

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

**NPDES PERMIT NO. AZ0024601**

In compliance with the provisions of the Clean Water Act (“CWA”) (Public Law 92-500, as amended, 33 U.S.C. 1251 et seq.), the following discharger is authorized to discharge from the identified facility at the outfall location(s) specified below, in accordance with the effluent limits, monitoring requirements, and other conditions set forth in this permit. This permit authorizes the discharge of only those pollutants resulting from facility processes, waste streams, and operations that have been clearly identified in the permit application process.

Discharge Name	Cyprus Tohono Corporation
Discharge Address	P.O. Box 15009 Casa Grande, AZ 85130-5009
Facility Name	Cyprus Tohono Mine
Facility Location Address	32 miles south of Casa Grande on Hwy 15 Casa Grande, AZ 95122
Facility Rating	Minor

Outfall Number	General Type of Waste Discharged	Outfall Latitude	Outfall Longitude	Receiving Water
001	Treated Pit Water	32° 31’ 43” N	111° 54’ 58” W	Unnamed Tributary of Santa Rosa Wash

This permit was issued on:	May 22, 2019
This permit shall become effective on:	June 1, 2019
This permit shall expire at midnight on:	May 31, 2024
In accordance with 40 CFR § 122.21(d), the discharger shall submit a new application for a permit at least 180 days before the expiration date of this permit, unless permission for a date no later than the permit expiration date has been granted by the Director.	

Signed this 22nd day of May 2019, for the Regional Administrator.

/s/ by Kristin Gullatt

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for/ Tomás Torres, Director  
Water Division

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**PART I. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

***A. Effluent Limits and Monitoring Requirements***

1. During the period beginning on the effective date of this permit and ending on the expiration date of this permit, Cyprus Tohono Corporation (“Permittee”) is authorized to discharge treated mine pit water through Outfall 001. Such discharge shall be limited and monitored by the Permittee as specified in Table 1.
2. The permittee shall ensure that its discharge shall not:
  - a. Settle to form bottom deposits that inhibit or prohibit the habitation, growth or propagation of aquatic life;
  - b. Cause objectionable odor in the area in which the surface water is located;
  - c. Cause off-taste or odor in drinking water;
  - d. Cause off-flavor in aquatic organisms;
  - e. Be toxic to humans, animals, plants or other organisms;
  - f. Cause the growth of algae or aquatic plants that inhibit or prohibit the habitation, growth or propagation of other aquatic life or that impair recreational uses;
  - g. Change the color of the surface water from natural background levels of color.
3. The permittee shall ensure that its discharge be free from oil, grease and other pollutants that float as debris, foam, or scum; or that cause a film or iridescent appearance on the surface of the water; or that cause a deposit on a shoreline, bank or aquatic vegetation.
4. The discharge of treated pit water at any point other than Outfall 001 described in this permit is prohibited and constitutes a violation thereof.

***Table 1. Effluent Limits***

Effluent Characteristic	Maximum Allowable Discharge Limits		Monitoring Requirements	
	Daily Maximum	Units	Monitoring Frequency	Sample Type
Flow	Monitoring Only <sup>1</sup>	mg/L	Daily	Estimate
Aluminum <sup>2</sup>	Monitoring Only <sup>3</sup>	mg/L	Weekly	Composite
Cadmium <sup>2</sup>	0.014	mg/L	Weekly	Composite
Copper <sup>2</sup>	0.0063	mg/L	Weekly	Composite
Lead <sup>2</sup>	0.015	mg/L	Weekly	Composite
Manganese <sup>2</sup>	Monitoring Only <sup>3</sup>	mg/L	Weekly	Composite
Selenium <sup>2</sup>	Monitoring Only <sup>3</sup>	mg/L	Weekly	Composite
Silver <sup>2</sup>	0.00032	mg/L	Weekly	Composite
Zinc <sup>2</sup>	0.344	mg/L	Weekly	Composite
Total Acidity	Monitor Only <sup>3</sup>	mg/L	Daily (Field)	Discrete
pH	Between 6.5 to 9.0 at all times	Standard units	Daily (Field)	Discrete

Footnotes:

<sup>1</sup> No limit set for Flow.

