

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”),

Soap Creek Associates, LLC

is authorized to discharge from Pond #3 of the wastewater treatment facility located in the NW 1/4 of Section 34, Township 6 S, Range 32 E, at latitude 45.272500 and longitude -107.778056, Big Horn County, Montana

to Soap 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 **January 1, 2023**

This Permit and the authorization to discharge shall expire at midnight, **December 31, 2027**

Authorized Permitting Official

Darcy O’Connor, Director
Water Division

NPDES BP (Rev.11/2021)

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1 Definitions

The *7-day (weekly) average*, other than for microbiological organisms (e.g., bacteria, viruses, etc.), is the average of “daily discharges” over a calendar week, calculated as the sum of all “daily discharges” measured during a calendar week divided by the number of “daily discharges” measured during that week. 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. (40 CFR § 122.2)

The *30-day (monthly) average*, other than for microbiological organisms (e.g., bacteria, viruses, etc.), is the average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month. 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. (40 CFR § 122.2)

Act (“the Act”) 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 Act may be referred to as the CWA. (40 CFR § 122.2)

Bypass means the intentional diversion of waste streams from any portion of a treatment facility. (40 CFR § 122.41(m)(1)(i))

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 specified otherwise at 40 CFR Part 136. (40 CFR § 122.21(g)(7)). Unless otherwise specified, the time between the collection of the first sample and the last sample shall not be less than six (6) hours, not 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.

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. The Daily Maximum limitation is the highest allowable discharge limit over the calendar day or representative 24-hour period. (40 CFR §§ 122.2, see “daily discharge” and “maximum daily discharge limitation”)

EPA means the United States Environmental Protection Agency, the Regional Administrator of the EPA Region 8 or an authorized representative.

E. coli means *Escherichia coli*.

Geometric mean is an average or mean based on multiplication instead of addition. To calculate a geometric mean, multiply all the measured values together and then take the nth root, where n is the number of measured values.

$$GeoMean = \sqrt[n]{(X_1 X_2 X_3 \dots X_n)}$$

Grab sample, for monitoring requirements, is defined as a sample collected over a period not exceeding 15 minutes (typically a single "dip and take" sample or an instantaneous measurement) at a location that is representative of conditions at the time the sample is collected.

Industrial User or *User* means a source of Indirect Discharge, which is the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act. (40 CFR §§ 403.3(i) and (j))

Maximum limit means the maximum allowable concentration or other measure of a pollutant determined from the analysis of any sample.

Minimum limit means the minimum allowable concentration or other measure of a pollutant determined from the analysis of any sample.

Interference means an indirect discharge from an Industrial User which, alone or in conjunction with a discharge or discharges from other sources, both:

- (a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
- (b) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following

statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act. (40 CFR § 403.3(k))

Narrative limit means a narrative condition that must be met (e.g., The discharge must be free from a visible sheet). *New Source* means any building, structure, facility, or installation from which there is or may be a “discharge of pollutants,” the construction of which commenced:

- (a) After promulgation of standards of performance under Section 306 of the Act which are applicable to such source, or
- (b) After proposal of standards of performance in accordance with Section 306 of the Act which are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal. (40 CFR § 122.2)

Pass Through means an Indirect Discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation). (40 CFR § 403.3(p))

Permit means this NPDES permit upon finalization. (40 CFR § 122.2)

Permittee means the “person” as defined either by Section 502(5) of the Act or 40 CFR § 122.2, including an agent or employee thereof, authorized to discharge under this Permit. (Section 502(5) of the Act, 40 CFR § 122.2)

Publicly Owned Treatment Works or *POTW* means a treatment works as defined by Section 212 of the Act, which is owned by a State or municipality (as defined by Section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant, which means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste. The term POTW also means the municipality as defined in Section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works. (40 CFR § 403.3(q) and (r))

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. (40 CFR § 122.41(m)(1)(ii))

Sewage Sludge means any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 CFR Part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge. (40 CFR § 122.2)

Storm water means storm water runoff, snow melt runoff, and surface runoff and drainage. (40 CFR § 122.26(b)(13))

Sufficiently Sensitive – An analytical test method is sufficiently sensitive when:

- (a) The method minimum level (ML) is at or below the level of the effluent limit established in the permit for the measured pollutant or pollutant parameter; or
- (b) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter. (40 CFR § 122.44(i)(1)(iv)(A))

Toxicity Identification Evaluation (TIE) means a set of procedures to identify the specific chemicals or pathogens responsible for effluent toxicity. (U.S. EPA Office of Water, March 1991, Technical Support Document for Water Quality-based Toxics Control [EPA/505/2-90-001], pg. xxi)

Toxicity Reduction Evaluation (TRE) means a site-specific study conducted in a stepwise process designed to identify the causative agents of effluent toxicity, isolate the sources of toxicity, evaluate the effectiveness of toxicity control options, and then confirm the reduction in effluent toxicity after control measures are put in place. (U.S. EPA Office of Water, March 1991, Technical Support Document for Water Quality-based Toxics Control [EPA/505/2-90-001], pg. xxi)

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. (40 CFR § 122.41(n))

Whole Effluent Toxicity (WET) is the total toxic effect of an effluent measured directly with a toxicity test using methods approved under 40 CFR Part 136.

2 Description of Discharge and Monitoring 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 a 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.

Table 1. Description of Discharge and Monitoring Points

Outfall Serial Number	Latitude/Longitude	Receiving Water	Description
001	45.2725 and -107.7780	Soap Creek	Effluent discharged from the Pond #3 of the wastewater treatment train

3 Effluent Limitations

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:

Table 2. Effluent Limitations for Outfall 001

Effluent Characteristic	30-day Effluent Limitation Average a/	7-day Effluent Limitation Average a/	Daily Effluent Limitation Maximum a/
Total Flow, mgd	report only	N/A	report only
Total Radium 226, pCi/L	report only	N/A	N/A
Sulfate, mg/L	1,000	N/A	1,800
Sulfide as H ₂ S, µg/L	2.0	N/A	N/A
Oil and grease, mg/L	N/A	N/A	10
Chloride, mg/L	report only	N/A	report only
Electrical Conductivity, µS/cm	N/A	N/A	8,000
Total Dissolved Solids, mg/L	1,500	2,300	N/A
Fluoride, mg/L	N/A	N/A	2.0
Whole Effluent Toxicity at 25 °C,, Chronic	report only	N/A	N/A
Per- and Polyfluoroalkyl Substances (PFAS), ng/L	N/A	N/A	report only
Toxic Pollutants Screen	N/A	N/A	report only
The concentration of oil and grease shall not exceed 10 mg/L in any sample nor shall there be a visible sheen or cause a visible sheen in the receiving waters or deposits on the bottom or shoreline of the receiving waters.			
The pH of the discharge shall not be less than 6.5 or greater than 9.0 at any time.			
There shall be no discharge of floating solids or visible foam in other than trace amounts.			

a/ See Permit Part 1.1. for definition of terms.

