

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 Wind Casino**

is authorized to discharge from its wastewater treatment facility located in the Northwest 1/4 of Section 15, Township 37 North, Range 48 West, latitude 43.183921° N and longitude 102.988274° W, Oglala County,

to **unnamed tributary of Lower South Branch Blacktail Creek**

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 **to be determined upon issuance**

This Permit and the authorization to discharge shall expire at midnight, **to be determined upon issuance**

Signed this \_\_\_\_\_ day of

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Authorized Permitting Official

Darcy O’Connor, Director  
Water Division

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## 1. Definitions

The *7-day (and weekly) 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 or calendar week, whichever is applicable. Geometric means shall be calculated for microbiological organisms unless specified otherwise in the Permit. The 7-day and weekly averages are applicable only to those effluent characteristics for which there are 7-day average effluent limitations. The calendar week, which begins on Sunday and ends on Saturday, shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms. Weekly averages shall be calculated for all calendar weeks with Saturdays in the month. If a calendar week overlaps two months (i.e., the Sunday is in one month and the Saturday in the following month), the weekly average calculated for that calendar week shall be included in the data for the month that contains the Saturday.

The *30-day (and monthly) 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 or calendar month, whichever is applicable. Geometric means shall be calculated for microbiological organisms unless specified otherwise in the Permit. The calendar month shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms.

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

*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.

*EPA* means the United States Environmental Protection Agency, the Regional Administrator of the EPA Region 8 or an authorized representative.

*E. coli* means *Escherichia coli*.

*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.

*Permit*, is the NPDES permit in which “Permit” and corresponding statement of basis is written.

*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.

*Stormwater* means storm water runoff, snow melt runoff, and surface runoff and drainage.

*Sufficiently Sensitive* – An analytical chemical-specific test method is sufficiently sensitive when:

- The method minimum level (ML) is at or below the level of the effluent limit established in the permit for the measured pollutant or pollutant parameter; or
- The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter.

*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.

*Whole Effluent Toxicity (WET)* is the total toxic effect of an effluent measured directly with a toxicity test.

## 2. Description of Discharge Point(s)

The Prairie Wind Casino wastewater treatment plant (WWTP) is authorized to discharge from Outfall 001. The WWTP is not designed to discharge. In the event that a discharge is necessary, wastewaters are most likely to enter an unnamed tributary of Lower South Branch Blacktail Creek.

Table 1 – Discharge Locations

Outfall Serial Number	Description of Discharge Point	GPS Coordinates
001	Outfall from WWTP	Latitude 43.183339N Longitude 102.987864W

## 3. Effluent Limitations

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

Characteristic	30-Day Average a/	7-Day Average a/	Daily Maximum a/
Biochemical Oxygen Demand (BOD <sub>5</sub> ), mg/L	30	45	N/A
Total Suspended Solids (TSS), mg/L	30	45	N/A
<i>Escherichia coli</i> ( <i>E. coli</i> ), Number/100mL	126	N/A	410
Oil and Grease, mg/L	N/A	N/A	10
Total Residual Chlorine (TRC), µg/L b/	.011	N/A	.019
The pH of the discharge shall not be less than 6.5 or greater than 9.0 standard units at any time.			

a/ See Definitions, section 1, for definition of terms.

b/ The minimum limit of analytical reliability for TRC is considered to be 0.05 mg/L. For purposes of this permit and calculating averages and reporting in the DMR form, analytical values less than 0.05 mg/L shall be considered in compliance with this permit.

## 4. Self-Monitoring Requirements

**Effective immediately and lasting through the effective term of this Permit.** Sampling and test procedures for pollutants listed in this part shall be in accordance with guidelines promulgated by the Administrator in 40 CFR Part 136, as required in 40 CFR § 122.41(j). Samples or measurements shall be representative of the volume and nature of the monitored discharge.

Monitoring is only required in the event of a discharge. The facility is not anticipated to discharge under normal operating circumstances. In the event a discharge is necessary then, at a minimum, the constituents shall be monitored at the frequency and with the type of measurement indicated in Table 3. The monitoring frequency is daily for every analyte. If a discharge lasts longer than three days, the monitoring frequency may be reduced to weekly after the first three daily monitoring events are conducted. For example, a discharge is conducted from October 1-12, monitoring events are to be conducted October 1,2,3, and 10.

