

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

AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

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

Dakota Petroleum Transport Solutions, LLC

is authorized to discharge stormwater from the **Dakota Plains Holdings, Inc. Intermodal Facility** located at 3895 88th Avenue NW, latitude 47°58'21" N and longitude 102°29'8" W, New Town, North Dakota,

to an unnamed tributary of the Missouri River,

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

This permit shall become effective September 1, 2013

This permit and the authorization to discharge shall expire at midnight, June 30, 2018

Signed this day of

Authorized Permitting Official

Derrith R. Watchman-Moore, Assistant Regional Administrator
Office of Partnerships and Regulatory Assistance

1. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1.1. Definitions.

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

Daily Maximum (Daily Max.) is the maximum measured value for a pollutant discharged during a calendar day or any 24-hour period that reasonably represents a calendar day for purposes of sampling. For pollutants with daily maximum limitations expressed in units of mass (e.g., kilograms, pounds), the daily maximum is calculated as the total mass of pollutant discharged over the calendar day or representative 24-hour period. For pollutants with limitations expressed in other units of measurement (e.g., milligrams/liter, parts per billion), the daily maximum is calculated as the average of all measurements of the pollutant over the calendar day or representative 24-hour period. If only one measurement or sample is taken during a calendar day or representative 24-hour period, the single measured value for a pollutant will be considered the daily maximum measurement for that calendar day or representative 24-hour period.

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

EPA means the United States Environmental Protection Agency.

Facility means all contiguous property owned, operated, leased or under the control of the same person or entity.

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

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

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.

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.

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

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

- 1.2. Description of Discharge Point(s). The authorization to discharge provided under this permit is limited to those outfalls specifically designated below as discharge locations. Discharges to any location not authorized under an NPDES permit is a violation of the Clean Water Act and could subject the person(s) responsible for such discharge to penalties under Section 309 of the Act.

Outfall

Serial Number(s) Description of Discharge Point(s)

001	Any discharge from Basin 1 to the adjacent wetlands at the northwest portion of the Facility: latitude 47°58'35" N and longitude 102°28'43" W. Stormwater discharge events can be sampled via a 18" corrugated metal pipe which flows south into the adjacent wetlands.
-----	---

1.3. Specific Limitations and Self-Monitoring Requirements

- 1.3.1. Prohibition of Non-stormwater discharges. The following discharges are not authorized by this permit: vehicle/equipment wash water (including tank cleaning operations), surfactants commingled in water from fire suppression systems, and discharges from the cleanout of oil/water separators. Such discharges must be authorized under a separate NPDES permit, discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements, or recycled on-site.
- 1.3.2. Effluent Limitations – Outfall 001. Effective immediately and lasting through the life of this permit, the quality of effluent discharged by the facility shall, at a minimum, meet the limitations as set forth below:

Effluent Characteristic	Daily Maximum <u>a/</u>
Settleable Solids, ml/L <u>b/</u>	0.5
Oil and Grease, mg/L	10.0

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

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

c/ The concentration of oil and grease shall not exceed 10 mg/L in any sample. If a visible sheen is detected in any of the facility settling basins or in the wetlands adjacent to the railroad line, capture of oil and grease via booms or other appropriate mechanisms must be initiated rapidly (e.g., within 15 minutes) to reduce the discharge of oil and grease.

- 1.3.3. Self-Monitoring Requirements - Outfall 001. At a minimum, upon the effective date of this permit, the following constituents shall be monitored at the frequency and with the type of measurement indicated; samples or measurements shall be representative of the volume and nature of the monitored discharge. If no discharge occurs during the entire monitoring period, it shall be stated on the Discharge Monitoring Report Form (EPA No. 3320-1) that no discharge or overflow occurred.