4 Self-Monitoring and Data Requirements

Self-monitoring shall be conducted effective immediately and last through the effective term of this Permit. Sampling and test procedures for pollutants listed in this section shall be in accordance with guidelines promulgated by the Administrator in 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O, as required in 40 CFR § 122.41(j). At a minimum, 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 (DMR) that no discharge occurred. See Reporting of Monitoring Results for more details.

Table 3. Monitoring and Reporting Requirements for Outfall 001

Effluent Characteristic	Frequency	Sample/Monitoring Type <u>a/</u>	Data Value Reported on DMR <u>b/</u>
Total Flow, mgd <u>c/</u>	Monthly	Instantaneous	Daily Max. 30-Day Avg.
pH, standard units	Monthly	Grab	Minimum Maximum
Total Radium 226, pCi/L	Semi-annually	Grab	30-Day Avg.
Chloride, mg/L	Semi-annually	Grab	Daily Max. 30-Day Avg.
Electrical Conductivity, μ S/cm	Monthly	Grab	Daily Max.
Oil and grease, mg/L <u>f/</u>	Semi-annually	Grab	Daily Max.
Oil and grease, visual <u>f/</u>	Weekly	Visual	Narrative
Sulfide as H ₂ S, μ g/L <u>d/</u>	Quarterly	Grab	30-Day Avg.
Sulfate, mg/L	Quarterly	Grab	Daily Max. 30-Day Avg.
Fluoride, mg/L	Semi-annually	Grab	Daily Max.
Total Dissolved Solids, mg/L	Semi-annually	Grab	7-Day Avg. 30-Day Avg.
Whole Effluent Toxicity at 25 °C, Chronic	Annually <u>e/</u>	Composite	Narrative
Per- and Polyfluoroalkyl Substances (PFAS), ng/L <u>g/</u>	Quarterly	Grab	Daily Max.
Toxic Pollutants Screen <u>h/</u>	2-3 times/5 years	Grab	Daily Max.

a/ See Permit Part 1 for definition of terms.

- b/ *Daily Max.* – Report the highest daily maximum value for the DMR period. Use a geometric mean to average more than one bacteria sample (E. coli or fecal coliform) collected during a day.
7-Day Avg. – Calculate the 7-day (weekly) average for each calendar week in the DMR period that one or more samples were collected and report the highest 7-day average for the DMR period. Use a geometric mean to average more than one bacteria sample (E. coli or fecal coliform) collected during a calendar week.
30-Day Avg. – Calculate and report the 30-Day average for each calendar month. Use a geometric mean to average more than one bacteria sample (E. coli or fecal coliform) collected during a month.
Maximum and Minimum – Report the extreme high and low measurements for the reporting period. If only one sample was collected during the reporting period, this will be the same value for both.
Narrative – For visual observations, report “Yes” if the parameter was ever detected during the reporting period; report “No” if the parameter was never detected during the reporting period. For WET tests, report “Fail” if any WET test failed during the reporting period; report “Pass” if all WET tests passed during the reporting period.
- c/ Flow measurements of effluent volume shall be made in such a manner that the permittee can affirmatively demonstrate that representative values are being obtained. The average flow rate (in million gallons per day) during the reporting period and the maximum flow rate observed (in mgd) shall be reported.
- d/ The analysis for sulfide (as H₂S) shall be done with an approved procedure that has a method detection level of no greater than 0.10 mg/L (100 µg/L). In the calculation of average sulfide (as H₂S) concentrations, those analytical results that are less than 0.10 mg/L shall be considered to be zero. If all individual analytical results that would be used in the calculations are less than 0.10 mg/L, then “less than 0.10 mg/L” shall be reported on the discharge monitoring report form. Otherwise, report the maximum value and the calculated average value.
- e/ Tests shall be coordinated with the Toxic Pollutants Screen to ensure more even coverage as described of this Permit. To the extent practicable, tests shall be timed to provide results that represent seasonal variation in the discharge.
- f/ A weekly visual observation is required. 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. Additionally, semi-annually a grab sample shall be taken regardless if a sheen is present/observed in order to quantify the concentration of oil and grease in the effluent.
- f/ Use EPA Draft Method 1633 until EPA approves a 40 CFR Part 136 method. Analysis shall be for the 40 PFAS parameters included in the method. If the results of the initial eight (8) quarterly PFAS monitoring samples using Method 1633 show non-detectable levels of PFAS, the Permittee may submit a request for a waiver from further testing for approval of the appropriate EPA delegated representative. Submit waiver requests to:

U.S. EPA, Region 8 (8WD-CWW), Attention: Wastewater Section Chief, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

h/ See Section 5.1.

