

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. Part 1251 et seq; “the Act”),

**The City of Poplar**

is authorized to discharge from its wastewater treatment facility located in the Southwest ¼ of Section 7, Township 27N, Range 51E, latitude 48.1059° N and longitude 105.1884° W, Roosevelt County,

**to 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 July 1, 2020.

This Permit and the authorization to discharge shall expire at midnight, June 30, 2025.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Authorized Permitting Official

Judy Bloom, Manager  
Clean Water Branch

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## 1. Definitions

The *7-day (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 (40 CFR Part 122.2).

The *30-day (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 (40 CFR Part 122.2).

*Act ("the Act")* 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 Act may be referred to as the CWA.

*Approval Authority* means the Director in a NPDES state with an approved state pretreatment program and the appropriate Regional Administrator in a non-NPDES state or NPDES state without an approved state pretreatment program. EPA is the Approval Authority for the Permit.

*Bypass* means the intentional diversion of waste streams from any portion of a treatment facility (40 CFR Part 122.41(m)).

*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.

*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*.

*Geometric mean* is an average or mean based on multiplication instead of addition. To calculate a geometric mean, take the *n*th root of the product of *n* measured values.

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

*Industrial User* means as source that introduces pollutants into the POTW from any non-domestic source regulated under section 307(b), (c) or (d) of the Act. An Industrial User is considered a Significant Industrial User if it:

- (a) Is subject to Categorical Pretreatment Standards under Section 307 of the Act and 40 CFR Chapter I, Subchapter N;
- (b) Has a process wastewater flow of 25,000 gallons or more per day;
- (c) Contributes five percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
- (d) Is designated by the Approval Authority as having a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirements.

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

*Interference* means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

- (a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
- (b) Therefore is a cause of a violation of any requirement of the POTW's permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal.

*Lethal Concentration, 50 Percent (LC50)* is the toxicant or effluent concentration that would cause death in 50 percent of the test organisms over a specified period of time.

*New Source* means any building, structure, facility, or installation from which there is or may be a “discharge of pollutants,” the construction of which commenced:

- (a) After promulgation of standards of performance under section 306 of CWA which are applicable to such source, or
- (b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

*Pass Through* means a discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW’s NPDES permit (including an increase in the magnitude or duration of a violation).

*Permit* means the NPDES permit in which “Permit” and corresponding statement of basis or fact sheet is written.

*Permittee* means the “person” as defined by section 502(5) of the Act authorized to discharge under the Permit.

*Publicly Owned Treatment Works (POTW)* means a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant.

*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:

- (a) 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

(b) 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.

*Toxicity Identification Evaluation (TIE)* is a set of site-specific procedures used to identify the specific chemical(s) or pathogens causing effluent toxicity.

*Toxicity Reduction Evaluation (TRE)* is a site-specific study conducted in a step-wise process to identify the causative agents of effluent toxicity, isolate the source of toxicity, evaluate the effectiveness of toxicity control options, and then confirm the reduction in effluent toxicity after the control measures are put in place.

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

Table 1 – Description of Discharge Points

Outfall Serial Number	Location Description	Latitude/Longitude	Receiving Water
001	Where the facility's effluent pipe discharges to a naturally occurring surface water channel southeast of Indian Highway.	48.10330° N /105.18741° W	Missouri River

### 3. Effluent Limitations

**Outfall 001:** Effective immediately and lasting through the effective term of this Permit, the quality of effluent discharged by the facility shall, at a minimum, meet the limitations as set forth below:

Table 2 – Effluent Limitations

Effluent Characteristic	Effluent Limitation		
	30-Day Average <u>a/</u>	7-Day Average <u>a/</u>	Daily Maximum <u>a/</u>
Biochemical Oxygen Demand (BOD <sub>5</sub> ), mg/L	30	45	N/A
BOD <sub>5</sub> Percent Removal (%) <u>b/</u>	85%	N/A	N/A
Total Suspended Solids (TSS), mg/L	30	45	N/A
TSS Percent Removal (%) <u>b/</u>	85%	N/A	N/A
<i>Escherichia coli</i> ( <i>E. coli</i> ), Number/100 mL (April – October) <u>c/</u>	126	N/A	235
<i>Escherichia coli</i> ( <i>E. coli</i> ), Number/100 mL (November – March) <u>c/</u>	126	N/A	410
Oil and Grease (O&G), mg/L	N/A	N/A	10
The pH of the discharge shall not be less than 6.5 or greater than 9.0 at any time.			
There shall be no discharge of floating solids or visible foam in other than trace amounts, nor shall there be a discharge which causes a visible sheen in the receiving waters.			