Effluent Characteristic	Frequency	Sample Type <u>a/</u>
Settleable Solids (ml/L) <u>c/</u>	Discharge <u>b/</u>	Grab
Oil and grease, visual <u>d/</u>	Discharge <u>b/</u>	Grab
Benzene <u>d/</u>	Discharge <u>b/</u>	Grab

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

b/ The discharge shall be sampled once as soon as the permittee is aware that a discharge is occurring and reported for each discharge from the facility on the Discharge Monitoring Report Form (EPA No. 3320-1).

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

d/ A visual observation is required to determine whether there is a visible sheen in the effluent any time the facility discharges from the storm water settling basin. If a visible sheen is detected, a grab sample shall be taken immediately and analyzed in accordance with the requirements of 40 CFR Part 136 for both oil and grease and benzene.

1.3.4. Weekly Inspections. Weekly site inspections of the facility shall be conducted in accordance with Part 3.9 of the permit.

1.3.5. Comprehensive Facility Inspections. In addition to weekly inspections, qualified personnel identified by the operator shall make a comprehensive inspection of their storm water management system, at least twice per year (in the spring and fall) in accordance with Part 3.10 of the permit.

2. MONITORING, RECORDING AND REPORTING REQUIREMENTS

2.1. Representative Sampling. Samples taken in compliance with the monitoring requirements established under Part 1 shall be collected from the effluent stream prior to discharge into the receiving waters.

2.2. Monitoring Procedures. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit

2.3. Penalties for Tampering. The Act provides that any person who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or by both. Second conviction is punishable by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or both.

2.4. Reporting of Monitoring Results. Effluent monitoring results obtained during the previous 6 months shall be summarized and reported on **one** Discharge Monitoring Report Form (EPA No. 3320-1), postmarked no later than the 28th day of the month following the completed reporting period. If no discharge occurs during the reporting period, "no discharge" shall be reported. Legible copies of these, and all other reports required herein, shall be signed and certified in accordance with the Signatory Requirements (see Part 6.7), and submitted to the EPA Region 8 Policy, Information Management & Environmental Justice Program and the Three Affiliated Tribes at the addresses given below:

original to: U.S. EPA, Region 8
Policy, Information Management & Environmental Justice Program (8ENF-PJ)
Attention: Director
1595 Wynkoop Street
Denver, Colorado 80202-1129

copy to: Edmund Baker, Environmental Director
Three Affiliated Tribes
404 Frontage Road
New Town, ND 58763-9404

- 2.5. Additional Monitoring by the Permittee. If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136, 40 CFR 503, or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.
- 2.6. Records Contents. Records of monitoring information shall include:
- 2.6.1. The date, exact place, and time of sampling or measurements;
- 2.6.2. The initials or name(s) of the individual(s) who performed the sampling or measurements;
- 2.6.3. The date(s) analyses were performed;
- 2.6.4. The time(s) analyses were initiated;
- 2.6.5. The initials or name(s) of individual(s) who performed the analyses;
- 2.6.6. References and written procedures, when available, for the analytical techniques or methods used; and,
- 2.6.7. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.
- 2.7. Retention of Records. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time. Data collected on site, data used to prepare the DMR, copies of Discharge Monitoring Reports, and a copy of this NPDES permit must be maintained on site.
- 2.8. Twenty-four Hour Notice of Noncompliance Reporting.
- 2.8.1. The permittee shall report any noncompliance which may endanger health or the environment as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the EPA, Region 8, Site Assessment/Emergency Response Program at (303) 293-1788 and the Three

Affiliated Tribes at (701) 627-4781.

