



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

Draft 10/29/09

ISSUANCE
Page 1
Permit No. MN-0070092-1

AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, as amended, Enbridge Energy, Limited Partnership and Enbridge Pipelines LLC (referred to collectively as Enbridge) are authorized by the United States Environmental Protection Agency, Region 5, to discharge to waters of the United States (U.S.) hydrostatic test water resulting from activities associated the Enbridge Alberta Clipper and Southern Lights Pipeline Projects located within parts of the Leech Lake Indian Reservation (Cass and Itasca Counties) within Minnesota, in accordance with effluent limitations, monitoring requirements, and other conditions set forth in this permit.

This permit and the authorization to discharge shall expire at midnight, [insert 5 years from the date of issuance]. The permittee shall not discharge after the above date of expiration. In order to receive authorization to discharge beyond the date of expiration, the permittee shall submit such information and forms as are required by EPA no later than 180 days prior to the above date of expiration.

This permit shall become effective on the date of signature.

Signed and Dated _____, 2009

Draft 10/29/09

Director, Water Division

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CHAPTER I. AUTHORIZATION UNDER THIS PERMIT

A. Description of Activities

Enbridge Energy, Limited Partnership in conjunction with Enbridge Pipelines (Southern Lights) L.L.C (referred to collectively as Enbridge) have applied for a Presidential Permit for the construction, operation, and maintenance of a proposed pipeline and associated facilities for importation of crude oil from Canada. The proposed Alberta Clipper Pipeline extends from Hardisty, Alberta, Canada to Superior, Wisconsin and will have the capacity to deliver an average of 450,000 barrels per day (bpd) of crude oil from a supply hub near Hardisty to an existing terminal in Superior. In the United States, the Alberta Clipper pipeline will consist of approximately 326.9 miles of new 36-inch-diameter liquid petroleum pipeline and associated facilities that will be installed primarily within or adjacent to the existing Enbridge pipeline corridor from the U.S./Canada border to the existing Enbridge terminal in Superior. In addition, a 20-inch-diameter liquid hydrocarbon pipeline (Southern Lights Diluent Pipeline) will be installed adjacent and parallel to the proposed Alberta Clipper Pipeline; from the Clearbrook terminal to the Superior terminal. The proposed projects will impact approximately 702.40 acres of land associated with the Leech Lake Band of Ojibwe Reservation.

Consistent with U.S. Department of Transportation safety requirements, the structural integrity of the new pipeline must be established prior to putting the pipeline in use for its intended operation. Hydrostatic testing is a common means of evaluating the integrity of pipelines. The pipeline is filled with water to an established pressured rating and the line checked for leaks and stability. Following testing of the pipeline's integrity, the water must be released back to the environment. During these tests, water is used as the testing medium rather than as a process stream. Because no additives are used, it is anticipated that the water used will not change significantly and thus, will reflect the characteristics of the source from which it was appropriated. Hydrostatic test water discharges are typically one time events that may occur over 24 hours. Flow volume and discharge duration will be dependent upon the size and length of the pipeline segment being tested and the discharge pumping rate. A table of test segments and associated volumes is provided below.

In order to prevent the entrainment of fish or other species of concern during hydrostatic test water withdrawal from waterbodies, screening will be used and installed around the intake hoses. The permittee shall attempt to avoid backwater areas, slow flow areas, and the mouths of tributary streams when determining the location for hydrostatic intake hoses in waterbodies. Caution shall be used against appropriating in known spawning areas or during the spawning season.

To minimize impacts on surface waters and to prevent erosion, the permittee plans to discharge hydrostatic test water to a well-vegetated, upland area or an appropriate dewatering structure. Dewatering structures may include geotextile filter bags and/or a hay bale structures lined with geotextile fabric. The permittee shall use the discharge locations as identified in the October 5, 2009 e-mail from Natural Resource Group to EPA. Runoff from the site has the potential to

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reach the identified receiving waters. All hydrostatic testing activities will be monitored by environmental inspectors and the outflow rates adjusted, if necessary.

