

DRAFT

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105**

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

**NPDES PERMIT NO. AZ0024635**

In compliance with the provisions of the Clean Water Act, Public Law 92-500, as amended, 33 U.S.C. 1251 et seq. (CWA) and the CWA implementing regulations, as amended, the following discharger is authorized to discharge from the identified facility at the outfall location(s) specified below, in accordance with the effluent limits, monitoring requirements, and other conditions set forth in this permit:

|                           |                          |
|---------------------------|--------------------------|
| Discharger Name           | ASARCO LLC               |
| Discharger Address        | 4201 West Pima Mine Road |
|                           | Sahuarita, AZ 85629      |
| Facility Name             | Mission Complex          |
| Facility Location Address | 4201 West Pima Mine Road |
|                           | Sahuarita, AZ 85629      |
| Facility Rating           | Minor                    |

| Outfall Number | General Type of Waste Discharged       | Outfall Latitude | Outfall Longitude | Receiving Water                                |
|----------------|--|------------------|-------------------|--|
| 002D           | Runoff North Dump (Reclaimed Tailings) | 32E 1' 46" N     | 111E 0' 46" W     | Unnamed washes flowing to the Santa Cruz River |

|  |  |
|--|--|
| This permit was issued on:   |  |
| This permit shall become effective on:   |  |
| This permit shall expire at midnight on:   |  |
| In accordance with 40 CFR 122.21(d), the discharger shall submit a new application for a permit at least 180 days before the expiration date of this permit, unless permission for a date no later than the permit expiration date has been granted by the Director. |  |

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2020, for the Regional Administrator.

\_\_\_\_\_  
Tomás Torres, Director  
Water Division

**TABLE OF CONTENTS**

**DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS**..... 3  
Discharge Limitations and Monitoring Requirements..... 3  
Additional Discharge Monitoring Requirements..... 4  
Narrative Standards..... 5  
Rainfall Monitoring..... 6  
**MONITORING AND REPORTING**..... 6  
Sample Collection and Analysis..... 6  
QA Manual..... 6  
Collection, Preservation and Handling..... 6  
Use of Approved Methods..... 7  
MDLs/MLs..... 7  
Reporting of Monitoring Results..... 8  
Twenty-four Hour Reporting of Noncompliance... 9  
Monitoring Records..... 10  
**BEST MANAGEMENT PRACTICES**..... 11  
SWPPP Implementation..... 11  
SWPPP Provisions..... 11  
SWPPP Minimum Requirement..... 11  
Annual SWPPP Review, Site Evaluation, and Reporting..... 15  
SWPPP Recordkeeping..... 15  
**STANDARD CONDITIONS** ..... 15  
**REOPENER** .....15  
**APPENDIX A DEFINITIONS**..... 16  
**APPENDIX B STANDARD CONDITIONS** .....17  
**APPENDIX C SITE MAP**..... 31

**Part I. EFFLUENT DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS**

**A. Effluent Limits.** ASARCO LLC (Asarco or the Permittee) is authorized to discharge stormwater and mine drainage at the Asarco Mission North Complex (the Mission North Complex) from Outfall 002D pursuant to the below-described limitations (the Permit).

1. Discharges resulting from storm events less than the 100-year 24-hour storm event from Outfall 002D is prohibited;
2. In the event of a discharge from Outfall 002D, such discharge shall be limited and monitored by the Permittee as specified in Table 1, below:

**TABLE 1: Discharge Limitations and Monitoring Requirements**

| Parameter                  | Maximum Allowable Discharge Limitations                                  | Monitoring Requirements     |                           |
|----------------------------|--|-----------------------------|---------------------------|
|                            | Daily Maximum Concentration Limits                                       | Monitoring Frequency (1)(2) | Sample Type (1)           |
| Flow (MGD) (3)             | (4)  | Daily (5)                   | Measured or Estimated (5) |
| Copper (Total Recoverable) | 0.057 mg/L (6)   | Once per discharge event    | Discrete                  |
| Lead (Total Recoverable)   | 0.015 mg/L   | Once per discharge event    | Discrete                  |
| Zinc (Total Recoverable)   | 2.491 mg/L (6)   | Once per discharge event    | Discrete                  |
| pH (7)                     | Not less than 6.5 standard units<br>nor greater than 9.0 standard units. | Once per discharge event    | Discrete                  |

Footnotes:

- (1) Except for flow, the measuring frequency and sample type for intermittent flows from all outfalls shall consist of grab samples resulting from a storm event that is greater than 0.1

inches in magnitude and that occurs at least 72 hours from the end of the previous storm event of at least 0.1 inches in magnitude. When field conditions are safe, samples shall be collected during the first hour of the discharge.

- (2) Monitoring results shall be reported quarterly. See Part II.B.1.
- (3) MGD = Million gallons per day.
- (4) Monitoring and reporting required. No limit set at this time.
- (5) Flow rates shall be determined as specified in Part I.F.2 below
- (6) These discharge limitations are based on a hardness of 259 mg/L as CaCO<sub>3</sub>. The discharge must be tested for hardness in the laboratory. Please see the hardness definition in Appendix A, Part B.
- (7) pH must be measured at the time of sampling and does not require a certified laboratory.