- 2.8.2. The following occurrences of noncompliance shall be reported by telephone to the EPA, Region 8, NPDES Enforcement Unit at (800) 227-8917 (8:00 a.m. - 4:30 p.m. Mountain Time) and the Three Affiliated Tribes at (701) 627-4781 (8:00 a.m. - 4:30 p.m. Central Time) by the first workday following the day the permittee became aware of the circumstances:
- 2.8.2.1. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Part 5.7, Bypass of Treatment Facilities.);
 - 2.8.2.2. Any upset which exceeds any effluent limitation in the permit (See Part 5.8, Upset Conditions.); or,
 - 2.8.2.3. Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.
- 2.8.3. A written submission shall also be provided to the USEPA, Office of Enforcement, Compliance and Environmental Justice, and to the Three Affiliated Tribes within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:
- 2.8.3.1. A description of the noncompliance and its cause;
 - 2.8.3.2. The period of noncompliance, including exact dates and times;
 - 2.8.3.3. The estimated time noncompliance is expected to continue if it has not been corrected; and,
 - 2.8.3.4. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
- 2.8.4. The Director may waive the written report on a case-by-case basis for an occurrence of noncompliance listed under Part 2.8.2 above, if the incident has been orally reported in accordance with the requirements of Part 2.8.2.
- 2.8.5. Reports shall be submitted to the addresses in Part 2.4, Reporting of Monitoring Results.
- 2.9. Other Noncompliance Reporting. Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for Part 2.4 are submitted. The reports shall contain the information listed in Part 2.8.3.
- 2.10. Inspection and Entry. The permittee shall allow the Regional Administrator, or authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:
- 2.10.1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

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

3. STORM WATER MANAGEMENT CONTROLS

You must identify, describe, and implement appropriate facility specific controls that will reduce or prevent pollutants in storm water. These must include all of the storm water management controls required in Parts 3.1-3.10. If any of the requirements are not applicable to the facility, you shall include a written explanation of inapplicability in your Storm Water Pollution Plan (SWPPP). If existing controls need to be modified or if additional controls are necessary, new controls must be implemented as soon as reasonable and practicable, but not more than **60 days** after unless additional time is approved by the permit issuing authority. Failure to take corrective actions within this timeframe is a violation of this permit.

3.1. Good Housekeeping includes procedures to maintain a clean and orderly facility. You must:

- 3.1.1. Maintain stormwater settling basins and fire water collection basins, drainage areas, conveyance systems, loading and unloading areas, waste handling/disposal areas, and perimeter areas impacted by off-facility materials or storm water run-on to prevent the discharge of pollutants in stormwater runoff and to address concerns prior to precipitation events. Any identified debris, wastes, and spilled, tracked, or leaked materials shall be cleaned and disposed of properly;
- 3.1.2. Implement and maintain controls to reduce or prevent material tracking (e.g., sediment, debris) offsite;
- 3.1.3. Cover all stored industrial materials (including salt used for deicing that can be readily mobilized by contact with storm water);
- 3.1.4. Maintain all material storage vessels (e.g., for used oil, spent solvents, paint wastes, hydraulic fluids) to prevent contamination of stormwater and plainly label them (e.g., "Used Oil," "Spent Solvents," etc.). Consider storing the materials indoors; installing berms/dikes around the areas; minimizing runoff of stormwater to the areas; using dry cleanup methods; and treating and/or recycling collected stormwater runoff; and
- 3.1.5. Contain all stored non-solid industrial materials (such as liquids and powders) that can be transported or dispersed via wind dissipation or contact with storm water.

3.2. Identification of Potential Pollutant Sources and Best Management Practices. You must:

- 3.2.1. Address the following potential sources of pollutants and implement and maintain Best Management Practices (BMPs) to reduce the potential of these sources to contribute pollutants to storm water discharges: earth and soil moving; waste hauling and loading or

unloading; outdoor storage of significant materials and storage/management/cleanup of sand used for locomotive traction areas.