ENBRIDGE ALBERTA CLIPPER AND SOUTHERN LIGHTS PIPELINE PROJECTS

HYDROSTATIC DISCHARGE LOCATIONS – LEECH LAKE RESERVATION

Outfall Number	Receiving Water ¹	Milepost	Longitude (DMS)	Latitude (DMS)	County	PLSS	Estimated Volume (million gallons)
001	Pike's Bay	955.8	47° 22' 47"	-94° 35' 15"	Cass	T145N, R31W, S15	0.12 ² 0.04 ³
002	Mississippi River	986.0	47° 19' 24"	-93° 57' 34"	Itasca/ Cass	T144N, R26W, S3	0.20 ² 0.06 ³
003	Ball Club River	989.5	47° 19' 54"	-93° 53' 21"	Itasca	T145N, R25W, S31	7.60 ⁴ 2.35 ⁵

¹ Source water for hydrostatic test will be obtained from the receiving waterbody (except for Pike's Bay) or from a local municipal supply.
² 36 inch (Alberta Clipper) Horizontal Directional Drill (HDD) test segment
³ 20 inch (Southern Lights) HDD test segment
⁴ 36 inch (Alberta Clipper) mainline test segment
⁵ 20 inch (Southern Lights) mainline test segment

B. Authorization to Discharge

This permit authorizes discharges of hydrostatic test water without additives.

This permit DOES NOT authorize: the construction or installation of pipeline facilities; the permittee to work in waters of the U.S.; or the permittee to appropriate waters for hydrotests.

C. Prohibitions

1. **Prohibition on non-storm water discharges.** All discharges covered by this permit shall be composed entirely of hydrostatic test water. This permit does not authorize the discharge of sewage, wash water, scrubber water, spills, oil, hazardous substances, or equipment/vehicle cleaning and maintenance wastewaters to ditches, wetlands, or other surface waters of the U.S.
2. **Prohibition on the discharge of excessive sediments.** The discharge of sediments is prohibited, except in minor amounts associated with the proper implementation of sound soil erosion and sediment control practices.
3. **Discharges Not in Compliance with Water Quality Standards.** Discharges covered under this permit shall not cause or contribute to a violation of an applicable water quality standard. Where a discharge is determined to cause or contribute to the violation of an

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applicable Tribal or Minnesota State Water Quality Standard (Class 2 water), EPA, Region 5, will notify the permittee of such violation(s) and the permittee shall take all necessary actions to ensure future discharges do not cause or contribute to the violation of a water quality standard, and shall document these actions in a letter to EPA, Region 5. Compliance with this requirement does not preclude any enforcement activity as provided by the Clean Water Act for the underlying violation.

4. **Discharges to Municipal Wastewater Treatment Systems.** The permittee shall not transport pollutants to a municipal wastewater treatment system that will interfere with the operation of the treatment system or cause pass-through violations of effluent limits or water quality standards.
5. **Endangered Species.** Discharges and construction activities covered under this permit shall not adversely affect Federal listed endangered and threatened species or designated critical habitat. The permittee shall make every attempt to avoid previously identified sensitive biological resources along the pipeline when establishing specific appropriations and discharge locations or implement the mitigation measures identified by the Minnesota Department of Natural Resources.
6. **Historic Properties.** Discharges and construction activities covered under this permit shall protect historic properties that are listed or are eligible to be listed in the National Register of Historic Places. The permittee shall make every attempt to avoid previously identified sensitive cultural resources along the pipeline when establishing specific appropriations and discharge locations. If these sites cannot be avoided, there should be mitigation measures taken. Plans should reflect a treatment plan to mitigate potential adverse effects. Should any unreported cultural materials be discovered during project activities, all work shall cease and the Tribal Historic Preservation Officer (THPO) is to be notified immediately. Should any human remains or suspected human remains be encountered, all work shall cease and the following personnel should be notified immediately in this order: County Sheriff's Office, Office of the State Archeologist, and the THPO.
7. **Water Treatment and/or Chemical Additives(s).** The Permittee has not been approved for the use of water treatment and/or chemical additives. If the Permittee wishes to use additives, approval must be requested from EPA prior to use.
8. **Outstanding Resource Value Waters/Trout Waters.** Discharges to outstanding resource value waters (ORVW), as defined in Minn. R. 7050.0180 or Tribal Water Quality Standards, or trout waters as defined in Minn. R. 7050.0420 or Tribal Water Quality Standards, are restricted.
9. **Erosion, Flooding, and Nuisance Conditions.** The Permittee shall operate and maintain the discharge operation in such a manner so as to cause no erosion, flooding, or other nuisance conditions in the area of the operation or in the receiving stream.