**B. Monitoring Requirements.**

The Permittee shall monitor discharges from Outfall 002D for additional parameters as specified in Table 2. If an assessment level (AL) is established, data results above the assessment level do not constitute a Permit violation but may trigger evaluation of Reasonable Potential (RP) by EPA. The Permittee shall use an approved analytical method with a Method Detection Limit (MDL) lower than the AL value per this Permit in Part II.A.4.

**TABLE 2: Additional Discharge Monitoring Requirements**

| Parameter                     | Assessment Levels (1)       |                 | Monitoring Requirements      |                 |
|-------------------------------|-----------------------------|-----------------|------------------------------|-----------------|
|                               | Daily Maximum Concentration | Reporting Units | Monitoring Frequency (2) (3) | Sample Type (2) |
| Total Suspended Solids (TSS)  | (4)                         | mg/L            | Once per discharge event     | Discrete        |
| Chemical Oxygen Demand (COD)  | (4)                         | mg/L            | Once per discharge event     | Discrete        |
| Nitrate/Nitrite (as Total N)  | (4)                         | mg/L            | Once per discharge event     | Discrete        |
| Hardness (CaCO <sub>3</sub> ) | (4)                         | mg/L            | Once per discharge event     | Discrete        |
| Arsenic (Total Recoverable)   | 420                         | ug/L            | Once per discharge event     | Discrete        |
| Cadmium (Total Recoverable)   | 181 (5)                     | ug/L            | Once per discharge event     | Discrete        |
| Chromium (Total Recoverable)  | 100                         | ug/L            | Once per discharge event     | Discrete        |
| Chromium VI (Dissolved) (6)   | 34                          | ug/L            | (6)                          | Discrete        |
| Mercury (Total Recoverable)   | 2                           | ug/L            | Once per discharge event     | Discrete        |
| Selenium (Total Recoverable)  | 33                          | ug/L            | Once per discharge event     | Discrete        |

Footnotes:

- (1) Concentration values are calculated based on Arizona Water Quality Standards. Monitoring and reporting required.
- (2) The measuring frequency and sample type for intermittent flows from all outfalls shall consist of grab samples resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the end of the previous storm event of at least 0.1 inches in magnitude. Samples shall be collected during the first hour of the discharge.
- (3) Monitoring results shall be reported quarterly. See Part II.B.1.
- (4) Monitoring and reporting required. No assessment level set at this time.
- (5) This assessment level is based on a hardness of 259 mg/L as CaCO<sub>3</sub>. The discharge must be tested for hardness in the laboratory. Please see the hardness definition in Appendix A.
- (6) Monitoring for chromium VI (Cr VI) is required only if the detected concentration of total recoverable chromium or its MDL exceeds the Cr VI AL of 34 ug/L. If the concentration of total recoverable chromium detected in any discharge event exceeds the Cr VI AL, all subsequent discharges shall be monitored for both total recoverable chromium and Cr VI.

C. [Reserved]

**D. Narrative Standards**

The State of Arizona has adopted water quality standards to protect the designated uses of its surface waters. The water quality standards vary by the designated use depending on the level of protection required to maintain that use. Pursuant to Arizona's water quality standards, the tributary that would receive any discharge from the outfalls at the Mission North Complex are protected by the Aquatic and Wildlife ephemeral (A&We) and Partial Body Contact (PBC) designated uses. See A.A.C. R18-11-105.

According to the applicable Arizona Water Quality Standards, the discharge shall be free from pollutants in amounts or combinations that:

1. Settle to form bottom deposits that inhibit or prohibit the habitation, growth or propagation of aquatic life;
2. Cause objectionable odor in the area in which the surface water is located;
3. Cause off-flavor in aquatic organisms;
4. Are toxic to humans, animals, plants, or other organisms;
5. Cause the growth of algae or aquatic plants that inhibit or prohibit the habitation, growth, or propagation of other aquatic life or that impair recreational uses;

- E.** The discharge shall be free from: (1) oil, grease, and other pollutants that float, such as debris, foam, and scum; (2) that cause a film or iridescent appearance on the surface of the water; and (3) that cause a deposit on a shoreline, bank, or aquatic vegetation.
- F.** Discharge samples taken in compliance with the monitoring requirements specified in Table 1 and Table 2 shall be discrete samples collected at Outfall 002D using an automated sampling device. When field conditions are safe, samples shall be collected during the first hour of any discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the end of the previous storm event of at least 0.1 inches in magnitude.
1. For each discharge sample collected, the following information about the storm event that generated the sampled runoff shall be recorded:
    - a. Date(s) of the storm event;
    - b. Estimated duration in hours of the storm event; and
    - c. Rainfall measurements in inches.
  2. For each discharge sample collected, the discharge flow rate in gallons per day shall either be recorded using a flow meter or estimated using one of the methods described in the *NPDES StormWater Sampling Guidance Document* (EPA 833/B-92-001).
- G. Rainfall Monitoring.** For the purposes of this permit, the gauge station used to monitor rainfall shall be that operated by the National Weather Service or the National Oceanographic and Atmospheric Administration nearest to the Facility. The Permittee may establish a gauge station at the Facility, in which case rainfall shall be recorded on a daily basis. If the Permittee establishes a gauge station at the Facility, the Permittee must utilize a National Weather Service Standard Rain Gauge.