- 3.3. Preventative Maintenance. Preventative maintenance BMPs generally include the regular inspection and maintenance of facility equipment and systems used outdoors (such as process machinery, collection systems, storage containers, etc.) to prevent spills and leaks from occurring due to age, use, malfunction, or damage. You must:
- 3.3.1. Identify all equipment used outdoors that may spill or leak pollutants and establish a schedule to perform maintenance of identified equipment and systems. The schedule shall be either periodic or based upon more appropriate intervals such as hours of use, mileage, and age. This includes but is not limited to lock valves for fire suppression systems, locomotive track pans, and secondary containment features for above ground storage tanks;
 - 3.3.2. Establish a schedule to perform maintenance of identified equipment and systems. The schedule shall either be periodic or based upon more appropriate intervals such as hours of use, mileage, age, etc;
 - 3.3.3. Maintain velocity dissipation and settling structures on Outfalls 001 such that the discharge does not create deleterious impacts to receiving waters and wetlands from erosion, sedimentation, and undercutting;
 - 3.3.4. Maintain stormwater settling basins to reduce nuisance algal growth, to maintain at least ½ of the design capacity by removing accumulated sediment, and to maintain hydraulic head consistent with the design as needed to maintain effective sediment removal efficiency;
 - 3.3.5. Maintain stormwater conveyance channels to minimize erosion and maintain channel integrity;
 - 3.3.6. Maintain oil/water separators and coalescing plate separators by inspecting and maintaining consistent with manufacturer specifications, removing sludge buildup and accumulated oil in a manner to maintain effective functioning condition, and cleaning coalescing plates before they get “blinded” or coated with silt or solids; and
 - 3.3.7. Establish procedures for prompt maintenance and repair of equipment and systems when conditions exist that may result in the development of spills or leaks or failure of collection, recapture, and diversion systems.
- 3.4. Spill Prevention and Response Procedures. You must:
- 3.4.1. Develop and implement spill response procedures. Response procedures must include notification of appropriate facility personnel, emergency agencies, and regulatory agencies, and procedures for stopping, containing and cleaning up spills. Measures for cleaning up hazardous material spills or leaks must be consistent with applicable Resource Conservation and Recovery Act (RCRA) regulations at 40 CFR Part 264 and 40 CFR Part 265;
 - 3.4.2. Provide preventative measures to prevent spills from discharging from the facility. These must include barriers between material storage and traffic areas, secondary containment

provisions, and procedures for material storage and handling;

- 3.4.3. Maintain absorbent booms or other appropriate equipment on site and in the proper location so that if a sheen is recognized at any of the facility settling basins or discharging to the wetland areas bisected by the facility, a rapid remedial action can be taken (e.g., with 15 minutes);
 - 3.4.4. Identify and describe all necessary and appropriate spill response equipment, location of spill response equipment, and spill response equipment maintenance procedures;
 - 3.4.5. Identify and train appropriate spill response personnel; and
 - 3.4.6. Maintain a list of spills and leaks that occurred during the year and the actions taken to remediate the impacts from those spills and leaks and document them in the semi-annual Comprehensive Facility Inspection.
- 3.5. Material Handling/Waste Management. You must:
- 3.5.1. Prevent or minimize handling of materials or wastes that can be readily mobilized by contact with storm water during a storm event;
 - 3.5.2. Divert run-on from material handling, waste management, and fueling areas;
 - 3.5.3. Contain non-solid materials or wastes that can be dispersed via wind erosion during handling; and
 - 3.5.4. Clean all spills of materials/wastes that occur during handling in accordance with the spill response procedures required in Part 3.4.
- 3.6. Employee Training. You must:
- 3.6.1. Establish a facility point of contact or list of contacts responsible for complying with this permit. This person should be familiar with the day-to-day operations at the facility, the facility SWPPP, and facility site-map. The facility point of contact should have access to as-built diagrams which specify the design and maintenance of settling basins, outfall structures, oil/water separators, fire suppression systems, and leak detection systems;
 - 3.6.2. Prepare or acquire appropriate training materials which describe the inspection procedures required by this permit, applicable recordkeeping requirements, the structural BMPs on site and how they need to be maintained, and spill response and reporting requirements;
 - 3.6.3. Identify which personnel shall be trained, their responsibilities, and the type of training they shall receive;
 - 3.6.4. Provide a training schedule; and
 - 3.6.5. Maintain documentation of all completed training classes and the personnel who received training.
- 3.7. Record Keeping and Quality Assurance. You must:

