

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

AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

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

Westmoreland Resources, Inc.

is authorized to discharge mine drainage from 24 outfalls as described in Part 1.2 of this permit associated with the Absaloka Mine South Extension near Hardin, Big Horn County, Montana, on the Crow Indian Reservation

to the Middle Fork of Sarpy Creek and to unnamed ephemeral tributaries of Sarpy Creek,

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

This permit shall become effective May 1, 2009.

This permit and the authorization to discharge shall expire at midnight, March 31, 2014.

Signed this day of

Authorized Permitting Official

Eddie A. Sierra, Acting Assistant Regional Administrator
Office of Partnerships and Regulatory Assistance

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1. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1.1. Definitions.

1-year, 2-year, and 10-year, 24-hour precipitation events mean the maximum 24-hour precipitation event with a probable recurrence interval of once in one, two, and ten years respectively as defined by the National Weather Service Technical Paper No. 40, "Rainfall Frequency Atlas of the U.S.," May 1961, or equivalent regional or rainfall probability information developed therefrom.

The *30-day (and monthly) average*, other than for microbiological organisms (e.g., bacteria, viruses, etc.), is the arithmetic average of all samples collected during a consecutive 30-day period or calendar month, whichever is applicable. Geometric means shall be calculated for microbiological organisms unless specified otherwise in the permit. The calendar month shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms.

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

Active mining area means the area, on and beneath land, used or disturbed in activity related to the extraction, removal, or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas, and post-mining areas.

Alkaline mine drainage means mine drainage which, before any treatment, has a pH equal to or greater than 6.0, and total iron concentration of less than 10 mg/L.

Bond release means the time at which the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work has been satisfactorily completed.

Brushing and grubbing Area means the area where woody plant materials that would interfere with soil salvage operations have been removed or incorporated into the soil that is being salvaged.

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

Coal preparation plant means a facility where coal is subjected to cleaning, concentrating, or other processing or preparation in order to separate coal from its impurities and then is loaded for transit to a consuming facility.

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

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

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

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

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

EPA means the United States Environmental Protection Agency.

GPM means gallons per minute.

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

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

mg/L means milligrams per liter.

ml/L means milliliters per liter.

Mine drainage means any drainage, and any water pumped or siphoned, from an active mining area or a post-mining area.

National Pollutant Discharge Elimination System (NPDES) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA.

Post-mining area means a reclamation area.

Reclamation area means the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.

Regraded area means the surface area of a coal mine that has been returned to required contour.

Settleable solids is that matter measured by the volumetric method specified in 40 C.F.R. §434.64

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.

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

Topsoil stockpiling area means the area outside the mined-out area where topsoil is temporarily stored for use in reclamation, including containment berms.

Total metals includes metals in the dissolved, colloidal, and particulate fractions.

Whole Effluent Toxicity, Acute occurs when 50 percent or more mortality is observed for either species (see Part 1.3.) at any effluent concentration. Mortality in the control must simultaneously be 10 percent or less for the effluent results to be considered valid.

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

- 1.2. Description of Discharge Point(s). The authorization to discharge provided under this permit is limited to those outfalls specifically designated below as discharge locations. Field conditions may dictate that outfall locations be moved, deleted or combined. Outfall locations may be combined or deleted or moved up to 1,000 feet to accommodate conditions in the filed, but new outfalls may not added without modifying this permit. (Discharges at any location not authorized under an NPDES permit is a violation of the Clean Water Act and could subject the person(s) responsible for such discharge to penalties under Section 309 of the Act.)