<sup>2</sup> Total Recoverable. All metals limits are for total recoverable metals as specified in Methods for Chemical Analysis of Water and Wastes (EPA 600/4-79-020) method 4.1.4.

<sup>3</sup> No limit set at this time. A level that approaches or exceeds applicable surface water quality standards may trigger a re-evaluation of reasonable potential and the permit may be reopened and limitations placed in the permit.

**B. General Monitoring and Reporting**

1. All monitoring shall be conducted in accordance with 40 CFR Part 136 test methods, unless otherwise specified in this permit. For effluent analyses required in Table 1 of this permit, the permittee shall utilize 40 CFR Part 136 test methods with published Method Detection Limit and Minimum Level (“MDL” and “ML”) that are lower than the effluent limits in Table 1 of this permit. For parameters without an effluent limit, the permittee must use an analytical method at or below the level of the applicable water quality criterion for the measured pollutant or the amount of the pollutant is high enough that the method detects and quantifies the level of pollutant in the discharge. If all MDLs or MLs are higher than these effluent limits or criteria concentrations, then the permittee shall utilize the test method with the lowest MDL or ML. In this context, the permittee shall ensure that the laboratory utilizes a standard calibration where the lowest standard point is equal to or less than the ML. Effluent analyses for metals shall measure “total recoverable metal”, except as provided under 40 CFR § 122.45(c).
2. As an attachment to the first Discharge Monitoring Report (“DMR”), the permittee shall submit, for all parameters with monitoring requirements specified in this permit:
  - a. The test method number or title and published MDL or ML,
  - b. The preparation procedure used by the laboratory,
  - c. The laboratory’s MDL for the test method computed in accordance with Appendix B of 40 CFR Part 136,
  - d. The standard deviation (S) from the laboratory’s MDL study,
  - e. The number of replicate analyses (n) used to compute the laboratory’s MDL, and
  - f. The laboratory’s lowest calibration standard.

As part of each DMR submittal, the permittee shall certify that there are no changes to the laboratory’s test methods, MDLs, MLs, or calibration standards. If there are any changes to the laboratory’s test methods, MDLs, MLs, or calibration standards, these changes shall be summarized in an attachment to the subsequent DMR submittal.

3. The permittee shall develop a Quality Assurance (“QA”) Manual for the field collection and laboratory analysis of samples. The purpose of the QA Manual is to assist in planning for the collection and analysis of samples and explaining data anomalies if they occur. At a minimum, the QA Manual shall include the following:

- a. Identification of project management and a description of the roles and responsibilities of the participants; purpose of sample collection; matrix to be sampled; the analytes or compounds being measured; applicable technical, regulatory, or program-specific action criteria; personnel qualification requirements for collecting samples;
  - b. Description of sample collection procedures; equipment used; the type and number of samples to be collected including QA/Quality Control (“QC”) samples; preservatives and holding times for the samples (see 40 CFR § 136.3); and chain of custody procedures;
  - c. Identification of the laboratory used to analyze the samples; provisions for any proficiency demonstration that will be required by the laboratory before or after contract award such as passing a performance evaluation sample; analytical method to be used; MDL and ML to be reported; required QC results to be reported (e.g., matrix spike recoveries, duplicate relative percent differences, blank contamination, laboratory control sample recoveries, surrogate spike recoveries, etc.) and acceptance criteria; and corrective actions to be taken in response to problems identified during QC checks; and,
  - d. Discussion of how the permittee will perform data review, report results, and resolve data quality issues and identify limits on the use of data.
4. Throughout all field collection and laboratory analyses of samples, the permittee shall use the QA/QC procedures documented in their QA Manual. If samples are tested by a contract laboratory, the permittee shall ensure that the laboratory has a QA Manual on file. A copy of the permittee’s QA Manual shall be retained on the permittee’s premises and available for review by regulatory authorities upon request. The permittee shall review its QA Manual annually and revise it, as appropriate.
  5. Samples collected during each month of the reporting period must be reported on Discharge Monitoring Report forms, as follows:
    - a. For a *maximum daily* permit limit or monitoring requirement when one or more samples are collected during the month, report either:

The *maximum value*, if the maximum value of all analytical results is greater than or equal to the ML; or

*NODI (Q)*, if the maximum value of all analytical results is greater than or equal to the laboratory’s MDL, but less than the ML; or

*NODI (B)*, if the maximum value of all analytical results is less than the laboratory’s MDL.