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10. **Construction/Installation.** This permit does not authorize the construction or installation of any pipeline facilities.
11. **Prohibition to appropriate source water from Pike's Bay or Pike's Bay Channel.**
The permittee shall not appropriate source water for hydrostatic testing from Pike's Bay or Pike's Bay Channel.

D. Releases in Excess of Reportable Quantities

The discharge of hazardous substances or oil in the hydrostatic test water shall be prevented or minimized. This permit does not relieve the permittee of the reporting requirements of 40 CFR part 117 and 40 CFR part 302. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR part 117 or 40 CFR part 302, occurs during a 24 hour period:

1. The permittee is required to notify the National Response Center (NRC) (800-424-8802) in accordance with the requirements of 40 CFR part 117 and 40 CFR part 302 as soon as he or she has knowledge of the discharge;
2. The permittee shall submit within 14 calendar days of knowledge of the release, a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken to minimize the chance of future occurrences to EPA, Region 5; and
3. The permittee must identify measures to prevent the recurrence of such releases and to respond to such releases.

E. Spills

This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

F. Advance Notice of Discharge from Hydrostatic Testing

The permittee shall submit a notice to the EPA, Regional office and the Leech Lake Indian Reservation, at the addresses listed below, as early as possible, but not less than thirty (30) days prior to initiating a discharge from hydrostatic testing. The notice shall include the following information:

1. The name and location of the water body into which, or location of right-of-way onto which, the test waters will be discharged. The Permittee shall include the county, the closest city/town, and section, township, and range (this information shall be provided even in the event that the test will not result in a discharge to the waters of the U.S.);
2. A map (Quad or topographic) showing the location of the pipeline in relation to any water body and the proposed discharge point;
3. Anticipated date(s) of discharge(s);

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4. Anticipated maximum and average discharge flow rates, and estimated total volume of the discharge;
5. Proposed method to prevent/minimize bottom scouring to the receiving water, or soil erosion for right-of-way discharges;
6. The water supply for the test waters, with a copy of any water appropriation permits, if applicable;
7. Water quality data if needed for background credits where the water source is the same as the receiving waterbody (or may be submitted with the discharge report);
8. Proposed treatment method(s) before discharge. This should include but is not limited to measures taken to remove residual slag, degreasing agents etc. to clean the interior pipeline segment prior to filling with water for testing purposes; and
9. Best management practices (BMPs) to be used to prevent scouring, sediment transport and erosion due to the discharge.

All written correspondence concerning discharges from the project covered under this permit shall be directed to EPA, Region 5, and the Leech Lake Band of Ojibwe at the following addresses:

1. United States Environmental Protection Agency, Region 5
NPDES Programs Branch (WN-16J)
Attention: Tribal Permitting
77 West Jackson Boulevard
Chicago, Illinois 60604
2. Division of Resources Management
Leech Lake Band of Ojibwe
6530 Hwy 2 NW
Cass Lake, MN 56633

CHAPTER II . SPECIAL CONDITIONS FOR HYDROSTATIC TEST WATER DISCHARGES

The applicability of this chapter shall be limited to discharges from hydrostatic testing of pipeline segments which:

- has been physically cleaned and provided with effluent treatment to ensure there is no discharge of bottom scour at a level which would have an impact on the receiving waters, construction debris, raw material or any waste product;
- are without water treatment additives without prior approval. Water treatment additives include any material that is added to water used at the facility or to waste water generated by the facility to condition or treat the water. This does not include water treatment

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additives that may have already been added at a municipal source.

