

**U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 8
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
STATEMENT OF BASIS**

PERMITTEE: Keller Transport

FACILITY NAME AND MAILING ADDRESS: Keller Transport Spill Site
P.O. Box 30197
Billings, MT 59107

PERMIT NUMBER: MT0030805

RESPONSIBLE OFFICIAL: Debra Will, Owner
Keller Transport, Inc.
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FACILITY CONTACT: Jim Rolle, Director, Environmental Services
West Central Environmental Consultants
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PERMIT TYPE: Dewatering, Indian Country

FACILITY LOCATION: Milepost 5.2, MT Highway 35
Polson, Lake County, Montana
47.7153° N, 114.0471° W

1. INTRODUCTION

This statement of basis (SoB) is for the issuance and modification of a National Pollutant Discharge Elimination System (NPDES) permit (the Permit) to Keller Transport, Inc. (Permittee) for the Keller Transport Spill Site (Facility). The Permit establishes discharge limitations for any discharge from the Facility through Outfalls 002 through 006 to Flathead Lake. The SoB explains the nature of the discharges, EPA's decisions for limiting the pollutants in the discharges, and the regulatory and technical basis for these decisions.

The Facility is located on the Flathead Reservation (Figure 1). EPA Region 8 is the permitting authority for facilities located in Indian country, as defined in 18 U.S.C. § 1151, located within Region 8 states and supports implementation of federal environmental laws consistent with the federal trust responsibility, the government-to-government relationship, and EPA's 1984 Indian Policy.

2. MAJOR CHANGES FROM PREVIOUS PERMIT

This is a major modification of the previous permit. The entire treatment system has been removed, including outfalls, and new outfalls and conveyance features installed. Thus, the scope of changes cannot be entirely captured here. However, the bulleted list below includes the most significant changes:

- Outfall 001 has been removed from the Permit.
- Outfalls 002 through 006 have been added to the Permit.
- Effluent limitations for benzene have been revised.
- Effluent limitations for combined benzene, toluene, ethylbenzene, and xylenes (BTEX) have been removed.
- Monitoring requirements for toluene, ethylbenzene, and total xylenes have been added.
- Monitoring frequencies have been modified.
- Inspection requirements in the Permit have been modified.

Figure 1. Facility Location Map



3. BACKGROUND INFORMATION

On April 2, 2008, approximately 6,380 gallons of gasoline spilled from a tanker truck due to a vehicle accident at mile marker 5.2 on Montana Highway 35, approximately five miles northeast of Polson, Montana (Figure 1). By the time initial responders arrived at the scene, all the spilled gasoline had seeped into the soil at the site. Immediate spill cleanup consisted of excavating gasoline saturated soils adjacent to and underneath Highway 35 at the spill site. On April 6, 2008, the initial remediation contractor detected organic vapors at two spring pools near the shoreline of Flathead Lake down-gradient of the spill site. On April 7, 2008, the remediation contractor set up a temporary treatment system utilizing carbon adsorption for the two spring pools. Continuous treatment and discharge of water from the springs began on April 8, 2008. An NPDES permit for the Facility was issued in December 2008, authorizing discharge of the treated (remediated) groundwater from the interim

treatment plant to Flathead Lake. The Permittee installed an interceptor trench across four residential properties affected by the spill and pulled water from the trench to their treatment facility.

The permanent water treatment system was completed in January 2009 to provide long-term treatment of all hydrocarbon contaminated groundwater at the site. The treatment facility consisted of ozone treatment followed by air stripping cells with horizontal diffusers. The air-stripped water flow path was then filtered before passing through a 4,000-pound granular activated carbon cell followed by a 1,000-pound granular activated carbon container. The treated effluent then discharged to Flathead Lake via Outfall 001. Operation of the treatment system showed the contaminated groundwater could be successfully treated using just the activated carbon filters, and so the air stripping unit was turned off after the first year of operation. The NPDES permit was modified in 2010 after the permanent treatment plant was operating, lowering the monitoring frequency for benzene from weekly to monthly, due to the quality of the treated water being produced by the treatment facility.