Monitoring methods must be sufficiently sensitive to meet the Method Detection Limits specified in the below:

Table 4. Required Method Detection Limits:

Parameter	Required Detection Limits and Required Units
Arsenic, Total	1 µg/L
Aluminum, Total Recoverable	50 µg/L
Antimony, Total Recoverable	50 µg/L
Beryllium, Total Recoverable	1 µg/L
Cadmium, Total Recoverable	0.1 µg/L
Chromium, Total Recoverable	5 µg/L
Chloride	5 mg/L
Copper, Total Recoverable	5 µg/L
Lead, Total Recoverable	1 µg/L
Magnesium, Total Recoverable	30 µg/L
Manganese, Total Recoverable	2 µg/L
Nickel, Total Recoverable	1 µg/L
Radium 226, Total Recoverable	0.2 pCi/L
Selenium, Total Recoverable	2 µg/L
Silver, Total Recoverable	5 µg/L
Sulfide/Hydrogen Sulfide (S=, HS-)	100 µg/L
Thallium, Total Recoverable	50 µg/L
Zinc, Total Recoverable	2 µg/L

Parameter	Required Detection Limits and Required Units
Hardness, Total	10 mg/L as CaCO ₃
Uranium, Total Recoverable	5 µg/L
Gross Alpha and Beta Radiation	0.2 p Ci/L
Dissolved Oxygen	1 mg/L
Calcium	10 mg/L
Fluoride	1 mg/L
Volatile Organic Compounds	5 µg/L
Acid & Base/Neutral Organic Compounds	10 µg/L
Chemical Oxygen Demand	3 mg/L

5 Special Conditions

5.1 Chemical Inventory Reporting Requirement

The Permittee shall maintain an inventory of the quantities and concentrations of the specific chemicals used to formulate well treatment and workover fluids. Unless these fluids are segregated, the Permittee shall submit the following information with the DMR, to the extent such information is obtainable after making reasonable inquiries to suppliers: all chemical additives in the well treatment or workover fluid, their trade names, purposes, supplier, CAS number, concentrations and amounts. The type of operation that generated the well treatment or well workover fluids shall also be reported. To the extent a Safety Data Sheet (SDS) contains the information required above, it may be submitted for purposes of complying with this provision. For purposes of this provision, well treatment and workover fluids will be considered segregated if the Permittee takes steps to recover a volume of fluid equivalent to the volume of the well treatment or workover fluid used in the job.

“Well treatment fluids” means any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled.

“Well workover fluids” means salt solutions, weighted brines, polymers, or other specialty additives used in a producing well to allow for maintenance, repair or abandonment procedures.”

The Chemical Inventory Reporting Requirement provides actual practices for well treatment and workover that occur at the facility. The facility can segregate fluids used in

well treatment and workover. This Permit requires reporting of the chemical quantities, etc. used in well treatment and workover only when those fluids are not segregated and are actually discharged with the produced water.

Additional Toxics Monitoring Requirements -Toxic Pollutants Screen.

This Permit requires the Permittee to monitor for the constituents listed below in the toxic pollutants screen up to three times during the life of the Permit. One monitoring event will be during the first year after the effective date of this Permit, and the second monitoring event during the third year after the effective date of this Permit. A third monitoring event will be required only if the Permittee undertakes a hydraulic fracturing job for a well that sends produced water to this facility. In that instance, the Permittee must complete a third toxic pollutants screen within one week of returning the hydraulically fractured well to production. Each of the toxic pollutants screen datasets shall be submitted to the permit issuing authority at the time of the DMR submittal for that reporting period in which the screening results were obtained. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this Permit.

Pollutants to Be Screened:

Table 5. All Volatile Organic Compounds, Base/Neutral, and Acid Organic Compounds listed in 40 CFR Part 122, Appendix D, Table II (see below)

Volatiles	Acid Compounds	Base/Neutral	Base/Neutral continued
acrolein	2-chlorophenol	acenaphthene	di-n-octyl phthalate
acrylonitrile	2,4-dichlorophenol	acenaphthylene	1,2-diphenylhydrazine (as azobenzene)
benzene	2,4-dimethylphenol	anthracene	fluroranthene
bromoform	4,6-dinitro-o-cresol	benzidine	fluorene
carbon tetrachloride	2,4-dinitrophenol	benzo(a)anthracene	hexachlorobenzene
chlorobenzene	2-nitrophenol	benzo(a)pyrene	hexachlorobutadiene
chlorodibromomethane	4-nitrophenol	3,4-benzofluoranthene	hexachlorocyclopentadiene
chloroethane	p-chloro-m-cresol	benzo(ghi)perylene	hexachloroethane

Volatiles	Acid Compounds	Base/Neutral	Base/Neutral continued
2-chloroethylvinyl ether	pentachlorophenol	benzo(k)fluoranthene	isophorone
chloroform	phenol	bis(2-chloroethoxy)methane	napthalene
dichlorobromomethane	2,4,6-trichlorophenol	bis(2-chloroethyl)ether	nitrobenzene
1,1-dichloroethane		bis(2-chloroisopropyl)ether	N-nitrosodimethylamine
1,2-dichloroethane		bis (2-ethylhexyl)phthalate	N-nitrosodi-n-propylamine
1,1-dichloroethylene		4-bromophenyl phenyl ether	N-nitrosodiphenylamine
1,2-dichloropropane		butylbenzyl phthalate	phenanthrene
1,3-dichloropropylene		2-chloronaphthalene	pyrene
ethylbenzene		4-chlorophenyl phenyl ether	1,2,4-trichlorobenzene
methyl bromide		chrysene	
methyl chloride		dibenzo(a,h)anthracene	
methylene chloride		1,2-dichlorobenzene	
1,1,2,2-tetrachloroethane		1,3-dichlorobenzene	
tetrachloroethylene		1,4-dichlorobenzene	
toluene		3,3'-dichlorobenzidine	
1,2-trans-dichloroethylene		diethyl phthalate	

Volatiles	Acid Compounds	Base/Neutral	Base/Neutral continued
1,1,1-trichloroethane		dimethyl phthalate	
1,1,2-trichloroethane		di-n-butyl phthalate	
trichloroethylene		2,4-dinitrotoluene	
vinyl chloride		2,6-dinitrotoluene	

Table 6. All metals listed in 40 CFR Part 122, Appendix D, Table III (see below)

40 CFR Part 122, Appendix D, Table III
Other Toxic Pollutants (Metals & Cyanide) and Total Phenols
Antimony, Total
Arsenic, Total
Beryllium, Total
Cadmium, Total
Chromium, Total
Copper, Total
Lead, Total
Mercury, Total
Nickel, Total
Selenium, Total
Silver, Total
Thallium, Total
Zinc, Total
Cyanide, Total

40 CFR Part 122, Appendix D, Table III
Phenols, Total

The Toxic Pollutants Screen provision provides greater coordination between the toxicity monitoring requirements that are being established. The Permittee is required to coordinate its whole effluent toxicity (WET) monitoring and the Toxic Pollutants Screen to ensure even coverage over the permit term. In doing so, the two monitoring provisions will ensure that the EPA has regular monitoring data about potential toxicants and toxic effects present in the discharge across time.

