

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

AUTHORIZATION TO DISCHARGE UNDER THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

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

**the Northern Cheyenne Utilities Commission**

is authorized to discharge from the Lame Deer Lagoon wastewater treatment facility located in the NE 1/4 of Section 33 and the SE 1/4 of Section 28, Township 2S, Range 41E, latitude 45.628889° N and longitude 106.673611° W, Rosebud County,

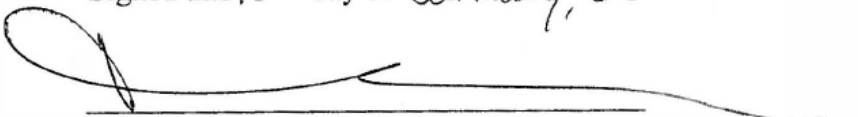
to **Lame Deer Creek, a tributary to Rosebud Creek,**

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

This Permit shall become effective March 1, 2018.

This Permit and the authorization to discharge shall expire at midnight, December 31, 2022.

Signed this 18<sup>th</sup> day of January, 2018

  
Authorized Permitting Official

Darcy O'Connor  
Assistant Regional Administrator  
Office of Water Protection

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## 1. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

### 1.1. Definitions.

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

The *average weekly (or 7-day)* limitation, other than for microbiological organisms (e.g., bacteria, viruses, etc.), is the arithmetic mean of all samples collected during a calendar week (or consecutive 7-day period if applicable). Geometric means shall be calculated for microbiological organisms unless specified otherwise in the Permit. The calendar week, which begins on Sunday and ends on Saturday, shall be used for purposes of reporting self-monitoring data on discharge monitoring reports. If a calendar week overlaps two months (i.e., the Sunday is in one month and the Saturday in the following month), the weekly average calculated for that calendar week shall be included in the data for the month that contains the Saturday.

*Approval Authority* means the Director in a NPDES state with an approved state pretreatment program and the appropriate Regional Administrator in a non-NPDES state or NPDES state without an approved state pretreatment program.

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

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

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

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

*E. coli* means *Escherichia coli*.

*EPA* means the United States Environmental Protection Agency.

*Geometric mean* is defined by the Northern Cheyenne Water Quality Standards as the value obtained by taking the  $n^{\text{th}}$  root of the product of the measured values where zero values for measured values are taken to be the detection limit.

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

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

*Severe property damage* means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

*Sewage Sludge* is any solid, semi-solid or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary or advanced wastewater treatment processes; and a material derived from sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

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

*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.

*Whole Effluent Toxicity (WET)* is the total toxic effect of an effluent measured directly with a toxicity test. Acute toxicity occurs when 50 percent or more mortality is observed for either species at any effluent concentration. Mortality in the control must simultaneously be 10 percent or less for the effluent results to be considered valid.

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

Outfall

Serial Number

Description of Discharge Point

001

Near the west corner of cell three; discharge point is located at latitude 45.628889° N, longitude 106.673333° W.

001R

The Montana Highway 39 bridge over Lame Deer Creek about three and one-half miles north of Lame Deer, approximate latitude 45.667570° N, longitude 106.699640° W.

### 1.3. Specific Limitations and Self-Monitoring Requirements

#### 1.3.1. Effluent Limitations

Interim Effluent Limitations - Outfall 001: Effective immediately and lasting through December 31, 2020, the quality of effluent discharged by the facility shall, at a minimum, meet the limitations as set forth below:

Effluent Characteristic	Effluent Limitation		
	Average Monthly a/	Average Weekly a/	Daily Maximum a/
BOD <sub>5</sub> , mg/L	30	45	N/A
Total Suspended Solids, mg/L	30	45	N/A
Fecal coliform, cfu/100 mL	200 <u>c</u> /	N/A	400 <u>c</u> /
<i>E. coli</i> , cfu/100 mL	126 <u>d</u> /	N/A	406 <u>d</u> /
Total Residual Chlorine, mg/L <u>e</u> /	0.011	N/A	0.019
The pH of the effluent shall not be less than 6.5 standard units or greater than 9.0 standard units (s.u.) in any single sample or analysis.			
The Dissolved Oxygen limitation 7 Day mean cannot be less than 6.5 mg/L and the 1 Day Minimum cannot be less than 5.0 mg/L.			
There shall be no visible sheen in the receiving water or adjoining shoreline. If visible sheen is detected, a grab sample shall be taken immediately and analyzed in accordance with 40 CFR Part 136. The concentration of oil and grease shall not exceed 10 mg/L in any sample taken.			
The temperature of the effluent shall not exceed 20°C in any single sample or analysis.			
There shall be no discharge of floating debris, scum, or other floating materials.			

