



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

CERTIFIED MAIL 7016 1970 0000 8992 6724
RETURN RECEIPT REQUESTED

Mr. John H. McCoy
Smoky Mountain Trout Farm
2697 Bunches Creek
PO Box 1244
Cherokee, North Carolina 28719

Subject: Final Issuance of National Pollutant Discharge Elimination System Permit
Number NC0052515 – Smoky Mountain Trout Farm

Dear Mr. McCoy:

Enclosed is the National Pollutant Discharge Elimination System permit for the above referenced facility. This action constitutes the U.S. Environmental Protection Agency's final permit decision in accordance with 40 Code of Federal Regulations (CFR) § 124.15(a). The permit will become effective as specified, provided that a request for review of the permit decision is not received by the EPA's Environmental Appeal Board within 30 days according to 40 CFR § 124.19 (see enclosed document titled "Appeal of NPDES Permits").

Please note the EPA has modernized Clean Water Act reporting by converting to an electronic data reporting system for NPDES permits instead of submitting written paper reports such as Discharge Monitoring Reports (DMRs). The permit requires electronic submittals of DMRs using the EPA's netDMR tool. More information regarding electronic submittals can be found in Part II of the permit.

Further information on procedures pertaining to the filing of a request for review of the permit decision or other legal matters relative to this permit issuance may be obtained by contacting Mr. Paul Schwartz, Assistant Regional Counsel, at (404) 562-9576. For information regarding technical aspects of the permit, please contact Mr. Kip Tyler of my staff at (404) 562-9294 or Tyler.Kip@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "MSW", written over a light blue horizontal line.

Mary S. Walker
Director
Water Protection Division

Enclosures (2)

cc: Mr. Michael Bolt, EBCI

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER

61 FORSYTH STREET

ATLANTA, GEORGIA 30303-8960

APPEALING NPDES PERMITS

If you wish to contest any of the provisions of your final National Pollutant Discharge Elimination System (NPDES) permit, you must file a petition for review with the U.S. Environmental Protection Agency's (EPA) Environmental Appeals Board (EAB) within thirty (30) days after the Regional Administrator served you with notice of the issuance of the final NPDES permit decision under 40 Code of Federal Regulations (CFR) § 124.15. The EAB is the final EPA decision-maker on administrative appeals of NPDES permits. If you received notice of this final permit decision by mail, the 30-day period within which you must file any appeal begins on the day the notice was sent by EPA (i.e., the day after the postmark date according to 40 CFR § 124.20(a)), and an additional three days are added to the period within which to appeal in order to compensate for mail delay (see 40 CFR § 124.20(d)).

Any person who filed comments on the draft permit or participated in any public hearing that may have been held pertaining to the draft permit may appeal a final permit by filing a Petition for Review with the Clerk of the EAB. The issues raised in the appeal must have been raised during the public comment period so long as they were reasonably ascertainable. Additionally, any person who failed to file comments or failed to participate in any public hearing on the draft permit may file a petition for review of permit conditions, but only to the extent that such permit conditions reflect changes from the draft permit.

Procedures for appealing permits are specified in 40 CFR § 124.19, as revised in 2013. 40 CFR § 124.19 is set forth on the following pages. Provisions related to appealing permits can be found at 40 CFR § 124.16 (stays of permit conditions), 40 CFR § 124.20 (computation of time), and 40 CFR § 124.60 (issuance and effective date and stays of NPDES permits). All permit appeals must conform to the regulations.

ENVIRONMENTAL APPEALS BOARD CONTACT INFORMATION

EAB's mailing address: Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue NW (Mail Code 1103M)
Washington, DC 20460-0001

EAB's telephone number: (202) 233-0122

EAB's fax number: (202) 233-0121

EAB's website: www.epa.gov/aboutepa/about-environmental-appeals-board-eab

40 CFR § 124.19 Appeal of RCRA, UIC, NPDES, and PSD Permits.

(a) Petitioning for review of a permit decision.

- (1) Initiating an appeal.** Appeal from a RCRA, UIC, NPDES, or PSD final permit decision issued under § 124.15 of this part, or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 of this chapter, is commenced by filing a petition for review with the Clerk of the Environmental Appeals Board within the time prescribed in paragraph (a)(3) of this section.
- (2) Who may file?** Any person who filed comments on the draft permit or participated in a public hearing on the draft permit may file a petition for review as provided in this section. Additionally, any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review of any permit conditions set forth in the final permit decision, but only to the extent that those final permit conditions reflect changes from the proposed draft permit.
- (3) Filing deadline.** A petition for review must be filed with the Clerk of the Environmental Appeals Board within 30 days after the Regional Administrator serves notice of the issuance of a RCRA, UIC, NPDES, or PSD final permit decision under § 124.15 or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 of this chapter. A petition is filed when it is received by the Clerk of the Environmental Appeals Board at the address specified for the appropriate method of delivery as provided in paragraph (i)(2) of this section.
- (4) Petition contents.**
 - (i)** In addition to meeting the requirements in paragraph (d), a petition for review must identify the contested permit condition or other specific challenge to the permit decision and clearly set forth, with legal and factual support, petitioner's contentions for why the permit decision should be reviewed. The petition must demonstrate that each challenge to the permit decision is based on:
 - (A)** A finding of fact or conclusion of law that is clearly erroneous, or
 - (B)** An exercise of discretion or an important policy consideration that the Environmental Appeals Board should, in its discretion, review.
 - (ii)** Petitioners must demonstrate, by providing specific citation to the administrative record, including the document name and page number, that each issue being raised in the petition was raised during the public comment period (including any public hearing) to the extent required by § 124.13. For each issue raised that was not raised previously, the petition must explain why such issues were not required to be raised during the public comment period as provided in § 124.13. Additionally, if the petition raises an issue that the Regional Administrator addressed in the response to comments document issued pursuant to § 124.17, then petitioner must provide a citation to the relevant comment and response and explain why the Regional Administrator's response to the comment was clearly erroneous or otherwise warrants review.

(b) Response(s) to a petition for review.

- (1)** In a PSD or other new source permit appeal, the Regional Administrator must file a response to the petition for review, a certified index of the administrative record, and the relevant portions of the administrative record within 21 days after the filing of the petition.
- (2)** In all other permit appeals under this section, the Regional Administrator must file a response to the petition, a certified index of the administrative record, and the relevant portions of the administrative record within 30 days after the filing of a petition.
- (3)** A permit applicant who did not file a petition but who wishes to participate in the appeal process must file a notice of appearance and a response to the petition. Such documents must be filed by the deadlines provided in paragraph (b)(1) or (2) of this section, as appropriate.

(4) The State or Tribal authority where the permitted facility or site is or is proposed to be located (if that authority is not the permit issuer) must also file a notice of appearance and a response if it wishes to participate in the appeal. Such response must be filed by the deadlines provided in paragraph (b)(1) or (2) of this section, as appropriate.

(c) Replies.

(1) In PSD and other new source permit appeals, the Environmental Appeals Board will apply a presumption against the filing of a reply brief. By motion, petitioner may seek leave of the Environmental Appeals Board to file a reply to the response, which the Environmental Appeals Board, in its discretion, may grant. The motion must be filed simultaneously with the proposed reply within 10 days after service of the response. In its motion, petitioner must specify those arguments in the response to which petitioner seeks to reply and the reasons petitioner believes it is necessary to file a reply to those arguments. Petitioner may not raise new issues or arguments in the motion or in the reply.

(2) In all other permit appeals under this section, petitioner may file a reply within 15 days after service of the response. Petitioner may not raise new issues or arguments in the reply.

(d) Content and form of briefs.

(1) **Content requirements.** All briefs filed under this section must contain, under appropriate headings:

- (i) A table of contents, with page references;
- (ii) A table of authorities with references to the pages of the brief where they are cited;
- (iii) A table of attachments, if required under paragraph (d)(2) of this section; and
- (iv) A statement of compliance with the word limitation.

(2) **Attachments.** Parts of the record to which the parties wish to direct the Environmental Appeals Board's attention may be appended to the brief submitted. If the brief includes attachments, a table must be included that provides the title of each appended document and assigns a label identifying where it may be found (e.g., Excerpts from the Response to Comments Document * * Attachment 1).

(3) **Length.** Unless otherwise ordered by the Environmental Appeals Board, petitions and response briefs may not exceed 14,000 words, and all other briefs may not exceed 7,000 words. Filers may rely on the word-processing system used to determine the word count. In lieu of a word limitation, filers may comply with a 30-page limit for petitions and response briefs, or a 15-page limit for replies. Headings, footnotes, and quotations count toward the word limitation. The table of contents, table of authorities, table of attachments (if any), statement requesting oral argument (if any), statement of compliance with the word limitation, and any attachments do not count toward the word limitation. The Environmental Appeals Board may exclude any petition, response, or other brief that does not meet word limitations. Where a party can demonstrate a compelling and documented need to exceed such limitations, such party must seek advance leave of the Environmental Appeals Board to file a longer brief. Such requests are discouraged and will be granted only in unusual circumstances.