- b. For an *average weekly* or *average monthly* permit limit or monitoring requirement when only one sample is collected during the week or month, report either:

The *maximum value*, if the maximum value of all analytical results is greater than or equal to the ML; or

*NODI (Q)*, if the maximum value of all analytical results is greater than or equal to the laboratory's MDL, but less than the ML; or

*NODI (B)*, if the maximum value of all analytical results is less than the laboratory's MDL.

- c. For an *average weekly* or *average monthly* permit limit or monitoring requirement when more than one sample is collected during the week or month, report:

The *average value* of all analytical results where 0 (zero) is substituted for *NODI (B)* and the laboratory's MDL is substituted for *NODI (Q)*.

6. In addition to information requirements specified under 40 CFR § 122.41(j)(3), records of monitoring information shall include: the laboratory which performed the analyses and any comment, case narrative, or summary of results produced by the laboratory. The records should identify and discuss QA/QC analyses performed concurrently during sample analyses and whether project and 40 CFR Part 136 requirements were met. The summary of results must include information on initial and continuing calibration, surrogate analyses, blanks, duplicates, laboratory control samples, matrix spike and matrix spike duplicate results, and sample condition upon receipt, holding time, and preservation.

### ***C. Reporting of Monitoring Results***

1. Monitoring Requirements During Periods of Non-Discharge If no discharge occurs during the reporting period, the permittee shall specify "No discharge" on the DMRs. During the time that the treatment plant is not in operation, the permittee shall submit DMRs on a **yearly** basis, due January 28th of each year.

2. Monitoring Requirements During Treatment System in Operation

If the treatment system is put back into operation, the permittee shall submit **monthly** DMRs during treatment operation. All monitoring results shall be submitted in such a format as to allow direct comparison with effluent limitations, monitoring requirements and conditions of this permit. Monthly DMRs for the previous three (3) months shall be submitted quarterly no later than the 28th day of the month following the previous quarterly reporting period. For example, the three (3) monthly DMR forms for the reporting period January through March shall be submitted by April 28th. A DMR shall be submitted for the reporting period even if there was not any discharge. If there is no discharge from the facility during the reporting period, the permittee shall submit a DMR indicating "No discharge" as required.

3. Submittal of DMRs and the Use of NetDMR

The permittee shall electronically submit compliance monitoring data and reports using the electronic reporting tools provided by EPA Region 9 (NetDMR and NeT) and may cease mailing paper DMRs. NetDMR is a web-based tool that allows permittees to electronically submit DMRs and other required reports via a secure internet connection. NetDMR can be accessed at: <http://www.epa.gov/netdmr>. By using NetDMR, the permittee will no longer be required to submit hard copies of DMRs to EPA under 40 CFR §§ 122.41 and 403.12.

4. Submittal of Reports as NetDMR Attachments

After the permittee begins submitting electronic DMRs, the permittee shall electronically submit all reports as NetDMR attachments rather than as hard copies, unless otherwise specified in this permit. A report submitted electronically as a NetDMR attachment shall be submitted to EPA by the 28<sup>th</sup> day of the month following the calendar quarter it was due.

**Part II. STANDARD CONDITIONS**

The permittee shall comply with all EPA Region 9 “*Standard Federal NPDES Permit Conditions*,” included in Attachment A of this permit.

**Part III. SPECIAL CONDITIONS**

***A. Permit Reopener***

At this time, there is no reasonable potential to establish any other water quality-based limits. Should any monitoring indicate that the discharge causes or has the reasonable potential to cause, or contributes to excursions above a water quality criterion, the permit may be reopened for the imposition of water quality-based limits and/or whole effluent toxicity limits. In accordance with 40 CFR Parts 122 and 124, this permit may be modified to include appropriate conditions or effluent limits, monitoring, or other conditions to implement new regulations, including new EPA-approved Arizona or Tribal water quality standards; or to address new information indicating the presence of effluent toxicity or the reasonable potential for the discharge to cause or contribute to exceedences of water quality standards.