Final Effluent Limitations - Outfall 001: Effective **42 months after the effective date of this permit** and lasting through the end of the permit, the quality of effluent discharged by the facility shall, at a minimum, meet the limitations as set forth below:

Effluent Characteristic	Effluent Limitation		
	Average Monthly a/	Average Weekly a/	Daily Maximum a/
BOD <sub>5</sub> , mg/L	30	45	N/A
Total Suspended Solids, mg/L	30	45	N/A
Fecal coliform, cfu/100 mL	200 <u>c</u> /	N/A	400 <u>c</u> /
<i>E. coli</i> , cfu/100 mL	126 <u>d</u> /	N/A	406 <u>d</u> /
Total Residual Chlorine, mg/L <u>e</u> /	0.011	N/A	0.019
Ammonia as N, mg/L	See Section 1.3.1.1		N/A
The pH of the effluent shall not be less than 6.5 standard units or greater than 9.0 standard units (s.u.) in any single sample or analysis.			
The Dissolved Oxygen limitation 7 Day mean cannot be less than 6.5 mg/L and the 1 Day Minimum cannot be less than 5.0 mg/L.			

There shall be no visible sheen in the receiving water or adjoining shoreline. If visible sheen is detected, a grab sample shall be taken immediately and analyzed in accordance with 40 CFR Part 136. The concentration of oil and grease shall not exceed 10 mg/L in any sample taken.
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The temperature of the effluent shall not exceed 20°C in any single sample or analysis.
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There shall be no discharge of floating debris, scum, or other floating materials.
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- a/ See Definitions, Part 1.1, for definition of terms.
- b/ This limit for Dissolved Oxygen applies as an instantaneous minimum.
- c/ Fecal coliform: From March 1 through October 31 each year, the geometric mean number of organisms in the fecal coliform group must not exceed 200 cfu/100 mL. In addition, no more than 10 percent of the total samples during any month are to exceed 400 cfu/100 mL.
- d/ *E. coli*: Based on a statistically sufficient number of samples (not less than 5 samples equally spaced over a month), the geometric mean of the *E. coli* densities shall not exceed 126 per 100 mL. In addition, no single sample shall exceed 406 per 100 mL.
- e/ The limits for Total Residual Chlorine are only applicable if chlorine is used in the disinfection process, once installed. The limits are below the minimum level of 0.05 mg/L for the required analytical method. Measured values greater than or equal to 0.05 mg/L are considered violations of the effluent limitations and measured values less than 0.05 mg/L are considered to be in compliance with the effluent limitations.

### Ammonia Compliance Schedule Requirements

The permittee shall achieve compliance with the effluent limitations for ammonia in Part 1.3.1 of this permit in accordance with the following schedule.

The permittee shall submit the following to the permit issuing authority:

- a. An outline of the measures to be taken to achieve compliance with the effluent limitations for ammonia in Part 1.3.1 of this permit; and
- b. A schedule for implementing the measures described in Part a above. The schedule includes, but not limited to planning, design, bidding, construction, etc. of the necessary site improvements.

The above items shall be submitted no later than **12 months after the effective date of this permit.**

The permittee shall submit to the EPA a progress report reflecting the project status outlined in Part b above by no later than **18 months after the effective date of this permit.**

The permittee shall begin implementing the measures outlined in Part a above by no later than **24 months after the effective date of this permit.**

The permittee shall submit to the permit issuing authority a progress report reflecting the project status outlined in Part b above by no later than **30 months after the effective date of this permit.**

The permittee shall submit to the permit issuing authority a progress report reflecting the project status outlined in Part b above by no later than **36 months after the effective date of this permit.**

The permittee shall achieve compliance with the effluent limitations for ammonia in Part 1.3.1 of this permit by no later than **42 months after the effective date of this permit.**

Reports of compliance or noncompliance with, or any progress reports, on interim and final requirements contained in this Compliance Schedule shall be submitted no later than 14 days following each schedule date described above. If noncompliance is being reported, the reason for noncompliance shall be reported and the expected date when compliance will be achieved shall be given. The letter shall include the certification statement given in Part 4.7.4 of this permit and the letter shall be signed by a principal executive officer.

#### 1.3.1.1 Ammonia Criteria Tables

Freshwater Aquatic Life Standards for *total ammonia* (mg/L NH<sub>3</sub>-N plus NH<sub>4</sub>-N) are expressed as a function of pH and temperature. Because these formulas are non-linear in pH and temperature, the standard is the average of separate evaluations of the formulas reflective of the fluctuations of flow, pH, and temperature within the averaging period; it is not appropriate to apply the formula to average pH, temperature and flow.

**Table 1.**  
**pH-Dependent Values of the 1-Hour Average Ammonia Limit**

pH	Salmonids Present
6.5	32.6
6.6	31.3
6.7	29.8
6.8	28.1
6.9	26.2
7.0	24.1
7.1	22.0
7.2	19.7
7.3	17.5
7.4	15.4
7.5	13.3
7.6	11.4
7.7	9.65
7.8	8.11
7.9	6.77
8.0	5.62
8.1	4.64
8.2	3.83
8.3	3.15
8.4	2.59
8.5	2.14
8.6	1.77
8.7	1.47
8.8	1.23
8.9	1.04
9.0	0.885