5.2 Chronic Whole Effluent Toxicity (WET) Monitoring

Starting with the effective date of this Permit and continuing through the life of the Permit, the Permittee shall, at least once every 12 months, conduct chronic toxicity tests on a composite sample of the discharge from Outfall 001. For each chronic test, samples must be collected on days one, three and five and must be chilled to 0 to 6°C.

The Permittee will coordinate WET testing and its Toxic Pollutant Screens to assess the toxicity of the produced water that discharges to these streams. At least five times after the effective date of the Permit, the Permittee shall conduct chronic static-renewal toxicity tests on a composite sample of the produced water discharge from Outfall 001. These tests shall be coordinated with the Toxic Pollutants Screen required as part of this Permit to ensure that the chronic static-renewal toxicity tests are staggered with the Toxic Pollutants Screens to ensure a more even coverage during the permit term. To the extent practicable, the static-renewal toxicity tests should also be timed to provide results that represent seasonal variation in the discharge. Samples must be chilled to 0°C to 6°C.

The chronic static-renewal toxicity tests shall be conducted in accordance with the procedures set out in the latest revision of “Short-term Methods for Measuring the Chronic Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms”, EPA-821/R-02-013 (October 2002), or most current edition. Chronic WET tests shall be performed on two species; *Daphnia magna*, EPA 2021.0, as a 48-hr, static-renewal definitive test with renewals at each 24-hr interval, and *Pimephales promelas*, EPA 2002.0, as a 96-hour static-renewal definitive test with renewals at each 24-hr interval. Both tests shall utilize the following standard minimum dilution series of 100%, 75%, 50%, 25%, 12.5% and a 0 control, with moderately hard synthetic laboratory water for dilutions with test temperature set at 25°C.

For the purpose of this Permit, *Daphnia magna* will be utilized as a toxicity indicator testing organism in lieu of *Ceriodaphnia dubia* due to its higher tolerance for the high TDS levels within the produced water from the wells. The high TDS levels will cause WET toxicity, and the purpose of the WET testing in this permit is to monitor for other sources of toxicity. This approach will ensure that any WET tests performed will control toxicity from other pollutants which may be present in the discharge that would be masked by the level of TDS in the discharge. There is no WET limit in this current permit.

Chronic toxicity is present in the effluent when a chronic WET test demonstrates that one (or both) of the two statistical test endpoints, either the NOEC or the IC25, are at any effluent concentration less than the in-stream waste concentration (IWC). The IWC for this permit has been determined to be 100% effluent for Outfall 001. If more than 10 percent control mortality occurs, the test is not valid. If test acceptability criteria are not met for control survival, growth, or reproduction, the test shall be considered invalid and retesting should begin immediately. Failure to obtain a valid test result during the monitoring period may result in a failure to monitor in accordance with the Permit.

Regular chronic toxicity test results shall be reported on the Discharge Monitoring Report (DMR) submitted for the reporting period when the chronic toxicity monitoring was conducted (e.g., whole effluent results for the first twelve months (January-December) shall be reported with the DMR due the 28th of the month following (January). A laboratory reporting form consistent with the "Suggested R8 WET Toxicity Test Report Form", including all chemical and physical data as specified shall also be submitted to the permit issuing authority as an attachment to the DMR. Copies of the format may be downloaded from the Region 8 web page at:

<https://www.epa.gov/sites/production/files/2016-01/wet-laboratory-reporting-forms.xlsm>.

If chronic toxicity occurs in a test, the Permittee shall do the following:

- (1) Notify the Permit issuing authority within 48 hours of when the Permittee learned of the initial test failure;
- (2) Promptly take all reasonable measures necessary to immediately reduce toxicity; and
- (3) Initiate an additional test within two (2) weeks of the date of when the Permittee learned of the test failure. If only one species fails, retesting may be limited to this species.

The Permit issuing authority may waive either or both requirements (2) or (3) with justification (e.g., the toxicity has been ongoing and the Permittee is in the process of conducting a toxicity identification evaluation/toxicity reduction (TIE/TRE) evaluation as required in this Permit).

Should chronic toxicity occur in the second test, the Permittee shall immediately begin testing once a month until further notified by the Permit issuing authority. Accelerated monthly testing is only required for the species that failed the initial and second tests.

In addition to the accelerated monitoring, the Permittee shall perform a toxicity identification evaluation/toxicity reduction evaluation as required by Part 5.1 of this Permit to establish the cause of the toxicity, locate the source(s) of the toxicity, and develop control of, or treatment for the toxicity.

Test results from additional toxicity testing conducted (i.e., two week retest, monthly testing and TIE/TRE testing) shall be reported by the 28th of the month through NetDMR and following the test to the following address:

Wastewater Section (8WD-CWW)
Attn: Regional WET Coordinator
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

5.3 Toxicity Identification Evaluation/Toxicity Reduction Evaluation (TIE/TRE)

Should chronic toxicity occur in the second retest following failure in the first test, the Permittee shall initiate corrective actions as follows:

- 5.3.1 Where the source of toxicity is known, the Permittee shall submit a TRE plan and schedule to reduce toxicity in the effluent and demonstrate no toxicity is present at or below the IWC. Chronic toxicity is present in the effluent when a chronic WET test demonstrates that one (or both) of the two statistical test endpoints, either the NOEC or the IC25, are at any effluent concentration less than the IWC. The IWC for this Permit has been determined to be 100% effluent for Outfall 001.
 - 5.3.1.1 The plan and schedule shall be submitted to Regional WET Coordinator **within 30 days** of the date of when the Permittee learned of the second retest failure.
 - 5.3.1.1.1 The Regional WET Coordinator has **30 days** from receipt of the initial TRE plan to review the TRE plan and schedule and provide written comments to the Permittee.
 - 5.3.1.1.2 If the Regional WET Coordinator **provides comments** on the TRE plan and schedule, the Permittee has **30 days** from receipt of those comments to submit a revised TRE plan and schedule that addresses the Regional WET Coordinator's comments and to initiate the revised TRE plan and schedule.
 - 5.3.1.1.3 If the Regional WET Coordinator **does not provide comments** on the TRE plan and schedule, the Permittee shall confirm receipt and approval of the TRE plan/schedule by EPA and initiate the TRE plan and schedule **within 60 days** after submittal of the TRE plan and schedule to the Regional WET Coordinator.
 - 5.3.1.2 Alternately, if the source of toxicity is known and can immediately be controlled through sustainable permanent operational changes, the Permittee can return to compliance by achieving passing results in follow-up testing on the accelerated monthly schedule. If one quarter of follow-up tests-indicate-a

return to compliance after the operational changes have been made, the Permittee may provide a written request for relief from accelerated testing and/or completion of a TRE.

