

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129

AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. § 1251 et seq; “the Act”),

the Prairie Knights Casino

is authorized to discharge from its wastewater treatment facility located in the North 1/2 of Section 12, Township 132 N, Range 80 W, latitude 46.272717° and longitude -100.635361°, Sioux County, North Dakota

to **an Unnamed tributary of Fool Bear Creek, a tributary of the Missouri River,**

in accordance with discharge point(s), effluent limitations, monitoring requirements and other conditions set forth herein. Authorization for discharge is limited to those outfalls specifically listed in the Permit.

This Permit shall become effective January 1, 2019.

This Permit and the authorization to discharge shall expire at midnight, December 31, 2023.

Signed this 13th day of December, 2018



Authorized Permitting Official

Darcy O'Connor
Assistant Regional Administrator
Office of Water Protection

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1 EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1.1 Definitions

The *7-day average*, other than for microbiological organisms (e.g., bacteria, viruses, etc.), is the arithmetic mean of all samples collected during a consecutive 7-day period commencing on the first day of a discharge event. Geometric means shall be calculated for microbiological organisms unless specified otherwise in the Permit. The 7-day averages are applicable only to those effluent characteristics for which there are 7-day average effluent limitations. If the 7-day monitoring period begins in one calendar month and ends in the next calendar month, the 7-day average shall be reported on the form for the month the last sample was collected for that averaging period. For example, if the first sample is collected in July and the last sample is collected in August, the 7-day average will be reported on the August discharge monitoring report form.

The *30-day average*, other than for microbiological organisms (e.g., bacteria, viruses, etc.), is the arithmetic average of all samples collected during a consecutive 30-day period commencing on the first day of a discharge event. Geometric means shall be calculated for microbiological organisms unless specified otherwise in the Permit. For purposes of reporting self-monitoring data, the 30-day average shall be reported on the form for the month the last sample was collected for that averaging period. For example, the 30-day average of samples collected spanning July and August will be reported on the August discharge monitoring report form.

Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

Composite samples shall be flow proportioned. The composite sample shall, at a minimum, contain at least four (4) samples collected over the compositing period. Unless otherwise specified, the time between the collection of the first sample and the last sample shall not be less than six (6) hours, nor more than twenty-four (24) hours. Acceptable methods for the preparation of composite samples are as follows:

- a. Constant time interval between samples, sample volume proportional to flow rate at the time of sampling;
- b. Constant time interval between samples, sample volume proportional to total flow (volume) since last sample. For the first sample, the flow rate at the time of the first sample was collected may be used;
- c. Constant sample volume, time interval between samples proportional to flow (i.e., sample taken every "X" gallons of flow); and,
- d. Continuous collection of sample with sample collection rate proportional to flow rate.

CWA means the Clean Water Act (formerly referred to as either the Federal Water Pollution Act or the Federal Water Pollution Control Act Amendments of 1972), Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117, and Pub. L. 100-4. In this Permit the CWA may be referred to as "the Act".

Daily Maximum (Daily Max.) is the maximum measured value for a pollutant discharged during a calendar day or any 24-hour period that reasonably represents a calendar day for purposes of sampling. For pollutants with daily maximum limitations expressed in units of mass (e.g.,

kilograms, pounds), the daily maximum is calculated as the total mass of pollutant discharged over the calendar day or representative 24-hour period. For pollutants with limitations expressed in other units of measurement (e.g., milligrams/liter, parts per billion), the daily maximum is calculated as the average of all measurements of the pollutant over the calendar day or representative 24-hour period. If only one measurement or sample is taken during a calendar day or representative 24-hour period, the single measured value for a pollutant will be considered the daily maximum measurement for that calendar day or representative 24-hour period.

Daily Minimum (Daily Min.) is the minimum value allowable in any single sample or instantaneous measurement collected during the course of a day.

Discharge Monitoring Report (DMR) means the required submission of monitoring results according to the schedule specified in the Permit.

Director means the Regional Administrator of the EPA Region 8 or an authorized representative.

E. coli means *Escherichia coli*.

EPA means the United States Environmental Protection Agency.