| OUTFALL NO. | LATITUDE | LONGITUDE | RECEIVING WATER |
|-------------|---------------|----------------|--|
| 1 | N 45° 45' 42" | W 107° 02' 37" | MIDDLE FORK SARPY CREEK |
| 2 | N 45° 45' 24" | W 107° 02' 19" | MIDDLE FORK SARPY CREEK |
| 3 | N 45° 45' 20" | W 107° 02' 16" | MIDDLE FORK SARPY CREEK |
| 4 | N 45° 45' 15" | W 107° 02' 12" | MIDDLE FORK SARPY CREEK |
| 5 | N 45° 45' 8" | W 107° 01' 54" | MIDDLE FORK SARPY CREEK |
| 6 | N 45° 45' 4" | W 107° 02' 18" | MIDDLE FORK SARPY CREEK |
| 7 | N 45° 45' 16" | W 107° 02' 15" | MIDDLE FORK SARPY CREEK |
| 8 | N 45° 45' 30" | W 107° 02' 29" | MIDDLE FORK SARPY CREEK |
| 9 | N 45° 45' 41" | W 107° 02' 39" | MIDDLE FORK SARPY CREEK |
| 10 | N 45° 44' 50" | W 107° 03' 34" | UNNAMED EPHEMERAL TRIBUTARY TO SARPY CREEK |
| 11 | N 45° 44' 48" | W 107° 03' 60" | UNNAMED EPHEMERAL TRIBUTARY TO SARPY CREEK |
| 12 | N 45° 44' 50" | W 107° 04' 12" | UNNAMED EPHEMERAL TRIBUTARY TO SARPY CREEK |
| 13 | N 45° 44' 52" | W 107° 04' 22" | UNNAMED EPHEMERAL TRIBUTARY TO SARPY CREEK |
| 14 | N 45° 44' 54" | W 107° 04' 37" | UNNAMED EPHEMERAL TRIBUTARY TO SARPY CREEK |
| 15 | N 45° 45' 6" | W 107° 04' 13" | UNNAMED EPHEMERAL TRIBUTARY TO SARPY CREEK |
| 16 | N 45° 45' 15" | W 107° 04' 6" | UNNAMED EPHEMERAL TRIBUTARY TO SARPY CREEK |
| 17 | N 45° 45' 16" | W 107° 04' 6" | UNNAMED EPHEMERAL TRIBUTARY TO SARPY CREEK |
| 18 | N 45° 45' 24" | W 107° 04' 7" | UNNAMED EPHEMERAL TRIBUTARY TO SARPY CREEK |
| 19 | N 45° 45' 30" | W 107° 04' 10" | UNNAMED EPHEMERAL TRIBUTARY TO SARPY CREEK |
| 20 | N 45° 45' 32" | W 107° 04' 16" | UNNAMED EPHEMERAL TRIBUTARY TO SARPY CREEK |
| 21 | N 45° 45' 35" | W 107° 04' 22" | UNNAMED EPHEMERAL TRIBUTARY TO SARPY CREEK |
| 22 | N 45° 45' 39" | W 107° 04' 27" | UNNAMED EPHEMERAL TRIBUTARY TO SARPY CREEK |
| 23 | N 45° 45' 50" | W 107° 04' 30" | UNNAMED EPHEMERAL TRIBUTARY TO SARPY CREEK |
| 24 | N 45° 45' 57" | W 107° 04' 38" | UNNAMED EPHEMERAL TRIBUTARY TO SARPY CREEK |

- 1.3. Effluent Limitations. These effluent limits apply to discharges of mine drainage, excluding mine drainage from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas (see Part 1.6). These effluent limits also apply to discharges of groundwater and for all dewatering discharges, regardless of whether the discharges are dewatering precipitation from precipitation events less than or greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume). Effective immediately and lasting through the life of this permit, the quality of effluent discharged by the facility shall to all outfalls listed in Part 1.2, at a minimum, meet the limitations as set forth below:

| Effluent Characteristic | 30-Day Average <u>a/</u> | Daily Maximum <u>a/</u> |
|--|--------------------------|-------------------------|
| Total Iron, mg/L | 3.0 | 6.0 |
| Total Suspended Solids, mg/L | 35.0 | 70.0 |
| Oil and Grease, mg/L | 15 | 10 |
| Dissolved Aluminum, ug/L | 87 | 750 |
| Dissolved Iron, ug/L | 1000 | n/a |
| Dissolved Lead, ug/L | 10.9 | n/a |
| There shall be no acute toxicity in the discharge (LC ₅₀ >100%) <u>b/</u> | n/a | <u>b/</u> |

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

b/ Whole Effluent Toxicity (WET) limitations will apply to the discharge for both Pimephales promelas and Ceriodaphnia dubia. Upon three (3) consecutive successful WET tests for a given indicator species, subsequent WET tests may be continued on an annual basis for that indicator species. Should acute toxicity and/or chronic toxicity be detected in the permittee's discharge, an additional test shall be conducted within two weeks of the date when the permittee learned of the test failure. If only one species fails, retesting may be limited to this species. Should acute toxicity and/or chronic toxicity be detected in the permittee's discharge, a Toxicity Identification Evaluation – Toxicity Reduction Evaluation (TIE-TRE) shall be undertaken by the permittee to establish the cause of the toxicity, locate the source(s) of the toxicity, and develop control of or treatment of the toxicity. Failure to initiate, or conduct and adequate TIE-TRE, or delays in the conduct of such tests, shall be considered a justification for non-compliance with the whole effluent toxicity (WET) limitations contained in this Part of the permit. A TRE plan needs to be submitted to the permitting authority within 45 days after confirmation of the continuance of the effluent toxicity.