(e) Participation by amicus curiae. Any interested person may file an amicus brief in any appeal pending before the Environmental Appeals Board under this section. The deadline for filing such brief is 15 days after the filing of the response brief, except that amicus briefs in PSD or other new source permit appeals must be filed within 21 days after the filing of the petition. Amicus briefs must comply with all procedural requirements of this section.

(f) Motions.

(1) **In general.** A request for an order or other relief must be made by written motion unless these rules prescribe another form.

- (2) Contents of a motion.** A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support the motion. In advance of filing a motion, parties must attempt to ascertain whether the other party(ies) concur(s) or object(s) to the motion and must indicate in the motion the attempt made and the response obtained.
- (3) Response to motion.** Any party may file a response to a motion. Responses must state with particularity the grounds for opposition and the legal argument necessary to support the motion. The response must be filed within 15 days after service of the motion unless the Environmental Appeals Board shortens or extends the time for response.
- (4) Reply.** Any reply to a response filed under paragraph (f)(3) of this section must be filed within 10 days after service of the response. A reply must not introduce any new issues or arguments and may respond only to matters presented in the response.
- (5) Disposition of a motion for a procedural order.** The Environmental Appeals Board may act on a motion for a procedural order at any time without awaiting a response.
- (g) Timing of motions for extension of time.** Parties must file motions for extensions of time sufficiently in advance of the due date to allow other parties to have a reasonable opportunity to respond to the request for more time and to provide the Environmental Appeals Board with a reasonable opportunity to issue an order.
- (h) Oral argument.** The Environmental Appeals Board may hold oral argument on its own initiative or at its discretion in response to a request by one or more of the parties. To request oral argument, a party must include in its substantive brief a statement explaining why oral argument should be permitted. The Environmental Appeals Board will apply a presumption against oral argument in PSD or other new source permit appeals. The Environmental Appeals Board may, by order, establish additional procedures governing any oral argument before the Environmental Appeals Board.
- (i) Filing and service requirements.** Documents filed under this section, including the petition for review, must be filed with the Clerk of the Environmental Appeals Board. A document is filed when it is received by the Clerk of the Environmental Appeals Board at the address specified for the appropriate method of delivery as provided in paragraph (i)(2) of this section.
- (1) Caption and other filing requirements.** Every document filed with the Environmental Appeals Board must specifically identify in the caption the permit applicant, the permitted facility, and the permit number. All documents that are filed must be signed by the person filing the documents or the representative of the person filing the documents. Each filing must also indicate the signer's name, address, and telephone number, as well as an email address, and facsimile number, if any.
- (2) Method of filing.** Unless otherwise permitted under these rules, documents must be filed either electronically, by mail, or by hand delivery. In addition, a motion or a response to a motion may be submitted by facsimile if the submission contains no attachments. Upon filing a motion or response to a motion by facsimile, the sender must, within one business day, submit the original copy to the Clerk of the Environmental Appeals Board either electronically, by mail, or by hand-delivery.
- (i) Electronic filing.** Documents that are filed electronically must be submitted using the Environmental Appeals Board's electronic filing system, subject to any appropriate conditions and limitations imposed by order of the Environmental Appeals Board. All documents filed electronically must include the full name of the person filing below the signature line. Compliance with Environmental Appeals Board electronic filing requirements constitutes compliance with applicable signature requirements.
- (ii) Filing by U.S. Mail.** Documents that are sent by U.S. Postal Service (except by U.S. Express Mail) must be sent to the official mailing address of the Clerk of the Environmental Appeals Board at: U.S. Environmental Protection Agency, Environmental Appeals Board, 1200 Pennsylvania Avenue

NW, Mail Code 1103M, Washington, DC 20460-0001. The original and two copies of each document must be filed. The person filing the documents must include a cover letter to the Clerk of the Environmental Appeals Board clearly identifying the documents that are being submitted, the name of the party on whose behalf the documents are being submitted, as well as the name of the person filing the documents, his or her address, telephone number and, if available, fax number and email address.

(iii) Filing by hand delivery. Documents delivered by hand or courier (including deliveries by U.S. Express Mail) must be delivered to the Clerk of the Environmental Appeals Board at: U.S. Environmental Protection Agency, Environmental Appeals Board, EPA East Building, 1201 Constitution Avenue NW, Room 3334, Washington, DC 20004. The original and two copies of each document must be filed. The person filing the documents must include a cover letter to the Clerk of the Environmental Appeals Board clearly identifying the documents being submitted, the name of the party on whose behalf the documents are being submitted, as well as the name of the person filing the documents, his or her address, telephone number and, if available, fax number and email address.

(3) Service requirements. Petitioner must serve the petition for review on the Regional Administrator and the permit applicant (if the applicant is not the petitioner). Once an appeal is docketed, every document filed with the Environmental Appeals Board must be served on all other parties. Service must be by first class mail, or by any reliable commercial delivery service. Upon agreement by the parties, service may be made by facsimile or electronic means.

(4) Proof of service. A certificate of service must be appended to each document filed stating the names of persons served, the date and manner of service, as well as the electronic, mailing, or hand delivery address, or facsimile number, as appropriate.

(j) Withdrawal of permit or portions of permit by Regional Administrator. The Regional Administrator, at any time prior to 30 days after the Regional Administrator files its response to the petition for review under paragraph (b) of this section, may, upon notification to the Environmental Appeals Board and any interested parties, withdraw the permit and prepare a new draft permit under § 124.6 addressing the portions so withdrawn. The new draft permit must proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this part. Any portions of the permit that are not withdrawn and that are not stayed under § 124.16(a) continue to apply. If the Environmental Appeals Board has held oral argument, the Regional Administrator may not unilaterally withdraw the permit, but instead must request that the Environmental Appeals Board grant a voluntary remand of the permit or any portion thereof.

(k) Petitioner request for dismissal of petition. Petitioner, by motion, may request to have the Environmental Appeals Board dismiss its appeal. The motion must briefly state the reason for its request.

(l) Final disposition and judicial review.

(1) A petition to the Environmental Appeals Board under paragraph (a) of this section is, under 5 U.S.C. 704, a prerequisite to seeking judicial review of the final agency action.

(2) For purposes of judicial review under the appropriate Act, final agency action on a RCRA, UIC, NPDES, or PSD permit occurs when agency review procedures under this section are exhausted and the subsequently issues a final permit decision under this paragraph. A final permit decision must be issued by the Regional Administrator:

(i) When the Environmental Appeals Board issues notice to the parties that the petition for review has been denied;

(ii) When the Environmental Appeals Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Environmental Appeals Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(3) The Regional Administrator must promptly publish notice of any final agency action regarding a PSD permit in the Federal Register.

(m) Motions for reconsideration or clarification. Motions to reconsider or clarify any final disposition of the Environmental Appeals Board must be filed within 10 days after service of that order. Motions for reconsideration must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for clarification must set forth with specificity the portion of the decision for which clarification is being sought and the reason clarification is necessary. Motions for reconsideration or clarification under this provision must be directed to, and decided by, the Environmental Appeals Board. Motions for reconsideration or clarification directed to the Administrator, rather than the Environmental Appeals Board, will not be considered, unless such motion relates to a matter that the Environmental Appeals Board has referred to the Administrator pursuant to § 124.2 and for which the Administrator has issued the final order. A motion for reconsideration or clarification does not stay the effective date of the final order unless the Environmental Appeals Board specifically so orders.

(n) Board authority. In exercising its duties and responsibilities under this part, the Environmental Appeals Board may do all acts and take all measures necessary for the efficient, fair, and impartial adjudication of issues arising in an appeal under this part including, but not limited to, imposing procedural sanctions against a party who, without adequate justification, fails or refuses to comply with this part or an order of the Environmental Appeals Board. Such sanctions may include drawing adverse inferences against a party, striking a party's pleadings or other submissions from the record, and denying any or all relief sought by the party in the proceeding. Additionally, for good cause, the Board may relax or suspend the filing requirements prescribed by these rules or Board order.

(o) General NPDES permits.

(1) Persons affected by an NPDES general permit may not file a petition under this section or otherwise challenge the conditions of a general permit in further Agency proceedings. Instead, they may do either of the following:

(i) Challenge the general permit by filing an action in court; or

(ii) Apply for an individual NPDES permit under § 122.21 as authorized in § 122.28 of this chapter and may then petition the Environmental Appeals Board to review the individual permit as provided by this section.

(2) As provided in § 122.28(b)(3) of this chapter, any interested person may also petition the Director to require an individual NPDES permit for any discharger eligible for authorization to discharge under an NPDES general permit.

(p) The Environmental Appeals Board also may decide on its own initiative to review any condition of any RCRA, UIC, NPDES, or PSD permit decision issued under this part for which review is available under paragraph (a) of this section. The Environmental Appeals Board must act under this paragraph within 30 days of the service date of notice of the Regional Administrator's action.



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

Water Protection Division
Atlanta Federal Center
61 Forsyth Street
Atlanta GA 30303-8960

**AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
PERMIT NUMBER
NC0052515**

Under the authority of the Clean Water Act (CWA) of 1977 (33 USC § 1251 et seq.) and in accordance with the effluent limitations, monitoring requirements, and other conditions set forth herein.