a/ See section 1 for definition of terms.

b/ Percent Removal Requirements (BOD<sub>5</sub> and TSS limitations): In addition to the concentration limits for BOD<sub>5</sub> and TSS, the arithmetic mean of the concentration for effluent samples collected in a 30-day consecutive period shall not exceed 15 percent of the arithmetic mean of the concentration for influent samples collected at approximately the same times during the same period (i.e., an 85 percent removal).

c/ The geometric mean shall be reported for *E. coli*. See section 1 for more information on geometric means.

### 4. Self-Monitoring Requirements

**Outfall 001 and Influent:** 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 Part 122.41(j). At a minimum, 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. If no discharge occurs during the entire monitoring period, it shall be stated on the Discharge Monitoring Report (DMR) that no discharge or overflow occurred.

Influent monitoring samples shall be taken from the collection system just prior to entering any treatment process at the facility. Effluent monitoring samples shall be taken at or near Outfall 001, after all treatment processes but prior to discharge to the receiving water.



Table 3 – Effluent Monitoring Requirements

<b>Effluent Characteristic</b>	<b>Frequency</b>	<b>Sample Type <u>a/</u></b>
Flow, mgd <u>b/</u>	Continuous	Instantaneous
Biochemical Oxygen Demand (BOD <sub>5</sub> ), mg/L <u>c/</u>	Monthly	Composite
BOD <sub>5</sub> Percent Removal (%)	Monthly	Calculated
Total Suspended Solids (TSS), mg/L <u>c/</u>	Monthly	Composite
TSS Percent Removal (%)	Monthly	Calculated
<i>E. coli</i> , Number/100 mL <u>d/</u>	Monthly	Grab
Oil and grease, Visual	Weekly	Visual
Oil and grease, mg/L	<u>e/</u>	Grab
pH, standard units	Weekly	Grab/Instantaneous
Temperature, °C	Weekly	Grab/Instantaneous
Nitrate + Nitrite (as N), mg/L	Monthly	Composite
Total Kjeldahl Nitrogen (as N), mg/L	Monthly	Composite
Total Ammonia Nitrogen (as N), mg/L	Monthly	Composite
Total Nitrogen (TN), mg/L <u>f/</u>	Monthly	Calculated
Total Phosphorus (TP), mg/L	Monthly	Composite
Total Metals, µg/L <u>g/</u>	Annually	Composite
Whole Effluent Toxicity – Acute, LC50 <u>h/</u>	Quarterly	Grab

a/ See section 1 for definition of terms.

b/ 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 during the reporting period and the daily maximum flow (maximum volume discharged during a 24-hour period) shall be reported (in million gallons per day).

- c/ Effluent sampling for BOD<sub>5</sub> and TSS shall occur concurrently with influent monitoring.
- d/ The geometric mean shall be reported for *E. coli*. See section 1 for more information on geometric means.
- e/ If a visible sheen or floating oil is detected or observed in the discharge, a grab sample shall immediately be taken, analyzed and recorded in accordance with the requirements of 40 CFR Part 136.
- f/ For the purposes of this Permit, the term “Total Nitrogen (TN)” is defined as the calculated sum of analytical results from “Total Kjeldahl Nitrogen (TKN)” plus “Nitrate+Nitrite”.
- g/ “Total metals” includes analysis for 10 metals listed as priority pollutants in Appendix A of 40 CFR Part 423: arsenic, cadmium, chromium, copper, lead, mercury, nickel, selenium, silver, and zinc.
- h/ Report the LC50. See section 5.1 for more details.

Table 4 – Influent Monitoring Requirements

Influent Characteristic	Frequency	Sample Type <u>a/</u>
Biochemical Oxygen Demand (BOD <sub>5</sub> ), mg/L <u>b/</u>	Monthly	Composite
Total Suspended Solids (TSS), mg/L <u>b/</u>	Monthly	Composite

a/ See section 1 for definition of terms.

b/ Influent sampling for BOD<sub>5</sub> and TSS shall occur concurrently with effluent monitoring.