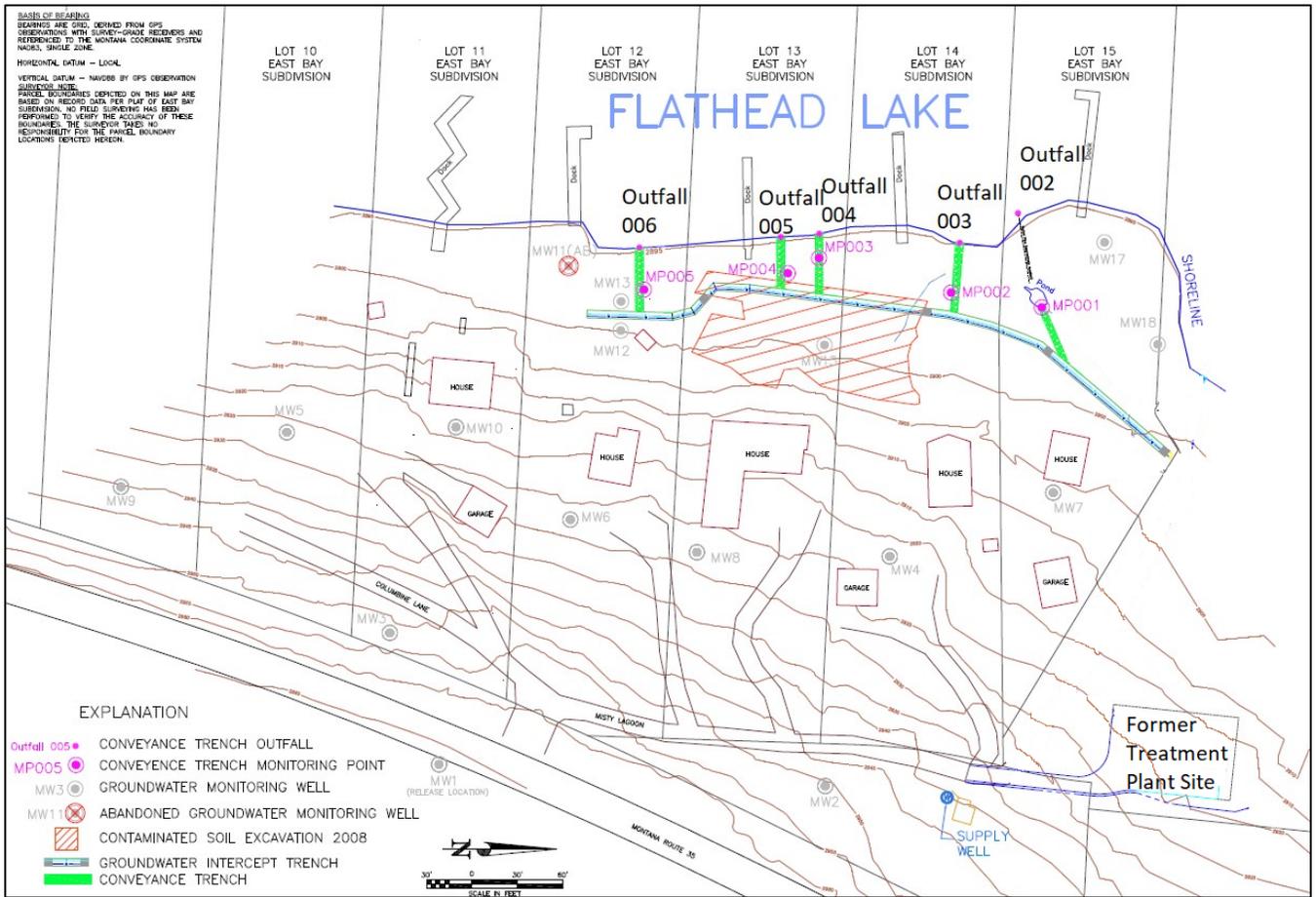
Based on a demonstration that the contaminant plume was stable and water being captured by the interceptor trench was no longer exhibiting contaminant concentrations above applicable standards, EPA's On-Scene Coordinator approved decommissioning of the groundwater treatment system in June 2018. The Permittee proposed an interim shutdown of the system in early summer 2018, to be followed by a period of monitoring and evaluation through the fall of 2018. The purpose of the interim shutdown and evaluation period was to determine how well groundwater would resume flow toward the lake when it was no longer being collected and pumped to the treatment system. If needed, the Permittee planned to submit a design plan for a subsurface trench system to facilitate the passive flow of groundwater from the collection sumps in the intercept trench to the lake and decommissioning of the equipment in the treatment system. After receiving EPA approval from the On-Scene Coordinator, the Permittee conducted the interim shutdown of the treatment system in July 2018, but water began accumulating on the surface of certain yards within a day or two. Accordingly, the treatment system was turned back on to continue pumping accumulated groundwater from the interceptor trench and discharge it from the treatment system.

The Permittee submitted a revised shutdown and decommissioning plan in February of 2019, with a revised subsurface drainage design to facilitate the passive flow of groundwater to the lake and minimize groundwater from surfacing and flooding the yards. EPA's On-Scene Coordinator approved the final shutdown and decommissioning plan in March 2019.

The Permittee completed construction of five passive drainage trenches and shut down the treatment system on May 1, 2019. Four of the subsurface trenches terminate at the lakeshore, and one terminates at a small pond on one of the residential properties approximately 50 feet from the lakeshore. This pond is connected to Flathead Lake by a buried pipe (Figure 2). The trenches are lined with geotextile fabric and filled with oversized washed rock, then covered with geotextile fabric and capped with topsoil. The purpose of the trenches is to facilitate the natural flow of groundwater to the lake and avoid pooling of water in residential lawns.

The treatment plant, all equipment, Outfall 001, and all electrical components were removed from the site in 2019 and 2020. The only remaining surface indication of the former system is a concrete pad where the former treatment system building was located and the five monitoring wells associated with the five new outfalls. The NPDES Permit is being modified to encompass the new discharges which are no longer treated but flow through constructed conveyances into Flathead Lake.

Figure 2. Facility Detail Map



3.1. Facility Process Description

There is no longer a treatment facility. The treatment plant was disassembled in 2019 and removed from the site. The Facility currently consists of the interceptor trench, and five monitoring wells accessing five constructed drainage trenches.

3.2. Treatment Process

The Facility does not provide any treatment of the discharged groundwater. Groundwater is discharged via five outfalls into Flathead Lake (Table 1 and Figure 2). As discussed above, Outfall 001 has been abandoned.