The pH shall be not be less than 6.0 standard units nor greater than 9.0 standard units at any time

- 1.4. Effluent Limitations for Smaller Precipitation Events. These effluent limits apply to discharges of mine drainage, excluding mine drainage from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas (see Part 1.6). These effluent limits apply to any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) and to discharges from steep slope areas as defined in section 515(d)(4) of the Surface Mining Control and Reclamation Act of 1977, as amended. Effective immediately and lasting through the life of this permit, the quality of effluent discharged by the facility shall, at a minimum, meet the limitations as set forth below:

| Effluent Characteristic | Daily Maximum <u>a/</u> |
|-----------------------------------|-------------------------|
| Settleable Solids, ml/L <u>b/</u> | 0.5 |
| Dissolved Aluminum, ug/L | 750 |

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

b/ Settleable solids is that matter measured by the volumetric method specified in 40 C.F.R. §434.64

The pH shall be not be less than 6.0 standard units nor greater than 9.0 standard units at any time

The operator shall have the burden of proof that the discharge or increase in discharge was caused by the applicable precipitation event.

- 1.5. Effluent Limitations for Larger Precipitation Events. These effluent limits apply to discharges of mine drainage, excluding mine drainage from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas (see Part 1.6). These effluent limits apply to any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume). Effective immediately and lasting through the life of this permit, the quality of effluent discharged by the facility shall, at a minimum, meet the limitations as set forth below:

The pH shall be not be less than 6.0 standard units nor greater than 9.0 standard units at any time

The operator shall have the burden of proof that the discharge or increase in discharge was caused by the applicable precipitation event.

- 1.6. Effluent Limitations Applicable to Mine Drainage from Reclamation Areas, Brushing and Grubbing Areas, Topsoil Stockpiling Areas, and Regraded Areas

- 1.6.1. Sediment Control Plan. A Sediment Control Plan (see Part 5) has been submitted to and approved by EPA along with a watershed model (see Part 5) which demonstrates that implementation of the Sediment Control Plan will result in average annual sediment yields that will not be greater than the sediment yield levels from pre-mined undisturbed conditions. Westmoreland Resources, Inc. must implement and maintain all procedures, design specifications, and Best Management Practices (BMPs) in accordance with the Sediment Control Plan as a condition of this permit. The limitations provided in Parts 1.6.2 - 1.6.20 are comprised of requirements from the Sediment Control Plan initially submitted and additional conditions based on professional judgment and do not supersede the requirement to comply with all of the terms of the Sediment Control Plan. The requirements in Parts 1.6.2 - 1.6.20 summarize requirements provided in the Sediment Control Plan initially submitted pursuant to OSM permit MT-0021 and are provided in this permit to assist EPA inspectors and interested parties in determining whether there is reasonable compliance with the initial terms of the plan. It is anticipated that, based on field conditions, the sediment control plan required by OSM permit may include minor modifications, thus ultimate compliance should be evaluated based on the most current version of the approved plan as required by OSM permit MT-0021.
- 1.6.2. Prohibition of Off-site Sediment Ponds. Control of surface water runoff and associated sedimentation will be accomplished without the use of off-site sediment pond dams consistent with the Final Effluent Limitations Guidelines and Standards for the Western Alkaline Coal Mining Subcategory (EPA-B-01-012) and alternate sediment control regulations.
- 1.6.3. Stream Buffer Zones. With the exception of three road and dragline crossings, a minimum distance of 100 feet from the stream channel must be maintained as undisturbed and demarcated with appropriate signs along the Middle Fork of Sarpy Creek.
- 1.6.4. Waste, Garbage, and Floatable Debris. Waste, garbage, and floatable debris shall not be discharged beyond the limits of disturbance for the mine.
- 1.6.5. Roadway Conveyances. Conveyance structures shall be constructed to route the 10-year, 24-hour storm event to sediment traps and along and under roads during mining.
- 1.6.6. Road Crossings. Where a conveyance crosses a road, pipe should be of a suitable size (see Figures A-4, A-5, Part 5.3A) to ensure that design capacity can be maintained.
- 1.6.7. Unlined Ditch Design and Maintenance. Unlined ditches designed for conveyance shall only be used where flow velocities are anticipated to be less than 5 feet-per-second. Ditches shall be maintained

sufficient to maintain the design capacity. Where ditch erosion occurs at higher flow velocities, more frequent trap maintenance to maintain adequate capacity may be required. Ditches shall be inspected periodically for blockages and erosion. Blockage shall be removed and the ditch restored to its design depth. Erosion and sedimentation that compromises the ability of the ditch to convey its design flow shall be addressed by reconstructing the ditch to its design geometry.