## 5. Special Conditions

### 5.1. Acute Whole Effluent Toxicity (WET) Monitoring:

Beginning with the effective date of this Permit, acute Whole Effluent Toxicity (WET) sampling shall be performed quarterly by the Permittee and shall be submitted to a WET laboratory for analysis. The Permittee shall take a grab sample of the discharge, chill it to between 0 and 6°C, and send it to the WET laboratory to start analysis within the 36-hour holding time, unless otherwise specified in 40 CFR Part 136.

The acute static-renewal toxicity tests shall be conducted in accordance with the procedures set out in the latest revision of the EPA WET manual<sup>a</sup>. The Permittee shall instruct the laboratory to conduct a 48-hour acute static-renewal toxicity test with renewals at each 24-hr interval using *Ceriodaphnia dubia*, Method 2002.0 and a 96-hour acute static-renewal toxicity test with renewals at each 24-hr interval using *Pimephales promelas*, Method 2000.0.

The laboratory shall use a multi-dilution test consisting of five concentrations (100%, 50%, 25%, 12.5%, 6.25%) and a 0% control. The dilution water used for the test shall be hard synthetic laboratory grade water, consistent with EPA WET manual laboratory specifications. Tests shall be run at 25°C.

<sup>a</sup> Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, EPA-821-R-02-012. Fifth Edition, October 2002. U.S. EPA.

WET test results shall be reported on the DMR submitted for the reporting period when the monitoring was conducted (e.g., WET results for the calendar quarter ending March 31 shall be reported with the DMR due April 28, etc.).

If the DMR and laboratory report data results for four (4) consecutive WET tests indicate no toxicity, the Permittee may make a request, in writing, to the permitting authority to allow a reduction to semiannual testing. The Permittee must supply all WET laboratory bench data with the request for review. The EPA may approve or deny the request based on WET test results and other available information without an additional public notice. If the request is approved, the WET test parameters are to be the same as specified above for both *Ceriodaphnia dubia* and *Pimephales promelas*.

If acute toxicity occurs in a WET test, the Permittee shall do the following:

1. Notify the EPA within 48 hours of when the Permittee learned of the initial test failure (see section 6.9.2);
2. Promptly take all reasonable measures necessary to immediately reduce toxicity; and
3. Conduct an additional WET test within two (2) weeks of the date of when the Permittee learned of the WET test failure.

Should toxicity occur in the second WET test, the Permittee shall immediately begin accelerated monthly testing until further notified by the EPA. Accelerated monthly WET testing is only required for the species that failed the initial and second WET tests.

In addition to the accelerated monitoring, the Permittee shall perform a toxicity identification evaluation/toxicity reduction evaluation (TIE/TRE) to establish the cause of the toxicity, locate the source(s) of the toxicity, and develop control of - or treatment for - the toxicity.

Test results from additional toxicity testing conducted (i.e., two week additional testing and monthly TIE/TRE testing) shall be reported by the 28th of the month following the WET test through NetDMR, as required by section 6.4 of the Permit, and to the following address:

U.S. EPA, Region 8  
Wastewater Unit (8WD-CWW)  
1595 Wynkoop Street  
Denver, CO 80202-1129

The EPA may waive either or both requirements (2) or (3), above with justification (e.g., the toxicity has been ongoing and the Permittee is in the process of conducting a TIE/TRE).

## 5.2. Industrial Waste Survey (IWS) Requirements:

An Industrial Waste Survey (IWS) shall be conducted and documented within **twelve (12) months** of the Permit effective date, and IWS procedures shall be maintained by the Permittee to ensure that the Permittee is aware of the nature of the discharges the facility is receiving from the service area, and the Permittee can ensure these discharges are in alignment with the objectives of the general pretreatment regulations (40 CFR Part 403.2). The Permittee shall incorporate the following pretreatment management practices when performing the IWS, referenced from 40 CFR Part 403.8(f)(2)(i-ii):

1. Identify and locate all possible Industrial Users that discharge to the facility and might be subject to the Pretreatment Standards identified in sections 7.11.1, 7.11.2, 7.11.4, and 7.11.5 of this Permit. Any compilation, index or inventory of Industrial Users made under this paragraph shall be made available to the Approval Authority upon request.
2. Identify the character and volume of pollutants contributed to the facility by the Industrial Users identified under (1) above. This information shall be made available to the Approval Authority upon request.

Further associated Pretreatment Standards and pretreatment requirements of the Permittee are found in section 7.11 (Industrial Waste Management) of this Permit.