Table 1. Outfalls

Outfall ID	Latitude/Longitude (decimal degrees)	Receiving Water	Description of Outfall
002	47.71558° N / 114.04720° W	Flathead Lake	Constructed conveyance outfall in

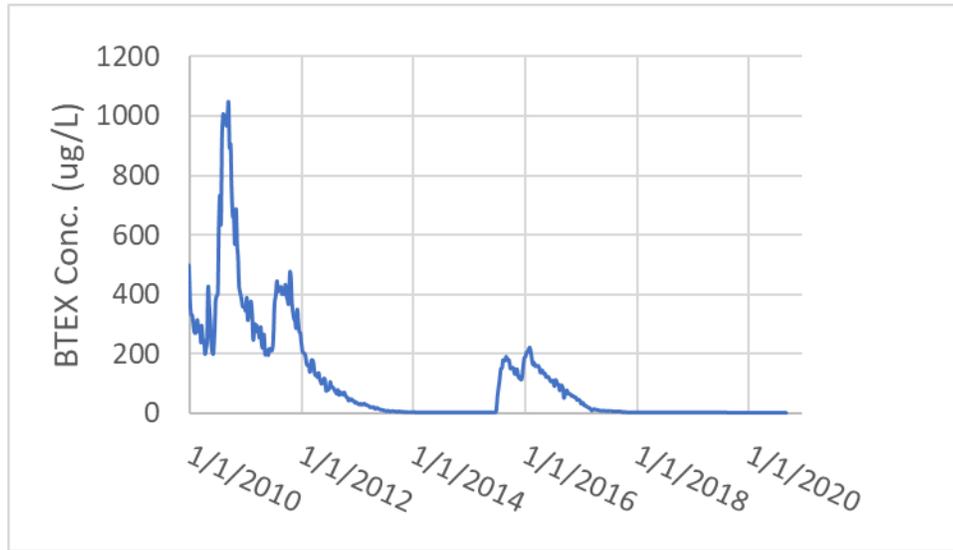
Outfall ID	Latitude/Longitude (decimal degrees)	Receiving Water	Description of Outfall
			Lot 15 of East Bay Subdivision
003	47.71552° N / 114.04712° W	Flathead Lake	Constructed conveyance outfall in Lot 14 of East Bay Subdivision
004	47.71526° N / 114.04711° W	Flathead Lake	Constructed conveyance outfall in Lot 13 of East Bay Subdivision
005	47.71519° N / 114.04709° W	Flathead Lake	Constructed conveyance outfall in Lot 13 of East Bay Subdivision
006	47.71493° N / 114.04705° W	Flathead Lake	Constructed conveyance outfall in Lot 12 of East Bay Subdivision

3.3. Chemicals Used

The Facility does not use or add any chemicals to the groundwater discharge. The former treatment facility was originally installed to treat a discharge from a tanker truck spill, which contained gasoline and other chemicals commonly found in gasoline.

The spill introduced a large initial mass of pollutants to the site, and this mass has decreased over time. Concentrations of spill material have followed suit – decreasing over time. In addition to the treatment and removal at the (former) treatment plant, other physical and chemical processes have and will continue to contribute to the decreasing concentrations – volatilization, chemical and biological breakdown, etc. This means that the pollutant plume will likely continue this decreasing trend. For example, Figure 3 shows the concentrations of BTEX found in the influent to the (former) treatment plant over time. With the exception of two co-solvent flushes performed in 2015 (when the Permittee purposefully added large volumes of ethanol to the groundwater matrix to flush BTEX out of the soil/groundwater and into the treatment plant), BTEX has shown a decreasing trend since 2011. Concentrations of BTEX have been below detection limits for several years. Although BTEX is used as an example in Figure 3, the same trend is present in all of the monitored pollutants associated with gasoline. Thus, the very nature of this site provides some confidence that concentrations of pollutants are unlikely to increase, and should continue to decrease from current levels over time.

Figure 3. Influent BTEX Concentrations Over Time



4. PERMIT HISTORY

According to EPA records, the Facility was first issued an NPDES discharge permit in 2009.

4.1. Discharge Monitoring Report (DMR) Data

The Facility discharges continuously as groundwater flows through the site. The Facility previously had only one outfall (Outfall 001), but this modification will incorporate five new outfalls (Outfalls 002 through 006) and retire the existing one. The Facility has had six violations of pH permit limits in the last three years (Table 2). According to the operator, the groundwater coming into the Facility at certain times of year (often during the first snowmelt) is low in pH, and since they did not adjust pH, this low pH was carried through to the outfall. Other than pH, actual discharges were an order of magnitude or more below permit limits.

Table 2. Summary of the DMR Data (May 2016-April 2019) for Outfall 001 from EPA Integrated Compliance Information System (ICIS) database

Parameter	Permit Limit(s)	Reported Average	Reported Range	Number of Data Points	Number of Violations
TPH (Gasoline), mg/L	10	0.0236	0-0.2	36	0
pH, s.u.	6.5-8.5	6.98 a/	5.24-7.74	36	6
Benzene (30-day average), µg/L	2.2	0.472	0-0.5	36	0
Benzene (daily max), µg/L	5	0.472	0-0.5	36	0
BTEX, µg/L	100	1.89	0-2	36	0
Flow (30-day average), gallons per minute (gpm)	-	40	40	36	-
Flow (daily max), gpm	-	80	80	36	-

a/ Reported median pH

4.2. Other Facility History

The Facility has not been inspected since the previous permit was issued in 2018.

In 2020, the Permittee conducted two sampling events at Outfalls 002 through 006 (Table 3). These represent untreated groundwater and the limited sampling data shows that all values were reported as non-detects.