Grab sample, for monitoring requirements, is defined as a single "dip and take" sample collected at a representative point in the discharge stream.

Instantaneous measurement, for monitoring requirements, is defined as a single reading, observation, or measurement.

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.

Sewage Sludge is any solid, semi-solid or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary or advanced wastewater treatment processes; and a material derived from sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

Storm Water means storm water runoff, snow melt runoff, and surface runoff and drainage.

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.

1.2 Description of Discharge Point(s)

The authorization to discharge provided under this Permit is limited to those outfalls specifically designated in Table 1 as discharge locations. Discharges at any location not authorized under an NPDES Permit is a violation of the CWA and could subject the person(s) responsible for such discharge to penalties under Section 309 of the Act.

Outfall 002 is the discharge point for the newly installed activated sludge WWTP. This outfall is the only discharge point permitted under this permit.

Table 1 – List of Permitted Discharge Points

Outfall Serial Number(s)	Description of Discharge Point(s)
002	Outfall from Ecolo-Chief Plant. The outfall discharges to a tributary of Fool Bear Creek located near: Latitude 46.272717 °, Longitude -100.635361°

1.3 Effluent Limitations and Self-Monitoring Requirements

1.3.1 Effluent Limitations - Outfall 002

Effective immediately and lasting through the life of this Permit, the quality of effluent discharged by the facility shall, at a minimum, meet the limitations as set forth in Table 2.

Table 2 – Effluent Limitations for discharges from Outfall 002

	30-Day Average a/	7-Day Average a/	Daily Minimum a/	Daily Maximum a/
BOD5, mg/L	30	45	N/A	N/A
Total Suspended Solids, mg/L	30	45	N/A	N/A
E. coli, number/100 mL	126	N/A	N/A	410
Oil and Grease, mg/L	NA	NA	N/A	10
pH, Standard Units	N/A	N/A	6.5	9.0

a/ See Definitions, Part 1.1, for definitions.

1.3.2 Self-Monitoring Requirements - Outfall 002

At a minimum, upon the effective date of this Permit, the following constituents shall be monitored at the frequency and with the type of measurement indicated. Samples or measurements shall be representative of the volume and nature of the monitored discharge.

Table 3 – Monitoring Requirements for Outfall 002

Effluent Characteristic	Frequency	Sample Type <u>a/</u>
Total Flow, mgd <u>b/</u>	Weekly	Measured
Total Suspended Solids, (mg/L)	Monthly	Grab <u>a/</u>
BOD ₅ , mg/L	Monthly	Grab <u>a/</u>
pH, units	Weekly	Grab <u>a/</u>
Total Kjeldahl Nitrogen (TKN), mg/L <u>c/</u>	Monthly	Grab <u>a/</u>
Ammonia (as N), mg/L	Monthly	Grab <u>a/</u>
Nitrate/nitrite (as N), mg/L	Monthly	Grab
Oil and Grease, mg/L	Monthly	Grab <u>a/</u>
<i>E. coli</i> , MPN/100ml <u>c/</u>	Monthly	Grab <u>a/</u>
Total Phosphorus (P), mg/L <u>c/</u>	Monthly	Grab <u>a/</u>
Temperature F°	Weekly	Measured

a/ See Definitions, Part 1.1., for definition of terms.

b/ Flow measurements of effluent volume shall be made by reading the metered discharge. Flow Measurements will not be required until after installation of the required flow measurement device. (See Part 2 SPECIAL CONDITIONS)

c/ Phosphorus, Nitrogen, and *E. coli* monitoring data will be utilized to assess if water quality effects on streams require future limitations to protect beneficial uses.

2 SPECIAL CONDITIONS

2.1 Flow Measurement

The permittee is required to install a device that will provide instant measurements of the discharge flow rate. The Permittee is required to research and select the device that best fits the application. The device is to be installed within three months of the Permit's effective date.

2.2 Outfall 001

The outfall that remains from the wastewater lagoons must be removed or permanently plugged in a manner to prevent unpermitted discharges. This outfall's approximate GPS coordinates are: Latitude 46.273595°, Longitude -100.629033°. This action must be completed within three months of the effective date of this permit. The Permittee is required to document the date and method in which this action was accomplished in the WWTP inspection log.