## **6. Monitoring, Record Keeping, and Reporting Requirements**

### **6.1. Representative Sampling:**

Samples shall be taken in compliance with the monitoring requirements established under section 4. Effluent samples shall be taken from the effluent stream prior to discharge into the receiving waters. Influent samples shall be taken from the collection system just prior to entering any treatment process at the facility. Samples and measurements shall be representative of the volume and nature of the monitored discharge or influent. Sludge samples shall be collected at a location representative of the quality of sludge immediately prior to use or disposal practice.

### **6.2. 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. The Permittee must select a test procedure that is Sufficiently Sensitive for all monitoring conducted in accordance with this Permit.

### **6.3. 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.

### **6.4. Reporting of Monitoring Results:**

With the effective date of this Permit, the Permittee must electronically report DMRs quarterly using NetDMR. Electronic submissions by permittees must be submitted quarterly to the EPA Region 8 no later than the 28th of the month following the completed compliance monitoring period. Although the annual metals sampling may be completed at any time throughout the year, the compliance monitoring period for this analysis is considered to be the fourth quarter of every year, and thus the annual metals monitoring results are due annually on January 28. The Permittee must sign and certify all electronic submissions in accordance with the requirements of section 8.7 of this Permit ("Signatory Requirements"). NetDMR is accessed from the internet at <https://netdmr.zendesk.com/home>.

Table 5 – DMR Due Dates for Quarterly Reporting

<b>Compliance Monitoring Period</b>	<b>Due Date</b>
January – March	April 28
April – June	July 28
July – September	October 28
October – December	January 28

In addition, the Permittee must submit a copy of the DMR to the Assiniboine and Sioux Tribes. Currently, the Permittee may submit a copy to the Assiniboine and Sioux Tribes by one of three ways: 1) a paper copy may be mailed to the Tribes at the address in section 6.5; 2) the appropriate Tribal contact's email address may be added to the electronic submittal through NetDMR; or 3) the Permittee may provide viewing rights to the Tribes through NetDMR.

6.5. Other reporting and notification requirements:

Other reporting and notification requirements shall be signed and certified in accordance with the Signatory Requirements (see section 8.7), and submitted to the EPA Region 8 Enforcement and Compliance Assurance Division, Water Enforcement Branch and the Assiniboine and Sioux Tribes at the addresses given below (unless telephone notification is specified):

original to:

U.S. EPA, Region 8  
Water Enforcement Branch (8ENF-W)  
Attention: DMR Coordinator  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

copy to:

Assiniboine and Sioux Tribes  
Attn: Environmental Program  
P.O. Box 1027  
Poplar, Montana 59255-1027

Prior to December 21, 2020, or as otherwise specified in 40 CFR Part 127, all other reports required herein (e.g., sections 6.9 and 6.10) as well as sewer overflow event reports, shall be signed and certified in accordance with the Signatory Requirements (see section 8.7), and submitted to the EPA Region 8 Enforcement and Compliance Assurance Division, Water Enforcement Branch and the Assiniboine and Sioux Tribes at the addresses given above. Effective no later than December 21, 2020, or as otherwise specified in 40 CFR Part 127, these reports shall be submitted electronically using the NPDES Electronic Reporting Tool (NeT). If the NeT tool is not available on December 21, 2020, the reports may continue to be submitted to the addresses above until the tool is available.

6.6. Additional Monitoring by the Permittee:

If the Permittee monitors any pollutant in accordance with section 6.1 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.

6.7. Records Contents:

Records of monitoring information shall include:

- 6.7.1. The date, exact place, and time of sampling or measurements;
- 6.7.2. The name(s) of the individual(s) who performed the sampling or measurements;
- 6.7.3. The date(s) analyses were performed;
- 6.7.4. The time(s) analyses were initiated;
- 6.7.5. The name(s) of individual(s) who performed the analyses;
- 6.7.6. References and, when available, written procedures for the analytical techniques or methods used; and,
- 6.7.7. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

6.8. 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 CFR 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.