- 5.3.2 Where the source of toxicity is unknown and the toxicity cannot be immediately controlled through operational changes, the Permittee shall initiate a TIE to identify the source of the toxicity and develop and implement a TRE plan and schedule to identify and reduce toxicity in the effluent and demonstrate no toxicity at or below the IWC in accordance with the following schedule:

- 5.3.2.1 Submit a toxicity reduction (TRE) study plan detailing the toxicity identification and reduction procedures to be employed and the schedule for completing the plan. The plan and schedule shall be submitted to the Regional WET Coordinator **within 45 days** of the date of when the Permittee learned of the second test failure. EPA publications listed below shall be considered in developing the plan and schedule. Copies of the publications may be downloaded from the Region 8 web page at <https://www.epa.gov/npdes/permit-limits-whole-effluent-toxicity-wet>.

"Methods for Aquatic Toxicity Identification Evaluations, Phase I Toxicity Characterization Procedures", Second Edition, EPA/600/6-91/003, February 1991.

"Methods for Aquatic Toxicity Identification Evaluations, Phase II Toxicity Identification Procedures for Samples Exhibiting Acute and Chronic Toxicity", EPA/600/R-92/080, September 1993.

"Methods for Aquatic Toxicity Identification Evaluations, Phase III Toxicity Confirmation Procedures for Samples Exhibiting Acute and Chronic Toxicity", EPA/600/R-92 /081, September 1993.

"Toxicity Reduction Evaluation Guidance for Municipal Wastewater Treatment Plants", EPA/833B-99/002, August 1999.

"Generalized Methodology for Conducting Industrial Toxicity Reduction Evaluations (TREs)", EPA/600/2-88/070, April 1989

- 5.3.2.2 The Regional WET Coordinator may review the TRE plan and schedule and provide written comments to the Permittee.

- 5.3.2.3 If the Regional WET Coordinator **provides comments** on the TRE plan and schedule, the Permittee has **30 days** from receipt of those comments to submit a revised TRE plan and schedule that addresses the Regional WET Coordinator's comments and to initiate the revised TRE plan and schedule.

- 5.3.2.4 If the Regional WET Coordinator **does not provide comments** on the TRE plan and schedule, the Permittee shall initiate the TRE plan and schedule **within 60 days** after submittal of the TRE plan and schedule to the Regional WET Coordinator.

- 5.3.3 The Permittee shall comply with the final schedule for implementing the TRE plan; failure to comply with the schedule is a violation of the Permit.
- 5.3.4 The Permittee may request modification(s) to the TIE/TRE plan or schedule. The request shall be submitted to the Regional WET Coordinator for review prior to implementation of the modification. The review and comment procedure shall follow the steps included in Part 5.3.1 as applicable. Unless notified of approval in writing of the modification, the Permittee shall not implement any modification of the TIE/TRE plan or schedule.
- 5.3.5 The Permittee shall submit results of the TRE, including summary of findings, corrective actions required, and data generated in accordance with the final schedule for implementing the TRE plan;
- 5.3.6 The Permittee shall also complete construction, if necessary, to implement the TRE controls as described in the final TRE report in accordance with the final schedule for implementing the TRE plan; and
- 5.3.7 Upon successful completion of the TIE/TRE and approval by the Permitting Authority, the Permittee shall return to annual whole effluent toxicity monitoring and reporting as specified in Part 5 of the Permit.

All test results from additional toxicity testing conducted (i.e., retest results, accelerated monthly testing, and monthly TIE/TRE testing) shall be reported by the 28th of the month following the WET test through NetDMR, as required by Part 6.4 of the Permit, and to the following address:

U.S. EPA, Region 8 (8WD-CWW)
Attn: Regional WET Coordinator
1595 Wynkoop Street
Denver, CO 80202-1129

If WET testing confirms reasonable potential to cause or contribute to an exceedance of the narrative standards, the Permit may be reopened to include a WET limitation.

5.4 Per- and Polyfluoroalkyl Substances (PFAS) Notification and Plan

If PFAS is detected in any effluent samples for any of the 40 PFAS parameters in Method 1633, the Permittee shall:

- 5.4.1 The first time during the permit term PFAS is detected, provide written notification to EPA within 14 calendar days of the Permittee receiving the PFAS testing results. Notification shall be sent in accordance with Part 6.5.5. Notification shall include the laboratory data results.

- 5.4.2 Within 180 days of the Permittee receiving positive PFAS testing results, the Permittee shall perform and begin implementing a PFAS source identification and reduction plan (PFAS Plan). If the Permittee already has or is in the process of developing a PFAS Plan, the Permittee shall make any appropriate updates based on the new data. The initial PFAS Plan shall be submitted by this 180-day deadline in accordance with Part 6.5. The PFAS Plan shall include, at a minimum, the following:
- 5.4.2.1 Identification of the source or suspected source of the PFAS pollutant(s);
 - 5.4.2.2 Identification and implementation of best management practices (BMPs) to keep PFAS out of the produced water discharge. This may include but is not limited to product substitution, reduction, or elimination for discharges with PFAS;
 - 5.4.2.3 Accidental discharge minimization by optimizing operations and implementing good housekeeping practices;
 - 5.4.2.4 Equipment decontamination or replacement where PFAS products have historically been used to prevent discharge of legacy PFAS following the implementation of product substitution;
 - 5.4.2.5 A plan for identifying future sources of PFAS in the influent and facility operations, a mechanism for reduction/elimination of those sources and, if removal is possible, treatment that will be implemented to reduce/remove PFAS from the effluent.