Permittee: **John H. McCoy**
2697 Bunches Creek (PO Box 1244)
Cherokee NC 28719

from the facility located: **Smoky Mountain Trout Farm**
2697 Bunches Creek (PO Box 1244)
Cherokee NC 28719


is authorized to discharge: **treated wastewater from a Concentrated Aquatic Animal Production point source (SIC code 0273)**

from the outfalls: **001 (Latitude 35.542283; Longitude -83.216362)**
002 (Latitude 35.542506; Longitude -83.218566)

into receiving water bodies: **Heintooga Creek (outfall 001)**
Bunches Creek (outfall 002)

Issuance Date: June 9, 2017
This permit shall become effective on: June 10, 2017
This permit shall expire on: June 9, 2022

The permittee shall reapply for NPDES coverage before December 5, 2021 (180 days before the expiration of this permit) if the permittee intends to continue to discharge at the facility beyond the term of this permit.



Mary S. Walker, Director
Water Protection Division

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SCHEDULE OF SUBMISSIONS

The following table summarizes some of the items that the permittee must complete and submit to the U.S. Environmental Protection Agency (EPA) and/or the Eastern Band of Cherokee Indian (EBCI) during the term of this permit:

Item	Due Date
1. Discharge Monitoring Reports (DMRs)	Unless an exception is granted, the DMRs must be entered into NetDMR on a quarterly basis (see Part III.B.1)
2. Best Management Practices (BMP) Plan	The permittee must develop a BMP plan and provide it to the EPA and EBCI within 90 days of the effective date of this permit (see Part IV).
3. Submittal of NPDES Application	A complete application for the next permit cycle must be submitted to the EPA no later than 180 days before the permit expires (see 40 CFR § 122.21).
4. Quality Assurance Plan (QAP)	The permittee must submit a QAP to the EPA and EBCI within 90 days of the effective date of this permit (see Part V).
5. Receiving Water Body Monitoring	The in-stream sampling results must be submitted with the DMRs for the month in which the monitoring is conducted (see Part I.A).
6. Drug and Chemical Use Report Contents	Drugs, pesticides, chemicals, investigational new animal drugs, and extra-label drug use must be reported when used (see Part II.A.1).
7. Annual Reporting	The permittee must submit a certification to the EPA and EBCI that the BMP plan (Part IV.E) and QAP (Part V.E) has been reviewed and modified (if necessary) on an annual basis.

The addresses below are to be used for all submittals except DMRs:

NPDES Permitting and Enforcement Branch Chief
U.S. Environmental Protection Agency, Region 4
Water Protection Division | NPDES Permitting and Enforcement Branch
61 Forsyth Street SW | Atlanta GA 30303-8960
404.562.9610 | R4NPDESPermits@epa.gov

Mr. Michael LaVoie
Natural Resources Program Manager
Eastern Band of Cherokee Indians
PO Box 1747 | Cherokee NC 28719
828.359.6113 | michlavo@nc-chokeee.com

PART I – LIMITATIONS AND MONITORING REQUIREMENTS

A. Effluent Limitations and Other Monitoring Requirements

During the period beginning on the effective date and lasting through the term of this permit, the permittee is authorized to discharge from outfall 001 and 002 into the receiving water body. Such discharges shall be limited and monitored by the permittee as specified below in Table 1.

Table 1: Limitations and Monitoring Requirements

Parameter	Units	Minimum	Maximum	Average Monthly	Maximum Daily	Location ¹	Frequency	Sample Type
Dissolved Oxygen (DO)	mg/L	6.0	N/A	N/A	N/A	E, U, D	1/month ²	Grab ³
Drugs or Chemicals ⁴	lbs or gal	REPORT	REPORT	N/A	N/A	Culture Area	When used / administered	Measured
Flow rate ⁵	MGD	REPORT	REPORT	N/A	N/A	E	1/month ²	Instantaneous
pH ⁶	SU	6.0	8.5	N/A	N/A	E, U, D	1/month ²	Grab ³
Temperature	°C	N/A	⁷	REPORT	REPORT	E, U, D	1/month ²	Grab ³
Total Ammonia Nitrogen (TAN)	mg/L	N/A	N/A	REPORT	REPORT	E, U, D	1/month ²	Grab ³
Total Nitrogen (TN)	mg/L	N/A	N/A	REPORT	REPORT	E, U, D	1/month ²	Grab ³
Total Phosphorus (TP)	µg/L	N/A	N/A	REPORT	REPORT	E, U, D	1/month ²	Grab ³
Total Suspended Solids (TSS)	mg/L	N/A	N/A	30	45	E, U, D	1/month ²	Grab ³
Turbidity ⁸	NTU	N/A	10.0	REPORT	REPORT	E, U, D	1/month ²	Grab ³

Table 1 footnote information

¹ Effluent (E) samples taken in compliance with the monitoring requirements specified in this permit shall be taken at the nearest accessible point after final treatment but prior to the actual discharge, mixing, or potential mixing with the receiving water body. Upstream (U) samples taken in compliance with the monitoring requirements specified in this permit shall be taken in the receiving water body within 150 feet of the facility intake within 1-hour of collecting the effluent sample. Downstream (D) samples taken in compliance with the monitoring requirements specified in this permit shall be taken in the receiving water body no less than 75 feet from the outfall (but prior to the actual discharge, mixing, or potential mixing with the downstream receiving water body) of the facility within 1-hour of collecting the effluent sample.

² The monitoring frequency for all effluent sampling shall be 1/month. The monitoring frequency for all in-stream (upstream and downstream) sampling shall be 1/quarter and shall be sampled concurrently with the effluent in accordance with note 1. All in-stream sampling shall continue for a period of at least two years. Written approval from the EPA is required before discontinuing any in-stream monitoring.

³ All effluent samples shall be grab samples. At least six of the effluent samples taken in a calendar year shall be collected during feeding, harvesting, and cleaning (and appropriately noted on the DMR forms).

All in-stream samples shall be grab samples collected during the effluent sample period. At least six of the in-stream samples taken in a calendar year shall be collected during feeding, harvesting, and cleaning (and appropriately noted on the Discharge Monitoring Records).

- ⁴ Drugs shall be defined as all veterinary therapeutic products, antibiotics, medicinal products, pesticides, extra-label drugs, and investigational new animal drugs, and other veterinarian treatments (drug is also defined in 40 CFR § 451.2). Only drugs and medicinal premixes for inclusion in fish feeds, which are approved for use in aquaculture by the Food and Drug Administration, shall be used. The withdrawal times for all medicines used in the treatment or prevention of fish disease must be adhered to. The discharge of any drug or any other chemical shall be reported in accordance with Part II of this permit.
- ⁵ Flow rate measurement must be taken within 1-hour of collecting the effluent sample.
- ⁶ The pH of the effluent shall not vary outside the range 6.0 to 8.5 standard units (SU). However; the pH in the effluent shall be normal to the background if the natural background pH is outside the above range.
- ⁷ The receiving water body temperature shall not be increased by more than 0.5 degrees Celsius and in no case be increased to exceed the required temperature necessary to support trout habitat.
- ⁸ The turbidity in the receiving water body shall not exceed 10 NTU. If the turbidity exceeds this level due to background (upstream) conditions, the existing turbidity level cannot be increased.

B. Prohibited Discharges

1. Discharges from aquaculture facilities must not cause or contribute to a violation of the Eastern Band of Cherokee Indians (EBCI) Water Quality Code for Surface Waters (Chapter 113E) or a downstream violation of North Carolina's surface water and wetland standards (15A NCAC subchapter 2B).
2. The permittee must not discharge into the receiving water body:
 - a. Any fish parts, floating solids, or visible foam beyond trace amounts;
 - b. Any substance that causes a visible sheen;
 - c. Any hazardous materials at levels found to be of public health significance, that impair designated uses, or violates water quality standards;
 - d. Any sludge, grit, and accumulated solid residues;
 - e. Any untreated wastewater (e.g., obtained from a vacuum or standpipe bottom drain system or rearing/holding unit disinfection);
 - f. Any floating, suspended or submerged matter, including dead fish, in amounts causing nuisance or objectionable condition or that may impair designated uses or violate water quality standards;
 - g. Any toxic substances, including drugs, pesticides, INADs, or other chemicals, in concentrations that impair designated uses or violate water quality standards;
 - h. Any chelated copper compounds or copper sulfate;
 - i. Any numeric or narrative pollutant that causes a violation of water quality standards;
 - j. Any deleterious materials in concentrations that impair designated use or violate water quality standards; and
 - k. Any oxygen-demanding materials in concentrations that would result in an anaerobic water condition.

C. Prohibited Practices

The permittee is prohibited from engaging in any of the following practices:

1. Practices that allow accumulated solids in excess of the limits to be discharged to tribal waters (*e.g.*, the removal of dam boards in raceways or ponds, the cleaning of settling basins, etc.);

2. Sweeping, raking, or otherwise intentionally discharging accumulated solids from raceways, ponds, or settling basins to tribal waters.
3. The use of any chelated copper compounds or copper sulfate.