## **PART II. MONITORING AND REPORTING**

### **A. Sample Collection and Analysis**

#### **1. Quality Assurance (QA) Manual**

The Permittee shall keep a QA Manual at the Facility that describes the sample collection and analyses processes. If the Facility collects samples or conducts sample analyses in-house, the Permittee shall develop the QA Manual. If a third party collects and/or analyzes samples on behalf of the Permittee, the Permittee shall ensure that the third party has an appropriate QA Manual. The QA Manual shall be available for EPA to review upon request. The Permittee shall take all reasonable steps to ensure the quality and accuracy of all data required under this Permit. The QA Manual shall be updated as necessary and shall describe the following:

- a. Project Management. Shall describe: the roles and responsibilities of the individuals collecting and/or managing samples taken pursuant to this Permit; the purpose of sample collection; the matrix to be sampled; the analytes or compounds being measured; the applicable regulatory or Permit-specific limits or Assessment Levels; and personnel qualification requirements for collecting samples.
  - b. Sample collection procedures. Shall describe: equipment used; the type and number of samples to be collected including QA/Quality Control (QC) samples (i.e., background samples, duplicates, and equipment or field blanks); preservatives and holding times for the samples (see methods under 40 CFR 136 or 9 A.A.C. 14, Article 6 or any condition within this Permit that specifies a particular test method.)
  - c. Approved analytical method(s) to be used. Shall describe: Method Detection Limits (MDLs) and Minimum Levels (MLs) to be reported; required quality control (QC) results to be reported (e.g., matrix spike recoveries, duplicate relative percent differences, blank contamination, laboratory control sample recoveries, surrogate spike recoveries, etc.) and acceptance criteria; and corrective actions to be taken by the Permittee or the laboratory as a result of problems identified during QC checks.
  - d. The QA Manual will also describe how the Permittee will: perform data review; report results; resolve data quality issues; and identify limitations on the use of the data.
2. Sample collection, preservation and handling shall be performed as described in 40 CFR 136 including the referenced Editions of *Standard Methods for the Examination of Water and Wastewater*. Where collection, preservation, and handling procedures are not described in 40 CFR 136, the procedures specified under 9 A.A.C. 14, Article 6 methods for wastewater samples shall be used. The Permittee shall outline the proper procedures in the QA Manual and follow those procedures when taking samples to meet the monitoring requirements in this permit.
  3. All samples collected for monitoring must be analyzed:
    - a. by a laboratory that is licensed by the Arizona Department of Health Services Office of Laboratory Licensure and Certification and that has demonstrated proficiency within the last 12 months for each parameter to be sampled under the terms of this Permit, under R9-14-609. This requirement does not apply to parameters that must be analyzed for at the time of sampling and which are therefore exempt under A.A.C. R 9-14-602. These parameters include flow and pH.



- b. using a method specified in this permit. If no test procedure is specified within this Permit, then the Permittee shall analyze the pollutant using:
    - i. a test procedure listed in 40 CFR 136;
    - ii. an alternative test procedure approved by EPA as provided in 40 CFR 136;
    - iii. a test procedure listed in 40 CFR 136, with modifications allowed by EPA and approved as a method alteration by the ADHS under A.A.C. R9-14-610(B); or
    - iv. If a test procedure for a pollutant is not available under subparagraphs (3)(b)(i) through (3)(b)(iii), a test procedure listed in A.A.C. R9-14-612 or approved under A.A.C. R9-14-610(B) for wastewater may be used, except the use of Hach Methods is not allowed unless otherwise specified in this Permit. If there is no approved wastewater method for a parameter, any other method identified in 9 A.A.C. 14, Article 6 and accepted by EPA that will achieve appropriate detection limits may be used to analyze that parameter.
  - c. For results to be considered valid, all analytical work shall meet Quality Control standards specified in the approved methods.
4. The Permittee shall use an analytical method with a Method Detection Limit (MDL, as defined in Appendix A of this Permit) that is lower than the discharge limitations, Assessment Levels, or water quality criteria specified in this Permit. If all method-specific MDLs are higher than the limits specified in this permit, the Permittee shall use the approved analytical method with the lowest method-specific MDL.
5. The Permittee shall use a standard calibration where the lowest standard point is equal to or less than the Minimum Level (ML) as defined under 40 CFR 136. When a method-specific ML is not available pursuant to 40 CFR 136, the *interim* ML (see Appendix A: Definitions) is to be used for calibration.
- When neither a ML nor MDL is promulgated under 40 CFR 136, the Laboratory ML, (as defined in Appendix A) shall be used for calibration.
6. In accordance with 40 CFR 122.45(c), discharge analyses for all metals in Table 1, with the exception of chromium VI, shall be measured as “total recoverable metals.” Discharge levels in this Permit are for total recoverable metals, except for Chromium VI, for which the levels listed are dissolved.

## **B. Reporting of Monitoring Results**

### Submittal of Discharge Monitoring Reports and the Use of NetDMR

- a. The results of all monitoring required by this permit shall be submitted in such a format as to allow direct comparison with effluent limitations and Permit requirements.

The Permittee shall submit Discharge Monitoring Reports (DMRs) using NetDMR (<http://www.epa.gov/netdmr>).

DMRs shall be submitted by the 28<sup>th</sup> day of the month following the previous reporting period. A DMR must be submitted for the reporting period even if there was not any discharge. If there is no discharge from the facility during the reporting period, the Permittee shall submit a DMR indicating no discharge as required.

