Permit No.: MT0029360

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 its Lame Deer wastewater treatment facility located in Township 2S, Range 41E, Section 33, 45° 37' 44" N, 106° 40' 25" West, Rosebud County to Lame Deer 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 to be determined upon issuance

This permit and the authorization to discharge shall expire at midnight, to be determined upon issuance

Signed this day of

Authorized Permitting Official

Stephen S. Tuber, Assistant Regional Administrator
Office of Partnerships and Regulatory Assistance
Title

TABLE OF CONTENTS

1. Effluent Limitations and Monitoring Requirements
   1.1. Definitions
   1.2. Description of Discharge Points
   1.3. Specific Limitations and Self-Monitoring Requirements
      1.3.1. Effluent Limitations
      1.3.2. Self-Monitoring Requirements
      1.3.3. Inspection Requirements

2. Monitoring, Recording and Reporting Requirements
   2.1. Representative Sampling
   2.2. Monitoring Procedures
   2.3. Penalties for Tampering
   2.4. Reporting of Monitoring Results
   2.5. Additional Monitoring by the Permittee
   2.6. Records Contents
   2.7. Retention of Records
   2.8. Twenty-four Hour Notice of Noncompliance Reporting
   2.9. Other Noncompliance Reporting
   2.10. Inspection and Entry

3. Compliance Responsibilities
   3.1. Duty to Comply
   3.2. Penalties for Violations of Permit Conditions
   3.3. Need to Halt or Reduce Activity not a Defense
   3.4. Duty to Mitigate
   3.5. Proper Operation and Maintenance
   3.6. Removed Substances
   3.7. Bypass of Treatment Facilities
   3.8. Upset Conditions
   3.9 Industrial Waste Management (Minor POTWs in Indian country)

4. General Requirements
   4.1. Planned Changes
   4.2. Anticipated Noncompliance
   4.3. Permit Actions
   4.4. Duty to Reapply
   4.5. Duty to Provide Information
   4.6. Other Information
   4.7. Signatory Requirements
   4.8. Penalties for Falsification of Reports
   4.9. Availability of Reports
   4.10. Oil and Hazardous Substance Liability
   4.11. Property Rights
   4.12. Severability
   4.13. Transfers
   4.14. Permittees in Indian Country
   4.15. Reopener Provision
   4.16. Toxicity Limitation - Reopener Provision

# 1. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

## 1.1. Definitions.

The *30-day (and monthly) average*, other than for microbiological organisms (e.g., bacteria, viruses, etc.), is the arithmetic average of all samples collected during a consecutive 30-day period or calendar month, whichever is 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 report forms.

The *7-day (and weekly) average*, other than for microbiological organisms (e.g., bacteria, viruses, etc.), is the arithmetic mean of all samples collected during a consecutive 7-day period or calendar week, whichever is applicable. Geometric means shall be calculated for microbiological organisms unless specified otherwise in the permit. The 7-day and weekly averages are applicable only to those effluent characteristics for which there are 7-day average effluent limitations. The calendar week, which begins on Sunday and ends on Saturday, shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms. Weekly averages shall be calculated for all calendar weeks with Saturdays in the month. 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.

*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.

*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.

*Composite samples* shall be flow proportioned. The composite sample shall, at a minimum, contain at least four (4) samples collected over the compositing period. Unless otherwise specified, the time between the collection of the first sample and the last sample shall not be less than six (6) hours, nor more than twenty-four (24) hours. Acceptable methods for the preparation of composite samples are as follows:

a. Constant time interval between samples, sample volume proportional to flow rate at the time of sampling;

b. Constant time interval between samples, sample volume proportional to total flow (volume) since last sample. For the first sample, the flow rate at the time of the first sample was collected may be used;

c. Constant sample volume, time interval between samples proportional to flow (i.e., sample taken every "X" gallons of flow); and,

d. Continuous collection of sample with sample collection rate proportional to flow rate.

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

*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.

*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.

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

*EPA* means the United States Environmental Protection Agency.

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

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

*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.

*Whole Effluent Toxicity*, Acute occurs when 50 percent or more mortality is observed for either species (see Part 1.3) 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 Point(s). The authorization to discharge provided under this permit is limited to those outfalls specifically designated below as discharge locations. 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(s) | Description of Discharge Point(s) |
|---|---|
| 001 | Any discharge from the northwest corner of the tertiary cell to Lame Deer Creek. |