PART II – AQUACULTURE SPECIFIC REQUIREMENTS

A. Reporting Requirements for the Use of Drugs and Other Chemicals

The following requirements apply to drugs, pesticides, and chemicals that are used in such a way that they will be or may be discharged to the receiving water body. More information about the reporting requirements (including report examples) for drugs, pesticides, chemicals, structural failure or damage to the facility, and spills can be found in the Compliance Guide for the Concentrated Aquatic Animal Production Point Source Category.¹

1. Use of Drugs, Pesticides, and Other Chemicals
 - a. All drugs, pesticides and other chemicals must be applied in accordance with label directions.
 - b. The permittee must maintain records of all drug, pesticide, and other chemical applications including date and time of application and the quantity of the drug or chemical used. See appendix C for more information.
2. Investigational New Animal Drugs (INAD) and Extra-Label Drug Usage
 - a. Participation in INAD Testing and the Use of Extra-Label Drugs: The permittee must notify the EPA in writing within seven (7) days of volunteering to participate in INAD testing, in accordance with 40 CFR § 451.3. The permittee shall report the intended use of INADs and any extra-label drugs both orally and in writing. Based on the report, the EPA may implement site-specific action, as warranted. The written report shall identify and confirm the use of the drug, and provide more complete data for future analysis and measures control. See appendix C for more information.
 - b. INAD or Extra-Label Drug Reporting Exception: If the EPA has already approved the permittee's use of a specific INAD or extra-label drug, additional approval to treat another species, or to treat another disease using this INAD or extra-label drug, is not necessary provided that the permittee maintain similar treatment conditions and restrict the dosage not-to-exceed the approved dosage (See 40 CFR § 451.3).

B. Structural Failure or Damage to the Facility

The permittee shall alert the EPA to any damage to containment structures such as berms, containers, ponds, or nets that results in a loss of any discharge, pollutants, or materials hazardous, including pollutants authorized by this permit, to the receiving stream. The permittee shall make an oral report to the EPA within twenty-four (24) hours of the spill's occurrence followed by a written report within seven (7) days. The report shall identify the material spilled and estimate the amount spilled (40 CFR § 451.3). Upon receiving the oral report, the EPA may differ the requirement for a written report.

C. Spills of Feed, Drugs, Pesticides, or Other Chemicals

The Permittee shall alert the EPA of any loss of hazardous materials such drugs, pesticides or feed with potential impact to the environment. The Permittee shall make an oral report to the EPA within twenty-four (24) hours of the spill's occurrence followed by a written report within seven (7) days. The report shall identify the material spilled and estimate the amount (40 CFR § 451.3). Upon receiving the oral report, the EPA may defer the requirement for a written report.

The permittee must collect spill-related samples as soon as the discharge reaches the outfall. Any bypass of the treatment facility, which is not included in the effluent monitored above, must be monitored for flow rate and all

¹ U.S. Environmental Protection Agency. 2006. Compliance Guide for the Concentrated Aquatic Animal Production Point Source Category. EPA-821-B-05-001. U.S. Environmental Protection Agency, Office of Water, Washington, DC.
< http://water.epa.gov/scitech/wastetech/guide/aquaculture/upload/2006_05_03_guide_aquaculture_guidance_full-final.pdf >.

parameters limited in Table 1: Effluent Limitations and Monitoring Requirements. For parameters other than flow rate, at least one grab sample per day shall be monitored. Flow rate shall be monitored or estimated, as appropriate, to obtain reportable data.

PART III – REPORTING, MONITORING, AND RECORD REQUIREMENTS

A. Electronic Reporting Requirements

1. Starting in January 2017, monitoring data required by this permit shall be submitted on EPA Form 3320-1 Discharge Monitoring Report (DMR) forms using the electronic DMR (NetDMR) internet application. NetDMR is a web-based application that allows National Pollutant Discharge Elimination System (NPDES) Permittee Users to enter and electronically submit DMR data through the Central Data Exchange (CDX) to the Integrated Compliance Information System (ICIS). EPA's NetDMR webpage can be found at: <https://netdmr.epa.gov/netdmr/public/home.htm>.

The permittee shall determine its ability to meet the above date and if unable, shall submit a written request to EPA at the address below requesting a waiver from electronic reporting. Temporary and permanent waivers from electronic reporting may be granted based on appropriate factors (e.g., lack of computer or internet service, etc.). If you qualify for a waiver from electronic reporting, monitoring data must be submitted on paper DMR forms provided by EPA. If you wish to receive NetDMR training or paper DMR forms, please contact:

NPDES Permitting and Enforcement Branch Chief
U.S. Environmental Protection Agency, Region 4
Water Protection Division | NPDES Permitting and Enforcement Branch
61 Forsyth Street SW | Atlanta GA 30303-8960
404.562.9610 | R4NPDESPermits@epa.gov

2. The DMRs shall be signed by a facility's Responsible Official or a Delegated Responsible Official (i.e. a person delegated by the Responsible Official). The Responsible Official of a facility is defined in Part VI. For NetDMR, the person(s) viewing, editing, signing and submitting the DMRs will need to register for a new account managed by EPA Region 4. A request for signatory privilege requires submission of a Subscriber Agreement to EPA Region 4 for any facility or permittee staff responsible for signing and submitting DMRs on behalf of an organization. Additionally, Delegated Responsible Officials must be delegated by the Responsible Official, either on-line using NetDMR, or on a paper delegation form provided by EPA. For more information and guidance on NetDMR, please view the following web page: <https://netdmr.zendesk.com/home>
3. DMRs submitted using NetDMR shall be submitted to EPA Region 4 by the 21st day of the month (April, July, October, January) following the quarter for which the monitoring was completed. DMRs submitted on paper must include the original signed DMR form and submitted as specified in Part III.A.1 above.

Regardless of the submission method, a paper copy of the submitted EPA 3320-1 DMR shall be maintained onsite for records retention purposes. For NetDMR users, view and print the DMR from the Submission Report Information page after each original or revised DMR is submitted. For submittals on paper, make a copy of the completed paper form after it is signed by a Responsible Official or a Delegated Responsible Official.

4. DMRs must be reported using EPA's electronic NetDMR tool unless a waiver from electronic reporting has been granted from EPA Region 4 based on one of the following conditions:
 - a. If your headquarters is physically located in a geographic area (i.e., zip code or census tract) that is identified as under-served for broadband Internet access in the most recent report from the Federal Communications Commission; or
 - b. If you have limitations regarding available computer access or computer capability.

If the permittee wishes to obtain a waiver from submitting DMRs electronically, a written request must be

submitted to EPA Regional 4 at the below address. The request must document which exemption is met and provide evidence supporting any claims. A waiver may only be considered granted once the permittee receives written confirmation from EPA Region 4.

NPDES Permitting and Enforcement Branch Chief
U.S. Environmental Protection Agency, Region 4
Water Protection Division | NPDES Permitting and Enforcement Branch
61 Forsyth Street SW | Atlanta GA 30303-8960
404.562.9610 | R4NPDESPermits@epa.gov

B. Monitoring Procedures

Monitoring and sampling must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit or approved by EPA as an alternate test procedure under 40 CFR § 136.5.

C. Additional Monitoring by the Permittee

In accordance with 40 CFR § 122.41(l)(4)(ii), if the permittee monitors any pollutant or monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the permittee must include the results of this monitoring in the calculation and reporting of the data submitted in the DMR.

In order to ensure that the effluent limits set forth in this permit are not violated at times other than when routine samples are taken, the permittee must collect additional samples at the outfall whenever any discharge occurs that may reasonably be expected to cause or contribute to a violation that is unlikely to be detected by a routine sample. The permittee must analyze the additional samples for those parameters limited in Table 1: Effluent Limitations and Monitoring Requirements.

D. Retention of Records

In accordance with 40 CFR § 122.41(j)(2), the permittee shall retain records of all monitoring information including all calibration and maintenance records, all recordings for continuous monitoring instrumentation, copies of all reports and plans 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, plan, or application. This period may be extended by request of the Director at any time.

PART IV – BEST MANAGEMENT PRACTICES (BMP) PLAN

A. Purpose

Through implementation of the best management practices (BMP) plan, the permittee must prevent or minimize the generation and discharge of wastes and pollutants to the receiving water body, ensure disposal of wastes in such a way as to minimize negative environmental impact, and comply with relevant solid waste disposal regulations.

B. Development and Implementation Deadline

The permittee must develop and implement a BMP Plan that meets the specific requirements listed below. The permittee must implement the provisions of the BMP Plan as conditions of this permit within 90 days of permit issuance. The permittee must provide the BMP plan to the EPA within 90 days of permit effective date at the following address:

NPDES Permitting and Enforcement Branch Chief
U.S. Environmental Protection Agency, Region 4
Water Protection Division | NPDES Permitting and Enforcement Branch
61 Forsyth Street SW | Atlanta GA 30303-8960
404.562.9610 | R4NPDESPermits@epa.gov

C. Requirements

More information about BMP plan requirements (including examples) can be found in EPA's 2006 Compliance Guide for the Concentrated Aquatic Animal Production Point Source Category.² The BMP Plan must include, at a minimum, the following BMPs:

1. Solids Control

The permittee must ensure adequate solids control procedures to control the discharge of solids and other materials.