- b. For effluent analyses, the Permittee shall utilize an analytical method with a published Method Detection Limit (MDL, as defined in Section G of this permit) that is lower than the effluent limitations (or lower than applicable numeric water quality criteria). If all published MDLs are higher than the effluent limitations or water quality criteria, then the Permittee shall utilize the analytical method with the lowest published MDL. The Permittee shall ensure that the laboratory utilizes a standard calibration where the lowest standard point is equal to or less than the minimum level (ML), as defined in Section G of this Permit.
- c. For samples collected during the quarterly reporting period, report on the DMR form:
  - (1) The maximum value, if the maximum value is greater than the ML; or NODI (Q)<sup>1</sup>, if the maximum value is greater than or equal to the laboratory's MDL, but less than the ML; or NODI (B)<sup>1</sup>, if the maximum value is less than the laboratory's MDL; and
  - (2) The average value of all analytical results where 0 (zero) is substituted for NODI (B) and the laboratory's MDL is substituted for NODI (Q), if more than one sample is collected during the quarterly reporting period.

As an attachment to each DMR form submitted during this permit term, the Permittee shall report for all parameters with monitoring requirements specified under Section A.2.B. of this Permit: the analytical method number or title, preparation and analytical procedure utilized by the laboratory, and published MDL or ML; the laboratory's MDL, the standard deviation (S) from the laboratory's MDL study, and the number of replicate analyses (n) used to compute the laboratory's MDL; and the ML.

### **C. Twenty-four Hour Reporting of Noncompliance**

The Permittee shall report any noncompliance which may endanger human health or the environment. See 40 CFR 122.41(l)(6). The Permittee is required to provide an oral report by directly speaking with an EPA staff person within twenty-four (24) hours from the time that Permittee becomes aware of the noncompliance. If the Permittee is unsuccessful in reaching an EPA staff person, the Permittee shall provide notification by 9 a.m. on the first business day

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<sup>1</sup> *NODI(Q)* means "No discharge/No data" (not quantifiable); *NODI(B)* means "No discharge/No data" (not detected).

following the noncompliance to the Wastewater Enforcement Section Manager at 415-972-3577 and to the ADEQ 24-hour hotline at 602-771-2330.

The Permittee shall follow up with a written submission within five (5) days of the time the Permittee becomes aware of the noncompliance. The written submission shall be emailed to [R9NPDES@epa.gov](mailto:R9NPDES@epa.gov) and/or the EPA staff person initially notified orally. The submission shall contain: a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times; and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The following shall be included as information which must be reported orally within 24 hours under this paragraph:

- a. Any unanticipated bypass which exceeds any effluent limit in the permit (see 40 CFR 122.44(g));
- b. Any upset which exceeds any effluent limit in the permit; and
- c. Violations of maximum daily discharge limit for any of the pollutants listed by the director in the Permit to be reported within 24 hours (see 40 CFR 122.22(g)).

#### **D. Additional Reporting Requirements**

Per 40 CFR 122.42(a), all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Director as soon as they know or have reason to believe:

- (1) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following “notification levels” (i) One hundred micrograms per liter (100 µg/l); (ii) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony; (iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with § 122.21(g)(7); or (iv) The level established by the Director in accordance with § 122.44(f).
- (2) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following “notification levels”: (i) Five hundred micrograms per liter (500 µg/l); (ii) One milligram per liter (1 mg/l) for antimony; (iii) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with § 122.21(g)(7); or (iv) The level established by the Director in accordance with § 122.44(f).

## **E. Monitoring Records**

The Permittee shall retain the following monitoring information at the Facility and must be able to provide it to EPA if it is requested:

1. Date, exact location, and time of sampling or measurements performed, preservatives used;
2. Individual(s) who performed the sampling or measurements;
3. Date(s) the analyses were performed;
4. Laboratory(s) which performed the analyses;
5. Analytical techniques or methods used;
6. Chain of custody forms;
7. Any comments, case narrative or summary of results produced by the laboratory. These comments should identify and discuss QA/QC analyses performed concurrently during sample analyses and should specify whether analyses met project requirements and 40 CFR 136. The summary of results must include information on initial and continuing calibration, surrogate analyses, blanks, duplicates, laboratory control samples, matrix spike and matrix spike duplicate results, sample receipt condition, holding times, and preservation;
8. Summary of data interpretation and any corrective action taken by the Permittee; and
9. Discharge Limitations or Assessment Levels for analytes/compound being analyzed.

## **Part III. BEST MANAGEMENT PRACTICES (BMPs)**

- A.** The Permittee shall continue to implement a Stormwater Pollution Prevention Plan (SWPPP). Within 30 days of the effective date of this Permit, the Permittee shall review the existing SWPPP for the Facility and revise it as necessary to ensure that it fully and accurately addresses all the following provisions. Any updates or revisions needed must be completed within ninety (90) days of the effective date of this Permit and submitted to EPA for review and approval.
- B.** The SWPPP shall include provisions for stormwater management such that all stormwater at the Mission Complex will be controlled through one or a combination of the following four methods:
  1. Stormwater run-off will be diverted through berms, channels, or dikes designed to

convey the 100-year, 6-hour storm event to containment areas where no discharge of water occurs;

2. Stormwater run-off will be diverted through berms, channels, or dikes designed to convey the 100-year, 6-hour storm event to containment areas designed to hold the 100-year, 24-hour storm event;
3. Stormwater run-on (generated from off-site) will be diverted around mining activities to prevent contact with areas disturbed by mining; or
4. Potential stormwater contaminants will be controlled at the source by capping, removing all exposed mineralized materials, or other reclamation and by stabilizing and protecting surface areas to effectively control erosion or leaching of contaminants.