The Permittee shall create and maintain documentation of actions taken under the PFAS Plan, including the date. If elements of the PFAS Plan will take longer than 180 days to implement, the PFAS Plan shall justify the rationale for the time needed.

6 Monitoring, Record Keeping, and Reporting Requirements

6.1 Representative Sampling:

All samples taken in compliance with the monitoring requirements established under Part 4 shall be representative. Effluent samples shall be collected from the effluent stream prior to discharge into the receiving waters. Any influent samples shall be taken of the influent stream at the first influent access point, and if feasible prior to entering any treatment unit. Samples and measurements shall be representative of the volume and nature of the monitored activity, discharge, influent, receiving stream, or other monitored location. Sludge samples shall be collected at a location representative of the quality of sludge immediately prior to use or disposal practice.

6.2 Monitoring Procedures:

Monitoring must be conducted according to test procedures approved by EPA under 40 CFR Part 136 or is required under 40 CFR subchapters N or O, unless other test procedures

have been specified in this Permit. Sludge monitoring procedures shall be those specified in 40 CFR Part 503, or as specified in this Permit. The Permittee must select a test procedure that is Sufficiently Sensitive for all monitoring conducted in accordance with this Permit.

6.3 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. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

6.4 Reporting of Monitoring Results:

Upon the effective date of this Permit, the Permittee must electronically report discharge monitoring reports (DMRs) using NetDMR at the frequency and by the due dates specified in Table 7, below.

Table 7. DMR Compliance Monitoring Periods and Due Dates

Compliance Monitoring Period	Due Date
January through June	July 28
July through December	January 28

Electronic submissions by permittees must be submitted to EPA Region 8 no later than the 28th of the month following the completed reporting period. The Permittee must sign and certify all electronic submissions in accordance with the Signatory Requirements (see section 8.7). NetDMR is accessed from the internet at https://usepa.servicenowservices.com/oeca_icis?id=netdmr_homepage.

In addition, the Permittee must submit a copy of the DMR to Crow Tribe. Currently, the Permittee may submit a copy to the Tribe by one of three ways:

1. a paper copy may be mailed;
2. the email address may be added to the electronic submittal through NetDMR; or,
3. the Permittee may provide viewing rights through NetDMR.

The following paragraph specifies how monitoring results collected more frequently than semi-annual should be reported on a semi-annual basis. For parameters with monthly monitoring frequencies, monitoring results obtained during the previous three (3) months shall be separately summarized for *each month* and reported in NetDMR by the dates listed in Table 6. For parameters with monitoring frequencies required more often than monthly (e.g., daily or monthly), monitoring results shall be separately summarized for each month in a similar manner as above, with the additional condition that the specific reporting requirements for some parameters are identified in Table 3 (Monitoring and Reporting

Requirements) and its footnotes. One data point or no data indicator code must be reported for *each month* for each applicable column with an effluent limit or noted at “report only” in Table 2 (Effluent Limitations for Outfall 001).

Additional requirements for data entered in NetDMR are as follows:

1. Requirements for the data values to report for each parameter (e.g., daily maximum, 30-day average, etc.) are included in Part 4.
2. If there is no data to report on the DMR for a parameter, enter the applicable no data indicator (NODI) code in NetDMR.
3. Enter the applicable measurement units.
4. In the number of excursions column (“# of Ex.”), enter the total number of sample measurements during the monitoring period that exceed the maximum and/or average limit(s) or was below the minimum limit(s), as applicable, for all permit limits for each parameter; if none, enter “0.”
5. For “Frequency of Analysis,” enter the actual frequency of monitoring for the parameter (e.g., Cont,” for continuous monitoring, “1/7” for one per week, “1/30” for one per month, “2/30” for two per month, “1/90” for one per quarter, “1/180” for one per six months, “1/365” for one per year, etc.).
6. For “Sample Type,” indicate the sample type collected.

6.5 Other Reporting Requirements:

All reports shall be signed and certified in accordance with the Signatory Requirements (see section 8.7). Unless otherwise specified in the applicable section of the Permit, all paper reports shall be submitted to EPA Region 8, Enforcement and Compliance Assurance Division, Water Enforcement Branch and the Crow Tribe at the addresses given below:

original to:

U.S. EPA, Region 8 (8ENF-W-NP)
Attention: NPDES and Wetlands Enforcement Section Chief
1595 Wynkoop Street
Denver, Colorado 80202-1129

copy to:

Environmental Director
Crow Tribe
52 Arapoosh Road
Crow Agency, Montana 59022

Prior to December 21, 2025, all other reports required herein shall be signed and certified in accordance with the Signatory Requirements, and submitted to EPA Region 8 and the Crow Tribe at the addresses given above. Effective no later than December 21, 2025, these reports shall be submitted electronically using the NPDES Electronic Reporting Tool (NeT). If the NeT tool is not available on December 21, 2025, the reports can continue to

be submitted to the addresses above until the tool is available unless otherwise indicated in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), 40 CFR §122.22, and 40 CFR Part 127.

6.6 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 Part 136, 40 CFR or another method as required under 40 CFR subchapters N or O, Part 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 or sludge reporting. Such increased frequency shall also be indicated on the DMR.

6.7 Monitoring Records Contents:

Records of monitoring information shall include:

- 6.7.1 The date, exact place, and time of sampling or measurements;
- 6.7.2 The name(s) of the individual(s) who performed the sampling or measurements;
- 6.7.3 The date(s) analyses were performed;
- 6.7.4 The time(s) analyses were initiated;
- 6.7.5 The name(s) of individual(s) who performed the analyses;
- 6.7.6 References to and, when available, written procedures for the analytical techniques or methods used; and,
- 6.7.7 The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results when analysis is conducted by the Permittee.

6.8 Retention of Records:

The Permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original recordings for continuous monitoring instrumentation (e.g., strip charts, continuous electronic recording), copies of all reports required by this Permit, and records of all data used to complete the application for this Permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of EPA at any time. However, 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 Part 503). Data collected on site, data used to prepare the DMR, copies of DMRs, and a copy of this NPDES Permit must be maintained on site.