Table 3 Monitoring Requirements

Effluent Characteristic	Frequency	Sample Type <u>a/</u>
Total Flow, million gallons per day <u>b/</u>	Daily	Instantaneous
Biochemical Oxygen Demand (BOD <sub>5</sub> ), mg/L	Daily	Grab
Total Suspended Solids, mg/L	Daily	Grab
<i>Escherichia coli</i> ( <i>E. coli</i> ), Number/100 mL	Daily	Grab
pH, standard units	Daily	Grab
Oil and grease, mg/L/	Daily	Grab
Dissolved Oxygen (DO), mg/L	Daily	Grab
Total Ammonia Nitrogen (as N), mg/L	Daily	Grab
Total Residual Chlorine (TRC), <u>c/</u> µg/L	Daily	Grab

a/ If a discharge lasts longer than three days, the monitoring frequency may be reduced to weekly after the first three daily monitoring events are conducted. For example, a discharge is conducted from October 1-12. Monitoring events are to be conducted October 1,2,3, and 10.

b/ See Definitions, section 1.1, for definition of terms.

c/ Flow measurements of effluent volume shall be made in such a manner that the Permittee can affirmatively demonstrate that representative values are being obtained. The average flow rate in million gallons per day (mgd) during the reporting period and the maximum flow rate observed, in mgd, shall be reported.

## 5. Monitoring, Recording and Reporting Requirements

### 5.1. Representative Sampling:

Samples taken in compliance with the monitoring requirements established under section 4 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. Sludge

samples shall be collected at a location representative of the quality of sludge immediately prior to use-disposal practice.

#### 5.2. Monitoring Procedures:

Monitoring must be conducted according to test procedures approved under 40 C.F.R. Part 136, unless other test procedures have been specified in this Permit. Sludge monitoring procedures shall be those specified in 40 C.F.R. 503, or as specified in the Permit. The permittee must select a test procedure that is Sufficiently Sensitive for all monitoring conducted in accordance with this Permit.

#### 5.3. Penalties for Tampering:

The Act 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. 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.

#### 5.4. Reporting of Monitoring Results:

With the effective date of this Permit, the Permittee must electronically report DMRs using NetDMR. The DMRs are required to be submitted on an unscheduled basis. DMRs must be submitted within 30 days of discharge. The Permittee must sign and certify all electronic submissions in accordance with the requirements of section 7.7 of this Permit ("Signatory Requirements"). NetDMR is accessed from the internet at <https://netdmr.zendesk.com/home>.

Table 4 – DMR Due Dates

Compliance Monitoring Period	Due Date
	DMR are to be submitted on an unscheduled basis. DMRs are due to the EPA within 30 days of any discharge event.

In addition, the Permittee must submit a copy of the DMR to the Oglala Sioux Tribe. Currently, the Permittee may submit a copy to the Oglala Sioux Tribe by one of three ways: 1. a paper copy may be mailed (section 5.5), 2. The email address may be added to the electronic submittal through NetDMR, or, 3. The Permittee may provide viewing rights through NetDMR.



5.5. Legible copies of all other reports required herein:

Shall be signed and certified in accordance with the Signatory Requirements (see section 7.7), and submitted to the EPA Region 8 Enforcement and Compliance Assurance Water Enforcement Branch and the Oglala Sioux Tribe at the addresses given below:  
original to:

U.S. EPA, Region 8  
8ENF-W-NW  
Attention: DMR Coordinator  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

copy to:

Delinda Simmons  
Water Quality Coordinator  
Oglala Sioux Tribe  
PO Box 980  
Martin, South Dakota 57551

Prior to December 21, 2020, all other reports required herein (e.g., Parts 5.9 and 5.10) as well as sewer overflow event reports, shall be signed and certified in accordance with the Signatory Requirements (see Part 7.7), and submitted to the EPA Region 8 Enforcement and Compliance Assurance Water Enforcement Branch and Oglala Sioux Tribe at the addresses given above. Effective no later than December 21, 2020, these reports shall be submitted electronically using "NeT". If the NeT tool is not available on December 21, 2020, the reports can continue to be submitted to the addresses above until the tool is available.

5.6. Additional Monitoring by the Permittee:

If the Permittee monitors any pollutant more frequently than required by this Permit, using test procedures approved under 40 C.F.R. Part 136, 40 C.F.R. 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.

5.7. Records Contents:

Monitoring and records. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. Records of monitoring information shall include:

- 5.7.1. The date, exact place, and time of sampling or measurements;
- 5.7.2. The name(s) of the individual(s) who performed the sampling or measurements;
- 5.7.3. The date(s) analyses were performed;
- 5.7.4. The time(s) analyses were initiated;
- 5.7.5. The name(s) of individual(s) who performed the analyses;

- 5.7.6. References and, when available, written procedures for the analytical techniques or methods used; and,
- 5.7.7. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

5.8. Retention of Records:

The Permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original 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 C.F.R. Part 503). This period may be extended by request of the EPA 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.