C. The SWPPP shall contain the following minimum requirements:

1. **Pollution prevention team.** The SWPPP shall identify individuals at the facility that are members of a Stormwater Pollution Prevention Team who are responsible for assisting the facility management in implementation, maintenance, and revision of the SWPPP. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's SWPPP.
2. **Site Description.** The SWPPP shall include a general description of the Facility, process operations, hydrology, topography, potential receiving waters, a description of Outfall 002D location, and potentially contributing drainage areas to permitted Outfall 002D.
3. **Potential pollution sources.** The SWPPP shall include a description of each area of the mine site (e.g. mining/milling areas; access and haul roads; equipment storage; fueling and maintenance areas; ore piles; materials handling areas; outdoor manufacturing, storage, or material disposal areas; chemical and explosives storage areas; waste rock/overburden; topsoil storage areas; waste storage areas; tailings piles; tailings ponds; tailings conveyances) and its potential for pollutants to be present in significant amounts. Areas of the mine site shall be indicated on the site map.

Factors that shall be considered for determining potential pollution sources include: the mineralogy of the ore, waste rock and native soils; toxicity and quantity of chemicals used, produced or discharged in the area; likelihood of contact with stormwater; vegetation of site; stabilization of site; history of leaks or spills; and characterization data for acid generating materials.

4. **Control of Runoff and Spills**
  - a. The SWPPP shall describe existing and planned diversion and containment structures for the control of mine drainage and stormwater combined with mine drainage such that no discharge occurs except during storm events larger than those described in Section B.
  - b. The SWPPP shall contain a drainage basin assessment to determine the outline of each basin, and its BMP(s) and designated outfall, or termination (if controlled by evapotranspiration or infiltration). The SWPPP shall describe assumptions and methods used to determine the position of drainage divides and present this data on a site map. The method must include field verification. The SWPPP shall provide calculations that demonstrate the stormwater capacities for all retention basins at the Mission North Complex.
  - c. The SWPPP shall include the BMPs utilized to contain spills and may include BMPs such as grading a road so as to provide containment for spray originating from a failed coupling. The SWPPP shall describe the drainage such that any spills of tailings or process fluids will be directed to sediment ponds or fluid control structures designed to contain the 100-year, 24-hour storm event, and the methods to be used to clean up spills. The location of contained process fluids and BMPs to control spills or leaks shall be shown on the map. These areas will be made accessible for regular inspections.
5. **Stormwater diversions.** The SWPPP shall indicate the location and the type of stormwater diversions and conveyances (e.g. dikes, swales, curbs, berms, pipe slope drains, subsurface drains, channels, gutters, rolling dips and road slopes) for all areas of the mine.
6. **Stormwater containment controls.** The SWPPP shall describe appropriate BMPs that will be used to control pollutants in stormwater discharges.
7. **Site Map.** The SWPPP shall include site map that show all features required in the SWPPP, including potential pollution sources, conveyance structures, stormwater controls, mine features, tailings, drainage area boundary lines, Outfall 002D or termination points, stormwater monitoring points, and all features described in Sections III.C.(2)-(6), above.
8. **Maintenance of Containment Facilities**
  - a. The Permittee shall monitor the available surge capacity and freeboard in the process impoundment and all stormwater basins designated as no-discharge

quarterly and after rainfall events of over 3 inches in 24 hours. After storm events, the Permittee shall take measures as soon as practicable to restore the freeboard necessary in the impoundments to contain the design storm event. Such measures shall be continued by the Permittee until adequate freeboard is restored.

- b. The Permittee shall assess the siltation of the process ponds and all stormwater basins designated as no-discharge annually and after rainfall events of over 3 inches in 24 hours. The Permittee shall take action to remove solids when liquid storage capacity is less than 80% of the required design volume. The Permittee shall take measures to maintain the integrity of containment liners during removal of solids.
  - c. The Permittee shall establish a maintenance program for pump stations, spare pumps, pipelines, containment structures, and standby electrical generators to prevent a spill or discharge of tailings. The Permittee shall maintain records for pump station testing and equipment inspections.
  - d. All areas adjacent to pipes transporting tailings and tailings return water will be bermed and/or graded to contain any spill or leak.
9. **Stormwater source controls.** The SWPPP shall include an assessment of areas where stormwater will be controlled at the source instead of diversion and containment. The SWPPP shall describe BMPs that will be used to stabilize and protect surface areas to effectively control erosion at the source. The BMPs shall, at a minimum, include:
- a. Establishment of an effective, permanent vegetative cover at least equal in extent of cover to natural vegetation or that is necessary to achieve the approved post-mining use.
  - b. Establishment of stable slopes to minimize sideslope erosion or gullies. BMPs for creating stable slopes include grading, berming, contour furrowing, limiting slope length, and creating stable slope shapes (concave slopes and complex slopes instead of convex and simple).
  - c. Regulating channel velocity through diversions, grading, rip rap, or other permanent control measure to minimize erosion.
  - d. Demonstration through monitoring that runoff from reclaimed lands meets all applicable surface water quality standards.
10. **Site Inspection and Maintenance.** All BMPs identified in the SWPPP must be maintained in effective operating condition. The SWPPP shall include a procedure for routine inspection of stormwater diversions, stormwater controls, and sediment and

erosion controls. The SWPPP shall include inspection and maintenance procedures for storage/containment ponds to assess available freeboard and surge capacity, maintenance of ponds, containment structures, pipelines, pump stations, and structural repair of berms, ditches, dikes, dams, etc.