**Table 2.**  
**Temperature- and pH-Dependent Values of the 30-Day Average Ammonia Limit**

30-Day Average Limit, mg N/L										
	Temperature, C									
pH	0	14	16	18	20	22	24	26	28	30
6.5	6.67	6.67	6.06	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.6	6.57	6.57	5.97	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.7	6.44	6.44	5.86	5.15	4.52	3.98	3.50	3.07	2.70	2.37
6.8	6.29	6.29	5.72	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.9	6.12	6.12	5.56	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.0	5.91	5.91	5.37	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.1	5.67	5.67	5.15	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.2	5.39	5.39	4.90	4.31	3.78	3.33	2.92	2.57	2.26	1.99
7.3	5.08	5.08	4.61	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.4	4.73	4.73	4.30	3.78	3.32	2.92	2.57	2.26	1.98	1.74
7.5	4.36	4.36	3.97	3.49	3.06	2.69	2.37	2.08	1.83	1.61
7.6	3.98	3.98	3.61	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.7	3.58	3.58	3.25	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.8	3.18	3.18	2.89	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.9	2.80	2.80	2.54	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.0	2.43	2.43	2.21	1.94	1.71	1.50	1.32	1.16	1.02	0.897
8.1	2.10	2.10	1.91	1.68	1.47	1.29	1.14	1.00	0.879	0.773
8.2	1.79	1.79	1.63	1.43	1.26	1.11	0.973	0.855	0.752	0.661
8.3	1.52	1.52	1.39	1.22	1.07	0.941	0.827	0.727	0.639	0.562
8.4	1.29	1.29	1.17	1.03	0.906	0.796	0.700	0.615	0.541	0.475
8.5	1.09	1.09	0.990	0.870	0.765	0.672	0.591	0.520	0.457	0.401
8.6	0.920	0.920	0.836	0.735	0.646	0.568	0.499	0.439	0.386	0.339
8.7	0.778	0.778	0.707	0.622	0.547	0.480	0.422	0.371	0.326	0.287
8.8	0.661	0.661	0.601	0.528	0.464	0.408	0.359	0.315	0.277	0.244
8.9	0.565	0.565	0.513	0.451	0.397	0.349	0.306	0.269	0.237	0.208
9.0	0.486	0.486	0.442	0.389	0.342	0.300	0.264	0.232	0.204	0.179

For temperature (T) and pH conditions not expressed in Tables 1 and 2 above, ammonia toxicity limits can be calculated using the following equations:

1. Acute Criteria (CMC)

- a. The one-hour average concentration of total ammonia nitrogen (in mg N/L) cannot exceed the acute criterion as follows.

$$\text{CMC} = \frac{0.275}{1 + 10^{7.204-\text{pH}}} + \frac{39.0}{1 + 10^{\text{pH}-7.204}}$$



## 2. Chronic Criteria (CCC)

- a. The thirty-day average concentration of total ammonia nitrogen (in mg N/L) cannot exceed the chronic criterion calculated as follows.

$$CCC = \left( \frac{0.0577}{1 + 10^{7.688 - \text{pH}}} + \frac{2.487}{1 + 10^{\text{pH} - 7.688}} \right) \times \text{MIN} (2.85, 1.45 \times 10^{0.028 \times (25 - T)})$$

Note: In addition, the highest four-day average within the 30-day period should not exceed 2.5 times the CCC.

1.3.2. Self-Monitoring Requirements

Outfall 001: At a minimum, upon the effective date of this Permit, the following constituents shall be monitored at the frequency and with the type of measurement indicated; samples or measurements shall be representative of the volume and nature of the monitored discharge. All effluent monitoring samples shall be taken at the discharge point near the west corner of cell three, at the earliest possible point in the discharge line after the Parshall flume located prior to the discharge into Lane Deer Creek. If no discharge occurs during the entire monitoring period, it shall be stated on the Discharge Monitoring Report (DMR) that no discharge or overflow occurred.

Effluent Characteristic <u>a/</u>	Frequency	Sample Type <u>b/</u>
Flow, MGD <u>c/</u>	Daily	Instantaneous
BOD <sub>5</sub> , mg/L	Monthly	Grab
Total Suspended Solids, mg/L	Monthly	Grab
pH, standard units	Weekly <u>d/</u>	Instantaneous
Dissolved Oxygen, mg/L	Monthly	Grab
Fecal Coliform, no./100 ml. <u>e/</u>	5 per month <u>f/</u>	Grab
<i>E. coli</i> , no./100 ml.	5 per month <u>f/</u>	Grab
Oil and Grease (visible sheen) <u>g/</u>	Weekly	Visual Observation
Oil and Grease, mg/L <u>g /</u>	Upon observation of visible sheen	Grab
Temperature, °C	Weekly <u>d/</u>	Instantaneous
Total Residual Chlorine, mg/L <u>h/</u>	Weekly	Grab
Ammonia, as N, mg/L	Monthly <u>d/</u>	Grab
Total Phosphorous, µg/L	Quarterly	Grab
Total Nitrogen, µg/L	Quarterly	Grab
Total Dissolved Solids, mg/L	Quarterly	Grab

a/ All monitored data shall be recorded in a daily log (paper or electronic). If no discharge occurs on any one day, zero (0) shall be recorded in the daily log for that day for flow and for all other parameters required to be monitored. If the required data are not entered in the daily log on a day that a discharge occurs, it will be assumed that the required monitoring was not performed. If no

discharge occurs during the reporting period, the appropriate “No Discharge” code shall be reported on the DMR.