Table 3. Summary of Additional Data from Outfalls 002 through 006 (Collected 3/23/20 and 9/3/20)

Parameter	Reported Average	Reported Range	Number of Data Points	Number of Violations
TPH (Gasoline), mg/L	<0.02	<0.02	2	0
Benzene, µg/L	<0.5	<0.5	2	0
Toluene, µg/L	<0.5	<0.5	2	-
Ethylbenzene, µg/L	<0.5	<0.5	2	-
Xylenes, Total, µg/L	<0.5	<0.5	2	-

5. DESCRIPTION OF RECEIVING WATER

Water from the Facility is discharged directly to East Bay of Flathead Lake (Figure 2). Flathead Lake is located in northwestern Montana and is the largest natural freshwater lake in the western United States. Though Flathead Lake is a natural water body, the lake level is controlled by Salish Kootenai Dam (formerly Kerr Dam), a power-producing facility on the lower Flathead River approximately 4.5 river miles downstream of where it exits Flathead Lake. Regulation of the outflow by the dam maintains the Lake's water level between 2,883 and 2,893 feet above sea level year-round.

Flathead Lake is approximately bisected by the northern boundary of the Flathead Reservation. Located about 12 miles south of the northern reservation boundary, East Bay of Flathead Lake lies entirely within the external boundaries of the Flathead Reservation. The Facility is located within hydrologic unit code (HUC) 17010208 (Flathead Lake).

6. PERMIT LIMITATIONS

6.1. Technology-Based Effluent Limitations (TBELs)

EPA has not developed formal technology-based effluent limitations (TBELs) in an effluent limitation guideline that apply to discharges from the Facility. However, the previous permit used EPA's *Model NPDES Permit for Discharges Resulting From The Cleanup of Gasoline Released From Underground Storage Tanks and Fact Sheet*, NPDES Permit Number: ID-G91-0000, which recommends a total BTEX limit of 100 µg/l based on an air stripping removal efficiency of 99.5%, to implement a TBEL for BTEX. Since the treatment system has been removed, implementation of this TBEL was not continued in this Permit as discussed in section 6.2.1.

6.2. Water Quality Based Effluent Limitations (WQBELS)

The Facility discharges to Flathead Lake. The receiving water is within the Flathead Reservation, and the Confederated Salish & Kootenai Tribes (CSKT) have Treatment as a State authority for the Clean Water Act to implement and manage the Water Quality Standards program under Sections 303(c) and thus the CSKT water quality standards (WQS)¹ apply.

The most recent revision to the CSKT's WQS were approved by EPA in April 2019. Section 1.3.6 of CSKT's WQS lists the portion of Flathead Lake within the Flathead Reservation as a class A-1 water. Waters classified as A-1 must be maintained suitable for drinking, culinary, and food processing purposes after conventional treatment for removal of naturally present impurities, and are also to be suitable for bathing, swimming and recreation, wildlife (birds, mammals, amphibians, and reptiles), the growth and propagation of salmonid fishes and associated aquatic life, and for agricultural and industrial water supply purposes. Section 1.3.6 of CSKT's WQS also specifies several water quality standards covering bacteria, dissolved oxygen, pH, turbidity, temperature, sediment, color, and toxics. Specifically for toxics, Section 1.3.6 Part 3(h) states that "concentrations of toxic or deleterious substances which would remain in the water after conventional water treatment may not exceed the maximum contaminant levels set forth in the U.S. EPA National Primary Drinking Water Regulations or the U.S. EPA National Secondary Drinking Water Regulations, nor may concentrations of toxic or deleterious substances exceed Tribal Numeric Chart levels."

The Tribal Numeric Chart levels referenced above list aquatic life standards and human health standards for priority pollutants and non-priority pollutants and numeric surface water maximum contaminant levels.

Section 1.3.13 *General Requirements and Limitations* of CSKT's WQS lists narrative standards for tribal waters. The narrative standards require reservation surface waters to be free from substances that are or may become injurious to public health, safety, welfare, or any of the designated or existing beneficial uses. It further states that these substances may or will:

- a) Settle to form objectionable sludge deposits or emulsions beneath the surface of the water or upon adjoining shorelines;
- b) Create floating debris, scum, a visible oil film (or be present in concentrations at or above 10 milligrams per liter) or globules of grease or other floating materials;
- c) Produce odors, colors or other conditions that create a nuisance or render undesirable tastes to fish flesh or make fish inedible;
- d) Create concentrations or combinations of materials that are toxic or harmful to human, animal, plant or aquatic life; and,
- e) Create conditions that produce undesirable aquatic life.

¹ Confederated Salish and Kootenai Tribes of the Flathead Reservation. Surface Water Quality Standards and Antidegradation Policy, CSKT Natural Resources Department, Environmental Protection Division, Water Quality Program, published and submitted to EPA October 2018, approved by EPA April 2019.

No mixing zone is provided in this Permit. The Facility must meet end-of-pipe requirements.

6.2.1. Benzene, Toluene, Ethylbenzene, and Xylenes (BTEX)

Gasoline is a complex combination of hydrocarbon compounds, additives and blending agents. Finished gasoline can contain more than 150 different compounds. However, the volatile organic compounds benzene, toluene, ethylbenzene and the mix of three xylene isomers (collectively referred to as ‘BTEX’) are commonly used as an effluent indicator parameter to represent the compounds found in gasoline. These compounds have similar physical and chemical characteristics.

Of these compounds, benzene, ethylbenzene, and toluene are listed in the CSKT Human Health Priority Pollutants table and ethylbenzene, toluene and xylenes are listed in the CSKT Numeric Surface Water Maximum Contaminant Level (MCL) Standards table. These compounds and their limits as listed in each chart are summarized below (Table 4):

Table 4. Confederated Salish & Kootenai Tribes WQS for Compounds Commonly Found in Gasoline

Parameter	Human Health Standard (Water + Organism) (µg/L)	Human Health Standard (Organism Only) (µg/L)	Adopted MCL Standard (Water Supply) (µg/L)
Benzene	0.58	16	5 ^{a/}
Ethylbenzene	68	130	700
Toluene	57	520	1,000
Xylenes	-	-	10,000

^{a/} While the CSKT do not list benzene in their MCL standards table, they do incorporate EPA’s National Primary Drinking Water Standards by reference in Section 1.3.6 of their WQS. EPA lists benzene as a regulated drinking water contaminant with an MCL of 5 µg/l in its National Primary Drinking Water Standards. Therefore, this value of 5 µg/L is incorporated into this Permit.