- a. The plan should use efficient feed management and feeding strategies that limit feed input to the minimum amount reasonably necessary to achieve production goals and sustain targeted rates of aquatic animal growth.
- b. The plan must identify and implement procedures for routine cleaning of rearing units and offline settling basins.
- c. The plan should identify procedures for inventorying, grading, and harvesting aquatic animals that minimize discharge of accumulated solids.
- d. The permittee must identify procedures to remove and dispose of aquatic animal mortalities properly on a regular basis to prevent discharge to the Receiving water body.

2. Material Storage

The permittee must ensure proper storage of drugs, feed, pesticides and hazardous materials. This plan shall include information and procedures related to the prevention of spills and unplanned discharges of chemicals and other hazardous materials.

² U.S. Environmental Protection Agency. 2006. Compliance Guide for the Concentrated Aquatic Animal Production Point Source Category. EPA-821-B-05-001. U.S. Environmental Protection Agency, Office of Water, Washington, DC.
< http://water.epa.gov/scitech/wastetech/guide/aquaculture/upload/2006_05_03_guide_aquaculture_guidance_full-final.pdf >.

- a. The plan shall provide a complete and up-to-date list of all chemicals and other hazardous materials stored at the facility.
- b. The plan shall include descriptions of the procedures used to properly prevent, control, and/or treat spills and unplanned discharges of chemicals and other hazardous materials.
- c. The plan shall include a description of the supplies and equipment which prevent, control, and/or treat spills and unplanned discharges and a compliance schedule to install any necessary items.
- d. The plan shall include the description of the reporting system which shall be used to alert responsible facility management and appropriate legal and regulatory authorities.
- e. All members of the facilities staff shall have an operational familiarity with the plan.

3. Structural Maintenance

The permittee must ensure that all equipment is operational by:

- a. Routinely inspect rearing and holding units, waste collection and containment systems, and waste collection and containment structures, to identify and promptly repair damage.
- b. Regularly conduct maintenance of rearing and holding units, waste collection and containment systems, and waste collection and containment structures, to ensure their proper function.

4. Record-keeping

In accordance with record maintenance requirements, the permittee must:

- a. Maintain records for aquatic animal rearing units documenting feed amounts and estimates of the numbers and weights of aquatic animals in order to calculate representative feed conversion ratios.
- b. Keep records documenting frequency of cleaning, inspections, maintenance, and repairs. A checklist of record-keeping requirements is located in Appendix R of the Concentrated Aquatic Animal Production (CAAP) Effluent Limitation Guidelines.

5. Training Requirements

The BMP should include procedures to:

- a. Train all relevant personnel in spill prevention and how to respond in the event of a spill to ensure proper clean-up and disposal of spilled materials.
- b. Train personnel on proper operation and cleaning of all equipment and treatment systems.

6. Operational Requirements

The BMP must ensure that:

- a. Water used in the rearing and holding units or hauling trucks that is disinfected with chlorine or other chemicals is treated before it is discharged to the receiving water body.
- b. Treatment equipment used to control the discharge of floating, suspended or submerged matter is cleaned and maintained at a frequency sufficient to prevent overflow or bypass of the treatment unit by floating, suspended, or submerged matter.
- c. Procedures are implemented to prevent fish from entering quiescent zones, full-flow and off-line settling basins. Fish that have entered quiescent zones or basins must be removed as soon as possible.
- d. Procedures are identified and implemented to collect, store, and dispose of wastes, including biological wastes, such as fish mortalities and other solid processing aquaculture wastes.

- e. All drugs and pesticides are administered in accordance with applicable label directions (Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or Food and Drug Administration (FDA)), except under the following conditions, both of which must be reported to the EPA in accordance with Part II.A.1 – Use of Drugs, Pesticides, and Other Chemicals:
 - i. Participation in Investigational New Animal Drug (INAD) studies, using established protocols; or
 - ii. Extra-Label drug use, as prescribed by a veterinarian in writing.

D. Documentation

The permittee must maintain a copy of the BMP Plan at the facility and make it available to the EPA or an authorized representative upon request. If lack of a suitable storage area makes on-site storage impossible the BMP Plan must be in the possession of staff whenever they are working on-site.

E. Modification and Annual Certification

The permittee must amend the BMP Plan whenever there is a change in the facility or in the operation of the facility which materially increases the generation of pollutants or their release or potential release to surface waters. With any change in operator, the BMP Plan must be reviewed and modified, if necessary. The permittee must review the BMP Plan annually and provide certification that the BMP plan has been reviewed annually. The annual certification is due May 15th of each year.

PART V – QUALITY ASSURANCE PLAN (QAP)

A. Purpose

The purpose of the quality assurance plan (QAP) is to ensure that the water quality data collected by the permittee is reliable, designed to support sample collection and analysis, and document representative sampling conditions or data anomalies at the site.

B. Development and Implementation Deadline

The permittee must submit a QAP for all effluent and in-stream monitoring required by this permit. The plan must be implemented and provided to the EPA within 90 days of coverage under this permit. The QAP shall be submitted to the EPA at the following address:

NPDES Permitting and Enforcement Branch Chief
U.S. Environmental Protection Agency, Region 4
Water Protection Division | NPDES Permitting and Enforcement Branch
61 Forsyth Street SW | Atlanta GA 30303-8960
404.562.9610 | R4NPDESPermits@epa.gov

C. Requirements

Throughout the sample collection and analysis activities, the permittee must use the EPA-approved quality assurance and quality control (QA/QC) and chain-of-custody procedures described in the EPA Requirements for Quality Assurance Project Plans³ and Guidance for Quality Assurance Project Plans.⁴ The QAP must be prepared in the form that is specified in these documents. At a minimum, the QAP must include the following:

1. Details on the number of samples, type of sample containers, preservation of samples, holding times, analytical methods, analytical detection and quantification limits for each parameter, type and number of quality assurance field samples, precision and accuracy requirements, sample preparation requirements, sample shipping methods, and laboratory data delivery requirements; and
2. Description of flow rate measuring devices or methods used to measure influent and/or effluent flow rate at each point, calibration procedures, and calculations used to convert to flow units; and
3. Maps indicating the location of each sampling point, including receiving water and downstream sampling locations and justification for the choice of the sampling location; and
4. Qualification and training of personnel; and
5. Name, address, and telephone number of the laboratory used by the permittee.

D. Documentation

Copies of the QAP must be kept on-site. If lack of a suitable storage area makes on-site storage impossible, the QAP must be in the possession of staff whenever they are working on-site.

³ U.S. Environmental Protection Agency. 2001. EPA Requirements for Quality Assurance Project Plans (QA/R-5). EPA/240/B-01/003. U.S. Environmental Protection Agency, Office of Environmental Information, Washington, DC.

< https://www.epa.gov/sites/production/files/2016-06/documents/r5-final_0.pdf >

⁴ U.S. Environmental Protection Agency. 2002. Guidance for Quality Assurance Project Plans (QA/G-5). EPA/240/R-02/009. U.S. Environmental Protection Agency, Office of Environmental Information, Washington, DC.

< <https://www.epa.gov/sites/production/files/2015-06/documents/g5-final.pdf> >

E. Modification and Annual Certification

The permittee must amend the QAP whenever there is a change in the facility or in the operation of the facility which materially increases the generation of pollutants or their release or potential release to surface waters. An amendment to the QAP is also required whenever there is a modification in sample collection, sample analysis, or other procedure addressed by the QAP. The permittee must amend the QAP with any change in operator. The permittee must review the QAP annually and provide certification that the QAP has been reviewed annually. The annual certification is due May 15th of each year.

PART VI – STANDARD CONDITIONS

A. General Conditions

1. Duty to Comply [40 CFR §§ 122.41(a) and 122.41(a)(1)]

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act (CWA or Act) and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. 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 Section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

2. Penalties for Violations of Permit Conditions [40 CFR § 122.41(a)(2) and 40 CFR § 122.41(a)(3)]

(Note: Civil and administrative penalty amounts described in this subsection are based on adjustments to the original statutory amounts based on inflation, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101- 410, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Public Law 104-134, enacted April 26, 1996; 110 Stat. 1321) and as set forth at 40 CFR § 19.4.)

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 \$51,570 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 Section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than one 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 two 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 three 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 six years, or both. Any person who knowingly violates Section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in Section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

Any person may be assessed an administrative penalty by the Administrator for violating Section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of this Act. Administrative penalties for Class I violations are not to exceed \$20,628 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$51,570. Penalties for Class II violations are not to exceed \$20,628 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$257,848. The specific penalty amounts described above for violations reflect those in effect at the time of permit issuance and are subject to change.

3. Civil and Criminal Liability [40 CFR § 122.41(m) and (n)]

Except as provided in permit conditions on “Bypassing” Section B, Paragraph 3, and “Upset” Section B, Paragraph 4, nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

4. Duty to Mitigate [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. Permit Actions [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.

