation in the permit (See Part IV.G., "Upset Conditions"); or

- d. any violation of a maximum daily discharge limitation for any of the pollutants in Table 1 of Part I.A.
 - e. any upset condition that could produce a discharge that may affect the water quality of the Main Drain or the Snake River, but, which, at the time of the notice, remains contained and within the property of Magic Valley Produce.
2. The permittee must also provide a written submission within five days of the time that the permittee becomes aware of any event required to be reported under Part III.G.1. The written submission must contain:
 - a. a description of the noncompliance and its cause;
 - b. the period of noncompliance, including exact dates and times;
 - c. the estimated time noncompliance is expected to continue if it has not been corrected; and
 - d. steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
 3. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the NPDES Compliance Hotline in Seattle, Washington, by telephone, (206) 553-1846 and by IDEQ at (208) 736-2190.
 4. Reports must be submitted to the EPA and IDEQ addresses in Part III.B ("Reporting of Monitoring Results").

H. Other Noncompliance Reporting. The permittee must report all instances of noncompliance that are not required to be reported within 24 hours at the time that monitoring reports for Part III.B ("Reporting of Monitoring Results") are submitted. The reports must contain the information listed in Part III.G.2 of this permit ("Twenty-four Hour Notice of Noncompliance Reporting").

I. Changes in Discharge of Toxic Substances. The permittee must notify the Director and the IDEQ as soon as it knows, or has reason to believe:

1. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in the permit, if that discharge may reasonably be expected to exceed the highest of the following "notification levels":
 - a. One hundred micrograms per liter (100 µg/l);
 - b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
 - c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
 - d. The level established by the Director in accordance with 40 CFR 122.44(f).

2. That any activity has occurred or will occur that would result in any discharge, on a non-routine or infrequent basis, of any toxic pollutant that is not limited in the permit, if that discharge may reasonably be expected to exceed the highest of the following "notification levels":
 - a. Five hundred micrograms per liter (500 µg/l);
 - b. One milligram per liter (1 mg/l) for antimony;
 - c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
 - d. The level established by the Director in accordance with 40 CFR 122.44(f).

IV. COMPLIANCE RESPONSIBILITIES

- A. Duty to Comply.** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application.
- B. Penalties for Violations of Permit Conditions**
1. **Civil and Administrative Penalties.** Pursuant to 40 CFR Part 19 and the Act, any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently \$27,500 per day for each violation).
 2. **Administrative Penalties.** Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Pursuant to 40 CFR 19 and the Act, administrative penalties for Class I violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently \$11,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$27,500). Pursuant to 40 CFR 19 and the Act, penalties for Class II violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently \$11,000 per day for each day during which the violation continues, with the

maximum amount of any Class II penalty not to exceed \$137,500).

3. Criminal Penalties:

- a. Negligent Violations. The Act provides that any person who negligently violates Sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both.
- b. Knowing Violations. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both.
- c. Knowing Endangerment. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the Act, shall, upon conviction of

violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

- d. **False Statements.** The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
- C. Need to Halt or Reduce Activity not a Defense.** It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with this permit.
- D. Duty to Mitigate.** The permittee must take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.
- E. Proper Operation and Maintenance.** The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this Part.
2. Notice.
 - a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it must submit prior notice, if possible at least 10 days before the date of the bypass.
 - b. Unanticipated bypass. The permittee must submit notice of an unanticipated bypass as required under Part III.G ("Twenty-four Hour Notice of Noncompliance Reporting").
3. Prohibition of bypass.
 - a. Bypass is prohibited, and the Director may take enforcement action against the permittee for a bypass, unless:
 - i) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and
 - iii) The permittee submitted notices as required under

paragraph 2 of this Part.

- b. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 3.a. of this Part.

G. Upset Conditions

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the permittee meets the requirements of paragraph 2 of this Part. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
2. Conditions necessary for a demonstration of upset. To establish the affirmative defense of upset, the permittee must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - a. An upset occurred and that the permittee can identify the cause(s) of the upset;
 - b. The permitted facility was at the time being properly operated;
 - c. The permittee submitted notice of the upset as required under Part III.G, "Twenty-four Hour Notice of Noncompliance Reporting;" and
 - d. The permittee complied with any remedial measures required under Part IV.D, "Duty to Mitigate."
3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

H. Toxic Pollutants. The permittee must comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants

within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

I. Planned Changes. The permittee must give notice to the Director and IDEQ as soon as possible of any planned physical alterations or additions to the permitted facility whenever:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or
2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit nor to notification requirements under Part III.I (“Changes in Discharge of Toxic Substances”).