3 MONITORING, RECORDING AND REPORTING REQUIREMENTS

3.1 Representative Sampling

Samples taken in compliance with the monitoring requirements established under Part 1 shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

3.2 Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this Permit. Sludge monitoring procedures shall be those specified in 40 CFR Part 503, or as specified in the Permit.

3.3 Penalties for Tampering

The CWA provides that any person who knowingly falsifies, tampers with, or 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 two years, or by both. Second conviction is punishable by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or both.

3.4 Reporting of Monitoring Results

With the effective date of this Permit, the Permittee must submit Discharge Monitoring Reports (DMR) on a quarterly basis. The Permittee is required to submit all monitoring data in accordance with Part 3.5. Table 4 details the monitoring periods and corresponding DMR Due dates.

Table 4 – DMR Due Dates

Compliance Monitoring Period	Due Date
January through March	April 28
April through June	July 28
July through September	October 28
October through December	January 28

The permittee is required to electronically report DMRs using NetDMR. Electronic submissions by permittees must be sent to the EPA Region 8 no later than the 28th of the month following the completed reporting period. The Permittee must sign and certify all electronic submissions in accordance with the requirements of Part 5.7 of this Permit (“Signatory Requirements”). NetDMR is accessed from the internet at:

<https://netdmr.zendesk.com/home>

The Permittee must submit a copy of the DMR to the Standing Rock Sioux Tribe. The Permittee may submit a copy to the Standing Rock Sioux Tribe by one of three ways:

1. A paper copy may be mailed.

2. The email address for Standing Rock Sioux Tribe may be added to the electronic submittal through NetDMR.
3. The Permittee may provide Standing Rock Sioux Tribe viewing rights through NetDMR.

The submission method is to be selected by the permittee.

EPA Region 8 Contact information

U.S. EPA, Region 8
Policy, Information Management & Environmental Justice Program (8ENF-PJ)
Attention: DMR Coordinator
1595 Wynkoop Street
Denver, Colorado 80202-1129
(303) 293-1788

Standing Rock Tribe contact information

Allyson Two Bears
Environmental Director
Tribal Environmental Protection Agency
P.O. Box D
Fort Yates, ND 58538
atwobears@standingrock.org
(701) 854-3823

3.5 Additional Monitoring by the Permittee

If the Permittee monitors any pollutant more frequently than required by this Permit, using test procedures approved under 40 CFR Part 136, 40 CFR Part 503, or as specified in this Permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.

3.6 Records Contents

Records of monitoring information shall include:

- 3.6.1 The date, exact place, and time of sampling or measurements;
- 3.6.2 The initials or name(s) of the individual(s) who performed the sampling or measurements;
- 3.6.3 The date(s) analyses were performed;
- 3.6.4 The time(s) analyses were initiated;
- 3.6.5 The initials or name(s) of individual(s) who performed the analyses;
- 3.6.6 References and written procedures, when available, for the analytical techniques or methods used; and,
- 3.6.7 The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

3.7 Retention of Records

The Permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this Permit, and records of all data used to complete the application for this Permit, for a period of at least three years from the date of the sample, measurement, report or application. Records of monitoring required by this Permit related to sludge use and disposal activities must be kept at least five years (or longer as required by 40 CFR Part 503). This period may be extended by request of the Director at any time. Data collected on site, data used to prepare the DMR, copies of DMRs, and a copy of this NPDES Permit must be maintained on site.