5.9. Twenty-four Hour Notice of Noncompliance

- 5.9.1. Reporting: 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, Superfund & Emergency Management Division at (303) 293-1788 and the Tribe at (605) 685-6820.
- 5.9.2. The following occurrences of noncompliance shall be reported by telephone to the EPA, Region 8 Enforcement and Compliance Assurance Division, NPDES & Wetlands Section at (800) 227-8917 (8:00 a.m. - 4:30 p.m. Mountain Time), and the Tribe(s) at (605) 685-6820 (8:00 a.m. - 4:30 p.m. Central Time) by the first workday following the day the Permittee became aware of the circumstances:
  - 5.9.2.1. Any unanticipated bypass which exceeds any effluent limitation in the Permit (See section 6.8, Bypass of Treatment Facilities.);
  - 5.9.2.2. Any upset which exceeds any effluent limitation in the Permit (See section 6.9, Upset Conditions); or,
  - 5.9.2.3. Violation of a maximum daily discharge limitation for any of the pollutants listed in the Permit to be reported within 24 hours.
- 5.9.3. A written submission shall also be provided to the Enforcement and Compliance Assurance Division, NPDES & Wetlands Section, and to the Tribe within five days of the time that the Permittee becomes aware of the circumstances. The written submission shall contain:
  - 5.9.3.1. A description of the noncompliance and its cause;
  - 5.9.3.2. The period of noncompliance, including exact dates and times;
  - 5.9.3.3. The estimated time noncompliance is expected to continue if it has not been corrected; and,
  - 5.9.3.4. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

- 5.9.4. The EPA may waive the written report on a case-by-case basis for an occurrence of noncompliance listed under section 5.9.2 above, if the incident has been orally reported in accordance with the requirements of section 5.9.2.
- 5.9.5. Reports shall be submitted to the addresses in section 5.5, Reporting of Monitoring Results.
- 5.10. Other Noncompliance Reporting:

Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for section 5.5 are submitted. The reports shall contain the information listed in section 5.9.3.

5.11. Inspection and Entry:

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

- 5.11.1. 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;
- 5.11.2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Permit;
- 5.11.3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Permit; and,
- 5.11.4. 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.

## **6. Compliance Responsibilities**

6.1. 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 termination, revocation and reissuance, modification, or denial of a permit renewal application. The Permittee shall give the EPA 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.

6.2. 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 effective January 15, 2018 (83 Fed. Reg. 1190-1194). The civil and criminal penalties for violations of the Act are as follows:

- 6.2.1. 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 \$53,484 per day for each violation.
- 6.2.2. 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.
- 6.2.3. 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.
- 6.2.4. 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.
- 6.2.5. 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 \$21,393 per violation, with a maximum amount not to exceed \$53,484. Where an administrative enforcement action is brought for a Class II civil penalty, the assessed penalty may not exceed \$21,393 per day for each day during which the violation continues, with the maximum amount not to exceed \$267,415.
- 6.3. 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 to maintain compliance with the conditions of this Permit.

6.4. 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.

6.5. Inspection Requirements:

6.5.1. On at least a weekly basis, the Permittee shall inspect its wastewater treatment facility, at a minimum, for the following:

6.5.1.1. Determine if a discharge is occurring, has occurred since the previous inspection, and/or if a discharge is likely to occur before the next inspection. (Note: If a discharge has occurred or is likely to occur before the next inspection, perform the appropriate monitoring and reporting requirements in Part 4 and Section 5.4 of this Permit if not already done.);

6.5.1.2. Check to see if there is any leakage through the dikes;

6.5.1.3. Check to see if there are any animal burrows in the dike;

6.5.1.4. Check to see if there has been any excessive erosion of the dikes;

6.5.1.5. Check to see if there are any rooted plants, including weeds growing in the water;

6.5.1.6. Check to see if vegetation growth on the dikes needs mowing; and,

6.5.1.7. Determine if proper operation and maintenance procedures are being undertaken at the wastewater treatment facility.