J. Anticipated Noncompliance. The permittee must give advance notice to the Director and IDEQ of any planned changes in the permitted facility or activity that may result in noncompliance with this permit.

V. GENERAL PROVISIONS

A. Permit Actions. This permit may be modified, revoked and reissued, or terminated for cause, as specified in 40 CFR §§122.62, 122.64, or 124.5. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

B. Duty to Reapply. If the permittee intends to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. In accordance with 40 CFR 122.21(d), and unless permission for the application to be submitted at a later date has been granted by the Regional Administrator, the permittee must submit a new application at least 180 days before the expiration date of this permit.

- C. Duty to Provide Information.** The permittee must furnish to the Director and to the IDEQ, within the time specified in the request, any information that the Director or to the IDEQ may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee must also furnish to the Director or to the IDEQ, upon request, copies of records required to be kept by this permit.
- D. Other Information.** When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or that it submitted incorrect information in a permit application or any report to the Director, to the IDEQ, or to the Minidoka Irrigation District, it must promptly submit the omitted facts or corrected information.
- E. Signatory Requirements.** All applications, reports, or information submitted to the Director and to the IDEQ must be signed and certified as follows.
1. All permit applications must be signed as follows:
 - a. For a corporation: by a responsible corporate officer.
 - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.
 - c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.
 2. All reports required by the permit and other information requested by the Director or by the IDEQ must be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - a. The authorization is made in writing by a person described above;
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall

responsibility for environmental matters for the company; and

c. The written authorization is submitted to the Director and to the IDEQ.

3. Changes to authorization. If an authorization under Part V.E.2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or for environmental matters for the company, a new authorization satisfying the requirements of Part V.E.2. must be submitted to the Director and to the IDEQ prior to or together with any reports, information, or applications to be signed by an authorized representative.
4. Certification. Any person signing a document under this Part must make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- F. Availability of Reports.** In accordance with 40 CFR 2, information submitted to EPA pursuant to this permit may be claimed as confidential by the permittee. In accordance with the Act, permit applications, permits, and effluent data are not considered confidential. Any confidentiality claim must be asserted at the time of submission by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice to the permittee. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR 2, Subpart B (Public Information) and 41 Fed.

Reg. 36902 through 36924 (September 1, 1976), as amended.

- G. Inspection and Entry.** The permittee must allow the Director, the IDEQ, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:
1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
 2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
 4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.
- H. Property Rights.** The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, nor any infringement of state or local laws or regulations.
- I. Transfers.** This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act. (See 40 CFR 122.61; in some cases, modification or revocation and reissuance is mandatory).
- J. State Laws.** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

VI. DEFINITIONS

- A. “Act” means the Clean Water Act.
- B. “Administrator” means the Administrator of the EPA, or an authorized representative.
- C. “Average monthly discharge limitation” means the highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.
- D. “Best Management Practices” (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of Waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.
- E. “Bypass” means the intentional diversion of waste streams from any portion of a treatment facility.
- F. “Daily discharge” means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.
- G. “Director” means the Director of the Office of Water, EPA Region 10, or an authorized representative.
- H. “DMR” means discharge monitoring report.
- I. “EPA” means the United States Environmental Protection Agency.

- J. “Gpd” means gallons per day .
- K. “Grab” sample is an individual sample collected over a period of time not exceeding 15 minutes.
- L. “IDEQ” means the Idaho Department of Environmental Quality .
- M. "Maximum daily discharge limitation" means the highest allowable "daily discharge."
- N. “Method Detection Limit (MDL)” means the minimum concentration of a substance (analyte) that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.
- O. “MGD” means million gallons per day .
- P. “mg/l” means milligrams per liter.
- Q. “Pollutants” means, among other things, solid waste, sewage, garbage, chemical wastes, biological materials, heat, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.
- R. “QA/QC” means quality assurance/quality control.
- S. “Regional Administrator” means the Regional Administrator of Region 10 of the EPA, or the authorized representative of the Regional Administrator.
- T. "Severe property damage" means substantial physical damage to property , damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- U. “Upset” means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations

because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