The previous permit contained effluent limits and monitoring requirements for benzene. Benzene is typically considered to be the most persistent of the BTEX constituents under anoxic conditions, the most soluble in water, and one of the (if not the) most toxic. Benzene is also a carcinogen. Permit limits and monitoring requirements for benzene will be retained in the Permit. The permit limit for benzene has been revised in this modification, as the CSKT human health WQS for benzene was reduced from 2.2 µg/L to 0.58 µg/L in 2019. The new 30-day average benzene effluent limitation will be 0.58 µg/L. The daily maximum limit will remain at 5 µg/L per the maximum contaminant level.

The previous permit also contained effluent limits and monitoring requirements for BTEX. As discussed in section 6.1, the previous permit used an air-stripping TBEL to determine a BTEX effluent limitation of 100 µg/L. However, the Facility no longer uses air stripping (or any other form of treatment). Since the treatment technology has substantively changed, the focus of the modified permit will transition away from technology based limits, and towards consideration and protection of the individual CSKT WQS for benzene (discussion above), toluene, ethylbenzene, and

xylene. As such, the BTEX effluent limitation will be removed from the Permit. This decision triggers anti-backsliding considerations, and these are further discussed in section 6.3.2 (anti-backsliding).

Available monitoring data for toluene, ethylbenzene, and total xylenes indicate that these pollutants do not have reasonable potential to cause or contribute to an exceedance of any applicable water quality standards (collectively referred to as “RP”). The Permittee collected weekly or monthly monitoring of *untreated influent* to their treatment plant. This data shows all “non-detects” of <0.5 µg/L for toluene, ethylbenzene, and xylenes since February 2018 (Figure 3). Additionally, the Permittee collected two samples from Outfalls 002 through 006 in 2020 (Table 3), and these also show all “non-detects” of <0.5 µg/L for these pollutants. However, based on the removal of the treatment facility and the limited dataset post-removal, these pollutants are still considered pollutants of concern. Monitoring and reporting of toluene, ethylbenzene, and total xylenes will be required at Outfalls 002 through 006 to determine if there is RP for these pollutants. This will develop a more robust post-removal dataset with which to make informed permitting decisions. If any of these pollutants is found to have RP, effluent limitations may be added to the Permit at a future date. Likewise, if the expanded monitoring data shows no RP, then monitoring requirements for these pollutants may be reduced or removed at a future date.

6.2.2. Total Petroleum Hydrocarbons – Gasoline Range Organics (TPH-GRO)

Total petroleum hydrocarbons (TPH) is a term used to describe a large family of several hundred chemical compounds that originally come from crude oil. Because there are so many different chemicals in crude oil and in other petroleum products, it is not practical to measure each one separately. Measuring TPH provides an indicator of overall petroleum contamination at a site. Some chemicals that may be found in TPH are hexane, jet fuels, mineral oils, benzene, toluene, xylenes, naphthalene, and fluorene, as well as other petroleum products and gasoline components. Total Petroleum Hydrocarbons as gasoline range organics (TPH-GRO) specifically measures the more volatile petroleum hydrocarbons – those that have shorter carbon chains and are more likely found in gasoline.

This parameter was included in the previous permit with an effluent limitation of 10 mg/L. TPH-GRO was selected as an appropriate analysis based on the professional judgement of EPA Region 8 permitting staff. The TPH-GRO analysis was used in conjunction with a visual observation of the receiving water at the effluent discharge point looking for a petroleum product sheen on the water. The CSKT do not have WQS for TPH-GRO. However, the TPH-GRO effluent limitation of 10 mg/L is being retained in this Permit to be used in conjunction with CSKT’s narrative WQS for surface waters of the reservation, which state in part that all waters must be “free from substances, which may or will create floating debris, scum, a visible oil film (or be present in concentrations at or in excess of 10 milligrams per liter) or globules of grease or other floating materials.”

The previous permit identified this effluent limitation as “Total *Purgeable* Hydrocarbons – Gasoline Range Organics” instead of “Total *Petroleum* Hydrocarbons – Gasoline Range Organics.” This is the same parameter. The TPH method is via a purge and trap analysis, and the terminology is often used interchangeably. The correct terminology is “Total Petroleum Hydrocarbons.”

6.2.3. pH

The relevant CSKT water quality standard for pH [Section 1.3.6(3)(c)] states, “Induced variation of hydrogen ion concentration (pH) within the range of 6.5 to 8.5 must be less than 0.5 pH unit. Natural pH outside this range must be maintained without change. Natural pH above 7.0 must be maintained above 7.0.” The Facility provides no treatment and no chemical adjustments of pH at this time. However, they have had several pH violations (Table 2), with pH values occasionally dropping below 6.5 during the summer months. The Permittee states that the pH variations are likely a natural phenomenon due to the geologic makeup of the native bedrock and influenced by seasonal groundwater recharge patterns (e.g., snowmelt and spring rain events).

A pH range limit of 6.5-8.5 was included in the previous permit based on an interpretation of the CSKT water quality standards for A-1 classified waters. This effluent limitation will be retained in this permit modification.