1.3. Specific Limitations and Self-Monitoring Requirements

1.3.1. Effluent Limitations - Outfall 001. Effective immediately and lasting through the life of this permit, the quality of effluent discharged by the facility shall, at a minimum, meet the limitations as set forth below:

| Effluent Characteristic | Effluent Limitation | | |
|---|---|---|---|
| | 30-Day Average a/ | 7-Day Average a/ | Daily Maximum a/ |
| BOD5, mg/L | 45 | 65 | N/A |
| Total Suspended Solids, mg/L | 45 | 65 | N/A |
| The pH of the effluent shall not be less than 6.0 s.u. or greater than 9.0 s.u. in any single sample or analysis. | | | |
| The concentration of oil and grease in any single sample shall not exceed 10 mg/L nor shall there be any visible sheen in the receiving water or adjoining shoreline. | | | |
| There shall be no discharge of floating solids or visible foam in other than trace amounts. | | | |

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

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. If no discharge occurs during the entire monitoring period, it shall be stated on the Discharge Monitoring Report Form (EPA No. 3320-1) that no discharge or overflow occurred. Outfall 001 shall be sampled at the earliest possible point in the discharge line from the Parshall Flume.

| Effluent Characteristic | Frequency | Sample Type a/ |
|---|---|---|
| Flow, MGD b/ | Monthly | Instantaneous |
| BOD5, mg/L | Monthly | Grab |
| Total Suspended Solids, mg/L | Monthly | Grab |
| pH, standard units | Monthly | Grab |
| Oil and Grease, mg/L c/ | Monthly | Visual c/ |

a/ See Definitions, Part 1.1, 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 (in gallons per day) during the reporting period and the daily maximum flow (maximum volume discharged during a 24-hour period) shall be reported.

c/ 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.

1.3.3. Inspection Requirements

1.3.3.1. 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:

1.3.3.1.1. Determine if a discharge is occurring, has occurred since the previous inspection, and/or if a discharge is likely to occur before the next inspection. (Note: If a discharge has occurred or is likely to occur before the next inspection, perform the appropriate monitoring and reporting requirements in Parts 1.3.2 and 2.4 of this permit if not already done.);

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

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

1.3.3.1.4. Check to see if there has been any excessive erosion of the dikes;

1.3.3.1.5. Check to see if there are any rooted plants, including weeds growing in the water;

1.3.3.1.6. Check to see if vegetation growth on the dikes needs mowing; and,

1.3.3.1.7. Determine if proper operation and maintenance procedures are being undertaken at the wastewater treatment facility.

1.3.3.2. The permittee shall maintain a bound notebook recording information obtained during the inspection. At a minimum, the notebook shall include the following:

1.3.3.2.1. Date and time of the inspection;

1.3.3.2.2. Name of the inspector(s);

1.3.3.2.3. The facility's discharge status;

1.3.3.2.4. The flow rate of the discharge if occurring;

1.3.3.2.5. Identification of operational problems and/or maintenance problems;

1.3.3.2.6. Recommendations, as appropriate, to remedy identified problems;

1.3.3.2.7. A brief description of any actions taken with regard to problems identified; and,

1.3.3.2.8. Other information, as appropriate.

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

1.3.3.3. Problems identified during the inspection shall be addressed through proper operation and maintenance. (See Part 3.5 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 test procedures approved under 40 CFR Part 136, 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. Penalties for Tampering. The Act provides that any person who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both. Second conviction is punishable by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or both.

2.4. Reporting of Monitoring Results. Effluent monitoring results obtained during the previous month shall be summarized and reported on one Discharge Monitoring Report Form (EPA No. 3320 1), postmarked no later than the 28th day of the month following the completed reporting period. If no discharge occurs during the reporting period, "no discharge" shall be reported. Until further notice, sludge monitoring results may be reported in the testing laboratory's normal format (there is no EPA standard form at this time), but should be on letter size pages. Whole effluent toxicity (biomonitoring) results must be reported on the most recent version of EPA Region 8's Guidance For Whole Effluent Reporting. Legible copies of these, and 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 Tribe at the addresses given below:

original to: U.S. EPA, Region 8
Montana Office
10 W. 15th Street, Suite 3200
Helena, MT 59626

copy to: Northern Cheyenne Tribe
Environmental Protection Department
P.O. Box 128
Lame Deer, MT 59043

2.5. Additional Monitoring by the Permittee. If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136, 40 CFR 503, or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.

2.6. Records Contents. Records of monitoring information shall include:

2.6.1. The date, exact place, and time of sampling or measurements;

2.6.2. The initials or name(s) of the individual(s) who performed the sampling or measurements;

2.6.3. The date(s) analyses were performed;
2.6.4. The time(s) analyses were initiated;

2.6.5. The initials or name(s) of individual(s) who performed the analyses;

2.6.6. References and written procedures, when available, for the analytical techniques or methods used; and,

2.6.7. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

2.7. Retention of Records. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. Records of monitoring required by this permit related to sludge use and disposal activities must be kept at least five years (or longer as required by 40 CFR 503). This period may be extended by request of the Director at any time. Data collected on site, data used to prepare the DMR, copies of Discharge Monitoring Reports, and a copy of this NPDES permit must be maintained on site.