- 1.6.8. Ditch Transitions. Ditch transitions from triangular to trapezoidal shall be made over a distance of 10 feet or more. If a transition is required because of an intersecting ditch, the transition shall be made above, rather than below the intersection.
- 1.6.9. Intersecting Ditches. Intersecting ditches serving drainage areas should merge with parallel flow lines to the extent possible to minimize erosion.
- 1.6.10. Establishment of Sediment Traps. In smaller watersheds, which range in size from less than 10 to about 160 acres, ditching and sediment traps established to convey and contain the 2-year, 24-hour event plus annual sediment yield for 3 years shall be established prior to clearing, grubbing, and soil stockpiling. Sediment traps or other appropriate BMPs shall be used where drainage flows from disturbed to undisturbed or reclaimed areas.
- 1.6.11. Establishment of Sediment Control Measures for Site-Specific Control. Sediment control measures such as contour scarification, straw dikes, rip rap, check dams, and erosion control products shall be used when necessary to minimize erosion and sediment transport in areas requiring site-specific erosion control.
- 1.6.12. Maintenance of Sediment Traps. Sediment accumulations in sediment traps designed to contain the 2-year, 24-hour event plus annual sediment yield for 3 years shall be cleaned out when the design depth is reduced by more than 25%.
- 1.6.13. Maintenance of Sediment Control BMPs. Sediment traps and site-specific BMPs (e.g., ponds, traps, erosion control products) shall be maintained in effective operating condition during the active mining phase. During reclamation, sediment traps and ponds shall be converted to small depressions designed for vegetation diversity and wildlife habitat enhancement in addition to short-term sediment capture. Control measures for site-specific control (e.g., straw dikes, rip rap) shall be removed or converted to small depressions during reclamation. Maintenance of depressions for short-term sediment capture shall be maintained until vegetation achieves good hydrologic condition, defined as 75 percent or greater ground cover, similar to pre-mining vegetative cover.
- 1.6.14. Soil Salvage Areas. In soil salvage areas, drainage shall be intercepted at the soil salvage edge using a combination of ditching and traps sized to contain runoff from at least a 2-year, 24-hour runoff event and a one-year sediment yield.
- 1.6.15. Soil Preparation on the Contour. Spoil scarification, soil placement, soil preparation and seeding shall be done on the contour provided safety of equipment operators is not compromised.
- 1.6.16. Establishment of Vegetation. Seedbed preparation techniques that create a roughened surface to retard surface runoff and increase infiltration shall be used. Permanent vegetation cover appropriate for the site shall be established by the end of the third growing season following initial seeding.
- 1.6.17. Minimizing Potential for Erosion During Reclamation. Slope lengths shall be reduced by constructing complex slope topography. With the exception of agricultural areas, regraded landscapes shall be left in a roughened condition to minimize compaction. Coarse textured substrates, including soils with high coarse fragment content shall be used, particularly on sites with increased erosion potential, or where establishment of woody species is desired.

- 1.6.18. Maintenance of Depressions During Reclamation. During the reclamation process, small depressions shall be established on an opportunistic basis within the reclaimed area to enhance vegetative diversity, wildlife habitat, recharge and short-term sediment control. Small depressions will meet the following criteria:
- Each depression on the interior of the reclaimed area will be one acre foot or less in capacity;
 - Each depression at the margin of the reclaimed area will be two acre feet or less in capacity;
 - No depression will be deeper than three feet;
 - Depressions will be soiled and revegetated; and
 - Maximum slopes will be 5:1 on the uphill (inflow) side and 3:1 on the lateral and downhill (outflow) sides.
- 1.6.19. Reclamation of Rills and Gullies. Rills and gullies developed post-construction shall be remediated on a site-specific basis if they adversely impact the establishment of vegetation, disrupt post-mine land use and/or cause or contribute to a violation of a water quality standard. Unless otherwise permitted, any rill or gully greater than 30 inches in depth will be considered disruptive and shall be remediated.
- 1.6.20. Spill Prevention and Response Procedures. The potential for leaks, spills, and other releases that may be exposed to stormwater shall be minimized and plans shall be developed for effective response to spills when they occur. Development and implementation of a Spill Prevention Control and Countermeasure (SPCC) Plan which may be used to comply with the terms of this permit.
- 1.7. Self-Monitoring Requirements. Unless otherwise stated, the self-monitoring requirements in Part 1.7 apply to discharges from all outfalls as listed in Part 1.2.
- 1.7.1. Monitoring of Precipitation. Upon the effective date of this permit, precipitation shall be monitored and recorded in a location representative of where active mining is occurring. Precipitation shall be monitored and recorded using a precipitation gauge which meets the standards provided in National Weather Service (NWS) Instructional Bulletin 10-1302 (October 4, 2005), *Instrument Requirements and Standards for the NWS Surface Observing Programs (Land)*.