The permittee must install and maintain outlet protection measures at the discharge stations to prevent erosion, scouring, sediment transport, flooding, or other nuisance conditions in the area of the discharge or in the receiving stream.

A. Effluent Limitations and Monitoring Requirements

The permittee is authorized to discharge hydrostatic test water. Such discharges shall be limited and monitored by the permittee as specified below:

<u>Parameter</u>	<u>Effluent Limitations</u>		<u>Monitoring Requirement</u>	
	<u>Daily Min.</u>	<u>Daily Max.</u>	<u>Frequency</u>	<u>Sample Type</u>
Total Discharge Volume (MG)		(Report)	Daily	Calculation
Total Suspended Solids		30 mg/l	See item #3	Composite
pH (standard units)	6.0 S.U.	9.0 S.U.	See item #3	Grab
Dissolved Oxygen	5 mg/l		See item #3	Grab
Oil & Grease		10 mg/l	See item #3	Grab
Chlorine, Total Residual (See item # 7)		0.038 mg/L	See item #3	Grab
Treatment System, Discharge and Receiving Water Inspection		(Report)	Continuous	Visual See item # 6

1. Representative samples - Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge to the receiving waters.
2. Monitoring Location - Samples and measurements taken in compliance with the monitoring requirements above shall be taken after treatment and prior to discharge into the receiving waters. For intake credits, receiving water body samples shall be taken mid-stream, mid-depth in the early morning hours. For determining maintenance of background (generally applicable to a discharge to a wetland), monitoring within the water body shall occur before and after the discharge at a point which would represent the discharge's impact on the receiving water body.
3. Monitoring Frequency - The permittee shall take a minimum of three grab samples during each projects discharge. Grab samples shall be taken at the beginning, in the

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middle and at the end of each discharge event in which monitoring is required. For pH, dissolved oxygen and total residual chlorine, each grab sample shall be analyzed and compared to the limit. For oil & grease, each grab sample shall be analyzed and the average of the three samples shall be compared to the limit. Notwithstanding the foregoing, composite sampling may be used for total suspended solids.

4. Monitoring Methods - The sampling procedures, preservation and handling, and analytical protocol for compliance monitoring shall be in accordance with EPA approved methods, 40 CFR part 136.
5. Additional Monitoring - If the permittee monitors any pollutant more frequently than required, using EPA approved methods, the results of such monitoring shall be included in the records.
6. Outfall Observation:
 - a. The permittee is required to have a representative on site for the duration of the discharge;
 - b. The receiving water shall contain no unnatural turbidity, color, oil films, floating solids, foams, settleable solids, or deposits as a result of this discharge.
 - c. Any unusual characteristics, as described at item 6.b above, shall be recorded detailing the findings of the investigation and the steps taken to correct the condition.
7. The Total Residual Chlorine limit is only applicable if the source water used for the hydrostatic test has been chlorinated.
8. To avoid the transfer of invasive aquatic organisms, the permittee shall not transfer hydrotest influent water from one watershed divide to another. That is, intake from surface water source shall be returned to the same surface water body or water body within the same watershed.
9. For wetland discharges, pH levels in the waste stream shall not affect background. In lieu of monitoring the discharge pH, the permittee may monitor the pH levels in the wetland near the discharge before and after the discharge event. The same shall be done for Dissolved Oxygen (DO) monitoring for wetland discharges, where the discharge DO level is less than 5.0 mg/L.

B. Record Keeping

1. All monitoring data required by Chapter II.A shall be available onsite for inspection for the duration of this permit;
2. The above monitoring data shall be made available to Federal, Tribal, State and local officials within 24 hours of request for the duration of this permit;

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3. The permittee shall retain copies of all above monitoring data for a period of at least three years after completion of the construction project.

C. Reporting

The permittee shall record all monitoring results required by Chapter II.A on Discharge Monitoring Report (DMR) forms. One form shall be used for each discharge event. The date(s) of the discharge event shall be included on the form. The DMR forms shall be mailed to EPA at the address below, postmarked no later than the 21st day of the month following the month for which the monitoring was completed. The permittee shall submit to the address below, an annual report of no discharge for calendar years in which no discharges have occurred. The annual report of no discharge is due by January 31st of the following year. If a project does not result in a discharge to waters of the U.S., the permittee shall report the date and total volume of the discharge. For these events, DMR forms do not have to be used. They shall be reported as an attachment to the DMR or annual “no discharge” submittal.