6. Toxic Pollutants [40 CFR § 122.44(b)(1)]

If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Director shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

7. Oil and Hazardous Substance Liability

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

8. State Laws

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

9. Effect of a Permit [40 CFR § 122.5(a)(1) and (2)]

Except for any toxic effluent standards and prohibitions imposed under Section 307 of the CWA and “standards for sewage sludge use or disposal” under Section 405(d) of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Sections 301, 302, 306, 307, 318, 403, and 405 (a)-(b) of the CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in 40 CFR §§ 122.62 and 122.64.

Compliance with a permit condition which implements a particular “standard for sewage sludge use or disposal” shall be an affirmative defense in any enforcement action brought for a violation of that “standard for sewage sludge use or disposal” pursuant to Sections 405(e) and 309 of the CWA.

10. Property Rights [40 CFR § 122.5(b), 40 CFR § 122.41(g), and 40 CFR § 122.5(c)]

This permit does not convey any property rights of any sort, or any exclusive privilege. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

11. Onshore or Offshore Construction

This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any waters of the United States.

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.

13. Duty to Provide Information [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.

14. Reopener Clause [40 CFR § 122.62(a)(7)]

This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under CWA § 301(b)(2)(C), CWA § 301(b)(2)(D), and CWA § 307(a)(2), as amended, if the effluent standard or limitation so issued or approved:

- a. Contains different conditions or is otherwise more stringent than any condition in the permit; or
- b. Controls any pollutant not addressed in the permit.

The permit as modified or reissued under this paragraph shall contain any other requirements of the CWA then applicable.

B. Operation and Maintenance of Pollution Controls

1. Proper Operation and Maintenance [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 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.

2. Need to Halt or Reduce Activity Not a Defense [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.

3. Bypass of Treatment Facilities [40 CFR § 122.41(m)(1)-(4)]

a. Definitions

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

b. Bypass not exceeding limitations.

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Paragraphs c. and d. of this subsection.

c. Notice

- (1) **Anticipated bypass.** If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.
- (2) **Unanticipated bypass.** The permittee shall submit notice of an unanticipated bypass as required in Section D, Subsection 8 (24-hour notice).

d. Prohibition of bypass

- (1) 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; and
 - (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 preventive maintenance; and

(c) The permittee submitted notices as required under Paragraph c. of this subsection.

(2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in Paragraph d.(1) of this subsection.

4. Upsets [40 CFR § 122.41(n)(1)-(4)]

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 preventive 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 c. of this subsection are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. Conditions necessary for a demonstration of upset

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (1) An upset occurred and that the permittee can identify the cause(s) of the upset;
- (2) The permitted facility was at the time being properly operated;
- (3) The permittee submitted notice of the upset as required in Section D, Subsection 8 (24-hour notice); and
- (4) The permittee complied with any remedial measures required under Section A, Subsection 4.

d. Burden of proof

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

5. Removed Substances

This permit does not authorize discharge of solids, sludge, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters of the United States unless specifically limited in Part I.

C. Monitoring and Records

1. Representative Sampling [40 CFR § 122.41(j)(1)]

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

All samples shall be taken at the monitoring points specified in this permit and, unless otherwise specified, before the effluent joins or is diluted by any other waste stream, body of water, or substance. Monitoring points shall not be changed without notification to and the approval of the Director.

2. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to insure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to insure that the accuracy of all measurements are consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than $\pm 10\%$ from the true discharge rates throughout the range of expected discharge volumes. Guidance in selection, installation, calibration, and operation of acceptable flow measurement devices can be obtained from the following references. These references are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; phone number: (800) 553-6847 or (703) 487-4650.

“A Guide to Methods and Standards for the Measurement of Water Flow,” U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 421, May 1975, 100 pp. (Order by NTIS No. COM-7510683.)

“Water Measurement Manual,” U.S. Department of Interior, Bureau of Reclamation, Revised Edition, 1984, 343 pp. (Order by NTIS No. PB-85221109.)

“Flow Measurement in Open Channels and Closed Conduits,” U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 484, October 1977, 982 pp. (Order by NTIS No. PB-273535.)

“NPDES Compliance Flow Measurement Manual,” U.S. Environmental Protection Agency, Office of Water Enforcement, Publication MCD-77, September 1981, 149 pp. (Order by NTIS No. PB-82131178.)

3. Monitoring Procedures [40 CFR § 122.41(j)(4)]

Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 or, in the case of Sewage 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.

4. Penalties for Tampering [40 CFR § 122.41(j)(5)]

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.

5. Retention of Records [40 CFR § 122.41(j)(2)]

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.

6. Record Contents [40 CFR § 122.41(j)(3)(i)-(vi)]

Records of monitoring information shall include:

- a. The date, exact place, and time of sampling or measurements;
- b. The individual(s) who performed the sampling or measurements;
- c. The date(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

7. Inspection and Entry [40 CFR § 122.41(i)(1)-(4)]

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.

D. Reporting Requirements

1. Change in Discharge [40 CFR § 122.41(l)(1)(i)-(iii)]

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:

- a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR § 122.29(b); or
- b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Section D, Subsection 11.
- c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. Anticipated Noncompliance [40 CFR § 122.41(l)(2)]

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.

Any maintenance of facilities, which might necessitate unavoidable interruption of operation and degradation of effluent quality, shall be scheduled during noncritical water quality periods and carried out in a manner approved by the Director.

3. Transfer of Ownership of Control [40 CFR § 122.41(l)(3), § 122.61, and § 122.61(b)]

- a. 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.
- b. In some cases, modification or revocation and reissuance is mandatory.
- c. Automatic transfers. As an alternative to transfers of permits by modification, any NPDES permit may be automatically transferred to a new permittee if:
 - (1) The current permittee notifies the Director at least 30 days in advance of the proposed transfer date in Subparagraph b(2) of this subsection;
 - (2) The notice includes a written agreement between the existing and new permittee(s) containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
 - (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. 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 Subparagraph b(2) of this subsection.

4. Monitoring Reports [40 CFR § 122.41(l)(4) and 40 CFR § 122.41(l)(4)(i)]

Monitoring results shall be reported at the intervals specified in Part III of the permit. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of all effluent and in-stream monitoring.

5. Additional Monitoring by the Permittee [40 CFR § 122.41(l)(4)(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 sewage sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sewage sludge reporting form specified by this Permit.

6. Averaging of Measurements [40 CFR § 122.41(l)(4)(iii)]

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

7. Compliance Schedules [40 CFR § 122.41(l)(5)]

The permittee shall achieve compliance with the effluent limitations and monitoring requirements specified for discharges by the effective date of this permit. 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. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

8. Twenty-Four Hour Reporting [40 CFR § 122.44(g), 40 CFR § 122.41(l)(6), and 40 CFR § 122.44(g)]

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-calendar days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The following shall be included as information which must be reported within 24 hours under this paragraph. The Director may waive the written report on a case-by-case basis for reports under this subsection if the oral report has been received within 24 hours.

- a. Any unanticipated bypass which exceeds any effluent limitation in the permit.
- 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.

9. Other Noncompliance [40 CFR § 122.41(l)(7)]

The permittee shall report all instances of noncompliance not reported under Section D at the time monitoring reports are submitted. The reports shall contain the information listed in Section D, Subsection 8.

10. Other Information [40 CFR § 122.41(l)(8)]

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information to the Director.

11. Changes in Discharge of Toxic Substances [40 CFR § 122.42(a)(1)(i-iii) and 40 CFR § 122.42(a)(2)(i-iii)]

The following conditions apply to all NPDES permits within the categories specified below:

- a. Existing manufacturing, commercial, mining, and silvicultural dischargers. All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Director as soon as they know or have reason to believe:
 - (1) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following “notification levels”:
 - (a) One hundred micrograms per liter (100 µg/l);
 - (b) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony; or
 - (c) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR § 122.21(g)(7).
 - (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”:
 - (a) Five hundred micrograms per liter (500 µg/l);
 - (b) One milligram per liter (1 mg/l) for antimony; or
 - (c) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR § 122.21(g)(7).
- b. Publicly owned treatment works. All POTWs must provide adequate notice to the Director of the following:
 - (1) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to Section 301 or 306 of CWA if it were directly discharging those pollutants; and
 - (2) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
 - (3) For purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the POTW, and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW. [40 CFR § 122.42(b)]

12. Duty to Reapply [40 CFR § 122.41(b), § 122.21(d), § 122.6(a), and § 122.6(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.

The application should be submitted at least 180 days before the expiration date of this permit. The Regional Administrator may grant permission to submit an application later than the 180 days in advance, but no later than the permit expiration date.

When EPA is the permit-issuing authority, the conditions of an expired permit continue in force under 5 U.S.C. 558(c) until the effective date of a new permit if the permittee has submitted a timely application under this subsection which is a complete application for a new permit; and the Regional Administrator, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit. Permits continued under this section remain fully effective and enforceable.