| Precipitation Gauge Performance Standard | | | |
|--|---|-----------------------|-------------|
| Parameter | Accuracy | Range | Resolution |
| Liquid Precipitation Accumulated Amount | ±0.02 inches or 4 percent of hourly amount (whichever is greater) | 0-10"/Hour | 0.01 inches |
| Snow Depth | 0 to 5 inches - ±0.5 inches >5 to 99 inches - ±1.0 inch | 0 to 99 inches (auto) | 1 inch |
| Freezing Precipitation | Detection occurs whenever 0.01" accumulates | 0 to 40 inches | 0.01 inches |
| Frozen Precipitation (water equivalent) | ±0.04 inches or 1% of total accumulation | 0 to 40 inches | 0.01 inches |

- 1.7.2. Discharge Monitoring (not applicable to discharges from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas). At a minimum, upon the effective date of this permit, the following constituents shall be monitored at the frequency and with the type of measurement indicated; samples or measurements shall be representative of the volume and nature

of the monitored discharge. If no discharge occurs during the entire monitoring period, it shall be stated on the Discharge Monitoring Report Form (EPA No. 3320-1) that no discharge or overflow occurred.

| Effluent Characteristic | Frequency | Sample Type <u>a/</u> |
|---|---------------------|-----------------------|
| Total Flow, gpm <u>b/</u> | Daily | Instantaneous |
| pH, standard units | Discharge <u>c/</u> | Grab |
| Total Iron, mg/L | Discharge <u>c/</u> | Grab |
| Total Suspended Solids, mg/L | Discharge <u>c/</u> | Grab |
| Oil and Grease, mg/L | Discharge <u>c/</u> | Grab |
| Dissolved Aluminum, ug/L | Discharge <u>c/</u> | Grab |
| Dissolved Iron, ug/L | Discharge <u>c/</u> | Grab |
| Dissolved Lead, ug/L | Discharge <u>c/</u> | Grab |
| Whole Effluent Toxicity, acute LC50 <u>d/</u> | Discharge <u>c/</u> | Grab |

a/ See Definitions, Part 1.1., 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 (in gallons per minute) during the reporting period and the maximum flow rate observed (in gpm) shall be reported.

c/ The discharge shall be sampled once at the initiation of the discharge, once during the discharge, and once at the termination of the discharge. The composite of these three samples shall be reported for each discharge event on the Discharge Monitoring Report Form (EPA No. 3320-1). For acute toxicity, a composite sample shall be used.

d/ Whole Effluent Toxicity (WET) limitations will apply to the discharge for both Pimephales promelas and Ceriodaphnia dubia. Upon three (3) consecutive successful WET tests for a given indicator species, subsequent WET tests may be continued on an annual basis for that indicator species. Should acute toxicity and/or chronic toxicity be detected in the permittee's discharge, an additional test shall be conducted within two weeks of the date when the permittee learned of the test failure. If only one species fails, retesting may be limited to this species. Should acute toxicity and/or chronic toxicity be detected in the permittee's discharge, a Toxicity Identification Evaluation – Toxicity Reduction Evaluation (TIE-TRE) shall be undertaken by the permittee to establish the cause of the toxicity, locate the source(s) of the toxicity, and develop control of or treatment of the toxicity. Failure to initiate, or conduct and adequate TIE-TRE, or delays in the conduct of such tests, shall be considered a justification for non-compliance with the whole effluent toxicity (WET) limitations contained in this Part of the permit. A TRE plan needs to be submitted to the permitting authority within 45 days after confirmation of the continuance of the effluent toxicity.