6.5.2. The Permittee shall maintain a log in either paper or electronic format recording information obtained during inspection activities. At a minimum, the notebook shall include the following:

6.5.2.1. Date and time of the inspection;

6.5.2.2. Name of the inspector(s);

6.5.2.3. The facility's discharge status;

6.5.2.4. The flow rate of the discharge if occurring;

6.5.2.5. Identification of operational problems and/or maintenance problems;

6.5.2.6. Recommendations, as appropriate, to remedy identified problems;

6.5.2.7. A brief description of any actions taken with regard to problems identified; and,

6.5.2.8. Other information, as appropriate.

6.5.3. The Permittee shall maintain daily log in either paper or electronic format 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 the applicable Tribe.

6.5.4. Problems identified during the inspection shall be addressed through proper operation and maintenance. (See Part 6.6 of this Permit.)

6.6. 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 requires 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.

6.6.1. 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:

6.6.1.1. Have a current O & M Manual(s) that describes the proper operational procedures and maintenance requirements of the wastewater treatment facility;

6.6.1.2. 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;

6.6.1.3. Have a schedule(s) for routine operation and maintenance activities at the wastewater treatment facility; and,

6.6.1.4. Require the operator to perform the routine operation and maintenance requirements in accordance with the schedule(s).

6.6.2. The Permittee shall maintain a daily log in either paper or electronic format containing a summary record of all operation and maintenance activities at the wastewater treatment facility. At a minimum, the log shall include the following information:

6.6.2.1. Date and time;

6.6.2.2. Name and title of person(s) making the log entry;

6.6.2.3. Name of the persons(s) performing the activity;

6.6.2.4. A brief description of the activity; and,

6.6.2.5. Other information, as appropriate.

6.6.3. 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 the Tribe.

6.7. 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 C.F.R. Part 257, 40 C.F.R. Part 258, 40 C.F.R. 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.

6.8. Bypass of Treatment Facilities:

6.8.1. 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 sections 6.8.2 and 6.8.3.

6.8.2. Notice:

6.8.2.1. 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 U.S. EPA, Technical Enforcement Program, and to the Tribe.

6.8.2.2. Unanticipated bypass: The Permittee shall submit notice of an unanticipated bypass as required under section 5.9, Twenty-four Hour Noncompliance Reporting, to the U.S. EPA, Technical Enforcement Program, and the Tribe.

6.8.3. Prohibition of bypass.

6.8.3.1. Bypass is prohibited. The EPA may take enforcement action against a permittee for a bypass, unless:

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

6.8.3.1.2. 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,

6.8.3.1.3. The Permittee submitted notices as required under section 6.8.2.

6.8.3.2. The EPA may approve an anticipated bypass, after considering its adverse effects, if the EPA determines that it will meet the three conditions listed above in section 6.8.3.1

**6.9. Upset Conditions:**

- 6.9.1. 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 section 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).
- 6.9.2. 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:
- 6.9.2.1. An upset occurred and that the Permittee can identify the cause(s) of the upset;
- 6.9.2.2. The permitted facility was at the time being properly operated;
- 6.9.2.3. The Permittee submitted notice of the upset as required under section 5.9, Twenty-four Hour Notice of Noncompliance Reporting; and,
- 6.9.2.4. The Permittee complied with any remedial measures required under section 6.4, Duty to Mitigate.
- 6.9.3. Burden of proof. In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

**7. General Requirements**

**7.1. Planned Changes:**

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

- 7.1.1. 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,
- 7.1.2. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source.

**7.2. Anticipated Noncompliance:**

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

**7.3. 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.



7.4. 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 shall be submitted at least 180 days before the expiration date of this Permit.

7.5. Duty to Provide Information:

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

7.6. 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 EPA, it shall promptly submit such facts or information.

7.7. Signatory Requirements:

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

7.7.1. All permit applications shall be signed by either a principal executive officer or ranking elected official.

7.7.2. All reports required by the Permit and other information requested by the EPA 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:

7.7.2.1. The authorization is made in writing by a person described above and submitted to the EPA; and,

7.7.2.2. 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.)

7.7.3. Changes to authorization: If an authorization under section 7.7.2 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 section 7.7.2 must be submitted to the EPA prior to or together with any reports, information, or applications to be signed by an authorized representative.

7.7.4. 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."

7.8. 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.

7.9. Availability of Reports:

Except for data determined to be confidential under 40 C.F.R. 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 EPA. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

7.10. 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.

7.11. 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, Tribal or local laws or regulations.

7.12. 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.

7.13. Transfers:

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

- 7.13.1. The current Permittee notifies the EPA at least 30 days in advance of the proposed transfer date;
- 7.13.2. 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,
- 7.13.3. The EPA 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 section 7.13.2.

7.14. 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.

7.15. 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:

- 7.15.1. 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.
- 7.15.2. 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.

7.16. 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.