United States Environmental Protection Agency, Region 5
Water Enforcement and Compliance Branch (WC-15J)
77 West Jackson Boulevard
Chicago, Illinois 60604

D. Special Conditions

1. To minimize the potential impact to fish during withdrawal of hydrostatic test water, the permittee shall install intakes with filtering and screening devices (with openings no greater than 1 inch to preclude fish from being pulled in with the test water) and suspend the intakes within the waterbody or just below the surface of the water. Withdrawals shall be made at controlled rates to protect aquatic life, provide for all waterbody uses, and avoid effects on downstream withdrawals of water by existing users. When using the dam-and-pump method, screening devices shall be installed at the pump intakes to minimize entrainment impacts to aquatic species.
2. The permittee shall avoid instream work within trout streams and their tributaries between September 1 and April 15 for coldwater fisheries and between March 15 and June 15 for coolwater and warmwater fisheries.
3. Erosion and Sediment Control – The permittee shall employ BMPs [best available technology economically achievable (BAT)] to reduce pollutant levels in the discharge. Energy dispersal devices shall be used to minimize bottom scouring, erosion and sediment transport in, into or near receiving waters. The use of BMPs is a minimum requirement, additional pollutant control technologies are required if necessary to maintain water quality for recreational activities in and on the water and for the protection and

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propagation of a balanced, indigenous aquatic community and the flora and fauna that support that community.

Corrective measures shall be taken for any discharge causing or contributing to a noticeable increase in turbidity and/or suspended solids levels to surface waters or should the discharge cause or create a sediment plume.

4. Oil or other substances shall not be discharged in amounts that create a visible color film.
5. The discharge shall not degrade the aquatic habitat, which includes the waters of the state and stream bed, in any material manner.
6. The discharge shall not seriously impair or endanger the normal fishery and lower aquatic biota upon which it is dependent. The species composition shall not be altered materially, and the propagation or migration of the fish or other biota normally present shall not be prevented or hindered by the discharge.
7. The discharge shall not in any manner render the receiving water unsuitable or objectionable for fishing, fish culture or recreational activities in or on the water.
8. The discharge shall not cause or contribute to a material increase in undesirable slime growths or aquatic plants, including algae.
9. Irrespective of numeric effluent limitations, the pollutant levels in the discharge shall not impair the receiving water for its designated use. Lacking water quality standards to the contrary, all waters mentioned herein are considered to be protected for a fishable/swimmable designated beneficial use.

The permittee shall immediately cease any discharge which cause turbid conditions or results in a sediment plume in the receiving water and immediately employ corrective measures to mitigate the impairment.

10. Facility Operation - the permittee shall all times properly operate and maintain all treatment or control systems installed or used by the permittee.
11. Removed Substances - solids, sludges, filter backwash, or other pollutants removed from or resulting from treatment or control of waste waters shall be disposed of in compliance with applicable law and in such a manner as to prevent any pollutant from such materials from entering receiving waters.
12. Authorization to Discharge - coverage under this chapter shall be limited to discharges to surface water. It shall be the permittee's responsibility to seek, apply for and obtain any additional authorizations necessary to initiate the discharge.
13. The effluent limitations proposed in this permit are based on minimum secondary treatment standards (40 CFR part 133). As such, EPA is not estopped from establishing

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more stringent effluent limitations, additional or more frequent monitoring, and/or any other restrictions or requirements which might be necessary to protect the receiving stream for its designated uses.

14. The permittee shall implement its March 20, 2009, Minnesota and North Dakota Environmental Mitigation Plan as it relates to hydrostatic testing provided the mitigation measures are not superseded by this permit.