1.7.3. Discharge Monitoring for Smaller Precipitation Events (not applicable to discharges from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas). These monitoring requirements apply to any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) and to discharges from steep slope areas as defined in section 515(d)(4) of the Surface Mining Control and Reclamation Act of 1977, as amended. At a minimum, upon the effective date of this permit, the following constituents shall be monitored at the frequency and with the type of measurement indicated; samples or measurements

shall be representative of the volume and nature of the monitored discharge. If no discharge occurs during the entire monitoring period, it shall be stated on the Discharge Monitoring Report Form (EPA No. 3320-1) that no discharge or overflow occurred.

| Effluent Characteristic | Frequency | Sample Type <u>a/</u> |
|--|-----------|-----------------------|
| Total Flow, gpm <u>b/</u> | Daily | Instantaneous |
| pH, standard units | Weekly | Grab |
| Total Settleable Solids (ml/L) <u>c/</u> | Weekly | Grab |
| Dissolved Aluminum, ug/L | Weekly | Grab |

a/ See Definitions, Part 1.1., 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 (in gallons per minute) during the reporting period and the maximum flow rate (in gpm) shall be reported. This may be estimated based on an estimate of peak flow and total volume calculated based on the precipitation event.

c/ Settleable solids is that matter measured by the volumetric method specified in 40 C.F.R.§434.64

- 1.7.4. Discharge Monitoring for Larger Precipitation Events (not applicable to discharges from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas). These monitoring requirements apply to any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume). At a minimum, upon the effective date of this permit, the following constituents shall be monitored at the frequency and with the type of measurement indicated; samples or measurements shall be representative of the volume and nature of the monitored discharge. If no discharge occurs during the entire monitoring period, it shall be stated on the Discharge Monitoring Report Form (EPA No. 3320-1) that no discharge or overflow occurred.

| Effluent Characteristic | Frequency | Sample Type <u>a/</u> |
|---------------------------|-----------|-----------------------|
| Total Flow, gpm <u>b/</u> | Daily | Instantaneous |
| pH, standard units | Weekly | Grab |

a/ See Definitions, Part 1.1., 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 (in gallons per minute) during the reporting period and the maximum flow rate (in gpm) shall be reported. This may be estimated based on an estimate of peak flow and total volume calculated based on the precipitation event.

- 1.8. Inspections. Inspections of the areas covered by this permit shall be performed quarterly corresponding with inspections performed by Surface Mining Control and Reclamation Act (SMCRA) inspectors to ensure that each of the specific limitations and self-monitoring requirements in this Part are met. The records of these inspections shall be maintained with the SMCRA authority representative and summarized in the annual report (see Part 2.11).

2. MONITORING, RECORDING AND REPORTING REQUIREMENTS

- 2.1. Representative Sampling. Samples taken in compliance with the monitoring requirements established under Part 1 shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.
- 2.2. 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.
- 2.3. 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. Second conviction is punishable by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or both.
- 2.4. Reporting of Monitoring Results. Effluent monitoring results obtained during the previous reporting period shall be summarized and reported on **one** Discharge Monitoring Report Form (EPA No. 3320-1), postmarked no later than the 28th day of the month following the completed reporting period. If no discharge occurs during the reporting period, "no discharge" shall be reported. Whole effluent toxicity (biomonitoring) results must be reported on the most recent version of EPA Region 8's Guidance For Whole Effluent Reporting. Legible copies of these, and all other reports required herein, shall be signed and certified in accordance with the Signatory Requirements (see Part 4.7), and submitted to the EPA NPDES Program and the Crow Tribe at the addresses given below:

original to: NPDES Program
10 West 15th Street
Suite 3200
Helena, MT 59626

copy to: Roberta Harjo, Director
Environmental Program
P.O. Box 159
Crow Agency, MT 59022

- 2.5. Additional Monitoring by the Permittee. If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136, 40 CFR 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.
- 2.6. Records Contents. Records of monitoring information shall include:
 - 2.6.1. The date, exact place, and time of sampling or measurements;
 - 2.6.2. The initials or name(s) of the individual(s) who performed the sampling or measurements;
 - 2.6.3. The date(s) analyses were performed;
 - 2.6.4. The time(s) analyses were initiated;
 - 2.6.5. The initials or name(s) of individual(s) who performed the analyses;
 - 2.6.6. References and written procedures, when available, for the analytical techniques or methods used; and,