6.2.4. WET Testing

Discharge data from the Facility indicates that the source water is chemically consistent (Table 2 and Table 3). Furthermore, there are no chemicals used during the treatment process. This statement of basis provides a thorough review of CSKT water quality standards and the Permit has implemented monitoring requirements and effluent limitations in consideration of individual pollutants of concern. For these reasons, EPA believes there is no reasonable potential to cause whole effluent toxicity in the receiving water, and therefore WET effluent limitations and monitoring will not be required. The Permit contains a re-opener provision if the need for WET effluent limitations or monitoring is determined at a future date.

6.3. Final Effluent Limitations

Applicable TBELs and WQBELs were compared, and the most stringent of the two was selected for the following effluent limits (Table 5).

Table 5. Final Effluent Limitations for all Outfalls

Effluent Characteristic	30-Day Average Effluent Limitation <u>a/</u>	Daily Maximum Effluent Limitation <u>a/</u>	Limit Basis
Total Flow, gallons per minute (gpm)	report only	report only	-
Benzene, µg/L	0.58	5	CSKT WQS
Toluene, µg/L	report only	report only	-
Ethylbenzene, µg/L	report only	report only	-

Effluent Characteristic	30-Day Average Effluent Limitation <u>a/</u>	Daily Maximum Effluent Limitation <u>a/</u>	Limit Basis
Xylenes, Total, µg/L	report only	report only	-
Benzene, toluene, ethylbenzene, and total xylenes (BTEX), µg/L	report only	report only	-
Total Petroleum Hydrocarbons – Gasoline Range Organics (TPH-GRO), mg/L	n/a	10	PJ
pH	Shall not be less than 6.5 nor greater than 8.5 at any time.		CSKT WQS
Narrative Limits	The effluent shall not: a) Settle to form objectionable sludge deposits or emulsions beneath the surface of the water or upon adjoining shorelines; b) create scum, a visible oil film or globules of grease or other floating material; c) produce odors, colors or other conditions that create a nuisance or render undesirable tastes to fish or make fish inedible; d) create concentrations or combinations of materials that are toxic or harmful to human, animal or plant life; e) create conditions that produce undesirable aquatic life.		CSKT WQS

CSKT WQS: CSKT Water Quality Standards; PJ: Professional Judgment

a/ See section 1 of the Permit for definition of terms.

6.3.1. Antidegradation

On the Flathead Reservation, all reservation surface waters are provided one of three different levels of antidegradation protection (Tier 1 through Tier 3, with Tier 3 being the most protective). Flathead Lake is not specifically designated as Tier 1, 2, or 3 at this time, and CSKT’s WQS “presume that most Tribal waters qualify for Tier 2 protection.” Tier 2 waters are high quality waters whose quality exceed levels necessary to support propagation of fish and wildlife and recreation in and on the water. Tier 2 waters shall have their quality maintained and protected unless degradation is allowed through an administrative process involving the CSKT, EPA, and the public. The CSKT determine likelihood of significant degradation on a parameter-by parameter basis.

All applicable Tribal water quality standards (required to be met at the end of pipe) were used to set the final effluent limits in this Permit. Furthermore, no changes to ambient concentrations or loading are proposed in this Permit. For these reasons, the proposed activity will not result in significant degradation, and antidegradation review is terminated per the CSKT Antidegradation Policy (see footnote page 5). Existing and designated uses - as well as the water quality - of the receiving water will continue to be protected under the conditions of the Permit.

6.3.2. Anti-Backsliding

Federal regulations require at 40 CFR Part 122.44(l)(1) that when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit were based have materially and substantially changed since the time the Permit was issued and would constitute cause for permit modification or revocation and reissuance under 40 CFR Part 122.62.

This permit renewal complies with anti-backsliding regulatory requirements. All effluent limitations, standards, and conditions in the Permit are either equal to or more stringent than those in the previous permit, with the exception of BTEX. The effluent limitation for BTEX of 100 µg/L has been removed in the Permit. 40 CFR Part 122.44(l)(2)(i)(B)(1) allows a permit to be renewed, reissued, or modified to with a less stringent effluent limitation for a pollutant if “*information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance.*” In this case, additional monitoring information not available at the time of the previous permit issuance shows that the *untreated influent* to the treatment plant has not had a BTEX detection above 2.0 µg/L since February 2018 (Figure 3). Additionally, limited untreated discharge data (Table 3) shows that there have been no BTEX above the detection limit of 2.0 µg/L since the treatment system was removed. These concentrations are significantly below the previous permitted limit of 100 µg/L. Regardless, the Permit now focuses on monitoring for the individual constituents in BTEX and will remain protective of CSKT WQS.

7. MONITORING REQUIREMENTS

7.1. Self-Monitoring Requirements

The following parameters shall be monitored during discharge from the dewatering operation (Table 6). If no discharge occurs during a monitoring period, “no discharge” shall be indicated on the DMR. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, as required in 40 CFR Part 122.41(j).

Effluent monitoring samples shall be taken at the appropriate outfall. The effluent sampling location shall be from the monitoring wells prior to discharge to the receiving water.

7.1.1. Changes in Monitoring Frequency

The previous permit required monthly monitoring. Data from the previous permit indicated that the discharge was chemically consistent and nearly two orders of magnitude below any applicable effluent limits for most parameters. However, there is not a robust data set of monitoring from the new outfalls.

This modification starts off with monthly monitoring to gather one year of data from each of the new outfalls, but contains a clause that allows the Permittee to request a reduction to quarterly monitoring (see footnote 'c' in Table 6). This request must be submitted to EPA in writing, and EPA may approve or deny the request based on the monitoring results and other information available (including applicable surface water quality standards) without further public notice or major modification of the Permit.