- 3.7.1. Keep and maintain records of inspections, spills, BMP related maintenance activities, corrective actions, visual observations, etc.; and
- 3.7.2. Develop and implement management procedures to ensure that the appropriate staff implements all requirements of this permit.
- 3.8. Identification of Discharges other than Storm Water. You must evaluate the storm water conveyance system on the site for the presence of discharges other than storm water. Where dry weather discharges are observed, you must perform illicit discharge detection and elimination procedures and provide information in the annual report on the results of any evaluations, the method(s) used, the date of the evaluation(s), and the on-site drainage points that were directly observed during the evaluation(s).
- 3.9. Weekly Inspections. You must inspect the site at least once every 7 days. Weekly inspections should focus on Good Housekeeping Procedures (see Part 3.1), Preventative Maintenance BMPs (see Part 3.3), Spill Prevention and Response Procedures (see Part 3.4), and Material Handling/Waste Management (see Part 3.5). Weekly visual inspections must be performed to look for any visual sheens indicative of oil and grease accumulating along the perimeter of the site including the stormwater conveyance ditch which circumnavigates the site, the settling basins on site, and all wetlands areas bisected by the railroad tracks within the facility. The areas inspected, the inspector providing weekly inspections, and the date of inspection must be documented in a log book. If during a weekly inspection, a visible sheen is recognized in the wetlands bisected by the railroad tracks within the facility, at one of the settling basins, or within the stormwater conveyance ditch which circumnavigates the site, capture of oil and grease via booms or other appropriate mechanisms should be initiated rapidly (e.g., within 15 minutes) to reduce the discharge of oil and grease.
- 3.10. Comprehensive Facility Inspections. In addition to weekly inspections, qualified personnel identified by the operator shall make a comprehensive inspection of their storm water management system, at least twice per year (in the spring and fall). These comprehensive inspections must be documented with documents retained on site as part of the Stormwater Pollution Prevention Plan (See Part 4). Qualified personnel are those who possess the knowledge and skills to assess conditions and activities that could impact storm water quality at the facility, and who can also evaluate the effectiveness of BMPs selected. You must:
 - 3.10.1. Inspect material handling areas, disturbed areas, areas used for material storage that are exposed to precipitation, and other potential sources of pollution identified in Parts 3.1-3.7 for evidence of, or the potential for, pollutants entering the drainage system. Structural storm water management measures, sediment and control measures, and other structural pollution prevention measures must be observed to ensure that they are operating correctly. A visual inspection of equipment needed to prevent pollutant discharges, such as spill response equipment, shall be made to confirm that it is readily available and in proper working order;
 - 3.10.2. Conduct repairs or maintenance as identified during the inspection; and
 - 3.10.3. Produce a report summarizing the inspection, personnel making the inspection, the date(s) of the inspection, significant observations, and actions taken in accordance with Part 3.10.2.

The report must be retained for at least three years after the date of the inspection. Significant observations include the locations of discharges of pollutants from the site; locations of previously unidentified sources of pollutants; locations of BMPs needing maintenance or repair; locations of spills or direct discharges of process water; locations of failed BMPs that need replacement; and locations where additional BMPs are needed. The report must also document any incidents of noncompliance observed.

4. STORM WATER POLLUTION PREVENTION PLAN

A Storm Water Pollution Prevention Plan (SWPPP) must be developed specifically for the facility. Any SWPPP that does not meet all of the requirements listed herein must be amended to conform with the SWPPP requirements in this permit. Such amendments must be completed within 60 days after the effective date of the permit.

4.1. Storm Water Pollution Prevention Plan Contents. The SWPPP must include the following items, at a minimum:

4.1.1. Industrial Activity Description. The plan shall provide a narrative description of the industrial activity taking place at the site.