6.9 Twenty-Four Hour Notice of Noncompliance Reporting:

- 6.9.1 The Permittee shall orally 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 a) EPA, Region 8, Superfund & Emergency Management Division at (303) 293-1788; b) Region 8's NPDES and Wetlands Enforcement Section at (800) 227-8917, and c) Crow Tribe at (406) 697-4765.
- 6.9.2 The following occurrences of noncompliance and WET test failures shall be orally reported by telephone to EPA, Region 8's NPDES and Wetlands Enforcement Section at (800) 227-8917 (8:00 a.m. - 4:30 p.m. Mountain Time) and Crow Tribe at (406) 697-4765 within 24 hours of the Permittee becoming aware of the circumstances:
 - 6.9.2.1 Any unanticipated bypass which exceeds any effluent limitation in the Permit (see section 7.6, Bypass of Treatment Facilities.);
 - 6.9.2.2 Any upset which exceeds any effluent limitation in the Permit (see Upset Conditions);
 - 6.9.2.3 Violation of a maximum daily discharge limitation for any of the pollutants listed in the Permit to be reported within 24 hours; and
 - 6.9.2.4 Chronic WET test toxicity.
- 6.9.3 For any noncompliance notification, a written report shall also be provided to the EPA, Office of Enforcement and Compliance Assurance Division, Water Enforcement Branch, and to the Crow Tribe within five days of the time that the Permittee becomes aware of the circumstances. Reports shall be submitted to the addresses in Part 6, Other Reporting Requirements.
- 6.9.4 The written report shall contain:
 - 6.9.4.1 A description of the noncompliance and its cause;
 - 6.9.4.2 The period of noncompliance, including exact dates and times;
 - 6.9.4.3 The estimated time noncompliance is expected to continue if it has not been corrected;
 - 6.9.4.4 Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance; and,
 - 6.9.4.5 The signed certification statement required by the Signatory Requirements.

- 6.9.5 An EPA delegated representative may waive the written report on a case-by-case basis for an occurrence of noncompliance listed above, if the incident has been orally reported in accordance with the requirements of those sections.

6.10 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 6.4 are submitted. The reports shall contain the information listed in Part 6.4, and, if applicable, when the Permittee failed to comply with any applicable long-term combined sewer overflow control plan or other permit requirements.

6.11 Inspection and Entry:

The Permittee shall allow the EPA, or authorized representative (including an authorized contractor or authorized tribal inspector acting as a representative of EPA) upon presentation of credentials and other documents as may be required by law, to:

- 6.11.1 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;
- 6.11.2 Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Permit;
- 6.11.3 Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Permit; and,
- 6.11.4 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.

7 Compliance Responsibilities

7.1 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; termination, revocation and reissuance, modification; or denial of a permit renewal application.

7.2 Penalties for Violations of Permit Conditions:

The Clean Water Act provides for statutory maximum and minimum civil and criminal monetary penalties for violations of its provisions. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires EPA to make adjustments of statutory civil penalties on an annual basis according to a prescribed formula to reflect inflation, beginning in 2016. EPA has adjusted its civil monetary penalties effective January 12,

2022 (87 Fed. Reg. 1676-79). Please note that the civil penalties described below are reflective of the most recent Civil Monetary Penalty Inflation Rule the year this permit was issued and that civil penalties will have been adjusted annually thereafter. Civil penalties that EPA issues will therefore be reflective of the minimum amounts adjusted for inflation at the time of the violation. The civil and criminal penalties for violations of the Act are as follows:

- 7.2.1 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 Section 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed \$59,973 per day for each violation.
- 7.2.2 Any person who negligently violates Section 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 one year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or both.
- 7.2.3 Any person who knowingly violates Section 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 three years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment for not more than six years, or both.
- 7.2.4 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 Act, 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.

- 7.2.5 Any person may be assessed an administrative penalty by the EPA 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 \$23,989 per violation, with a maximum amount not to exceed \$59,973. Where an administrative enforcement action is brought for a Class II civil penalty, the assessed penalty may not exceed \$23,989 per day for each day during which the violation continues, with the maximum amount not to exceed \$299,857.

7.3 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.

7.4 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.

7.5 Removed Substances:

Collected screenings, grit, solids, sludge (including sewage sludge), or other pollutants removed in the course of treatment shall be buried or disposed in a manner consistent with all applicable federal, state, tribal, or local regulations (e.g., 40 CFR Part 257 [Criteria For Classification Of Solid Waste Disposal Facilities And Practices], 40 CFR Part 258 [Criteria For Municipal Solid Waste Landfills], 40 CFR Part 503 [Standards for the Use or Disposal of 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.

7.6 Bypass of Treatment Facilities:

- 7.6.1 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 Part 7.

7.6.2 Notice:

- 7.6.2.1 Anticipated bypass: If the Permittee knows in advance of the need for a bypass, it shall submit prior notice in accordance with Part 6 Other Reporting Requirements, if possible at least 10 days before the date of the bypass to EPA Region 8 Enforcement and Compliance Assurance Division Water Enforcement Branch, and the Crow Tribe.

- 7.6.2.2 Unanticipated bypass: The Permittee shall submit notice of an unanticipated bypass as required under Part 6.9, Twenty-four Hour Notice of Noncompliance Reporting, to the EPA Region 8, Enforcement and Compliance Assurance Division, Water Enforcement Branch, and the Crow Tribe.

7.6.3 Prohibition of bypass

- 7.6.3.1 Bypass is prohibited and the EPA may take enforcement action against a permittee for a bypass, unless:

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

- 7.6.3.1.2 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,

- 7.6.3.1.3 The Permittee submitted notices as required under Part 7.

- 7.6.3.2 The EPA may approve an anticipated bypass, after considering its adverse effects, if the EPA determines that it will meet the three conditions listed above in Part 7.

7.7 Upset Conditions:

- 7.7.1 Effect of an upset: An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part 5 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 in an enforcement action brought for noncompliance with technology-based permit effluent limitations).