CHAPTER III. REOPENER CLAUSE

- A. If there is evidence indicating that hydrostatic test water discharges authorized by this permit are significant contributors to violations of applicable water quality standards, the permit may be modified to include different limitations and/or requirements.
- B. This permit may be modified or revoked and reissued based on new information provided by the U.S. Fish and Wildlife Service.
- C. This permit may be modified or revoked and reissued based on new information provided by the THPO and SHPO.
- D. Facilities that discharge to an impaired surface water, or to a watershed or drainage basin that contains impaired waters, may be required, at some future date, to comply with additional permits, or permit requirements, based on the conclusions of any applicable EPA approved Total Maximum Daily Load (TMDL) studies and their associated implementation plans.

CHAPTER IV. STANDARD PERMIT CONDITIONS

A. Duty to Comply

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

1. The permittee must comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish 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.
2. 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)

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or 402(b)(8) of the Act, is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. §2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. §3701 note) (currently \$27,500 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.

3. 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. Pursuant to 40 CFR part 19 and the Act, administrative penalties for Class I violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. §2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. §3701 note) (currently \$11,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$27,500). Pursuant to 40 CFR part 19 and the Act, penalties for Class II violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act and the Federal Civil Penalties Inflation Adjustment Act

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(28 U.S.C. §2461 note) as amended by the Debt Collection Improvement Act (31

U.S.C. §3701 note) (currently \$11,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$137,500).

B. 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.

C. 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.

D. 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.

E. Proper Operation and Maintenance

The operator 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 this permit.

F. 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.

G. Toxic Pollutants

Notwithstanding Paragraph F, above, if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and the permittee so notified.

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The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water 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.

H. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

I. Duty to Provide Information

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

J. Inspection and Entry

The permittee shall allow EPA, an affected Tribe, 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:

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. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times, escorted by a company representative, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

K. Monitoring and Records

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
2. Flow Measurements- Appropriate flow measurement devices or methods for

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calculating total volume shall be consistent with accepted scientific practices and shall be selected and used to insure the accuracy and reliability of measurements of the volume of monitored discharges.

3. 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 part 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 EPA at any time.
4. Records of monitoring information shall include:
 - ★ The date, exact place, and time of sampling or measurements;
 - ★ The individual(s) who performed the sampling or measurements;
 - ★ The date(s) analyses were performed
 - ★ The individual(s) who performed the analyses;
 - ★ The analytical techniques or methods used; and
 - ★ The results of such analyses.
5. Monitoring results must be conducted according to test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, unless other test procedures have been specified in the permit.
6. The Clean Water Act 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.

L. Signatory Requirements

1. All reports, certifications, or other information required by this permit must be signed and certified as follows:
 - A. For a corporation: By a responsible corporate officer. For the purpose of this Part, 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

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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.

- B. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or
 - C. For a municipality, State, Federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this Part, 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 Administrator of EPA).
2. All reports, certifications, or other information required by this permit must be signed by a person described in Chapter IV.L.1 above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
- A. The authorization is made in writing by a person described in Chapter IV.L.1 above; and
 - B. 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 a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).
3. Any person signing documents under the terms of this permit 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 gathered and evaluated 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.”

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4. 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.

M. Reporting Requirements

1. Planned changes. The permittee shall give notice to EPA as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - A. 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
 - B. 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);
 - C. 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;
2. Anticipated noncompliance. The permittee shall give advance notice to EPA of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
3. Transfers. This permit is not transferable to any person except after notice to EPA. EPA 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 Clean Water Act. (See 40 CFR §122.61; in some cases, modification or revocation and reissuance is mandatory.)
4. Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.
 - A. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by EPA for reporting results of monitoring of sludge use or disposal practices.

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- B. If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by EPA.
 - C. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by EPA in the permit.
5. 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.
6. Twenty-four hour reporting.
- A. 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 written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written 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.
 - B. 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 EPA in the permit to be reported within 24 hours. (See 40 CFR §122.44(g).)
 - C. EPA may waive the written report on a case-by-case basis for reports under Chapter IV.M.6.ii if the oral report has been received within 24

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hours.