6.9. Twenty-Four Hour Notice of Noncompliance Reporting:

- 6.9.1. 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, Superfund & Emergency Management Division at (303) 293-1788 and the Assiniboine and Sioux Tribes at (406) 768-2300.
- 6.9.2. The following occurrences of noncompliance and WET test failures shall be reported by telephone to the EPA, Region 8 Enforcement and Compliance Assurance Division, Water Enforcement Branch at (800) 227-8917 (8:00 a.m. - 4:30 p.m. Mountain Time), NPDES Program, EPA Region 8 Montana Office, at (406) 457-5000 (toll-free 866-457-2690) (8:00 a.m. - 4:30 p.m. Mountain Time) and the Assiniboine and Sioux Tribes at (406) 768-2300 (8:00 a.m. - 4:30 p.m. Central Time) by the first workday following the day the Permittee

became aware of the circumstances:

6.9.2.1. Any unanticipated bypass which exceeds any effluent limitation in the Permit (see section 7.8, Bypass of Treatment Facilities.);

6.9.2.2. Any upset which exceeds any effluent limitation in the Permit (see section 7.9, Upset Conditions);

6.9.2.3. Violation of a maximum daily discharge limitation for any of the pollutants listed in the Permit to be reported within 24 hours; or,

6.9.2.4. Acute toxicity in a WET test.

6.9.3. A written submission shall also be provided to the EPA, Office of Enforcement and Compliance Assurance Division, Water Enforcement Branch, and to the Assiniboine and Sioux Tribes within five days of the time that the Permittee becomes aware of the circumstances. The written submission shall contain:

6.9.3.1. A description of the noncompliance and its cause;

6.9.3.2. The period of noncompliance, including exact dates and times;

6.9.3.3. The estimated time noncompliance is expected to continue if it has not been corrected; and,

6.9.3.4. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

6.9.4. The EPA may waive the written report on a case-by-case basis for an occurrence of noncompliance listed under section 6.9.2 above if the oral report has been received within 24 hours.

6.9.5. Reports shall be submitted to the addresses in section 6.5, Reporting of Monitoring Results.

#### 6.10. 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 6.5 are submitted. The reports shall contain the information listed in section 6.9.3.

#### 6.11. Inspection and Entry:

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

6.11.1. 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;

6.11.2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Permit;

- 6.11.3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Permit; and,
- 6.11.4. 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.

## 7. Compliance Responsibilities

### 7.1. 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 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 could change any discharge from the facility, or of any activity that may result in failure to comply with permit conditions.

### 7.2. 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 13, 2020 (85 Fed. Reg. 1751-1757). The civil and criminal penalties for violations of the Act are as follows:

- 7.2.1. 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 \$55,800 per day for each violation.
- 7.2.2. 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.
- 7.2.3. 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.
- 7.2.4. 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 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.

- 7.2.5. 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 \$22,320 per violation, with a maximum amount not to exceed \$55,800. Where an administrative enforcement action is brought for a Class II civil penalty, the assessed penalty may not exceed \$22,320 per day for each day during which the violation continues, with the maximum amount not to exceed \$278,995.

7.3. 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.

7.4. 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.

7.5. Inspection Requirements:

- 7.5.1. On at least a weekly basis, unless otherwise approved by the EPA, the Permittee shall inspect its wastewater treatment facility. The inspection shall entail, at a minimum, a “walk-through” and visual observation of all process treatment units, sampling and flow monitoring equipment, outfalls, and the receiving stream.
- 7.5.2. 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:
- 7.5.2.1. Date and time of the inspection;
  - 7.5.2.2. Name of the inspector(s);
  - 7.5.2.3. Identification of operational problems and/or maintenance problems;
  - 7.5.2.4. Recommendations, as appropriate, to remedy identified problems;

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

7.5.2.6. Other information, as appropriate.

7.5.3. 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 Assiniboine and Sioux Tribes.

7.5.4. Problems identified during the inspection shall be addressed through proper operation and maintenance (see section 7.6).

7.6. 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 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.

7.6.1. 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:

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

7.6.1.2. 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;

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

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

7.6.2. 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:

7.6.2.1. Date and time;

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

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

7.6.2.4. A brief description of the activity; and,

7.6.2.5. Other information, as appropriate.

7.6.3. The Permittee shall maintain the daily log in accordance with proper record-keeping procedures and shall make the log available for inspection, upon request, by authorized representatives of the EPA or the Assiniboine and Sioux Tribes.

7.7. 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 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.

7.8. Bypass of Treatment Facilities:

7.8.1. 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 7.8.2 and 7.8.3.

7.8.2. Notice:

7.8.2.1. 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 EPA Region 8 Enforcement and Compliance Assurance Division, Water Enforcement Branch, and the Assiniboine and Sioux Tribes (see sections 6.5 and 6.9).