- 2.6.7. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.
- 2.7. Retention of Records. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time. Data collected on site, data used to prepare the DMR, copies of Discharge Monitoring Reports, and a copy of this NPDES permit must be maintained on site.
- 2.8. Twenty-four Hour Notice of Noncompliance Reporting.
- 2.8.1. The permittee shall report any noncompliance which may endanger health or the environment as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the EPA, Region 8, Site Assessment/Emergency Response Program at (303) 293-1788 and the Crow Tribe at (406)638-3715.
- 2.8.2. The following occurrences of noncompliance shall be reported by telephone to the NPDES Program, EPA Region 8 Montana Operations Office, at (406) 457-5000 (toll-free 866-457-2690) (8:00 a.m. - 4:30 p.m. Mountain Time) and the Crow Tribe at (406)638-3715 - (8:00 a.m. - 4:30 p.m. Central Time) by the first workday following the day the permittee became aware of the circumstances:
- 2.8.2.1. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Part 3.7., Bypass of Treatment Facilities.);
- 2.8.2.2. Any upset which exceeds any effluent limitation in the permit (See Part 3.8., Upset Conditions.); or,
- 2.8.2.3. Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.
- 2.8.3. A written submission shall also be provided to the USEPA, Office of Enforcement, Compliance and Environmental Justice, and to the Crow Tribe, within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:
- 2.8.3.1. A description of the noncompliance and its cause;
- 2.8.3.2. The period of noncompliance, including exact dates and times;
- 2.8.3.3. The estimated time noncompliance is expected to continue if it has not been corrected; and,
- 2.8.3.4. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
- 2.8.4. The Director may waive the written report on a case-by-case basis for an occurrence of noncompliance listed under Part 2.8.2. above, if the incident has been orally reported in accordance with the requirements of Part 2.8.2.
- 2.8.5. Reports shall be submitted to the addresses in Part 2.4., Reporting of Monitoring Results.
- 2.9. Other Noncompliance Reporting. Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for Part 2.4. are submitted. The reports shall contain the information listed in Part 2.8.3.

- 2.10. Inspection and Entry. The permittee shall allow EPA or the Regional Administrator, or authorized representative (including an authorized contractor acting as a representative of the Administrator) upon presentation of credentials and other documents as may be required by law, to:
- 2.10.1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- 2.10.2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- 2.10.3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and,
- 2.10.4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.
- 2.11. Annual Report. An annual report shall be prepared for each year of the permit term. Each report shall be signed in accordance with the signature requirements provided in Part 4.7. A copy of the report shall be submitted to both the EPA and the Crow Tribe using the addresses provided in Part 2.4. Contents of the annual report shall include:
- A list of the average monthly precipitation and the quantity of precipitation received and date of rainfall for events exceeding the 10-year, 24-hour precipitation event;
 - A list of all the discharge points (See Part 1.2) upstream of which active mining or reclamation occurred during the year;
 - A general description of the extent of the active mining area, including proposed areas for expansion during the following year;
 - A narrative description of the general effectiveness of each of the specific limitations in Parts 1.6.2-1.6.19 which includes notes of BMP failures and procedures for remediation; and
 - A narrative description of any proposed or planned changes to outfall design, BMP design, or maintenance programs to address significant erosion or sedimentation associated with rainfall events exceeding the 10-year, 24-hour event.

3. COMPLIANCE RESPONSIBILITIES

- 3.1. Duty to Comply. The permittee must comply with all conditions of this permit. Any failure to comply with the permit may constitute a violation of the Clean Water Act and may be grounds for enforcement action, including, but not limited to permit termination, revocation and reissuance, modification, or denial of a permit renewal application. The permittee shall give the director advance notice of any planned changes at the permitted facility that will change any discharge from the facility, or of any activity that may result in failure to comply with permit conditions.
- 3.2. 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 EPA to adjust the civil monetary penalties for inflation on a periodic basis. EPA previously adjusted its civil monetary penalties on December 31, 1996 (61 Fed. Reg. 69359-69365), with technical corrections and additions published on March 20, 1997 (62 Fed. Reg. 13514-13517) and June 27, 1997 (62 Fed. Reg. 35037-35041). On February 13, 2004 (69 Fed. Reg. 7121-7127) EPA once again adjusted

its civil monetary penalties. The civil and criminal penalties, as of March 15, 2004, for violations of the Act (including permit conditions) are given below:

- 3.2.1. 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 sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed \$32,500 per day for each violation.
- 3.2.2. 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 for 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 for not more than 2 years, or both.
- 3.2.3. Any person who *knowingly* 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 \$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 for not more than 6 years, or both.
- 3.2.4. Any person who *knowingly* violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment for not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment for not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.
- 3.2.5. 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 \$11,000 per violation, with a maximum amount not to exceed \$32,500. Where an administrative enforcement action is brought for a Class II civil penalty, the assessed penalty may not exceed \$11,000 per day for each day during which the violation continues, with the maximum amount not to exceed \$157,500.
- 3.3. 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.
- 3.4. 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.
- 3.5. Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used

by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. However, the permittee shall operate, at a minimum, one complete set of each main line unit treatment process whether or not this process is needed to achieve permit effluent compliance.