- b/ See Definitions, Section 1.1, for definition of terms.
- c/ Flow monitoring shall be daily. Flow measurements of effluent volume shall be made in such a manner that the Permittee can affirmatively demonstrate that representative values are being obtained. The average flow rate (in million gallons per day) during the reporting period and the maximum flow rate observed (in mgd) shall be reported.
- d/ Monitoring for pH and temperature must be conducted at the same time the sample to be analyzed for ammonia is taken.
- e/ Monitoring for fecal coliform is required from March 1 to October 31 only.
- f/ Samples shall be equally spaced over a calendar month.
- g/ If a visible sheen is detected, a grab sample shall be taken immediately and analyzed in accordance with the requirements of 40 CFR Part 136. The concentration of oil and grease shall not exceed 10 mg/L in any sample.
- h/ Monitoring for Total Residual Chlorine is required only if chlorine is used as part of the disinfection process.

### 1.3.3. Ambient Monitoring Requirements – Outfall 001R

Effluent Characteristic <u>a/</u>	Frequency	Sample Type <u>b/</u>
pH, standard units	Monthly	Instantaneous
Temperature, °C	Monthly	Instantaneous
Time sample collected	Monthly	Instantaneous
Date sample collected	Monthly	Instantaneous

- a/ All monitored data shall be recorded in a daily log (paper or electronic). If no discharge occurs on any one day, zero (0) shall be recorded in the daily log for that day for flow and for all other parameters required to be monitored. If the required data are not entered in the daily log on a day that a discharge occurs, it will be assumed that the required monitoring was not performed. If no discharge occurs during the reporting period, the appropriate “No Discharge” code shall be reported on the DMR.
- b/ See Permit Definitions, section 1.1, for definition of terms.

### 1.3.4. Reporting Period

For the duration of this Permit, the discharger shall submit Discharge Monitoring Reports (DMRs) monthly as described in section 2.3.

### 1.3.5. Inspection Requirements

1.3.5.1. On at least a weekly basis, unless otherwise approved by the Permit issuing authority, the Permittee shall inspect its wastewater treatment facility, at a minimum, for the following:

1.3.5.1.1. Check to see if there is any leakage through the dikes;

1.3.4.1.2. Check to see if there are any animal burrows in the dike;

- 1.3.5.1.3. Check to see if there has been any excessive erosion of the dikes;
  - 1.3.5.1.4. Check to see if there are any rooted plants, including weeds growing in the water;
  - 1.3.5.1.5. Check to see if vegetation growth on the dikes needs mowing; and,
  - 1.3.5.1.6. Determine if proper operation and maintenance procedures are being undertaken at the wastewater treatment facility.
- 1.3.5.2. The Permittee shall maintain a daily log in either paper or electronic format recording information obtained during the inspection. At a minimum, the log shall include the following:
- 1.3.5.2.1. Date and time of the inspection;
  - 1.3.4.2.2. Name of the inspector(s);
  - 1.3.5.2.3. The facility's discharge status;
  - 1.3.5.2.4. The flow rate of the discharge if occurring;
  - 1.3.5.2.5. Identification of operational problems and/or maintenance problems;
  - 1.3.5.2.6. Recommendations, as appropriate, to remedy identified problems;
  - 1.3.4.2.7. A brief description of any actions taken with regard to problems identified; and,
  - 1.3.5.2.8. Other information, as appropriate.

The Permittee shall maintain the daily log in accordance with proper record-keeping procedures and shall make the log available for inspection, upon request, by authorized representatives of the U.S. Environmental Protection Agency or the Northern Cheyenne Tribe.

- 1.3.5.3. Problems identified during the inspection shall be addressed through proper operation and maintenance. (See Part 3.1 of this Permit.)

## 2. MONITORING, RECORDING AND REPORTING REQUIREMENTS

- 2.1. Representative Sampling: Samples taken in compliance with the monitoring requirements established under Part 1 shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge. Sludge samples shall be collected at a location representative of the quality of sludge immediately prior to use-disposal practice.
- 2.2. Monitoring Procedures: Monitoring must be conducted according to paragraph 5.10.4, unless other test procedures have been specified in this Permit. Sludge monitoring procedures shall be those specified in 40 CFR 503, or as specified in the Permit.

- 2.3. Reporting of Monitoring Results: Upon the effective date of this Permit, the Permittee must electronically report DMRs using NetDMR. Electronic submissions by permittees must be sent to the EPA Region 8 no later than the 28th of the month following the completed reporting period. The Permittee must sign and certify all electronic submissions in accordance with the requirements of Part 4.2 of this Permit (“Signatory Requirements”). NetDMR is accessed from the internet at <https://netdmr.zendesk.com/home>.

In addition, the Permittee must submit a copy of the DMR to the Northern Cheyenne tribe. Currently, the Permittee may submit a copy to the Tribe by one of three ways: 1. a paper copy may be mailed. 2. The email address may be added to the electronic submittal through NetDMR, or, 3. The Permittee may provide viewing rights through NetDMR.