13. Signatory Requirements [40 CFR § 122.41(k)(1) and 40 CFR § 122.22]

All applications, reports, or information submitted to the Director shall be signed and certified.

a. All permit applications shall be signed as follows:

- (1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - (a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or
 - (b) 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 this subparagraph. 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 this subparagraph rather than to specific individuals.

- (2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or
- (3) For a municipality, State, Federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:
 - (a) the chief executive officer of the agency, or
 - (b) a senior executive officer having responsibility for the overall operations of a principal

geographic unit of the agency (e.g., Regional Administrators of EPA).

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

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

14. Availability of Reports and the Administrative Record [40 CFR §§ 124.18 & 122]

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 EPA. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

15. Penalties for Falsification of Reports [40 CFR § 122.41(k)(2)]

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 six (6) months per violation, or by both.

E. Definitions

1. The EPA [40 CFR § 122.2]

The Regional Administrator of EPA Region 4 or his/her designee is the “**The EPA**,” unless at some time in the future the State or Indian Tribe receives authority to administer the NPDES program and assumes jurisdiction over the permit at which time, the Director of the State program receiving the authorization becomes the issuing authority.

The use of the term “**Director**” in this permit shall apply to the EPA Regional Administrator, Region 4.

2. Act [40 CFR § 124.2]

“**Act**” means the CWA (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, 33 U.S.C. 1251 et seq.

3. Discharge Monitoring Report (DMR) [40 CFR § 122.2]

“**Discharge Monitoring Report**” means the EPA national form (Form 3320-1) or electronic reporting form required by the federal regulations including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees.

4. Measurements [40 CFR § 122.2]

The “**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 (i.e., concentration), the “daily discharge” is calculated as the average measurement of the pollutant over the day.

The “**average annual discharge limitation**” means the highest allowable average of “daily discharges” over a period of twelve consecutive calendar months, calculated as the “arithmetic mean” of the monthly averages for the current calendar month and the eleven prior calendar months. The annual average is calculated each month. This limitation is identified as “Annual Average” in Part I of the permit.

The “**average monthly discharge limitation**” other than for bacterial indicators, 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. For bacterial indicators, the “average monthly discharge limitation” is calculated using a “geometric mean.” This limitation is identified as “Monthly Average” or “Daily Average” in Part I of the permit.

The “**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. This limitation is identified as “Weekly Average” in Part I of the permit.

The “**maximum daily discharge limitation**” means the highest allowable “daily discharge.” This limitation is identified as “Daily Maximum” in Part I of the permit.

The “**Method Detection Limit (MDL)**” means the minimum concentration of a substance (analyte) that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

The “**Minimum Level (ML)**” means the concentration at which the entire analytical system must give a recognizable signal and an acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method-specified sample weights, volumes and processing steps have been followed.

5. Types of Samples

- a. Composite Sample: A “**composite sample**” is a combination of not less than eight influent or effluent portions (aliquots), of at least 100 ml, collected over the full time period specified in Part I of the permit. The composite sample must be flow proportioned by either a time interval between each aliquot, or by volume as it relates to effluent flow at the time of sampling, or by total flow since collection of the previous aliquot. Aliquots may be collected manually or automatically.
- b. Grab Sample: A “**grab sample**” is a single influent or effluent portion which is not a composite sample. The sample(s) shall be collected at the period(s) most representative of the total discharge.

6. Calculation of Means

- a. Arithmetic Mean: The “**arithmetic mean**” of any set of values is the sum of the individual values divided by the number of individual values.
- b. Geometric Mean: The “**geometric mean**” of any set of values is the N^{th} root of the product of the individual values where N is equal to the number of individual values. The geometric mean is equivalent to the antilog of the arithmetic mean of the logarithms of the individual values. For purposes of calculating the geometric mean, values of zero (0) shall be considered to be one (1).

7. Permittee [40 CFR 122.21(b)]

The “**Permittee**” means the operator who has substantial control over the day-to-day operations of the facility; when a facility or activity is owned by one person but is operated by another person, it is the operator’s duty to obtain a permit.

8. Hazardous Substance [40 CFR § 122.2]

A “**hazardous substance**” means any substance designated under 40 CFR Part 116 pursuant to Section 311 of the CWA.

9. Toxic Pollutants [40 CFR § 122.2]

A “**toxic pollutant**” is any pollutant listed as toxic under Section 307(a)(1) of the CWA or, in the case of “Sewage sludge use or disposal practices,” any pollutant identified in regulations implementing Section 405(d) of the CWA.

APPENDICES ⁵

- Appendix A: Best Management Practices (BMP) Plan Certification
- Appendix B: Quality Assurance Plan (QAP) Certification
- Appendix C: Drug and Chemical Use Certification
- Appendix D: Example Feed Conversion Ratios Log

⁵ More guidance about the reporting and certification requirements for the aquaculture industry (including plans, certifications, reports, and guidance) can be found in the Compliance Guide for the Concentrated Aquatic Animal Production Point Source Category. U.S. Environmental Protection Agency. 2006. Compliance Guide for the Concentrated Aquatic Animal Production Point Source Category. EPA-821-B-05-001. U.S. Environmental Protection Agency, Office of Water, Washington, DC.
< http://water.epa.gov/scitech/wastetech/guide/aquaculture/upload/2006_05_03_guide_aquaculture_guidance_full-final.pdf >.

Appendix A

**Best Management Practices (BMP) Plan
Certification**

**Best Management Practices (BMP) Plan
Certification**

Facility Name: _____

NPDES Permit Number: _____

The BMP Plan is complete and has been submitted to EPA and EBCI.

The BMP Plan is being implemented by trained employees.

The BMP Plan has been reviewed and endorsed by the facility manager.

The individuals responsible for implementation of the BMP Plan have been properly trained.

“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.”

Print Name: _____

Title/Company: _____

Signature: _____

Date: _____

Appendix B
Quality Assurance Plan (QAP)
Certification

**Quality Assurance Plan (QAP)
Certification**

Facility Name: _____

NPDES Permit Number: _____

The QAP is complete and has been submitted to EPA and EBCI.

The QAP is being implemented by trained employees.

The QAP has been reviewed and endorsed by the facility manager.

The individuals responsible for implementation of the QAP have been properly trained.

"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

Print Name: _____

Title/Company: _____

Signature: _____

Date: _____

Appendix C
Drug and Chemical Use
Report Contents

CHECKLIST FOR ORAL REPORT FOR INAD AND EXTRA-LABEL DRUG USE

Instructions: Provide an oral and written report to EPA and EBCI within 7 days after initiating use of the drug. The first row is an example row.

Reported to Permitting Authority?	Name of Drug (INAD & Extra-label) Used & Reason for Use	Method of Application	First Date of Drug Use	Date Oral Report Submitted to Permitting Authority	Initials
<input checked="" type="checkbox"/>	Extra-label: Erythromycin Treat bacterial infections	Injection	09/09/04	09/10/04	MJ
<input type="checkbox"/>					
<input type="checkbox"/>					
<input type="checkbox"/>					
<input type="checkbox"/>					
<input type="checkbox"/>					
<input type="checkbox"/>					
<input type="checkbox"/>					
<input type="checkbox"/>					

WRITTEN REPORT FOR AGREEING TO PARTICIPATE IN AN INAD STUDY

Facility Name: _____ NPDES Permit Number: _____

Name of person submitting this report: _____

Date this written report was submitted to the permitting authority: _____

Instructions: Submit a written report to the EPA and EBCI within 7 days of agreeing or signing up to participate in an INAD study. The first row is an example row.

Date Initiating INAD Study Participation	Name of INAD Drug Used & Dosage	Disease or Condition Intended to Treat	Method of Application
09/09/04	Oxytetracycline	For controlling columnaris in walleye	<input checked="" type="checkbox"/> Medicated feed <input type="checkbox"/> Injection <input type="checkbox"/> Bath treatment <input type="checkbox"/> Other:
			<input type="checkbox"/> Medicated feed <input type="checkbox"/> Injection <input type="checkbox"/> Bath treatment <input type="checkbox"/> Other:
			<input type="checkbox"/> Medicated feed <input type="checkbox"/> Injection <input type="checkbox"/> Bath treatment <input type="checkbox"/> Other:
			<input type="checkbox"/> Medicated feed <input type="checkbox"/> Injection <input type="checkbox"/> Bath treatment <input type="checkbox"/> Other:

Note: This form is only an example of what a written report could look like. Facilities may use other types of existing written reports if available.

WRITTEN REPORT FOR INAD AND EXTRA-LABEL DRUG USE

Facility Name: _____

NPDES Permit Number: _____

Name of person submitting this report: _____

Date this written report was submitted to the permitting authority: _____

Instructions: Submit a written report to the EPA and EBCI within 30 days after initiating use of the drug. For extra-label drug use, include the name of the prescribing veterinarian and date of the prescription. The first row is an example row.