2.8. Twenty-four Hour Notice of Noncompliance Reporting.

2.8.1. The permittee shall report any noncompliance which may endanger health or the environment as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the EPA, Region 8, Site Assessment/Emergency Response Program at (303) 293-1788, the Tribe at (406)638-3192.

2.8.2. The following occurrences of noncompliance shall be reported by telephone to the EPA, Region 8, NPDES Enforcement Unit at (800) 227-8917 (8:00 a.m. - 4:30 p.m. Mountain Time), or NPDES Program, EPA Region 8 Montana Office, at (406) 457-5000 (toll-free 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:

2.8.2.1. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Part 3.7, Bypass of Treatment Facilities.);

2.8.2.2. Any upset which exceeds any effluent limitation in the permit (See Part 3.8, Upset Conditions.); or,

2.8.2.3. Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.

2.8.3. A written submission shall also be provided to the USEPA, Office of Enforcement, Compliance and Environmental Justice, and to the Tribe within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:

2.8.3.1. A description of the noncompliance and its cause;

2.8.3.2. The period of noncompliance, including exact dates and times;

2.8.3.3. The estimated time noncompliance is expected to continue if it has not been corrected; and,

2.8.3.4. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

2.8.4. The Director may waive the written report on a case-by-case basis for an occurrence of noncompliance listed under Part 2.8.2 above, if the incident has been orally reported in accordance with the requirements of Part 2.8.2.

2.8.5. Reports shall be submitted to the addresses in Part 2.4, Reporting of Monitoring Results.

2.9. Other Noncompliance Reporting. Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for Part 2.4 are submitted. The reports shall contain the information listed in Part 2.8.3.

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

2.10.1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2.10.2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

2.10.3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and,

2.10.4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

## 3. COMPLIANCE RESPONSIBILITIES

3.1. Duty to Comply. The permittee must comply with all conditions of this permit. Any failure to comply with the permit may constitute a violation of the Clean Water Act and may be grounds for enforcement action, including, but not limited to permit termination, revocation and reissuance, modification, or denial of a permit renewal application. The permittee shall give the director advance notice of any planned changes at the permitted facility that will change any discharge from the facility, or of any activity that may result in failure to comply with permit conditions.

3.2. Penalties for Violations of Permit Conditions. The Clean Water Act provides for specified civil and criminal monetary penalties for violations of its provisions. However, the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires EPA to adjust the civil monetary penalties for inflation on a periodic basis. EPA previously adjusted its civil monetary penalties on December 31, 1996 (61 Fed. Reg. 69359-69365), with technical corrections and additions published on March 20, 1997 (62 Fed. Reg. 13514-13517), June 27, 1997 (62 Fed. Reg. 35037-35041) and February 13, 2004 (69 Fed. Reg. 7121-7127). On December 11, 2008 (73 Fed. Reg. 75340-75346) EPA once again adjusted its civil monetary penalties. The civil and criminal penalties, as of January 12, 2009, for violations of the Act (including permit conditions) are given below:

3.2.1. Any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed $37,500 per day for each violation.

3.2.2. Any person who *negligently* violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of $2,500 to $25,000 per day of violation, or imprisonment for not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation, or by imprisonment for not more than 2 years, or both.

3.2.3. Any person who *knowingly* violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of $5,000 to $50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or imprisonment for not more than 6 years, or both.

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

3.2.5. Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Where an administrative enforcement action is brought for a Class I civil penalty, the assessed penalty may not exceed $16,000 per violation, with a maximum amount not to exceed $37,500. Where an administrative enforcement action is brought for a Class II civil penalty, the assessed penalty may not exceed $16,000 per day for each day during which the violation continues, with the maximum amount not to exceed $177,500.

3.3. 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.

3.4. 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.

3.5. Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. However, the permittee shall operate, at a minimum, one complete set of each main line unit treatment process whether or not this process is needed to achieve permit effluent compliance.

3.5.1 The permittee shall, as soon as reasonable and practicable, but no later than six (6) months after the effective date of this permit, do the following as part of the operation and maintenance program for the wastewater treatment facility:

3.5.1.1. Have a current O & M Manual(s) that describes the proper operational procedures and maintenance requirements of the wastewater treatment facility;

3.5.1.2. 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;

3.5.1.3. Have a schedule(s) for routine operation and maintenance activities at the wastewater treatment facility; and,

3.5.1.4. Require the operator to perform the routine operation and maintenance requirements in accordance with the schedule(s).

3.5.2. The permittee shall maintain a daily log in a bound notebook(s) containing a summary record of all operation and maintenance activities at the wastewater treatment facility. At a minimum, the notebook shall include the following information:

3.5.2.1. Date and time;

3.5.2.2 Name and title of person(s) making the log entry;

3.5.2.3. Name of the persons(s) performing the activity;

3.5.2.4. A brief description of the activity; and,

3.5.2.5. Other information, as appropriate.

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

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

3.7. Bypass of Treatment Facilities.

3.7.1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts 3.7.2 and 3.7.3.