3.8 Twenty-four Hour Notice of Noncompliance Reporting

- 3.8.1 The Permittee shall report any noncompliance which **may endanger health or the environment** as soon as possible, but no later than twenty-four (24) hours from the time the Permittee first became aware of the circumstances. The report shall be made to the EPA, Region 8, Site Assessment/Emergency Response Program at (303) 293-1788 and the Standing Rock Sioux Tribe at (701) 854-3823.
- 3.8.2 The following occurrences of noncompliance shall be reported by telephone to the EPA, Region 8, NPDES Enforcement Unit at (800) 227-8917 (8:00 a.m. - 4:30 p.m. Mountain Time) NPDES Program, or the Standing Rock Sioux Tribe at (701) 854-3823 - (8:00 a.m. - 4:30 p.m. Central Time) by the first workday following the day the Permittee became aware of the circumstances:
- 3.8.2.1 Any unanticipated bypass which exceeds any effluent limitation in the Permit (See Part 4.7, Bypass of Treatment Facilities.);
- 3.8.2.2 Any upset which exceeds any effluent limitation in the Permit (See Part 4.8, Upset Conditions.); or,
- 3.8.2.3 Violation of a maximum daily discharge limitation for any of the pollutants listed in Part 1.3.1 of the Permit.
- 3.8.3 A written submission shall also be provided to the U.S. EPA, Office of Enforcement, Compliance and Environmental Justice, and the Standing Rock Sioux Tribe within five days of the time that the Permittee becomes aware of the circumstances. The mailing addresses are in section 2.4 of this Permit. At a minimum the written submission shall contain:
- 3.8.3.1 A description of the noncompliance and its cause;
- 3.8.3.2 The period of noncompliance, including exact dates and times;
- 3.8.3.3 The estimated time noncompliance is expected to continue if it has not been corrected; and,
- 3.8.3.4 Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
- 3.8.4 The Director may waive the written report on a case-by-case basis for an occurrence of noncompliance listed under Part 3.8.2 above, if the incident has been orally reported in accordance with the requirements of Part 3.8.2.

3.9 Other Noncompliance Reporting

Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for Part 2.4 are submitted. The reports shall contain the information listed in Part 3.8.3.

3.10 Inspection and Entry

The Permittee shall allow the Regional Administrator, or authorized representative (including an authorized contractor acting as a representative of the Administrator) upon presentation of credentials and other documents as may be required by law, to:

- 3.10.1 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;
- 3.10.2 Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Permit;
- 3.10.3 Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Permit; and,
- 3.10.4 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.

4 **COMPLIANCE RESPONSIBILITIES**

4.1 Duty to Comply

The Permittee must comply with all conditions of this Permit. Any failure to comply with the Permit may constitute a violation of the Clean Water Act and may be grounds for enforcement action, including, but not limited to permit termination, revocation and reissuance, modification, or denial of a permit renewal application. The Permittee shall give the Director advanced notice of any planned changes at the permitted facility that will change any discharge from the facility, or of any activity that may result in failure to comply with permit conditions.

4.2 Penalties for Violations of Permit Conditions

The Clean Water Act provides for specified civil and criminal monetary penalties for violations of its provisions. However, the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires the EPA to adjust the civil monetary penalties for inflation on a periodic basis. The EPA has adjusted its civil monetary penalties seven times since 1996, most recently on July 1, 2016 (81 Fed. Reg. 43091-43096). As of August 1, 2016, the civil and criminal penalties for violations of the Act (including permit conditions) are as follows:

- 4.2.1 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 Section 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed \$51,570 per day for each violation.

- 4.2.2 Any person who *negligently* violates Section 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 for not more than one 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 for not more than two years, or both.
- 4.2.3 Any person who *knowingly* violates Section 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 \$5,000 to \$50,000 per day of violation, or imprisonment for not more than three 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 for not more than six years, or both.
- 4.2.4 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 for 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 for not more than 30 years, or both. An organization, as defined in Section 309(c)(3)(B)(iii) of the CWA, 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.
- 4.2.5 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. Where an administrative enforcement action is brought for a Class I civil penalty, the assessed penalty may not exceed \$20,628 per violation, with a maximum amount not to exceed \$51,570. Where an administrative enforcement action is brought for a Class II civil penalty, the assessed penalty may not exceed \$20,628 per day for each day during which the violation continues, with the maximum amount not to exceed \$257,848.

4.3 Need to Halt or Reduce Activity not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Permit.

4.4 Duty to Mitigate

The Permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this Permit which has a reasonable likelihood of adversely affecting human health or the environment.