Legible copies of all other reports required herein, shall be signed and certified in accordance with the Signatory Requirements (see Part 4), and submitted to the EPA Region 8 Policy, Information Management & Environmental Justice Program and the Northern Cheyenne Tribe Department of Environmental Protection and Natural Resources (DEPNR) at the addresses given below:

Original to: U.S. EPA, Region 8  
(8ENF-PJ)  
Attention: DMR Coordinator  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

Copy to: Northern Cheyenne Tribe  
Department of Environmental Protection and Natural Resources  
P.O. Box 128  
Lame Deer, Montana 59043

- 2.4. Records Contents: In addition to those requirements specified in paragraph 5.10.3, records of monitoring information shall include:
- 2.4.1. References and written procedures, when available, for the analytical techniques or methods used (5.10.3.5); and,
- 2.4.2. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results (5.10.3.6).
- 2.5. Twenty-four Hour Notice of Noncompliance Reporting. Reporting required by section 5.12.6 shall be made to the following offices:
- 2.5.1. The Permittee shall report any noncompliance which **may endanger health or the environment** as soon as possible, but no later than twenty-four (24) hours from the time the Permittee first became aware of the circumstances. The report shall be made to the EPA, Region 8, Site Assessment/Emergency Response Program at (303) 293-1788 and the Northern Cheyenne Tribe DEPNR at (406) 477-6506.
- 2.5.2. Occurrences of noncompliance noted at section 5.12.6.2 of this Permit shall be reported by telephone to the EPA, Region 8, NPDES Enforcement Unit at (800) 227-8917 (8:00 a.m. - 4:30 p.m. Mountain Time), or NPDES Program, EPA Region 8 Office of Water Protection,

Wastewater Unit at 866-457-2690) (8:00 a.m. - 4:30 p.m. Mountain Time) and the Tribe at (406) 477-6506 - (8:00 a.m. - 4:30 p.m. Mountain Time) by the first workday following the day the Permittee became aware of the circumstances.

- 2.5.3. A written submission of all reports shall also be provided to the U.S. EPA, Office of Enforcement, Compliance and Environmental Justice, and to the Tribe within five days of the time that the Permittee becomes aware of the circumstances. The written submission shall contain:
  - 2.5.3.1. A description of the noncompliance and its cause;
  - 2.5.3.2. The period of noncompliance, including exact dates and times;
  - 2.5.3.3. The estimated time noncompliance is expected to continue if it has not been corrected; and,
  - 2.5.3.4. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
- 2.5.4. The Director may waive the written report on a case-by-case basis for an occurrence of noncompliance listed under Part 5.12.6.2, if the incident has been orally reported in accordance with the requirements of Part 2.5.2.
- 2.5.5. Reports shall be submitted to the addresses in Part 2.3, Reporting of Monitoring Results.

### 3. COMPLIANCE RESPONSIBILITIES

- 3.1. Proper Operation and Maintenance: In addition to the operation and maintenance requirements outlined at 5.5, the Permittee shall operate, at a minimum, one complete set of each main line unit treatment process whether or not this process is needed to achieve Permit effluent compliance.
  - 3.1.1. The Permittee shall, as soon as reasonable and practicable, but no later than six (6) months after the effective date of this Permit, do the following as part of the operation and maintenance program for the wastewater treatment facility:
    - 3.1.1.1. Have a current O & M Manual(s) that describes the proper operational procedures and maintenance requirements of the wastewater treatment facility;
    - 3.1.1.2. Have the O & M Manual(s) readily available to the operator of the wastewater treatment facility and require that the operator become familiar with the manual(s) and any updates;
    - 3.1.1.3. Have a schedule(s) for routine operation and maintenance activities at the wastewater treatment facility; and,
    - 3.1.1.4. Require the operator to perform the routine operation and maintenance requirements in accordance with the schedule(s).
  - 3.1.2. The Permittee shall maintain a daily log, in either paper (bound notebook) or electronic format, containing a summary record of all operation and maintenance activities at the wastewater treatment facility. At a minimum, the log shall include the following information:

- 3.1.2.1. Date and time;
- 3.1.2.2 Name and title of person(s) making the log entry;
- 3.1.2.3. Name of the persons(s) performing the activity;
- 3.1.2.4. A brief description of the activity; and,
- 3.1.2.5. Other information, as appropriate.

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

- 3.2. Removed Substances: Collected screenings, grit, solids, sludge (including sewage sludge), or other pollutants removed in the course of treatment shall be buried or disposed in a manner consistent with all applicable federal and tribal regulations (e.g., 40 CFR Part 257, 40 CFR Part 258, 40 CFR Part 503). Sludge/digester supernatant and filter backwash shall not be directly blended with or enter either the final plant discharge and/or waters of the United States.
- 3.3. Notice of Bypass (See 5.13.3):
  - 3.3.1. Anticipated bypass: If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass to the USEPA, Technical Enforcement Program, and to the Tribe.
  - 3.3.2. Unanticipated bypass: The Permittee shall submit notice of an unanticipated bypass as required under Part 2.8, Twenty-four Hour Noncompliance Reporting, to the U.S. EPA, Technical Enforcement Program, and to the Tribe.
- 3.4. Industrial Waste Management (Minor POTWs in Indian Country)
  - 3.4.1. The Permittee has the responsibility to protect the Publicly-Owned Treatment Works (POTW) from pollutants which would inhibit, interfere, or otherwise be incompatible with operation of the treatment works including interference with the use or disposal of municipal sludge.
  - 3.4.2. Pretreatment Standards (40 CFR Section 403.5) developed pursuant to Section 307 of the Federal Clean Water Act (the Act) require that the Permittee shall not allow, under any circumstances, the introduction of the following pollutants to the POTW from any source of nondomestic discharge:
    - 3.4.2.1. Any other pollutant which may cause Pass Through or Interference.
    - 3.4.2.2. Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, waste streams with a closed cup flashpoint of less than sixty (60) degrees Centigrade (140 degrees Fahrenheit) using the test methods specified in 40 CFR Section 261.21;