7. Other noncompliance. The permittee shall report all instances of noncompliance not reported under Chapter IV.M.4, Chapter IV.M.5, and Chapter IV.M.6, at the time monitoring reports are submitted. The reports shall contain the information listed in Chapter IV.M.6.
8. 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 Permitting Authority, it shall promptly submit such facts or information.
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 Permit Issuing Authority. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

N. Bypass

1. Definitions.
 - A. Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
 - B. 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.
2. 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 Chapter IV.N.3 and Chapter IV.N.4.
3. Notice—
 - A. 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.
 - B. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Chapter IV.M.6 (24-hour notice).
4. Prohibition of bypass.

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- A. Bypass is prohibited, and EPA 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 preventive maintenance; and
 - iii. The permittee submitted notices as required under Chapter IV.N.3.
- B. EPA may approve an anticipated bypass, after considering its adverse effects, if EPA determines that it will meet the three conditions listed above in Chapter IV.N.4.A.

O. Upset

- 1. 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 preventive maintenance, or careless or improper operation.
- 2. 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 Chapter IV.O.3 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.
- 3. 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:
 - A. An upset occurred and that the permittee can identify the cause(s) of the upset;
 - B. The permitted facility was at the time being properly operated; and
 - C. The permittee submitted notice of the upset as required in Chapter

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IV.M.6.B.ii of this Part (24 hour notice).

- D. The permittee complied with any remedial measures required under Chapter IV.D.
- 4. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

P. 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 CWA or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

Q. 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.

R. State/Tribal Environmental Laws

- 1. 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 established pursuant to any applicable law or regulation under authority preserved by section 518 of the CWA.
- 2. No condition of the permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

S. Transfer of Ownership or Control

In the event of any change in control or ownership of facility from which the authorized discharge emanates, the permittee shall notify the succeeding owner or controller of the existence of this permit by letter, a copy of which shall be forwarded to EPA Regional office. In the event of name changes, the permittee shall notify the EPA Regional office and seeks permit modification.

T. Right of Appeal

Within thirty (30) days of receipt of notice of a final permit decision, the permittee may petition the Environmental Appeals Board to review any condition of the permit decision. The petition should be sent to the following address:

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Environmental Appeals Board, MC 1103B
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington D.C. 20460

The petition shall include a statement of the reasons supporting that review in accordance with 40 CFR §124.19(a).

U. Civil and Criminal Liability

Except as provided in permit conditions on "Bypassing" (Chapter IV.N), nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

CHAPTER V. DEFINITIONS

A. Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the U.S. BMPs also include treatment requirements, operating procedures, and practice to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

B. Concentration Measurements

1. The "30-day average concentration", other than for fecal coliform bacteria, is the sum of the concentrations of all daily discharges sampled and/or measured during a consecutive 30 day period on which daily discharges are sampled and measured, divided by the number of daily discharges sampled and/or measured during such period (arithmetic mean of the daily concentration values). The daily concentration value is equal to the concentration of a composite sample or in the case of grab samples is the arithmetic mean (weighted by flow value) of all the samples collected during a calendar day. The 30-day average count for fecal coliform bacteria is the geometric mean of the counts for samples collected during a consecutive 30 day period. This limitation is identified as "30-day Average" or "Daily Average" in the permit and the average monthly concentration value is reported under the "Average" column under "Quality" on the DMR.

2. The "7-day average concentration", other than for fecal coliform bacteria, is the sum of the concentrations of all daily discharges sampled and/or measured during a consecutive 7 day period on which daily discharges are sampled and measured divided by the number of daily discharges sampled and/or measured during such period (arithmetic mean of the daily concentration value). The daily concentration value is equal to the concentration of a composite sample or in the case of grab samples is the arithmetic mean (weighted by flow value) of all the samples collected during that calendar day. The 7-day average count for fecal coliform

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bacteria is the geometric mean of the counts for samples collected during a consecutive 7 day period. This limitation is identified as "7-day Average" in the permit and the highest 7-day average concentration value is reported under the "Maximum" column under "Quality" on the DMR.