- 3.6. Removed Substances. Collected screenings, grit, solids, 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 (i.e., 40 CFR 257, 40 CFR 258, 40 CFR 503) and in a manner so as to prevent any pollutant from entering any waters of the United States or creating a health hazard.

3.7. Bypass of Treatment Facilities.

- 3.7.1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts 3.7.2. and 3.7.3.

3.7.2. Notice:

- 3.7.2.1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass to the USEPA, Technical Enforcement Program, and the Crow Tribe.

- 3.7.2.2. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part 2.8., Twenty-four Hour Noncompliance Reporting, to the USEPA, Technical Enforcement Program, and the Crow Tribe.

3.7.3. Prohibition of bypass.

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

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

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

- 3.7.3.1.3. The permittee submitted notices as required under Part 3.7.2.

- 3.7.3.2. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in Part 3.7.3.1.

3.8. Upset Conditions

- 3.8.1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part 3.8.2. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review (i.e., Permittees will have the opportunity for a judicial determination on any claim of

upset only in an enforcement action brought for noncompliance with technology-based permit effluent limitations).

- 3.8.2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - 3.8.2.1. An upset occurred and that the permittee can identify the cause(s) of the upset;
 - 3.8.2.2. The permitted facility was at the time being properly operated;
 - 3.8.2.3. The permittee submitted notice of the upset as required under Part 2.8., Twenty-four Hour Notice of Noncompliance Reporting; and,
 - 3.8.2.4. The permittee complied with any remedial measures required under Part 3.4., Duty to Mitigate.
- 3.8.3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.
- 3.9. Toxic Pollutants. The permittee shall comply with effluent standards or prohibitions established under Section 307 (a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
- 3.10. Changes in Discharge of Toxic Substances. Notification shall be provided to the Director as soon as the permittee knows of, or has reason to believe:
 - 3.10.1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - 3.10.1.1. One hundred micrograms per liter (100 ug/L);
 - 3.10.1.2. Two hundred micrograms per liter (200 ug/L) for acrolein and acrylonitrile; five hundred micrograms per liter 500 ug/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
 - 3.10.1.3. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or,
 - 3.10.1.4. The level established by the Director in accordance with 40 CFR 122.44(f).
 - 3.10.2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - 3.10.2.1. Five hundred micrograms per liter (500 ug/L);
 - 3.10.2.2. One milligram per liter (1 mg/L) for antimony;
 - 3.10.2.3. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or,
 - 3.10.2.4. The level established by the Director in accordance with 40 CFR 122.44(f).

4. GENERAL REQUIREMENTS

- 4.1. Planned Changes. The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - 4.1.1. 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,
 - 4.1.2. There are any planned substantial changes to the existing sewage sludge facilities, the manner of its operation. The permittee shall give the Director notice of any planned changes at least 30 days prior to their implementation.
 - 4.1.3. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source.
- 4.2. Anticipated Noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- 4.3. 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.
- 4.4. Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application should be submitted at least 180 days before the expiration date of this permit.
- 4.5. Duty to Provide Information. The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.
- 4.6. Other Information. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Director, it shall promptly submit such facts or information.
- 4.7. Signatory Requirements. All applications, reports or information submitted to the Director shall be signed and certified.
 - 4.7.1. All permit applications shall be signed by either a principal executive officer or ranking elected official.
 - 4.7.2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - 4.7.2.1. The authorization is made in writing by a person described above and submitted to the Director; and,
 - 4.7.2.2. 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.)

4.7.3. **Changes to authorization.** If an authorization under Part 4.7.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part 4.7.2. must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

4.7.4. **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."

4.8. **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.

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

4.10. **Oil and Hazardous Substance Liability.** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

4.11. **Property Rights.** The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, tribal or local laws or regulations.

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

4.13. **Transfers.** This permit may be automatically transferred to a new permittee if:

4.13.1. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date;

4.13.2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and,

4.13.3. The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part 4.13.2.

- 4.14. Permittees in Indian Country. EPA is issuing this permit pursuant to the Agency's authority to implement the Clean Water Act NPDES program in Indian country, as defined at 18 U.S.C. 1151.
- 4.15. 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:
- 4.15.1. 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.
- 4.15.2. Wasteload Allocation: A wasteload allocation is developed and approved by the Crow Tribe and/or EPA for incorporation in this permit.
- 4.15.3. 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.
- 4.16. Toxicity Limitation-Reopener Provision. This permit may be reopened and modified (following proper administrative procedures) to include whole effluent toxicity limitations if whole effluent toxicity is detected in the discharge.