4.1.2. Site Map. The plan shall include a site map indicating the following:

- 1) The areas where industrial activities occur;
- 2) The locations of storm water outfalls and an approximate outline of the areas draining to each outfall;
- 3) The locations of paved areas and buildings within the drainage area of each storm water outfall;
- 4) The locations of each past or present area used for outdoor storage or disposal of significant materials;
- 5) The locations of stormwater settling basins;
- 6) The locations of existing and new structural control measures designed to reduce pollutants in storm water runoff and divert run-on from commingling with wastewater and fueling areas;
- 7) The locations and sources of run-on to your site;
- 8) The location and description of non-storm water discharges;
- 9) Locations of potential pollutant sources as identified in Part 3.2;
- 10) Locations where significant spills or leaks as identified in Part 3.4 occurred;
- 11) Locations of storm water inlets and outfalls; and
- 12) Areas used for the treatment, storage, or disposal of wastes

4.1.3. Stormwater Management Controls. Document in the SWPPP the controls installed and any modifications performed to maintain these controls as required in Parts 3.1-3.8.

4.1.4. Inspection Reports. Include in the SWPPP summaries from the weekly inspections as well as the report required by the semi-annual comprehensive facility inspection.

4.2. SWPPP Administrator. The SWPPP must identify a specific individual(s) within the plant organization who is responsible for developing the plan and assisting the plant manager in its implementation, maintenance, and revision. The activities and responsibilities of the administrator shall address all aspects of the facility's SWPPP.

- 4.3. Operator Review/Change. You must amend the plan whenever there is a change in design, construction, operation, or maintenance which has a significant effect on the potential for the discharge of pollutants to the waters of the US, or if the storm water controls prove to be ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. If existing BMPs need to be modified or if additional BMPs are necessary, the plan changes and implementation must be completed as soon as practicable, but not more than **60 days** after: the change in design, construction, operation, or maintenance, or; the SWPPP has been determined to be ineffective, unless this time frame is extended by the permit issuing authority. Amendments to the plan shall be summarized in the next Annual Report.
- 4.4. SWPPP Availability. All SWPPPs required under this permit are considered reports that must be available to the public under Section 308(b) of the Clean Water Act. EPA shall make plans available to members of the public upon request. However, the operator may claim any portion of a storm water pollution plan as confidential in accordance with 40 CFR Part 2.

5. COMPLIANCE RESPONSIBILITIES

- 5.1. Duty to Comply. The permittee must comply with all conditions of this permit. Any failure to comply with the permit may constitute a violation of the Clean Water Act and may be grounds for enforcement action, including, but not limited to permit termination, revocation and reissuance, modification, or denial of a permit renewal application. The permittee shall give the director advance notice of any planned changes at the permitted facility that will change any discharge from the facility, or of any activity that may result in failure to comply with permit conditions.
- 5.2. Penalties for Violations of Permit Conditions. The Clean Water Act provides for specified civil and criminal monetary penalties for violations of its provisions. However, the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires EPA to adjust the civil monetary penalties for inflation on a periodic basis. EPA previously adjusted its civil monetary penalties on December 31, 1996 (61 Fed. Reg. 69359-69365), with technical corrections and additions published on March 20, 1997 (62 Fed. Reg. 13514-13517), June 27, 1997 (62 Fed. Reg. 35037-35041) and February 13, 2004 (69 Fed. Reg. 7121-7127). On December 11, 2008 (73 Fed. Reg. 75340-75346) EPA once again adjusted its civil monetary penalties. The civil and criminal penalties, as of January 12, 2009, for violations of the Act (including permit conditions) are given below:
- 5.2.1. Any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed \$37,500 per day for each violation.
- 5.2.2. Any person who *negligently* violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment for not more than 1 year, or both. In

the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment for not more than 2 years, or both.