4.5 Proper Operation and Maintenance

The Permittee shall 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 a permittee only when the operation is necessary to achieve compliance with the conditions of the Permit. However, the Permittee shall operate, at a minimum, one complete set of each main line unit treatment process whether or not this process is needed to achieve permit effluent compliance.

- 4.5.1 The Permittee shall, as soon as reasonable and practicable, but no later than six (6) months after the effective date of this Permit, do the following as part of the operation and maintenance program for the wastewater treatment facility:
- 4.5.1.1 Have a current O & M Manual(s) that describes the proper operational procedures and maintenance requirements of the wastewater treatment facility;
 - 4.5.1.2 Have the O & M Manual(s) readily available to the operator of the wastewater treatment facility and require that the operator become familiar with the manual(s) and any updates;
 - 4.5.1.3 Have a schedule(s) for routine operation and maintenance activities at the wastewater treatment facility; and,
 - 4.5.1.4 Require the operator to perform the routine operation and maintenance requirements in accordance with the schedule(s).
- 4.5.2 The Permittee shall maintain a daily log containing a summary record of all operation and maintenance activities at the wastewater treatment facility. At a minimum, the notebook shall include the following information:
- 4.5.2.1 Date and time;
 - 4.5.2.2 Name and title of person(s) making the log entry;
 - 4.5.2.3 Name of the persons(s) performing the activity;
 - 4.5.2.4 A brief description of the activity; and,
 - 4.5.2.5 Other information, as appropriate.

The Permittee shall maintain the log in accordance with proper record-keeping procedures and shall make the log available for inspection, upon request, by authorized representatives of the U.S. Environmental Protection Agency or Standing Rock Sioux Tribe.

4.6 Removed Substances

Collected screenings, grit, solids, sludge (including sewage sludge), or other pollutants removed in the course of treatment shall be buried or disposed in a manner consistent with all applicable federal and tribal regulations (e.g., 40 CFR Part 257, 40 CFR Part 258, 40 CFR Part 503).

Sludge/digester supernatant and filter backwash shall not be directly blended with or enter either the final plant discharge and/or waters of the United States.

4.7 Bypass of Treatment Facilities

4.7.1 Bypass not exceeding limitations: The Permittee may allow any bypass to occur which 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 Parts 4.7.2 and 4.7.3.

4.7.2 Notice:

4.7.2.1 Anticipated bypass: If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass to the EPA, Technical Enforcement Program, and Standing Rock Sioux Tribe.

4.7.2.1.1 Unanticipated bypass: The Permittee shall submit notice of an unanticipated bypass as required under Part 3.8, Twenty-four Hour Noncompliance Reporting, to the EPA, Technical Enforcement Program, and Standing Rock Sioux Tribe.

4.7.3 Prohibition of bypass:

4.7.3.1 Bypass is prohibited and the Director may take enforcement action against a permittee for a bypass, unless:

4.7.3.1.1 The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

4.7.3.1.2 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 judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

4.7.3.1.3 The Permittee submitted notices as required under Part 4.7.2.

4.7.3.2 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 Part 4.7.3.1.

4.8 Upset Conditions

4.8.1 Effect of an upset: An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part 3.8.2 are met. 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 (i.e., Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limitations).

4.8.2 Conditions necessary for a demonstration of upset: A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- 4.8.2.1 An upset occurred and that the Permittee can identify the cause(s) of the upset;
 - 4.8.2.2 The permitted facility was at the time being properly operated;
 - 4.8.2.3 The Permittee submitted notice of the upset as required under Part 3.8, Twenty-four Hour Notice of Noncompliance Reporting; and,
 - 4.8.2.4 The Permittee complied with any remedial measures required under Part 4.4, Duty to Mitigate.
- 4.8.3 Burden of proof: In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

4.9 Toxic Pollutants

The Permittee shall 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.