Name of Drug & Reason for Use	Date and Time of Application (start date/time end date/time)	Duration	Method of Application	Total Amount of Active Ingredient Added	Total Amount of Medicated Feed Added**
Oxytetracycline For control of columnaris in walleye	09/09/04 10:00 AM	5 consecutive days	<input checked="" type="checkbox"/> Medicated feed <input type="checkbox"/> Injection <input type="checkbox"/> Bath treatment <input type="checkbox"/> Other:	1 g/lb as sole ration	50 lbs
	09/13/04 10:00 AM		<input type="checkbox"/> Medicated feed <input type="checkbox"/> Injection <input type="checkbox"/> Bath treatment <input type="checkbox"/> Other:		
			<input type="checkbox"/> Medicated feed <input type="checkbox"/> Injection <input type="checkbox"/> Bath treatment <input type="checkbox"/> Other:		
			<input type="checkbox"/> Medicated feed <input type="checkbox"/> Injection <input type="checkbox"/> Bath treatment <input type="checkbox"/> Other:		
			<input type="checkbox"/> Medicated feed <input type="checkbox"/> Injection <input type="checkbox"/> Bath treatment <input type="checkbox"/> Other:		

* This form is only an example of what a written report could look like. Facilities may use other types of existing written reports if available.

** Applies only to drugs applied through medicated feed.

Appendix D
Feed Conversion Ratios Log

STATEMENT OF BASIS

NPDES #:	NC0052515
PERMITTEE:	John H. McCoy 2697 Bunches Creek (PO Box 1244) Cherokee NC 28719
FACILITY:	Smoky Mountain Trout Farm 2697 Bunches Creek (PO Box 1244) Cherokee NC 28719 Eastern Band of Cherokee Indian Tribal Land
FACILITY TYPE:	Concentrated Aquatic Animal Production (SIC code 0273)
OUTFALL(S):	001 (Latitude 35.542283; Longitude -83.216362) 002 (Latitude 35.542506; Longitude -83.218566)
RECEIVING WATER(S):	Heintooga Creek (outfall 001) Bunches Creek (outfall 002)

1. Facility Description

Cherokee Trout Farm is an existing source concentrated aquatic animal production (CAAP) “flow-through” facility that grows Rainbow Trout (*Oncorhynchus Mykiss*).¹ The operation includes ten (10) raceways and two (2) settling ponds that are in-series. The maximum daily discharge flow rate through the permitted outfalls is 0.864 million gallons. The maximum production of Rainbow Trout from this farm is approximately 30,000 pounds annually. The maximum amount of feed is 12,000 pounds per month. The intake water source for the facility is Heintooga Creek. The facility is located within the Eastern Band of Cherokee Indian (EBCI) Tribal boundary.

2. Receiving Water Body Description

The effluent discharges to Heintooga Creek and Bunches Creek thence approximately 3.0 miles to the Raven Fork River. According to the EBCI Water Quality Code for Surface Waters (Chapter 113E), the receiving water bodies have a designated use of primary contact recreation, ceremonial and religious use, and cold water aquatic habitat (trout waters). Additionally, Heintooga Creek is a Tribal Resource Water.

3. Rationale for the Permit Conditions and Requirements

The current NPDES permit authorizing the facility to discharge pollutants into the Raven Fork River was effective on December 1, 2009 and administratively continued on September 4, 2014. The permit conditions are consistent with the Clean Water Act (CWA) § 308, § 312, § 402, and § 403, and 40 Code of Federal Regulations (CFR) § 125. The permit conditions are based on the CAAP regulations (40 CFR § 122.24 and 40 CFR Part 451). The limits and conditions are further clarified in the CAAP effluent limit develop document² and the CAAP Compliance Guide.³

¹ A new source is defined as a facility from which there is a discharge of pollutants for which the construction commenced after the promulgation of standards of performance under CWA Section 306 (in accordance with 40 CFR § 122.2 and 40 CFR § 122.29). The facility originally obtained a NPDES permit from the EPA on December 5, 1988. The effluent limitations guidelines for the CAAP industry became effective on September 22, 2004. Therefore, the facility is considered an existing source.

² U.S. Environmental Protection Agency. 2002. Development Document for Proposed Effluent Limitations Guidelines and Standards for the Concentrated Aquatic Animal Production Industry Point Source Category. EPA-821-R-02-016. U.S. Environmental Protection Agency, Office of Water, Washington, DC. <<http://water.epa.gov/scitech/wastetech/guide/aquaculture/tdd.cfm>>.

³ U.S. Environmental Protection Agency. 2006. Compliance Guide for the Concentrated Aquatic Animal Production Point Source Category. EPA-821-B-05-001. U.S. Environmental Protection Agency, Office of Water, Washington, DC. <http://water.epa.gov/scitech/wastetech/guide/aquaculture/upload/2006_05_03_guide_aquaculture_guidance_full-final.pdf>.

The rationale for each part of the permit is summarized below:

Part I – Effluent Limitations and Monitoring Requirements

The monitoring conditions and/or effluent limitations are based upon the previous NPDES permit, the North Carolina Aquaculture General Permit (NCG530000), and the Best Professional Judgment (BPJ) of the permit writer to protect the EBCI Water Quality Code for Surface Waters and protect the North Carolina waters downstream from the facility's discharge. The monitoring requirements are consistent with the CWA § 308(a).

Part II – Aquaculture Specific Requirements

This permit section outlines the specific reporting requirements for aquaculture facilities as mandated by the effluent guidelines for the CAAP Point Source Category (40 CFR Part 451). While the annual trout production rate of this facility falls below the production requirement (100,000 lbs/year) to be covered under the CAAP effluent guidelines and standards, it is the permit writer's BPJ that the aquaculture specific requirements should be implemented.

Part III – Reporting, Monitoring, and Record Requirements

This permit section provides the electronic reporting requirements and general monitoring provisions in accordance with the CWA and its implementing regulations.

Part IV – Best Management Practices (BMP) Plan

The permit requires the implementation of a BMP plan to minimize the effects of the facility's discharges on the water quality of the receiving water body. The BMP plan is required in accordance with the effluent limitation guideline for the CAAP point source category and 40 CFR § 122.44(k). While the annual trout production rate of this facility falls below the production requirement (100,000 lbs/year) to be covered under the CAAP effluent guidelines and standards, it is the permit writer's BPJ that the BMP plan should be implemented.

Part V – Quality Assurance Plan (QAP)

This permit requires the implementation of a QAP to ensure that the water quality data collected by the permittee is reliable. The permittee is required to submit and follow the QAP which prescribes the procedures for the collection and analysis of all effluent and in-stream sampling. The QAP requirement is based upon the BPJ of the permit writer.

Part VI – Standard Conditions

This section contains the general conditions and definitions applicable to NPDES permits issued by the EPA.

4. Effective Date of Effluent Limits, Permit Conditions, and Compliance Schedule

The permittee shall achieve compliance with all effluent limitations, monitoring conditions, and permit requirements immediately upon the effective date of the permit. A compliance schedule is not included in this permit.

5. CWA § 401 Certification Requirements

A CWA § 401 certification is not required from the North Carolina Department of Environmental Quality because the permitted activity is not in State waters; however, a CWA § 401 certification from the EBCI is required because the permitted activity discharges to EBCI waters. The EBCI waived its right to provide a CWA § 401 certification

for this facility on March 20, 2017.

6. Endangered Species Act (ESA) Compliance

In accordance with 40 CFR § 122.49(c) the EPA is required to ensure, in consultation with the U.S. Fish and Wildlife Service, that “any action authorized EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.” The EPA, in consultation with the U.S. Fish and Wildlife Service, has determined that the discharges authorized by this permit are not likely to have an effect on any federally listed species, proposed species, or critical habitat. See the 2017 Biological Evaluation for more information.

7. National Environmental Policy Act (NEPA) Compliance

Under NEPA, an analysis is required when an action is deemed a major federal action significantly affecting the quality of the human environment. CWA § 511(c) lists the only actions of the Administrator under the CWA that require any NEPA analysis. Section 511(c)(1) of the CWA states: “Except for the provision of Federal financial assistance for the purpose of assisting the construction of publicly owned treatment works as authorized by Section 1281 of this title, and the issuance of a permit under Section 402 of this title for the discharge on any pollutant by a new source identified in Section 1316 of this title, no action of the Administrator taken pursuant to this chapter [the CWA] shall be deemed a major federal action significantly affecting the quality of the human environment within the meaning of NEPA.” This same limiting language is reflected in 40 CFR § 6.101(a).

Because the CWA and implementing regulations are specifically inclusive as to what actions require NEPA and is limited to those two annotated situations, existing sources are exempt from NEPA since they are not “deemed a major federal action significantly affecting the quality of the human environment within the meaning of NEPA.” The discharges associated with this CAAP facility are considered an existing source.¹ Therefore, a NEPA analysis is not required because the EPA is required to comply with the requirements of the NEPA for EPA-issued NPDES permits only for new sources.

8. The Administrative Record and EPA Contact

The entire administrative record including application, draft permit, statement of basis, public notice, comments received, and supporting information is available by contacting the EPA using the below information.

NPDES Permitting and Enforcement Branch Chief
U.S. Environmental Protection Agency, Region 4
Water Protection Division | NPDES Permitting and Enforcement Branch
61 Forsyth Street SW | Atlanta GA 30303-8960
404.562.9610 | R4NPDESPermits@epa.gov