Table 6. Monitoring and Reporting Requirements for all Outfalls

Effluent Characteristic	Monitoring Frequency	Sample Type a/	Data Reported on DMR a/
Total Flow, gpm <u>b/</u>	Monthly <u>c/</u>	Instantaneous	Daily Maximum 30-Day Average
Benzene, µg/L	Monthly <u>c/</u>	Grab	Daily Maximum 30-Day Average
Toluene, µg/L	Monthly <u>c/</u>	Grab	Daily Maximum 30-Day Average
Ethylbenzene, µg/L	Monthly <u>c/</u>	Grab	Daily Maximum 30-Day Average
Xylenes, Total, µg/L	Monthly <u>c/</u>	Grab	Daily Maximum 30-Day Average
Benzene, toluene, ethylbenzene, and total xylenes (BTEX), µg/L	Monthly <u>c/</u>	Calculation <u>d/</u>	Daily Maximum 30-Day Average
Total Petroleum Hydrocarbons – Gasoline Range Organics (TPH-GRO), mg/L	Monthly <u>c/</u>	Grab	Daily Maximum 30-Day Average
pH	Monthly <u>c/</u>	Grab <u>e/</u>	Instantaneous Minimum Instantaneous Maximum

a/ See section 1 of the Permit for definition of terms.

b/ 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 and the daily maximum flow (maximum volume discharged during a 24-hour period) observed during the reporting period shall be reported in the units provided in the table.

c/ After twelve months of monitoring the Permittee may request, in writing, a reduction in monitoring frequency to quarterly. Any such request must be sent to EPA at the address in footnote 'c' on Table 3 of the Permit. EPA may approve or deny the request based on the monitoring results and other information available (including applicable surface water quality standards) without further public notice or major modification of the Permit.

d/ Report BTEX as the sum of benzene, toluene, ethylbenzene, and total xylenes.

e/ pH samples must be analyzed within 15 minutes of sample collection.

8. REPORTING REQUIREMENTS

On December 21, 2015, the NPDES Electronic Reporting Rule (40 CFR Part 127) went into effect. This rule includes two phases. Phase 1 included the requirement that by no later than December 21, 2016, entities that are required to submit DMRs must do so electronically unless a waiver from electronic reporting is granted to the entity. Phase 2 includes the requirement that by no later than December 21, 2025, or as otherwise specified in 40 CFR Part 127, other specified reporting must be done electronically.

With the effective date of the Permit, the Permittee must electronically report DMRs on a quarterly frequency using NetDMR. Electronic submissions by permittees must be submitted to EPA Region 8 no later than the 28th of the month following the completed reporting period (Table 7). The Permittee must sign and certify all electronic submissions in accordance with the signatory requirements of the Permit. NetDMR is accessed from the internet at <https://netdmr.zendesk.com/home>.

The reports that are to be submitted electronically after December 21, 2025, or as otherwise specified in 40 CFR Part 127, are to be submitted using the NPDES Electronic Reporting Tool (NeT). The instructions on how to use NeT are not yet available. In the future, the Permittee will receive instructions on how to use NeT. Until then, the Permittee shall continue to submit these reports in paper format by mailing them to the specified addresses.

Table 7. Due Dates for Quarterly DMR Submittals

Compliance Monitoring Period	Due Date
January – March	April 28
April – June	July 28
July – September	October 28
October – December	January 28

9. OPERATION AND MAINTENANCE REQUIREMENTS

40 CFR 122.41(e) requires permittees to properly operate and maintain all facilities and systems of treatment and control which are installed or used by the Permittee to achieve compliance with the conditions of this permit. To ensure this, this Permit will require regular facility inspections and an operation and maintenance plan. Regular facility inspections and a working operation and maintenance plan allow the Permittee to observe and identify any operational deficiencies, and provides a framework to address those deficiencies. These requirements have been established in section 6.5 and 6.6 of the Permit to help ensure compliance with the provisions of 40 CFR 122.41(e).

10. ENDANGERED SPECIES CONSIDERATIONS

The Endangered Species Act of 1973 requires all Federal Agencies to ensure, in consultation with the U.S. Fish and Wildlife Service (FWS), that any Federal action carried out by the Agency is not likely to jeopardize the continued existence of any endangered species or threatened species (together, “listed” species), or result in the adverse modification or destruction of habitat of such species that is designated by the FWS as critical (“critical habitat”). See 16 U.S.C. § 1536(a)(2), 50 CFR Part 402. When a Federal agency’s action “may affect” a protected species, that agency is required to consult with the FWS, depending upon the endangered species, threatened species, or designated critical habitat that may be affected by the action (50 CFR § 402.14(a)).

The U. S. Fish and Wildlife Information for Planning and Conservation (IPaC) website program was accessed on November 3, 2020 to determine federally-listed Endangered, Threatened, Proposed and Candidate Species for the area near the Facility. The IPaC Trust Resource Report findings are provided below (Table 8). The designated area utilized was taken directly from the IPaC system and covers approximately 450 acres surrounding the spill site.