4.10 Changes in Discharge of Toxic Substances

Notification shall be provided to the Director as soon as the Permittee knows of, or has reason to believe:

- 4.10.1 That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the Permit, if that discharge will exceed the highest of the following "notification levels":
- 4.10.1.1 One hundred micrograms per liter (100 µg/L);
 - 4.10.1.2 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;
 - 4.10.1.3 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,
 - 4.10.1.4 The level established by the Director in accordance with 40 CFR § 122.44(f).
- 4.10.2 That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the Permit, if that discharge will exceed the highest of the following "notification levels":
- 4.10.2.1 Five hundred micrograms per liter (500 µg/L);
 - 4.10.2.2 One milligram per liter (1 mg/L) for antimony;
 - 4.10.2.3 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,
 - 4.10.2.4 The level established by the Director in accordance with 40 CFR § 122.44(f).

5 GENERAL REQUIREMENTS

5.1 Planned Changes

The Permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- 5.1.1 The alteration or addition could significantly change the nature or increase the quantity of pollutant discharged. This notification applies to pollutants which are not subject to effluent limitations in the Permit; or,
- 5.1.2 There are any planned substantial changes to the existing sewage sludge facilities, the manner of its operation, or to current sewage sludge management practices of storage and disposal. The Permittee shall give the Director notice of any planned changes at least 30 days prior to their implementation.
- 5.1.3 The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source.

5.2 Anticipated Noncompliance

The Permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

5.3 Permit Actions

This Permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any Permit condition.

5.4 Duty to Reapply

If the Permittee wishes 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. The application should be submitted at least 180 days before the expiration date of this Permit.

5.5 Duty to Provide Information

The Permittee shall furnish to the Director, within a reasonable time, any information which the Director 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 shall also furnish to the Director, upon request, copies of records required to be kept by this Permit.

5.6 Other Information

When the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Director, it shall promptly submit such facts or information.

5.7 Signatory Requirements

All applications, reports or information submitted to the Director shall be signed and certified.

- 5.7.1 All permit applications shall be signed by either a principal executive officer or ranking elected official.
- 5.7.2 All reports required by the Permit and other information requested by the Director shall 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:
- 5.7.2.1 The authorization is made in writing by a person described above and submitted to the Director; and,
- 5.7.2.2 The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)
- 5.7.3 Changes to authorization: If an authorization under Part 5.7.2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part 5.7.2 must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.
- 5.7.4 Certification: Any person signing a document under this section shall 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."

5.8 Penalties for Falsification of Reports

The Act 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 noncompliance shall, upon conviction be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

5.9 Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, Subpart B, all reports prepared in accordance with the terms of this Permit shall be available for public inspection at the offices of the Director. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

5.10 Oil and Hazardous Substance Liability

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 to which the Permittee is or may be subject under Section 311 of the Act.

5.11 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 private property or any invasion of personal rights, nor any infringement of federal, state, tribal or local laws or regulations.

5.12 Severability

The provisions of this Permit are severable, and if any provision of this Permit, or the application of any provision of this Permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Permit, shall not be affected thereby.

5.13 Transfers

This Permit may be automatically transferred to a new permittee if:

- 5.13.1 The current permittee notifies the Director at least 30 days in advance of the proposed transfer date;
- 5.13.2 The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and,
- 5.13.3 The Director does not notify the existing Permittee and the proposed new Permittee of his or her intent to modify, or revoke and reissue the Permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part 5.13.2.

5.14 Permittees in Indian Country

The EPA is issuing this Permit pursuant to the Agency's authority to implement the Clean Water Act NPDES program in Indian Country, as defined at 18 U.S.C. § 1151.

5.15 Reopener Provision

This Permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limitations (and compliance schedule, if necessary), or other appropriate requirements if one or more of the following events occurs:

- 5.15.1 Water Quality Standards: The water quality standards of the receiving water(s) to which the Permittee discharges are modified in such a manner as to require different effluent limits than contained in this Permit.
- 5.15.2 Wasteload Allocation: A wasteload allocation is developed and approved by the Standing Rock Sioux Tribe and/or the EPA for incorporation in this Permit.
- 5.15.3 Water Quality Management Plan: A revision to the current water quality management plan is approved and adopted which calls for different effluent limitations than contained in this Permit.

5.16 Toxicity Limitation-Reopener Provision:

This Permit may be reopened and modified (following proper administrative procedures) to include whole effluent toxicity limitations if whole effluent toxicity is detected in the discharge.