***B. Twenty Four-Hour Reporting of Noncompliance***

In accordance with 40 CFR § 122.41(l)(6)(i), (ii) and (iii), the following condition is expressly incorporated into this permit. 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 to the following persons or their offices:

Manager  
Wastewater Enforcement Office (ENF 3-1)  
U.S. EPA Region 9  
(415) 947-4179

Cornelius Antone, Manager  
Department of Safety  
Tohono O'odham Nation - Environmental Protection Office  
(520) 383-8681

Or mail to:

Tohono O'odham Nation EPO  
P.O. Box 834  
Sells, AZ 85634  
Attn: Cornelius Antone

1. If the permittee is unsuccessful in contacting the persons above, the permittee shall report by 9 a.m. on the first business day following the noncompliance. A written submission shall also be provided within five (5) 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 dates and times, and, if the noncompliance has not been corrected, the date and/or time it is expected to be corrected; and, steps and/or plans to reduce, eliminate, and prevent reoccurrence of the noncompliance.
2. The following information shall be included as information which must be reported within 24 hours under this paragraph.
  - a. Any unanticipated bypass which exceeds any effluent limit in the permit (see 40 CFR § 122.44(g)).
  - b. Any upset which exceeds any effluent limit in the permit.
  - c. Violation of a maximum daily discharge limit for any of the pollutants listed by the Director in the permit to be reported within 24 hours [see 40 CFR § 122.44(g).]
3. The Director may waive the written report on a case-by-case basis for reports required under paragraph B.2, if the oral report has been received within 24 hours.

### ***C. Notification Requirements for Discharge***

The Permittee shall provide notification to EPA and the Tohono O'odham Nation EPO at least 60 days prior to the commencement of discharge of treated pit water.

## **Part IV. OUTFALL EROSION PROTECTION REQUIREMENTS**

### ***A. Outfall Erosion Protection***

In accordance with Section 304(e) of the CWA and 40 CFR § 122.44(k), the Permittee must develop and implement appropriate control measures or Best Management Practices ("BMPs") designed for outfall erosion control protection and/or energy dissipation at the outfall location to prevent erosion and scouring of the channel during periods of discharge. Such BMPs may include rip rap, perforated pipe, construction of a splash pool, diffuser,



or other means that will slow down the velocity of the discharge and maintain a stable channel.

1. The Permittee shall develop (or update) or implement an Erosion Control Plan (the "Plan") that describes preventive measures or BMPs that specifically apply to the discharge location. The permittee shall implement timely corrective actions and revise BMPs, as necessary.
2. The Plan must identify the areas of the outfall that have a potential for significant soil erosion, and must describe the structural, vegetative, and/or stabilization BMPs that are or will be implemented to limit erosion.
3. The Plan must have qualified personnel inspect all impacted areas of the outfall and identify how often the inspections are to occur.
4. The Plan must have management approval and be maintained and amended whenever there is a change of design, construction, operation, or maintenance of the outfall which has a significant effect on the discharge, or potential for discharge, of pollutants from the facility.
5. The Plan must be retained on-site and be made available up request, for review, at the time of an EPA inspection.

#### ***B. Outfall Monitoring Inspection***

The Permittee shall establish a monitoring procedure and recordkeeping to evaluate the effects of the discharge on the wash. The monitoring procedure shall consist of visual monitoring at the discharge point and at the unnamed wash crossing at Indian Road 15 for the entire duration of the discharge. For the first week of discharge, the Permittee shall make daily inspections to determine the distance from the discharge point where the surface water completely infiltrates into the wash. For the following 4 weeks, the Permittee shall make weekly inspections to determine the distance from the discharge point where the surface water completely infiltrates into the wash. Inspections must include an evaluation of the existing BMPs.

If significant erosion or potential flooding is observed, the permittee shall notify EPA and the Tohono O'odham Nation EPO within 24 hours. The Permittee may be required to institute protective measures as necessary in order to minimize flooding or erosion.