3. The "maximum daily concentration" is the concentration of a pollutant discharge during a calendar day. It is identified as "Daily Maximum" in of the permit and the highest such value recorded during the reporting period is reported under the "Maximum" column under "Quality" on the DMR.
- C. Control Measure as used in this permit, refers to any Best Management Practice or other method used to prevent or reduce the discharge of pollutants to waters of the United States.
 - D. CWA means the Clean Water Act or the Federal Water Pollution Control Act, 33 U.S.C. section 1251 et seq.
 - E. Director means the Regional Administrator of the United States Environmental Protection Agency or an authorized representative.
 - F. Discharge when used without qualification means the “discharge of a pollutant.”
 - G. Energy Dissipation means methods employed at pipe outlets to prevent erosion. Examples include, but are not limited to; aprons, riprap, splash pads, and gabions which are designed to prevent erosion.
 - H. Facility or Activity means any NPDES ``point source" or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.
 - I. Impervious Surface means a constructed hard surface that either prevents or retards the entry of water into the soil and cause water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas, and concrete, asphalt, or gravel roads.
 - J. Indian Country lands as defined 18 United States Code 1151 includes, inter alia, all lands within the limits of any Indian reservation and all dependent Indian communities.
 - K. Operator for the purpose of this permit means any party associated with a construction project that meets either of the following two criteria:
 1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or

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2. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a SWPPP for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions). This definition is provided to inform permittees of EPA's interpretation of how the regulatory definitions of "owner or operator" and "facility or activity" are applied to discharges of storm water associated with construction activity.

L. Other Measurements

1. The effluent flow expressed as M³/day (MGD) is the 24 hour average flow averaged monthly. It is the arithmetic mean of the total daily flows recorded during the calendar month. Where monitoring requirements for flow are specified in Part I of the permit the flow rate values are reported in the "Average" column under "Quantity" on the DMR.
2. An "instantaneous flow measurement" is a measure of flow taken at the time of sampling, when both the sample and flow will be representative of the total discharge.
3. Where monitoring requirements for pH, dissolved oxygen or fecal coliform bacteria are specified in Part I of the permit, the values are generally reported in the "Quality of Concentration" column on the DMR.

M. Owner or operator means the owner or operator of any "facility or activity" subject to regulation under the NPDES program.

N. Permitting Authority means the United States Environmental Protection Agency, EPA, a Regional Administrator of the Environmental Protection Agency or an authorized representative.

O. Point Source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

P. Pollutant is defined at 40 CFR §122.2. A partial listing from this definition includes: dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.

Q. Pollutant of concern, for the purpose of this permit, includes sediment or a parameter that addresses sediment (e.g., total suspended solids, turbidity or siltation) that has been identified as a cause of a water quality impairment.

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- R. Receiving water means the "Water of the United States" as defined in 40 CFR §122.2 and below into which the regulated effluent discharges directly.
- S. Sediment means the product of an erosion process; solid material both mineral and organic, that is in suspension, is being transported, or has been moved by water, air, or ice, and has come to rest on the earth's surface either above or below water level.
- T. Toxic Pollutant means any pollutant listed as toxic under Section 307(a)(1) of the CWA.
- U. Types of Samples
1. Composite Sample: A "composite sample" as required by this permit is a combination of three individual representative samples taken at the beginning, middle, and end of a discharge. The reported value is the average of the three samples.
 2. Grab Sample: A "grab sample" is a single influent or effluent portion of at least 100 ml which is not a composite sample. The sample(s) shall be collected at the period(s) most representative of the total discharge.
- V. Waters of the U.S. means:
1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
 2. All interstate waters, including interstate "wetland";
 3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflat, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. Which are used or could be used for industrial purposes by industries in interstate, commerce;
 4. All impoundments of waters otherwise defined as waters of the U.S. under this definition;
 5. Tributaries of waters identified in paragraphs 1. through 4. of this definition;

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6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraph 1. through 6. of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirement of the CWA (other than cooling ponds for steam electric generation stations per 40 CFR part 423) which also meet the criteria of this definition) are not waters of the U.S. Waters of the U.S. do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the CWA, the final authority regarding CWA jurisdiction remains with EPA.

- W. Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.