- 3.4.2.3. Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with a pH of lower than 5.0 s.u., unless the treatment facilities are specifically designed to accommodate such discharges;
- 3.4.2.4. Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW, or other interference with the operation of the POTW;
- 3.4.2.5. Any pollutant, including oxygen demanding pollutants (e.g., BOD), released in a discharge at a flow rate and/or pollutant concentration which will cause Interference with any treatment process at the POTW;
- 3.4.2.6. Heat in amounts which will inhibit biological activity in the POTW resulting in Interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds forty (40) degrees Centigrade (104 degrees Fahrenheit) unless the Approval Authority, upon request of the POTW, approves alternate temperature limits;
- 3.4.2.7. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause Interference or Pass Through;
- 3.4.2.8. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
- 3.4.2.9. Any trucked or hauled pollutants, except at discharge points designated by the POTW; and
- 3.4.2.10. Any specific pollutant which exceeds a local limitation established by the Permittee in accordance with the requirements of 40 CFR Section 403.5(c) and (d).
- 3.4.3. For the POTWs covered by this Permit, the EPA presently is the Approval Authority for the Pretreatment Program and the mailing address for all reporting and notifications to the Approval Authority shall be: USEPA - Region 8, NPDES Enforcement Unit (8ENF-W-NP), 1595 Wynkoop Street, Denver, CO 80202-1129.
- 3.4.4. In addition to the general limitations expressed above, more specific Pretreatment Standards have been and will be promulgated for specific industrial categories under Section 307 of the Act (40 CFR Part 405 et. seq.).
- 3.4.5. The Permittee must notify the Approval Authority of any new introductions by new or existing industrial users or any substantial change in pollutants from any industrial user within sixty (60) days following the introduction or change. Such notice must identify:
  - 3.4.5.1. Any new introduction of pollutants into the POTW from an industrial user which would be subject to Sections 301, 306, or 307 of the Act if it were directly discharging those pollutants; or,
  - 3.4.5.2. Any substantial change in the volume or character of pollutants being introduced into the POTW by any industrial user;
  - 3.4.5.3. For the purposes of this section, adequate notice shall include information on:

- 3.4.5.3.1. The identity of the industrial user;
- 3.4.5.3.2. The nature and concentration of pollutants in the discharge and the average and maximum flow of the discharge to be introduced into the POTW; and
- 3.4.5.3.3. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from or biosolids or sludge produced at such POTW.
- 3.4.5.4. For the purposes of this section, an industrial user shall include:
  - 3.4.5.4.1. Any discharger subject to Categorical Pretreatment Standards under Section 307 of the Act and 40 CFR chapter I and subchapter N;
  - 3.4.5.4.2. Any discharger which has a process wastewater flow of 25,000 gallons or more per day;
  - 3.4.5.4.3. Any discharger contributing five percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant;
  - 3.4.5.4.4. Any discharger who is designated by the Approval Authority as having a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirements;
- 3.4.6. At such time as a specific Pretreatment Standard or requirement becomes applicable to an industrial user of the Permittee, the Approval Authority may, as appropriate:
  - 3.4.6.1. Amend the Permittee's NPDES discharge Permit to specify the additional pollutant(s) and corresponding effluent limitation(s) consistent with the applicable national Pretreatment Standards;
  - 3.4.6.2. Require the Permittee to specify, by ordinance, order, or other enforceable means, the type of pollutant(s) and the maximum amount which may be discharged to the Permittee's POTW for treatment. Such requirement shall be imposed in a manner consistent with the program development requirements of the General Pretreatment Regulations at 40 CFR Part 403; and/or,
  - 3.4.6.3. Require the Permittee to monitor its discharge for any pollutant which may likely be discharged from the Permittee's POTW, should the industrial user fail to properly pretreat its waste.
- 3.4.7. The Approval Authority retains, at all times, the right to take legal action against any source of nondomestic discharge, whether directly or indirectly controlled by the Permittee, for violations of a permit, order or similar enforceable mechanism issued by the Permittee, violations of any Pretreatment Standard or requirement, or for failure to discharge at an acceptable level under national standards issued by the EPA under 40 CFR, chapter I, subchapter N. In those cases where a NPDES permit violation has occurred because of the failure of the Permittee to properly develop and enforce Pretreatment Standards and requirements as necessary to protect the POTW, the Approval Authority shall hold the Permittee and/or industrial user responsible and may take legal action against the Permittee as well as the Industrial user(s) contributing to the Permit violation.