3.7.2. Notice:

3.7.2.1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass to the USEPA, Technical Enforcement Program, and the Tribe.

3.7.2.2. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part 2.8, Twenty-four Hour Noncompliance Reporting, to the USEPA, Technical Enforcement Program, and the Tribe.

3.7.3. Prohibition of bypass.

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

3.7.3.1.1. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

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

3.7.3.1.3. The permittee submitted notices as required under Part 3.7.2.

3.7.3.2. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in Part 3.7.3.1.

3.8. <u>Upset Conditions</u>

3.8.1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part 3.8.2 are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review (i.e., Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limitations).

3.8.2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

3.8.2.1. An upset occurred and that the permittee can identify the cause(s) of the upset;

3.8.2.2. The permitted facility was at the time being properly operated;

3.8.2.3. The permittee submitted notice of the upset as required under Part 2.8, Twenty-four Hour Notice of Noncompliance Reporting; and,

3.8.2.4. The permittee complied with any remedial measures required under Part 3.4, Duty to Mitigate.

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

3.9. <u>Industrial Waste Management</u> (Minor POTWs in Indian country)

3.9.1. 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.

3.9.2. 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:

3.9.2.1. Any other pollutant which may cause Pass Through or Interference.

3.9.2.2. Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams 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;

3.9.2.3. 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;

3.9.2.4. 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;

3.9.2.5. 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;

3.9.2.6. 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;

3.9.2.7. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause Interference or Pass Through;

3.9.2.8. 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;

3.9.2.9. Any trucked or hauled pollutants, except at discharge points designated by the POTW; and

3.9.2.10. 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).

3.9.3. For the POTWs covered by this permit, 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.

3.9.4. 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.).

3.9.5. 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:

3.9.5.1. 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

3.9.5.2. Any substantial change in the volume or character of pollutants being introduced into the POTW by any industrial user;

3.9.5.3. For the purposes of this section, adequate notice shall include information on:

3.9.5.3.1. The identity of the industrial user;

3.9.5.3.2. 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

3.9.5.3.3. 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.

3.9.5.4. For the purposes of this section, an industrial user shall include:

3.9.5.4.1. Any discharger subject to Categorical Pretreatment Standards under Section 307 of the Act and 40 CFR chapter I and subchapter N;

3.9.5.4.2. Any discharger which has a process wastewater flow of 25,000 gallons or more per day;

3.9.5.4.3. Any discharger contributing five percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant;

3.9.5.4.4. 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;

3.9.6. 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:

3.9.6.1. 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;

3.9.6.2. 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,

3.9.6.3. 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.

3.9.7. 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 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. 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:

4.1.1. The alteration or addition could significantly change the nature or increase the quantity of pollutant discharged. This notification applies to pollutants which are not subject to effluent limitations in the permit; or,

4.1.2. There are any planned substantial changes to the existing sewage sludge facilities, the manner of its operation, or to current sewage sludge management practices of storage and disposal. The permittee shall give the Director notice of any planned changes at least 30 days prior to their implementation.

4.1.3. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source.

4.2. 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.

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

4.4. Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application should be submitted at least 180 days before the expiration date of this permit.

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

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

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

4.7.1. All permit applications shall be signed by either a principal executive officer or ranking elected official.

4.7.2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

4.7.2.1. The authorization is made in writing by a person described above and submitted to the Director; and,

4.7.2.2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

4.7.3. Changes to authorization. If an authorization under Part 4.7.2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part 4.7.2 must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

4.7.4. Certification. Any person signing a document under this section shall make the following certification:

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

4.8. Penalties for Falsification of Reports. The Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

4.9. Availability of Reports. Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Director. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

4.10. Oil and Hazardous Substance Liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

4.11. Property Rights. The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, tribal or local laws or regulations.

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

4.13. Transfers. This permit may be automatically transferred to a new permittee if:

4.13.1. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date;

4.13.2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and,

4.13.3. The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part 4.13.2.

4.14. Permittees in Indian Country. EPA is issuing this permit pursuant to the Agency's authority to implement the Clean Water Act NPDES program in Indian country, as defined at 18 U.S.C. 1151.

4.15. Reopener Provision. This permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limitations (and compliance schedule, if necessary), or other appropriate requirements if one or more of the following events occurs:

4.15.1. Water Quality Standards: The water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit.

4.15.2. Wasteload Allocation: A wasteload allocation is developed and approved by the Tribe and/or EPA for incorporation in this permit.

4.15.3. Water Quality Management Plan: A revision to the current water quality management plan is approved and adopted which calls for different effluent limitations than contained in this permit.

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