## **Part V. ATTACHMENTS**

### **Attachment A: Standard Permit Conditions**

#### ***A. All NPDES Permits***

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

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

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

- a. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under 405(d) of the CWA within the time provided in the regulations that established these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.
- b. The CWA provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed \$25,000 per day for each violation. The CWA 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 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 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, such 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.
- c. Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit

condition or limitation implementing any such sections in a permit issued under section 402 of this Act. Administrative penalties for Class I violations are not to exceed \$10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$25,000. Penalties for Class II violations are not to exceed \$10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$125,000.

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

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

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

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

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

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

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

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

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

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

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

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

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

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

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

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

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

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

- a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR 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 the Director at any time.
- c. Records of monitoring information shall include:
  - (i) The date, exact place, and time of sampling or measurements;

- (ii) The individual(s) who performed the sampling or measurements;
  - (iii) The date(s) analyses were performed
  - (iv) The individuals(s) who performed the analyses;
  - (v) The analytical techniques or methods used; and
  - (vi) The results of such analyses.
- d. Monitoring 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.
- e. The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.
11. Signatory requirement; at 40 CFR § 122.41(k).
- a. All applications, reports, or information submitted to the Director shall be signed and certified. (See 40 CFR § 122.22.)
  - b. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
12. Reporting requirements; at 40 CFR § 122.41(l).
- a. Planned changes. The permittee shall give notice to the Director as soon as possible of any planned physical alternations or additions to the permitted facility. Notice is required only when:
    - (i) 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
    - (ii) 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).

- (iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;
- b. Anticipated noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- c. Transfers. This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the CWA. (See 40 CFR § 122.61; in some cases, modification or revocation and reissuance is mandatory.)
- d. Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.
  - (i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.
  - (ii) 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 503, or as specified in the permit, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.
  - (iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.
- e. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.
- f. Twenty-four-hour reporting.
  - (i) 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 5 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 the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

- (ii) The following shall be included as information which must be reported within 24 hours under this paragraph.
  - (A) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See 40 CFR § 122.41(g).)
  - (B) Any upset which exceeds any effluent limitation in the permit.
  - (C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. (See 40 CFR § 122.44(g).)
- (iii) The Director may waive the written report on a case-by-case basis for reports under 40 CFR § 122.41(l)(6)(ii) of this section if the oral report has been received within 24 hours.
- g. Other noncompliance. The permittee shall report all instances of noncompliance not reported under 40 CFR § 122.41(l)(4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (l)(6) of this section.
- h. Other information. Where the permittee becomes aware that it has failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.
- i. Identification of the initial recipient for NPDES electronic reporting data. The owner, operator, or the duly authorized representative of an NPDES-regulated entity is required to electronically submit the required NPDES information (as specified in Appendix A to 40 CFR Part 127) to the appropriate initial recipient, as determined by EPA, and as defined in 40 CFR § 127.2(b) of this chapter. EPA will identify and publish the list of initial recipients on its website and in the Federal Register, by state and by NPDES data group [see 40 CFR § 127.2(c) of this chapter]. EPA will update and maintain this listing.

13. Bypass; at 40 CFR § 122.41(m).

a. Definitions.

- (i) “Bypass” means the intentional diversion of waste streams from any portion of a treatment facility.
- (ii) “Severe property damage” means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 40 CFR § 122.41(m)(3) and (m)(4) of this section.

c. Notice.

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

d. Prohibition of bypass.

- (i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:
  - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
  - (C) The permittee submitted notices as required under paragraph (m)(3) of this section.