- 5.2.3. Any person who *knowingly* violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment for not more than 6 years, or both.
- 5.2.4. Any person who *knowingly* violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment for not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment for not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.
- 5.2.5. Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Where an administrative enforcement action is brought for a Class I civil penalty, the assessed penalty may not exceed \$16,000 per violation, with a maximum amount not to exceed \$37,500. Where an administrative enforcement action is brought for a Class II civil penalty, the assessed penalty may not exceed \$16,000 per day for each day during which the violation continues, with the maximum amount not to exceed \$177,500.
- 5.3. Need to Halt or Reduce Activity not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
- 5.4. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
- 5.5. Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. However, the permittee

shall operate, at a minimum, one complete set of each main line unit treatment process whether or not this process is needed to achieve permit effluent compliance.

- 5.5.1 The permittee shall, as soon as reasonable and practicable, but no later than six (6) months after the effective date of this permit, do the following as part of the operation and maintenance program for the facility:
 - 5.5.1.1. Have a current O & M Manual(s) that describes the proper operational procedures and maintenance requirements of the facility;
 - 5.5.1.2. Have the O & M Manual(s) readily available to the operator of the facility and require that the operator become familiar with the manual(s) and any updates;
 - 5.5.1.3. Have a schedule(s) for routine operation and maintenance activities at the facility; and,
 - 5.5.1.4. Require the operator to perform the routine operation and maintenance requirements in accordance with the schedule(s).
- 5.5.2. The permittee shall maintain a daily log in a **bound notebook(s)** containing a summary record of all operation and maintenance activities at the facility. At a minimum, the notebook shall include the following information:
 - 5.5.2.1. Date and time;
 - 5.5.2.2. Name and title of person(s) making the log entry;
 - 5.5.2.3. Name of the persons(s) performing the activity;
 - 5.5.2.4. A brief description of the activity; and,
 - 5.5.2.5. Other information, as appropriate.

The permittee shall maintain the notebook in accordance with proper record-keeping procedures and shall make the log available for inspection, upon request, by authorized representatives of the U.S. Environmental Protection Agency or the Three Affiliated Tribes.

- 5.6. Removed Substances. Collected screenings, grit, solids, sludge, or other pollutants removed in the course of treatment shall be buried or disposed in a manner consistent with all applicable federal and tribal regulations (i.e., 40 CFR 257, 40 CFR 258, 40 CFR 503) and in a manner so as to prevent any pollutant from entering any waters of the United States or creating a health hazard. **In addition, the use and/or disposal of sewage sludge shall be done under the authorization of an NPDES permit issued for the use and/or disposal of sewage sludge by the appropriate NPDES permitting authority for sewage sludge.** Sludge/digester supernatant and filter backwash shall not be directly blended with or enter either the final plant discharge and/or waters of the United States.
- 5.7. Bypass of Treatment Facilities.

- 5.7.1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts 5.7.2 and 5.7.3.
- 5.7.2. Notice:
- 5.7.2.1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass to the USEPA, Technical Enforcement Program, and Three Affiliated Tribes.
- 5.7.2.2. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part 2.8, Twenty-four Hour Noncompliance Reporting, to the USEPA, Technical Enforcement Program, and the Three Affiliated Tribes.
- 5.7.3. Prohibition of bypass.
- 5.7.3.1. Bypass is prohibited and the Director may take enforcement action against a permittee for a bypass, unless:
- 5.7.3.1.1. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- 5.7.3.1.2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,
- 5.7.3.1.3. The permittee submitted notices as required under Part 5.7.2.
- 5.7.3.2. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in Part 5.7.3.1.