- a. The BMPs identified in the SWPPP must be inspected at least quarterly and after significant precipitation events.
  - b. The SWPPP shall describe a method to implement repairs to facility deficiencies found during regular maintenance inspections at all stormwater facilities. If site inspections identify BMPs that are not operating effectively, maintenance must be performed before the next anticipated storm event, or as necessary to maintain the continued effectiveness of stormwater controls. If maintenance prior to the next anticipated storm event is impracticable, maintenance must be scheduled and accomplished as soon as practicable.
  - c. The Permittee shall conduct detailed visual inspections to determine the structural integrity of all visible portions of tailings reclaim water pipelines at least twice annually for pipelines that are situated such that a leak could contribute to storm water discharges from the site. In addition, a drive-by inspection of the tailings reclaim water pipeline for leaks and spills shall be conducted at least monthly. All repairs deemed necessary based on the findings of the inspections shall be completed as soon as practicable, and all spills and leaks shall be cleaned up in timely manner.
  - d. Records of inspections shall be maintained onsite. The Permittee shall implement and maintain an effective system for recordkeeping and tracking of follow-up corrective actions needed and taken in response to inspections.
11. **Employee Training.** The Permittee shall ensure that an effective training program is developed and implemented to inform personnel responsible for stormwater management or implementing activities addressed in the SWPPP. The SWPPP shall include a description of this training program. Training shall address topics such as goals of the SWPPP, spill prevention and control, good housekeeping and materials management practices, stormwater spill prevention and response procedures, and stormwater monitoring requirements. The Permittee must hold this training at least annually and the training agenda and records of employee attendance must be maintained as part of the SWPPP.
12. **Endangered Species.** The permittee shall follow protocols established with the Fish and Wildlife Service for mitigation when construction and maintenance activities related to the SWPPP affect endangered species. Such requirements are detailed in Exhibit XX to this Permit. The details of the protocols must also be included as an attachment in the SWPPP document developed by the Permittee pursuant to this Permit.



**D. Annual SWPPP Review, Compliance Evaluation, and Annual Report**

1. The Permittee shall review the SWPPP on an annual basis and update the SWPPP as necessary. The Permittee shall amend the SWPPP whenever: a) there is a change in design, construction, operation, or maintenance at the Facility which may have a significant effect on the discharges, or potential discharges, authorized by this Permit; or b) monitoring results and/or an inspection by the Permittee or EPA indicate that the SWPPP is ineffective in controlling storm water discharge quality.
2. The Permittee shall conduct a comprehensive site compliance evaluation at least annually to determine whether the BMPs and pollution prevention measures are adequate and properly implemented or whether additional control measures are needed. Structural stormwater management measures, sediment, and erosion control measures, and other structural pollution prevention measures identified in the SWPPP shall be observed to ensure that they are operating correctly. A visual evaluation of all equipment needed to implement the plan, including spill response equipment, shall be made.

Based on the results of the evaluation, the Permittee shall revise the stormwater pollution prevention measures and controls identified in the SWPPP as appropriate within two (2) weeks after the evaluation. The permittee must implement any changes to the plan within twelve (12) weeks after the evaluation.

3. The Permittee shall make a report summarizing the scope of the annual site compliance evaluation, personnel making the evaluation, the date(s) of the evaluation, major observations relating to the implementation of the SWPPP, and actions taken per Parts III.C and IV.A of the permit. The report shall be submitted to EPA on an annual basis and is due by the yearly anniversary of the effective date of this Permit. The report shall also be retained at the Facility as part of the SWPPP for at least 3 years from the date of preparation. The report shall identify any incidents of noncompliance and recommendations for revisions of the SWPPP. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP and Part III of this permit. The report shall be signed in accordance with the attached Region 9 "STANDARD FEDERAL NPDES PERMIT CONDITIONS" found in Appendix C.

The annual report shall include a certification that the SWPPP has been reviewed, remains accurate or has been revised as necessary, and that the Permittee is implementing the SWPPP and the stormwater provisions required by this Permit.

**E. SWPPP Recordkeeping Requirements**

1. The permittee shall retain a copy of the current SWPPP on site at the facility or locally available for use by any agency with regulatory control over stormwater discharges at the time of an inspection by such authority. A record of SWPPP revisions, including dates, authorizing personnel, and summaries of major changes to each revision, shall be maintained with the current SWPPP. A copy of the SWPPP and record of revisions shall be provided to EPA upon request.
2. The permittee shall maintain all logs, inspection and maintenance reports, and other records required by the SWPPP or this permit on file at the facility for three years where they shall be available for inspection by EPA.

**Part IV. STANDARD CONDITIONS**

- A. Standard Conditions. The permittee shall comply with all EPA Region 9 Standard Conditions, which are applicable to all EPA-issued NPDES permits pursuant to 40 CFR 122.41. Those standard conditions are found in Appendix B.
- B. Certification. Any person signing a document submitted to EPA pursuant to this Permit must make the following certification:

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

**Part V. REOPENER**

This permit may be modified per the provisions of 40 CFR Part 122 and 124. This permit may be reopened based on newly available information; to add conditions or limits to address demonstrated effluent toxicity; to implement any EPA-approved new Arizona water quality standard; or to re-evaluate RP based on monitoring conducted under this permit.