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

14. Upset; at 40 CFR § 122.41(n).

- a. Definition. “Upset” means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.
- b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph (n)(3) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- c. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (i) An upset occurred and that the permittee can identify the cause(s) of the upset;
  - (ii) The permitted facility was at the time being properly operated; and
  - (iii) The permittee submitted notice of the upset as required in paragraph (l)(6)(ii)(B) of this section (24-hour notice).
  - (iv) The permittee complied with any remedial measures required under paragraph (d) of this section.
- d. Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

***B. Standard Conditions Established by EPA Region 9 for All NPDES Permits***

1. Duty to reapply; at 40 CFR § 122.21(d).

- a. Any POTW with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director. (The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

- b. All other permittees with currently effective permits shall submit a new application at least 180 days before the existing permit expires, except that the Regional Administrator may grant permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date.
2. Signatories to permit applications and reports; at 40 CFR § 122.22.
    - a. Applications. All permit applications shall be signed as follows:
      - (i) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decisionmaking functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Note: EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in 40 CFR § 122.22(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under 40 CFR § 122.22(a)(1)(ii) rather than to specific individuals.
      - (ii) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or
      - (iii) For a municipality, State, Federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).
    - b. All reports required by permits, and other information requested by the Director shall be signed by a person described in paragraph (a) of this section, or by a duly

authorized representative of that person. A person is a duly authorized representative only if:

- (i) The authorization is made in writing by a person described in paragraph (a) of this section;
  - (ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters of the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and,
  - (iii) The written authorization is submitted to the Director.
- c. Changes to authorization. If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.
- d. Certification. Any person signing a document under paragraph (a) or (b) of this section shall make the following certification:

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

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

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

4. Transfer of permits; at 40 CFR § 122.61.
  - a. Transfers by modification. Except as provided in paragraph (b) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under 40 CFR § 122.62(b)(2)), or a minor modification made (under 40 CFR § 122.63(d)), to identify the new permittee and incorporate such other requirements as may be necessary under CWA.
  - b. Automatic transfers. As an alternative to transfers under paragraph (a) of this section, any NPDES permit may be automatically transferred to a new permittee if:
    - (i) The current permittee notifies the Director at least 30 days in advance of the proposed transfer date in paragraph (b)(2) of this section;
    - (ii) 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
    - (iii) The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification under 40 CFR § 122.63. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b)(2) of this section.

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

Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of 40 CFR Part 124. Any permit modification not processed as a minor modification under this section must be made for cause and with 40 CFR Part 124 draft permit and public notice as required in 40 CFR § 122.62. Minor modifications may only:

- a. Correct typographical errors;
- b. Require more frequent monitoring or reporting by the permittee;
- c. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or
- d. Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director.

- e. (1) Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under 40 CFR § 122.29.
  - (2) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.
  - f. [Reserved]
  - g. Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR § 403.11 (or a modification thereto that has been approved in accordance with the procedures in 40 CFR § 403.18) as enforceable conditions of the POTW's permits.
6. Termination of permits; at 40 CFR § 122.64.
- a. The following are causes for terminating a permit during its term, or for denying a permit renewal application:
    - (i) Noncompliance by the permittee with any conditions of the permit;
    - (ii) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;
    - (iii) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
    - (iv) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).
  - b. The Director shall follow the applicable procedures in 40 CFR Part 124 or 40 CFR § 122.22, as appropriate (or State procedures equivalent to 40 CFR Part 124) in terminating any NPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW (but not by land application or disposal into a well), the Director may terminate the permit by notice to the permittee. Termination by notice shall be effective 30 days after notice is sent, unless the permittee objects within that time. If the permittee objects during that period, the Director shall follow 40 CFR Part 124 or applicable State procedures for termination. Expedited permit termination procedures are not available to permittees that are subject to pending State and/or Federal enforcement actions including citizen suits brought under State or Federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not

subject to any pending State or Federal enforcement actions including citizen suits brought under State or Federal law. State-authorized NPDES programs are not required to use part 22 of this chapter's procedures for NPDES permit terminations.

7. Availability of Reports; pursuant to CWA section 308

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 Regional Administrator. As required by the CWA, permit applications, permits, and effluent data shall not be considered confidential.

8. Removed Substances; pursuant to CWA section 301

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

9. Severability; pursuant to CWA section 512

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

10. Civil and Criminal Liability; pursuant to CWA section 309

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

11. Oil and Hazardous Substances Liability; pursuant to CWA section 311

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the CWA.