- 7.7.2 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:

- 7.7.2.1 An upset occurred and that the Permittee can identify the cause(s) of the upset;

- 7.7.2.2 The permitted facility was at the time being properly operated;

- 7.7.2.3 The Permittee submitted notice of the upset as required under Part 7, Twenty-four Hour Notice of Noncompliance Reporting; and,

7.7.2.4 The Permittee complied with any remedial measures required under Part 7, Duty to Mitigate.

7.7.3 Burden of proof: In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

7.8 Toxic Pollutants:

The Permittee shall comply with effluent standards or prohibitions established under Section 307 (a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the Permit has not yet been modified to incorporate the requirement.

7.9 Discharge of Un-Permitted Toxic Pollutants:

Notification shall be provided to the EPA as soon as the Permittee knows of, or has reason to believe:

7.9.1 That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the Permit, if that discharge will exceed the highest of the following "notification levels":

7.9.1.1 One hundred micrograms per liter (100 µg/L);

7.9.1.2 Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;

7.9.1.3 Five (5) times the maximum concentration value reported for that pollutant in the Permit application in accordance with 40 CFR § 122.21(g)(7); or,

7.9.1.4 The level established by the EPA in accordance with 40 CFR § 122.44(f).

7.9.2 That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the Permit, if that discharge will exceed the highest of the following "notification levels":

7.9.2.1 Five hundred micrograms per liter (500 µg/L);

7.9.2.2 One milligram per liter (1 mg/L) for antimony;

7.9.2.3 Ten (10) times the maximum concentration value reported for that pollutant in the Permit application in accordance with 40 CFR § 122.21(g)(7); or,

7.9.2.4 The level established by the EPA in accordance with 40 CFR § 122.44(f).

8 General Requirements

8.1 Planned Changes:

The Permittee shall give written notice to the EPA as soon as possible of any planned physical alterations or additions to the permitted facility. The notice shall be signed and certified in accordance with the Signatory Requirements sent to the address below:

U.S. EPA, Region 8 (8WD-CWW)
Attention: Wastewater Section Chief
1595 Wynkoop Street
Denver, Colorado 80202-1129

Notice is required only when:

- 8.1.1 The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are not subject to effluent limitations in the Permit and to pollutants not subject to the toxic pollutants screen in Part 7.9;
- 8.1.2 The alteration or addition results in a significant change in the Permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of Permit conditions that are different from or absent in the existing Permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan; or,
- 8.1.3 The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a New Source.

8.2 Anticipated Noncompliance:

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

8.3 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.

8.4 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 shall be submitted at least 180 days before the expiration date of this Permit, unless

permission for a later date has been granted by the EPA. EPA cannot grant permission for applications to be submitted later than the expiration date of the existing permit.

8.5 Duty to Provide Information:

The Permittee shall furnish to the EPA, within a reasonable time, any information which the EPA 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 EPA, upon request, copies of records required to be kept by this Permit.

8.6 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 EPA, it shall promptly submit such facts or information.

8.7 Signatory Requirements:

All applications, reports or information submitted to the EPA shall be signed and certified in accordance with the provisions below.

- 8.7.1 For a corporation. By a responsible corporate officer. A responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- 8.7.2 For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or
- 8.7.3 For a municipality, State, Federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this Part, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

8.7.4 All reports required by the Permit and other information requested by the EPA 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:

8.7.4.1 The authorization is made in writing by a person described above and is submitted to the EPA; and,

8.7.4.2 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, operator of a well or well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

8.7.5 Changes to authorization: If an authorization under Part 8.7.4 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 8.7.4 must be submitted to the EPA prior to or together with any reports, information, or applications to be signed by an authorized representative.

8.7.6 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."

8.8 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.

8.9 Availability of Reports:

Except for data determined to be confidential under 40 CFR Part 2, Subpart B, all reports prepared in accordance with the terms of this Permit shall be available for public inspection. As required by the Act and 40 CFR § 122.7, permit applications, permits and effluent data shall not be considered confidential.

8.10 Property Rights:

The issuance of this Permit does not convey any property rights of any sort, or any exclusive privileges.

8.11 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.

8.12 Transfers:

This Permit is not transferable to any person except after notice and approval to the EPA, as described in the below provisions of this section. A permit may be automatically transferred to a new permittee if:

- 8.12.1 The current Permittee notifies the EPA at least 30 days in advance of the proposed transfer date at:

U.S. EPA, Region 8 (8WD-CWW)
Attention: Wastewater Section Chief
1595 Wynkoop Street
Denver, Colorado 80202-1129;

- 8.12.2 The notice includes a written agreement between the existing and new permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them;
- 8.12.3 The notice includes the signed certification statement required by the Signatory Requirements and,
- 8.12.4 The EPA does not notify the existing Permittee and the proposed new permittee of the EPA's 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 X.

8.13 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.

8.14 General Authorities:

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

8.15 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:

- 8.15.1 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.
- 8.15.2 Wasteload Allocation: A wasteload allocation is developed and approved by the Crow Tribe and/or the EPA for incorporation in this Permit.
- 8.15.3 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.
- 8.15.4 If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the Act for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the EPA shall institute to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.
- 8.15.5 Toxicity Limitation: This Permit may be reopened and modified (following proper administrative procedures) to include additional compliance date(s), additional or modified numerical limitations, a change in the whole effluent protocol, or any other conditions related to the control of toxicants if one or more of the following events occur (or as otherwise determined necessary by the Permit issuing authority):
 - 8.15.5.1 Toxicity was detected late in the life of the Permit near or past the deadline for compliance.
 - 8.15.5.2 The Toxicity Reduction Evaluation (TRE) results indicate that compliance with the toxic limits will require an implementation schedule past the date for compliance and the Permit issuing authority agrees with the conclusion.
 - 8.15.5.3 The TRE results indicate that the toxicant(s) represent pollutant(s) that may be controlled with specific numerical limits, and the Permit issuing authority agrees that numerical controls are the most appropriate course of action.
 - 8.15.5.4 Following the implementation of numerical controls on toxicants, the Permit issuing authority agrees that a modified whole effluent protocol is necessary to compensate for those toxicants that are controlled numerically.
 - 8.15.5.5 The TRE reveals other unique conditions or characteristics which, in the opinion of the permit issuing authority, justify the incorporation of unanticipated special conditions in the Permit.