## APPENDIX A: DEFINITIONS

*DAILY MAXIMUM CONCENTRATION LIMIT* means the maximum allowable discharge of a pollutant in a calendar day as measured on any single discrete sample or composite sample.

*DISCRETE or GRAB SAMPLE* means an individual **sample of at least 100 mL** collected from a single location, or over a period of time not exceeding 15 minutes.

*HARDNESS* means the sum of the calcium and magnesium concentrations, expressed as calcium carbonate (CaCO<sub>3</sub>) in milligrams per liter.

*INTERIM ML* If a promulgated method-specific ML is not available, then an interim ML must be calculated. The interim ML is equal to 3.18 times the promulgated method-specific MDL rounded to the nearest multiple of 1, 2, 5, 10, 20, 50, etc.

*LABORATORY ML* is to be calculated when neither an ML or MDL are promulgated under 40 CFR 136 or 9 A.A.C. 14, Article 6. A laboratory ML should be calculated by multiplying the best estimate of detection by a factor of 3.18 and rounding the value to the nearest multiple of 1, 2, 5, 10, 20, 50, etc. When a range of detection is given, the lower end value of the range of detection should be used to calculate the ML.

*METHOD DETECTION LIMIT (MDL)* is the minimum concentration of an analyte that can be detected with 99% confidence that the analyte concentration is greater than zero, as defined under 40 CFR 136 or 9 A.A.C. 14, Article 6 methods. The procedure for determination of a laboratory MDL is prescribed under 9 A.A.C. 14, Article 6 methods or by 40 CFR Part 136, Appendix B (1998).

*METHOD SPECIFIC ML* is the promulgated method-specific ML contained in 40 CFR 136 or 9 A.A.C.14, Article 6 (as “Minimum Levels”) and must be used if available.

*MINE DRAINAGE* means any water drained, pumped, or siphoned from a mine.

*MINIMUM LEVEL (ML)* is the concentration at which the entire analytical system gives a recognizable signal and acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all of the method-specified sample weights, volumes, and processing steps have been followed (as defined in EPA’s draft *National Guidance for the Permitting, Monitoring, and Enforcement of Water Quality-Based Effluent Limitations Set Below Analytical Detection/Quantitative Levels*, March 22, 1994).

## **APPENDIX B: REGION 9 NPDES STANDARD CONDITIONS**

In accordance with 40 CFR § 122.41, the following conditions apply to all NPDES permits and are expressly incorporated into this permit.

1. Duty to comply; at 40 CFR § 122.41(a).

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

a. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under 405(d) of the CWA within the time provided in the regulations that established these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

b. The Clean Water Act provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed \$25,000 per day for each violation. The Clean Water Act provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another

person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the 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.<sup>1</sup>

c. 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. Administrative penalties for Class I violations are not to exceed \$10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$25,000. Penalties for Class II violations are not to exceed \$10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$125,000.1

2. Duty to reapply; at 40 CFR § 122.41(b).

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. Any permittee with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director.

3. Need to halt or reduce activity not a defense; at 40 CFR § 122.41(c).

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

4. Duty to mitigate; at 40 CFR § 122.41(d).

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.

5. Proper operation and maintenance; at 40 CFR § 122.41(e).

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

backup 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. Permit actions; at 40 CFR § 122.41(f).

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. Property rights; at 40 CFR § 122.41(g).

This permit does not convey any property rights of any sort, or any exclusive privilege.

8. Duty to provide information; at 40 CFR § 122.41(h).

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

9. Inspection and entry; at 40 CFR § 122.41(i).

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

- a. 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;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameters at any location.

10. Monitoring and records; at 40 CFR § 122.41(j).

- a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR § 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample measurement, report or application. This period may be extended by request of the Director at any time.
- c. Records of monitoring information shall include:
  - (1) The date, exact place, and time of sampling or measurements;
  - (2) The individual(s) who performed the sampling or measurements;
  - (3) The date(s) analyses were performed
  - (4) The individuals(s) who performed the analyses;
  - (5) The analytical techniques or methods used; and

(6) The results of such analyses.

d. Monitoring must be conducted according to test procedures approved under 40 CFR § 136 or, in the case of sludge use or disposal, approved under 40 CFR § 136 unless otherwise specified in 40 CFR § 503, unless other test procedures have been specified in the permit.

e. The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

11. Signatory requirement; at 40 CFR § 122.41(k).

a. All applications, reports, or information submitted to the Director shall be signed and certified. (See 40 CFR § 122.22.) All permit applications shall be signed as follows:

(1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities,

provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. Note: EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in 40 CFR § 122.22(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under 40 CFR § 122.22(a)(1)(ii) rather than to specific individuals.

(2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

b. All reports required by permits, and other information requested by the Director shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- (1) The authorization is made in writing by a person described in paragraph (a) of this section;
- (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters of the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and,
- (3) The written authorization is submitted to the Director.

c. Changes to authorization. If an authorization under paragraph (b) of this section 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 paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

d. Certification. Any person signing a document under paragraph (a) or (b) of 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."

e. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

12. Reporting requirements; at 40 CFR § 122.41(i).

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

- (1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR § 122.29(b); or
- (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR § 122.42(a)(1).