7.8.2.2. Unanticipated bypass: The Permittee shall submit notice of an unanticipated bypass as required under section 6.9, Twenty-four Hour Noncompliance Reporting, to the EPA Region 8 Enforcement and Compliance Assurance Division, Water Enforcement Branch, and the Assiniboine and Sioux Tribes (see sections 6.5 and 6.9).

7.8.3. Prohibition of bypass:

7.8.3.1. Bypass is prohibited and the EPA may take enforcement action against a permittee for a bypass, unless:

- 7.8.3.1.1. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- 7.8.3.1.2. 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,

7.8.3.1.3. The Permittee submitted notices as required under section 7.8.2.

- 7.8.3.2. 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 7.8.3.1.

#### 7.9. Upset Conditions:

- 7.9.1. 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 7.9.2 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).
- 7.9.2. 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:
  - 7.9.2.1. An upset occurred and that the Permittee can identify the cause(s) of the upset;
  - 7.9.2.2. The permitted facility was at the time being properly operated;
  - 7.9.2.3. The Permittee submitted notice of the upset as required under section 6.9, Twenty-four Hour Notice of Noncompliance Reporting; and,
  - 7.9.2.4. The Permittee complied with any remedial measures required under section 7.4, Duty to Mitigate.
- 7.9.3. Burden of proof: In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

#### 7.10. 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.

### 7.11. Industrial Waste Management:

- 7.11.1. The Permittee has the responsibility to protect the Publicly Owned Treatment Works (POTW) from pollutants which would inhibit, interfere, or otherwise be incompatible with operation of the treatment works including interference with the use or disposal of municipal sludge.
- 7.11.2. Pretreatment Standards (40 CFR Part 403.5) developed pursuant to Section 307 of the Act require that the Permittee shall not allow, under any circumstances, the introduction of the following pollutants to the POTW from any source of nondomestic discharge:
  - 7.11.2.1. Any other pollutant which may cause Pass Through or Interference.
  - 7.11.2.2. Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, waste streams with a closed cup flashpoint of less than sixty (60) degrees Centigrade (140 degrees Fahrenheit) using the test methods specified in 40 CFR Part 261.21;
  - 7.11.2.3. Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with a pH of lower than 5.0 standard units, unless the treatment facilities are specifically designed to accommodate such discharges;
  - 7.11.2.4. Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW, or other interference with the operation of the POTW;
  - 7.11.2.5. Any pollutant, including oxygen demanding pollutants (e.g., BOD<sub>5</sub>), released in a discharge at a flow rate and/or pollutant concentration which will cause Interference with any treatment process at the POTW;
  - 7.11.2.6. Heat in amounts which will inhibit biological activity in the POTW resulting in Interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds forty (40) degrees Centigrade (104 degrees Fahrenheit) unless the Approval Authority, upon request of the POTW, approves alternate temperature limits;
  - 7.11.2.7. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause Interference or Pass Through;
  - 7.11.2.8. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
  - 7.11.2.9. Any trucked or hauled pollutants, except at discharge points designated by the POTW; and,
  - 7.11.2.10. Any specific pollutant which exceeds a local limitation established by the Permittee in accordance with the requirements of 40 CFR Part 403.5(c) and (d).
- 7.11.3. For the POTW covered by this Permit, the EPA presently is the Approval Authority for the Pretreatment Program and the mailing address for all reporting and notifications to the Approval Authority shall be:

U.S. EPA, Region 8  
Water Enforcement Branch (8ENF-W)  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