12. State, Tribe, or Territory Law; pursuant to CWA section 510

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

## **Attachment B: Definitions**

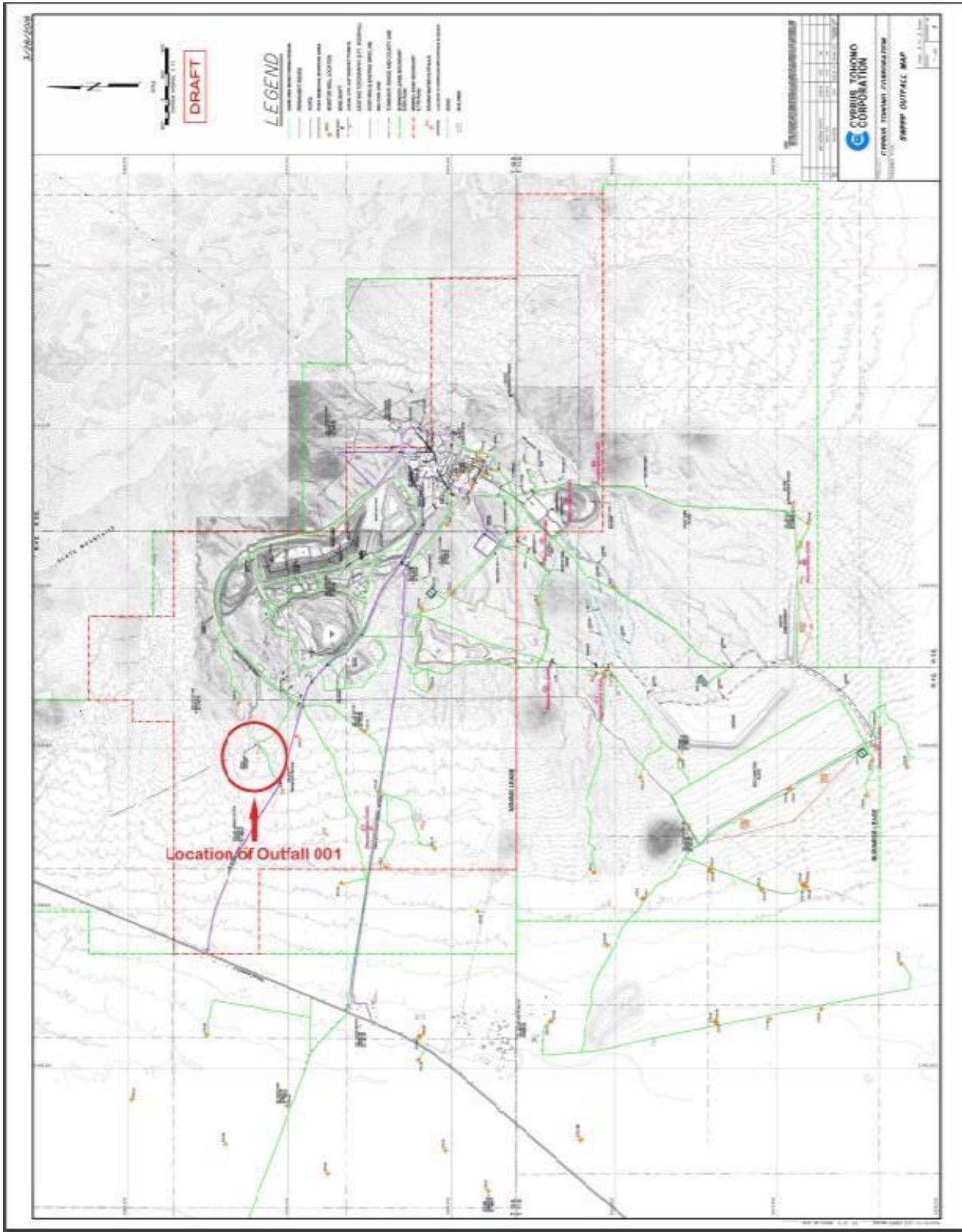
1. An "**average monthly discharge limitation**" means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