#### 4. GENERAL REQUIREMENTS

- 4.1. Planned Changes: In addition to the requirements outlined at 5.12.1, the Permittee shall give the Director notice, at least 30 days prior to implementation, when there are any planned substantial changes to the existing sewage sludge facilities, the manner of its operation, or to current sewage sludge management practices of storage and disposal.
- 4.2. Signatory Requirements: All applications, reports or information submitted to the Director shall be signed and certified.
- 4.2.1. All permit applications shall be signed by either a principal executive officer or ranking elected official.
- 4.2.2. All reports required by the Permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
- 4.2.2.1. The authorization is made in writing by a person described above and submitted to the Director; and,
- 4.2.2.2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)
- 4.2.3. Changes to authorization: If an authorization under Part 4.2.2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part 4.2.2 must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.
- 4.2.4. Certification: Any person signing a document under this section shall make the following certification:
- "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
- 4.3. Penalties for Falsification of Reports: The Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this Permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

- 4.4. Availability of Reports: Except for data determined to be confidential under 40 CFR Part 2, Subpart B, all reports prepared in accordance with the terms of this Permit shall be available for public inspection at the offices of the Director. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.
- 4.5. Oil and Hazardous Substance Liability: Nothing in this Permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties to which the Permittee is or may be subject under Section 311 of the Act.
- 4.6. Property Rights: The issuance of this Permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, tribal or local laws or regulations.
- 4.7. Severability: The provisions of this Permit are severable, and if any provision of this Permit, or the application of any provision of this Permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Permit, shall not be affected thereby.
- 4.8. Transfers: This Permit may be automatically transferred to a new permittee if:
- 4.8.1. The current Permittee notifies the Director at least 30 days in advance of the proposed transfer date;
- 4.8.2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and,
- 4.8.3. The Director does not notify the existing Permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the Permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part 4.8.2.
- 4.9. Permittees in Indian Country. The EPA is issuing this Permit pursuant to the Agency's authority to implement the Clean Water Act NPDES program in Indian Country, as defined at 18 U.S.C. § 1151.
- 4.10. Reopener Provision: This Permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limitations (and compliance schedule, if necessary), or other appropriate requirements if one or more of the following events occurs:
- 4.10.1. Water Quality Standards: The water quality standards of the receiving water(s) to which the Permittee discharges are modified in such a manner as to require different effluent limits than contained in this Permit.
- 4.10.2. Wasteload Allocation: A wasteload allocation is developed and approved by the Tribe and/or the EPA for incorporation in this Permit.
- 4.10.3. Water Quality Management Plan: A revision to the current water quality management plan is approved and adopted which calls for different effluent limitations than contained in this Permit.

- 4.1.1. Toxicity Limitation-Reopener Provision: This Permit may be reopened and modified (following proper administrative procedures) to include whole effluent toxicity limitations if whole effluent toxicity is detected in the discharge.

## 5. ADDITIONAL STANDARD CONDITIONS

- 5.1. Duty to comply: The Permittee must comply with all conditions of this Permit. Any Permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for Permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.
- 5.1.1. The Permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the Permit has not yet been modified to incorporate the requirement.
- 5.1.2. The Clean Water Act provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed \$53,484 per day for each violation. The Clean Water Act provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.
- 5.1.3. Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Administrative penalties for Class I violations are not to exceed \$21,393 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$53,484. Penalties for Class II

violations are not to exceed \$21,393 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$267,415.

- 5.1.4. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015, requires the EPA to adjust the civil monetary penalties for inflation on a periodic basis. The EPA has adjusted its civil monetary penalties seven times since 1996, most recently on January 15, 2018 (83 Fed. Reg. 1190-1194). The penalties noted in Parts 5.1.2 and 5.1.3 are the civil and criminal penalties for violations of the Act (including permit conditions) as of January 15, 2018.
- 5.2. Duty to reapply: If the Permittee wishes to continue an activity regulated by this Permit after the expiration date of this Permit, the Permittee must apply for and obtain a new permit.
- 5.3. Need to halt or reduce activity not a defense: It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Permit.
- 5.4. Duty to mitigate: The Permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this Permit which has a reasonable likelihood of adversely affecting human health or the environment.
- 5.5. Proper operation and maintenance: The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this Permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.
- 5.6. Permit actions: This Permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a Permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any Permit condition.
- 5.7. Property rights: This Permit does not convey any property rights of any sort, or any exclusive privilege.
- 5.8. Duty to provide information: The Permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Permit or to determine compliance with this Permit. The Permittee shall also furnish to the Director upon request, copies of records required to be kept by this Permit.