(3) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;

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

c. Transfers. This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the CWA. (See 40 CFR § 122.61; in some cases, modification or revocation and reissuance is mandatory.)

(1) Transfers by modification. Except as provided in paragraph (b) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under 40 CFR § 122.62(b)(2)), or a minor modification made (under 40 CFR § 122.63(d)), to identify the new permittee and incorporate such other requirements as may be necessary under CWA.

(2) Automatic transfers. As an alternative to transfers under paragraph (a) of this section, any NPDES permit may be automatically transferred to a new permittee if:

(A) The current permittee notifies the Director at least 30 days in advance of the proposed transfer date in paragraph (b)(2) of this section;

(B) 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

(C) The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification under 40 CFR § 122.63. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b)(2) of this section.

d. Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices. As of December 21, 2016 all reports and forms submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR § 127.2(b), in compliance with this section and 40 CFR § 3 (including, in all cases, subpart D to part 3), 40 CFR § 122.22, and 40 CFR § 127.

(2) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR § 136 or, in the

case of sludge use or disposal, approved under 40 CFR § 503, or as specified in the permit, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.

(3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

e. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

f. Twenty-four hour reporting.

(1) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A report shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times), and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described above (with the exception of time of discovery) as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), type of sewer overflow structure (e.g., manhole, combine sewer overflow outfall), discharge volumes untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the sewer overflow event, and whether the noncompliance was related to wet weather. As of December 21, 2020 all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR § 127.2(b), in compliance with this section and 40 CFR § 3 (including, in all cases, subpart D to part 3), 40 CFR § 122.22, and 40 CFR § 127.

(2) The following shall be included as information which must be reported within 24 hours under this paragraph.

(i) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See 40 CFR § 122.41(g).)

(ii) Any upset which exceeds any effluent limitation in the permit.

(iii) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. (See 40 CFR § 122.44(g).)

(3) The Director may waive the written report on a case-by-case basis for reports under 40 CFR § 122.41(l)(6)(ii) of this section if the oral report has been received within 24 hours.

g. Other noncompliance. The permittee shall report all instances of noncompliance not reported under 40 CFR § 122.41(l)(4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (l)(6) of this section.

h. Other information. Where 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 in any report to the Director, it shall promptly submit such facts or information.

13. Bypass; at 40 CFR § 122.41(m).

a. Definitions.

(1) “Bypass” means the intentional diversion of waste streams from any portion of a treatment facility.

(2) “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.

b. 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 paragraphs 40 CFR § 122.41(m)(3) and (m)(4) of this section.

c. Notice.

(1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (1)(6) of this section (24-hour notice).

(3) As of December 21, 2020 all notices submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR § 127.2(b), in compliance with this section and 40 CFR § 3 (including, in all cases, subpart D to part 3), 40 CFR § 122.22, and 40 CFR § 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.

d. Prohibition of bypass.

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

(i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

(iii)The permittee submitted notices as required under paragraph (m)(3) of this section.

(2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph (m)(4)(i) of this section.

14. Upset; at 40 CFR § 122.41(n).

a. Definition. “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 preventative maintenance, or careless or improper operation.

b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (n)(3) of this section 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.

c. 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:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated; and

(3) The permittee submitted notice of the upset as required in paragraph (l)(6)(ii)(B) of this section (24 hour notice).

(4) The permittee complied with any remedial measures required under paragraph (d) of this section.

d. Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

15. Reopener Clause; at 40 CFR § 122.44(c).

For any permit issued to a treatment works treating domestic sewage (including “sludge-only facilities”), the Director shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under section 405(d) of the CWA. The Director may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

16. Minor modifications of permits; at 40 CFR § 122.63.

Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of 40 CFR §

124. Any permit modification not processed as a minor modification under this section must be made for cause and with 40 CFR § 124 draft permit and public notice as required in 40 CFR § 122.62. Minor modifications may only:

- a. Correct typographical errors;
- b. Require more frequent monitoring or reporting by the permittee;
- c. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or
- d. Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director.
- e. Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under 40 CFR § 122.29.
- f. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.
- g. Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR § 403.11 (or a modification thereto that has been approved in accordance with the procedures in 40 CFR § 403.18) as enforceable conditions of the POTW's permits.

17. Termination of permits; at 40 CFR § 122.64.

a. The following are causes for terminating a permit during its term, or for denying a permit renewal application:

- (1) Noncompliance by the permittee with any conditions of the permit;
- (2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;
- (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
- (4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

18. Availability of Reports; pursuant to CWA § 308

Except for data determined to be confidential under 40 CFR § 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Regional Administrator. As required by the CWA, permit applications, permits, and effluent data shall not be considered confidential.

19. Removed Substances; pursuant to CWA § 301

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials entering waters of the U.S.

20. Severability; pursuant to CWA § 512

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 remainder of this permit, shall not be affected thereby.

21. Civil and Criminal Liability; pursuant to CWA § 309

Except as provided in permit conditions on “Bypass” and “Upset”, nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

22. Oil and Hazardous Substances Liability; pursuant to CWA § 311

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 CWA.

23. State, Tribe, or Territory Law; pursuant to CWA § 510

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the operator from any responsibilities, liabilities, or penalties established pursuant to any applicable State, Tribe, or Territory law or regulation under authorities preserved by CWA § 510.

**APPENDIX C: SITE MAP**