5.8. Upset Conditions

- 5.8.1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part 5.8.2 are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review (i.e., Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limitations).
- 5.8.2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
- 5.8.2.1. An upset occurred and that the permittee can identify the cause(s) of the upset;

- 5.8.2.2. The permitted facility was at the time being properly operated;
- 5.8.2.3. The permittee submitted notice of the upset as required under Part 2.8, Twenty-four Hour Notice of Noncompliance Reporting; and,
- 5.8.2.4. The permittee complied with any remedial measures required under Part 5.4, Duty to Mitigate.
- 5.8.3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.
- 5.9. Toxic Pollutants. The permittee shall comply with effluent standards or prohibitions established under Section 307 (a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
- 5.10. Changes in Discharge of Toxic Substances. Notification shall be provided to the Director as soon as the permittee knows of, or has reason to believe:
 - 5.10.1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - 5.10.1.1. One hundred micrograms per liter (100 ug/L);
 - 5.10.1.2. Two hundred micrograms per liter (200 ug/L) for acrolein and acrylonitrile; five hundred micrograms per liter 500 ug/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
 - 5.10.1.3. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or,
 - 5.10.1.4. The level established by the Director in accordance with 40 CFR 122.44(f).
 - 5.10.2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - 5.10.2.1. Five hundred micrograms per liter (500 ug/L);
 - 5.10.2.2. One milligram per liter (1 mg/L) for antimony;
 - 5.10.2.3. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or,
 - 5.10.2.4. The level established by the Director in accordance with 40 CFR 122.44(f).

6. GENERAL REQUIREMENTS

- 6.1. Planned Changes. The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - 6.1.1. The alteration or addition could significantly change the nature or increase the quantity of pollutant discharged. This notification applies to pollutants which are not subject to effluent limitations in the permit; or,
 - 6.1.2. There are any planned substantial changes to the existing sewage sludge facilities, the manner of its operation, or to current sewage sludge management practices of storage and disposal. The permittee shall give the Director notice of any planned changes at least 30 days prior to their implementation.
 - 6.1.3. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source.
- 6.2. Anticipated Noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- 6.3. Permit Actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- 6.4. Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application should be submitted at least 180 days before the expiration date of this permit.
- 6.5. Duty to Provide Information. The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.
- 6.6. Other Information. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Director, it shall promptly submit such facts or information.
- 6.7. Signatory Requirements. All applications, reports or information submitted to the Director shall be signed and certified.
 - 6.7.1. All permit applications shall be signed by either a principal executive officer or ranking elected official.
 - 6.7.2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- 6.7.2.1. The authorization is made in writing by a person described above and submitted to the Director; and,
- 6.7.2.2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)
- 6.7.3. Changes to authorization. If an authorization under Part 6.7.2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part 6.7.2 must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.
- 6.7.4. Certification. Any person signing a document under this section shall make the following certification:
- "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
- 6.8. Penalties for Falsification of Reports. The Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than six months per violation, or by both.
- 6.9. Availability of Reports. Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Director. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.
- 6.10. Oil and Hazardous Substance Liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.
- 6.11. Property Rights. The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, tribal or local laws or regulations.

- 6.12. Severability. The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.
- 6.13. Transfers. This permit may be automatically transferred to a new permittee if:
- 6.13.1. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date;
- 6.13.2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and,
- 6.13.3. The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part 6.13.2.
- 6.14. Permittees in Indian Country. EPA is issuing this permit pursuant to the Agency's authority to implement the Clean Water Act NPDES program in Indian country, as defined at 18 U.S.C. 1151.
- 6.15. Reopener Provision. This permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limitations (and compliance schedule, if necessary), or other appropriate requirements if one or more of the following events occurs:
- 6.15.1. Water Quality Standards: The water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit.
- 6.15.2. Wasteload Allocation: A wasteload allocation is developed and approved by the Three Affiliated Tribes and/or EPA for incorporation in this permit.
- 6.15.3. Water Quality Management Plan: A revision to the current water quality management plan is approved and adopted which calls for different effluent limitations than contained in this permit.
- 6.16. Toxicity Limitation-Reopener Provision. This permit may be reopened and modified (following proper administrative procedures) to include whole effluent toxicity limitations if whole effluent toxicity is detected in the discharge.