2. An **“average weekly discharge limitation”** means the highest allowable average of “daily discharges” over a calendar week, calculated as the sum of all “daily discharges” measured during a calendar week divided by the number of “daily discharges” measured during that week.
3. A **“composite”** sample means a time-proportioned mixture of not less than eight (8) discrete aliquots obtained at equal time intervals (e.g., 24-hour composite means a minimum of eight samples collected every three hours). The volume of each aliquot shall be directly proportional to the discharge flow rate at the time of sampling, but not less than 100 ml. Sample collection, preservation, and handling shall be performed as described in the most recent edition of 40 CFR § 136.3, Table II. Where collection, preservation, and handling procedures are not outlined in 40 CFR § 136.3, procedures outlined in the 18th edition of Standard Methods for the Examination of Water and Wastewater shall be used.
4. A **“daily discharge”** means the **“discharge of a pollutant”** measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the “daily discharge” is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the “daily discharge” is calculated as the average measurement of the pollutant over the day.
5. A **“daily maximum allowable effluent limitation”** means the highest allowable “daily discharge” measured during a calendar day or 24-hour period representing a calendar day.
6. A **“DMR”** is a **“Discharge Monitoring Report”** that is an EPA uniform national form, including any subsequent additions, revisions, or modifications for reporting of self-monitoring results by the permittee.
7. A **“grab”** sample is a single sample collected at a particular time and place that represents the composition of the discharge only at that time and place. Sample collection, preservation, and handling shall be performed as described in the most recent edition of 40 CFR § 136.3, Table II. Where collection, preservation, and handling procedures are not outlined in 40 CFR § 136.3, procedures outlined in the 18th edition of Standard Methods for the Examination of Water and Wastewater shall be used.
8. The **“method detection limit”** or **“MDL”** is the minimum concentration of an analyte that can be detected with 99% confidence that the analyte concentration is greater than zero, as defined by a specific laboratory method in 40 CFR Part 136. The procedure for determination of a laboratory MDL is in 40 CFR Part 136, Appendix B.

9. The “**minimum level**” or “**ML**” is the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed in a specific analytical procedure, assuming that all the method-specific sample weights, volumes, and processing steps have been followed (as defined in EPA’s draft National Guidance for the Permitting, Monitoring, and Enforcement of Water Quality-Based Effluent Limitations Set Below Analytical Detection/Quantitative Levels, March 22, 1994). If a published method-specific ML is not available, then an interim ML shall be calculated. The interim ML is equal to 3.18 times the published method-specific MDL rounded to the nearest multiple of 1, 2, 5, 10, 20, 50, etc. (When neither an ML nor MDL are available under 40 CFR Part 136, an interim ML should be calculated by multiplying the best estimate of detection by a factor of 3.18; when a range of detection is given, the lower end value of the range of detection should be used to calculate the ML.) At this point in the calculation, a different procedure is used for metals, than non-metals:
  - a. For metals, due to laboratory calibration practices, calculated MLs may be rounded to the nearest whole number.
  - b. For non-metals, because analytical instruments are generally calibrated using the ML as the lowest calibration standard, the calculated ML is then rounded to the nearest multiple of  $(1, 2, \text{ or } 5) \times 10^n$ , where  $n$  is zero or an integer. (For example, if an MDL is  $2.5 \mu\text{g/l}$ , then the calculated ML is:  $2.5 \mu\text{g/l} \times 3.18 = 7.95 \mu\text{g/l}$ . The multiple of  $(1, 2, \text{ or } 5) \times 10^n$  nearest to 7.95 is  $1 \times 10^1 = 10 \mu\text{g/l}$ , so the calculated ML, rounded to the nearest whole number, is  $10 \mu\text{g/l}$ .)
10. A “**NODI(B)**” means that the concentration of the pollutant in a sample is not detected. NODI(B) is reported when a sample result is less than the laboratory’s MDL.
11. A “**NODI(Q)**” means that the concentration of the pollutant in a sample is detected but not quantified. NODI(Q) is reported when a sample result is greater than or equal to the laboratory’s MDL, but less than the ML.



### Attachment C – Cyprus Tohono Mine Map including location of Outfall 001



### Attachment D - Aerial Photo of Facility





## Attachment E - View of Flooded Open Pit