- 7.11.4. In addition to the general limitations expressed above, more specific Pretreatment Standards have been and will be promulgated for specific industrial categories under Section 307 of the Act (40 CFR Part 405 et seq.).
- 7.11.5. The Permittee must notify the Approval Authority of any new introductions by new or existing Industrial Users or any substantial change in pollutants from any Industrial User within sixty (60) days following the introduction or change. Such notice must identify:
  - 7.11.5.1. Any new introduction of pollutants into the POTW from an Industrial User which would be subject to Sections 301, 306, or 307 of the Act if it were directly discharging those pollutants; and,
  - 7.11.5.2. Any substantial change in the volume or character of pollutants being introduced into the POTW by any Industrial User, as defined in section 1 of the Permit.
  - 7.11.5.3. For the purposes of this section, adequate notice shall include information on:
    - 7.11.5.3.1. The identity of the Industrial User;
    - 7.11.5.3.2. The nature and concentration of pollutants in the discharge and the average and maximum flow of the discharge to be introduced into the POTW; and,
    - 7.11.5.3.3. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from or biosolids or sludge produced at such POTW.
- 7.11.6. At such time as a specific Pretreatment Standard or requirement becomes applicable to an Industrial User of the Permittee, the Approval Authority may, as appropriate:
  - 7.11.6.1. Amend the Permittee's NPDES discharge Permit to specify the additional pollutant(s) and corresponding effluent limitation(s) consistent with the applicable national Pretreatment Standards;
  - 7.11.6.2. Require the Permittee to specify, by ordinance, order, or other enforceable means, the type of pollutant(s) and the maximum amount which may be discharged to the Permittee's POTW for treatment. Such requirement shall be imposed in a manner consistent with the program development requirements of the General Pretreatment Regulations at 40 CFR Part 403; and/or,
  - 7.11.6.3. Require the Permittee to monitor its discharge for any pollutant which may likely be discharged from the Permittee's POTW, should the Industrial User fail to properly pretreat its waste.
- 7.11.7. The Approval Authority retains, at all times, the right to take legal action against any source of nondomestic discharge, whether directly or indirectly controlled by the Permittee, for violations of a permit, order or similar enforceable mechanism issued by the Permittee, violations of any Pretreatment Standard or requirement, or for failure to discharge at an

acceptable level under national standards issued by the EPA under 40 CFR Chapter I, Subchapter N. In cases where a NPDES permit violation has occurred because of the failure of the Permittee to properly develop and enforce Pretreatment Standards and requirements as necessary to protect the POTW, the Approval Authority shall hold the Permittee and/or Industrial User responsible and may take legal action against the Permittee as well as the Industrial User(s) contributing to the Permit violation.

## **8. General Requirements**

### **8.1. 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:

- 8.1.1. 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,
- 8.1.2. 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 EPA notice of any planned changes at least 30 days prior to their implementation.
- 8.1.3. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a New Source.

### **8.2. 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.

### **8.3. 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.

### **8.4. 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, unless permission for a later date has been granted by the EPA.

### **8.5. 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.

#### 8.6. 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.

#### 8.7. Signatory Requirements:

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

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

8.7.2. 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:

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

8.7.2.2. 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.)

8.7.3. Changes to authorization: If an authorization under section 8.7.2 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 8.7.2 must be submitted to the EPA prior to or together with any reports, information, or applications to be signed by an authorized representative.

8.7.4. 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."*

#### 8.8. 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.



#### 8.9. 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 EPA. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

#### 8.10. 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.

#### 8.11. 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.

#### 8.12. Transfers:

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

- 8.12.1. The Permittee notifies the EPA at least 30 days in advance of the proposed transfer date;
- 8.12.2. 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,
- 8.12.3. The EPA does not notify the existing Permittee and the proposed new permittee of the EPA's 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 8.12.2.

#### 8.13. 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.

#### 8.14. 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. Part 1151.

#### 8.15. 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:

- 8.15.1. **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.

8.15.2. **Wasteload Allocation:** A wasteload allocation is developed and approved by the Assiniboine and Sioux Tribes and/or the EPA for incorporation in this Permit.

8.15.3. **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.

8.16. Toxicity Limitation-Reopener Provision:

This Permit may be reopened and modified (following proper administrative procedures) to include a new compliance date, additional or modified numerical limitations, a new or different compliance schedule, a change in the whole effluent protocol, or any other conditions related to the control of toxicants if one or more of the following events occur:

8.16.1. Toxicity was detected late in the life of the Permit near or past the deadline for compliance.

8.16.2. The Toxicity Reduction Evaluation (TRE) results indicate that compliance with the toxic limits will require an implementation schedule past the date for compliance and the EPA agrees with the conclusion.

8.16.3. The TRE results indicate that the toxicant(s) represent pollutant(s) that may be controlled with specific numerical limits, and the EPA agrees that numerical controls are the most appropriate course of action.

8.16.4. Following the implementation of numerical controls on toxicants, the EPA agrees that a modified whole effluent protocol is necessary to compensate for those toxicants that are controlled numerically.

8.16.5. The TRE reveals other unique conditions or characteristics which, in the opinion of the EPA, justify the incorporation of unanticipated special conditions in the Permit.