Table 8. Federally-listed Threatened and Endangered Species

Species	Scientific Name	Status	Additional IPaC Species Considerations:
Canada lynx	<i>Lynx canadensis</i>	Threatened	This location is outside the final critical habitat for this species.
Grizzly Bear	<i>Ursus arctos horribilis</i>	Threatened	There is proposed critical habitat for this species. The location of the critical habitat is not available.
Yellow-billed Cuckoo	<i>Coccyzus americanus</i>	Threatened	This location is outside the proposed critical habitat for this species.
Bull Trout	<i>Salvelinus confluentus</i>	Threatened	This location overlaps the final critical habitat for this species.
Spalding’s Catchfly	<i>Silene spaldingii</i>	Threatened	There is proposed critical habitat for this species. The location of the critical habitat is not available.
Whitebark Pine	<i>Pinus albicaulus</i>	Candidate	No critical habitat has been designated for this species.

10.1. Biological Evaluation

The potential effects of the proposed action on the six listed and candidate species and their critical habitat are provided below. These biological evaluations are based on information obtained from the IPaC site and knowledge regarding the proposed action.

The proposed action is a modification of a current NPDES permit. The Facility has already removed the treatment system and at this point the only surface disturbance will be when the Permittee accesses the monitoring wells by foot. The site is located in the backyards of four properties along Flathead Lake. No significant changes to habitat or discharge volumes or quality are planned or expected due to this Permit modification. The permitted activity is not a consumptive use activity, and no water depletions will result from this Permit. Permit effluent limitations are protective of receiving water quality.

Canada lynx, *lynx canadensis* – This species is currently listed as threatened, and this location is outside the critical habitat for this species. The Permit does not authorize changes to habitat that supports this species, nor are discharges from facility operations anticipated to affect this species. Based on this information, EPA has determined that the modification of the Permit will have **no effect** on this species.

Grizzly bear, *Ursus arctos horribilis* – This species is currently listed as threatened. The location of the proposed critical habitat for this species is not currently available. The Permit does not authorize changes to habitat that supports this species, nor are discharges from facility operations anticipated to affect this species. Based on this information, EPA has determined that the modification of the Permit will have **no effect** on this species.

Yellow-billed cuckoo, *Coccyzus americanus* – This species is currently listed as threatened, and this location is outside the proposed critical habitat for this species. The Permit does not authorize changes to habitat that supports this species, nor are discharges from facility operations anticipated to affect this species. Based on this information, EPA has determined that the modification of the Permit will have **no effect** on this species.

Bull trout, *Salvelinus confluentus* – This species is currently listed as threatened, and this location overlaps the final critical habitat for this species. The critical habitat for bull trout in this area includes Flathead Lake. The Permit does not authorize changes to habitat that supports this species, nor are discharges from facility operations anticipated to affect this species. Based on this information, EPA has determined that the modification of the Permit will have **no effect** on this species.

Spalding's catchfly, *Silene spaldingii* – This species is currently listed as threatened, and the location of the proposed critical habitat for this species is not currently available. The Permit does not authorize changes to habitat that supports this species, nor are discharges from facility operations anticipated to affect this species. Based on this information, EPA has determined that the modification of the Permit will have **no effect** on this species.

Whitebark pine, *Pinus albicaulus* – This species is currently listed as a candidate for listing, and no critical habitat has been established for this species. The Permit does not authorize changes to habitat that supports this species, nor are discharges from facility operations anticipated to affect this species.

Based on this information, EPA has determined that the modification of the Permit will have **no effect** on this species.

Based on the “no effect” determinations above, no consultation with the USFWS is required. During public notice of the Permit modification, FWS will be notified as an interested party.

11. NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS

Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470(f), requires that federal agencies consider the effects of federal undertakings on historic properties. The U.S. National Park Service (U.S. NPS) National Register of Historic Places Focus Database was utilized to determine and evaluate resources of concern in the Facility location.

The National Register of Historic Places (NRHP) is the official list of the Nation's historic places worthy of preservation. Authorized by the National Historic Preservation Act of 1966, the National Park Service's (NPS) National Register of Historic Places is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources. The NRHP was accessed on November 3, 2020, to determine federally listed historic properties and places near the Facility. No historic properties were identified as being located near the Facility. Based upon the information provided by the NPS database, EPA does not anticipate any impacts on listed/eligible historic properties due to Permit issuance and Facility discharge.

During public notice of the Permit modification, CSKT’s Tribal Historic Preservation Office (THPO) will be notified as an interested party.

12. 401 CERTIFICATION

The CSKT is the CWA section 401 certifying authority for the Permit, and a CWA section 401 certification will be requested prior to Permit finalization.

13. MISCELLANEOUS

The effective date of the Permit and the Permit expiration date will be determined upon issuance of the Permit. The intention is to issue the Permit for a period not to exceed 5 years.

Permit drafted by Erik Makus, U.S. EPA, 406-457-5017 (January 2021).

ADDENDUM:

AGENCY CONSULTATIONS

On [Month Day Year], the USFWS [concurring/disagreeing/did not comment on] with EPA's preliminary conclusion that the Permit reissuance is not likely to adversely affect listed species.

On [Month Day Year], the Tribes' THPO [agreed with/disagreed with/did not comment on] EPA's preliminary determination that the Permit reissuance will not impact any historic properties.

On [Month Day Year], EPA sent a CWA section 401 certification request to the CSKT. The CSKT [certified without section 401 requirements/certified with the following section 401 certification requirements/waived section 401 certification]. Any review or appeal of these requirements must be made through Tribal procedures pursuant to 40 CFR § 124.55(e).

- *[List any 401 certification requirements.]*

PUBLIC NOTICE AND RESPONSE TO COMMENTS

[The Permit and statement of basis were public noticed [on/in the XXX] on [month day, year]. The comment(s) received and the response(s) are provided below.

Comment:

The commenter noted that ...

Response:

The following language was added to the final Permit/No changes were made to the final Permit.....