- 5.9. Inspection and entry: 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:
- 5.9.1. Enter upon the Permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Permit;
  - 5.9.2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Permit;
  - 5.9.3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Permit; and
  - 5.9.4. Sample or monitor at reasonable times, for the purposes of assuring Permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.
- 5.10. Monitoring and records:
- 5.10.1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
  - 5.10.2. 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.
  - 5.10.3. Records of monitoring information shall include:
    - 5.10.3.1. The date, exact place, and time of sampling or measurements;
    - 5.10.3.2. The individual(s) who performed the sampling or measurements;
    - 5.10.3.3. The date(s) analyses were performed;
    - 5.10.3.4. The individual(s) who performed the analyses;
    - 5.10.3.5. The analytical techniques or methods used; and
    - 5.10.3.6. The results of such analyses.
  - 5.10.4. Monitoring must be conducted according to test procedures approved under 40 C.F.R. Part 136, unless other test procedures have been specified in this Permit. Sludge monitoring procedures shall be those specified in 40 C.F.R. 503, or as specified in the Permit.

5.10.5. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

5.11. Signatory requirement:

5.11.1. All applications, reports, or information submitted to the Director shall be signed and certified. (See 40 CFR 122.22)

5.11.2. 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 6 months per violation, or by both.

5.12. Reporting requirements:

5.12.1. Planned changes. The Permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the Permitted facility. Notice is required only when:

5.12.1.1. 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

5.12.1.2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the Permit, nor to notification requirements under 40 CFR 122.42(a)(1).

5.12.1.3. 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;

5.12.2. Anticipated noncompliance. The Permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with Permit requirements.

5.12.3. Transfers. This Permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the Permit to change the name of the Permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (See 40 CFR 122.61; in some cases, modification or revocation and reissuance is mandatory.)

5.12.4. Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this Permit.

- 5.12.4.1 Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices. As of December 21, 2016 all reports and forms submitted in compliance with this section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.
- 5.12.4.2. If the Permittee monitors any pollutant more frequently than required by the Permit using test procedures approved under 40 CFR Part 136, or another method required for an industry-specific waste stream under 40 CFR subchapters N or O, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.
- 5.12.4.3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the Permit.
- 5.12.5. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this Permit shall be submitted no later than 14 days following each schedule date.
- 5.12.6. Twenty-four hour reporting.
- 5.12.6.1. 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 report shall also be provided within 5 days of the time the Permittee becomes aware of the circumstances. The report 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. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described above (with the exception of time of discovery) as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), type of sewer overflow structure (e.g., manhole, combine sewer overflow outfall), discharge volumes untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the sewer overflow event, and whether the noncompliance was related to wet weather. As of December 21, 2020 all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

- 5.12.6.2. The following shall be included as information which must be reported within 24 hours under this paragraph.
- 5.12.6.2.1. Any unanticipated bypass which exceeds any effluent limitation in the Permit. (See 40 CFR 122.41(g).
- 5.12.6.2.2. Any upset which exceeds any effluent limitation in the Permit.
- 5.12.6.2.3. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the Permit to be reported within 24 hours. (See 40 CFR 122.44(g).)
- 5.12.6.3. The Director may waive the written report on a case-by-case basis for reports under paragraph 5.12.2.6 if the oral report has been received within 24 hours.
- 5.12.7. Other noncompliance. The Permittee shall report all instances of noncompliance not reported under paragraphs 5.12.4, .5, and .6, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph 5.12.6. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in paragraph 5.12.6 and the applicable required data in appendix A to 40 CFR part 127. As of December 21, 2020 all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.
- 5.12.8. Other information. Where the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.
- 5.12.9. Identification of the initial recipient for NPDES electronic reporting data. The owner, operator, or the duly authorized representative of an NPDES-regulated entity is required to electronically submit the required NPDES information (as specified in appendix A to 40 CFR part 127) to the appropriate initial recipient, as determined by the EPA, and as defined in 40 CFR 127.2(b). The EPA will identify and publish the list of initial recipients on its Web site and in the Federal Register, by state and by NPDES data group [see 40 CFR 127.2(c)]. The EPA will update and maintain this listing.
- 5.13. Bypass:
- 5.13.1. Definitions.
- 5.13.1.1. Bypass means the intentional diversion of waste streams from any portion of a treatment facility.



5.13.1.2. 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.

5.13.2. Bypass not exceeding limitations. The Permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 5.13.3 and 5.13.4.

### 5.13.3. Notice

5.13.3.1. 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. As of December 21, 2020 all notices submitted in compliance with this section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.

5.13.3.2. Unanticipated bypass. The Permittee shall submit notice of an unanticipated bypass as required in paragraph 5.12.6 (24-hour notice). As of December 21, 2020 all notices submitted in compliance with this section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.

### 5.13.4. Prohibition of bypass.

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

5.13.4.1.1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

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

5.13.4.1.3. The Permittee submitted notices as required under paragraph 5.13.3.

5.13.4.2. 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 5.13.4.1.

5.14. Upset:

- 5.14.1. Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- 5.14.2. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph 5.14.3 are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- 5.14.3. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
- 5.14.3.1. An upset occurred and that the Permittee can identify the cause(s) of the upset;
  - 5.14.3.2. The permitted facility was at the time being properly operated; and
  - 5.14.3.3. The Permittee submitted notice of the upset as required in paragraph 5.12.6.2 (24-hour notice).
  - 5.14.3.4. The Permittee complied with any remedial measures required under paragraph 5.4.
- 5.14.4. Burden of proof. In any enforcement proceeding the Permittee seeking to establish the occurrence of an upset has the burden of proof.