

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”),

Westmoreland Absaloka Mining LLC

is authorized to discharge from its coal mining operation located within the external boundaries of the Crow Reservation, in Sections 03, 04, 05, 08, 09, 10, 15, 16, and 17, Township 1S, Range 38E, at latitude 45.7670° N and longitude 107.0480° W, Big Horn County, Montana,

**to Middle Fork Sarpy Creek, various unnamed tributaries to Middle Fork Sarpy Creek,
and various unnamed tributaries to Sarpy 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 **November 1, 2023**

This Permit and the authorization to discharge shall expire at midnight, **September 30, 2028**

Authorized Permitting Official

Darcy O’Connor, Director
Water Division

NPDES BP (Rev.11/2021)

Table of Contents

| | | |
|------|---|----|
| 1 | Definitions..... | 4 |
| 2 | Description of Discharge and Monitoring Point(s)..... | 8 |
| 3 | Effluent Limitations | 10 |
| 3.1 | Active Mine Drainage (Outfalls 001, 002, 003, 004, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018, 021, 022, and 024) | 10 |
| 3.2 | Western Alkaline Coal Mining Drainage (Outfalls 005, 006, 019, 020, and 023) | 11 |
| 4 | Self-Monitoring and Data Requirements | 12 |
| 4.1 | Precipitation Monitoring | 14 |
| 5 | Special Conditions | 14 |
| 5.1 | Sediment Control BMPs | 14 |
| 5.2 | Whole Effluent Toxicity (WET) | 17 |
| 5.3 | Per- and Polyfluoroalkyl Substances (PFAS) Discharge Reduction BMP | 21 |
| 6 | Inspections, Corrective Actions, and Operation and Maintenance..... | 21 |
| 6.1 | Logs and Documentation: | 21 |
| 6.2 | Inspection Requirements:..... | 21 |
| 6.3 | Proper Operation and Maintenance:..... | 22 |
| 7 | Monitoring, Record Keeping, and Reporting Requirements | 23 |
| 7.1 | Representative Sampling:..... | 23 |
| 7.2 | Monitoring Procedures:..... | 24 |
| 7.3 | Penalties for Tampering: | 24 |
| 7.4 | Reporting of Monitoring Results: | 24 |
| 7.5 | Annual Reporting Requirements:..... | 25 |
| 7.6 | Other Reporting Requirements: | 26 |
| 7.7 | Additional Monitoring by the Permittee: | 27 |
| 7.8 | Monitoring Records Contents: | 27 |
| 7.9 | Retention of Records:..... | 27 |
| 7.10 | Twenty-Four Hour Notice of Noncompliance Reporting: | 28 |
| 7.11 | Other Noncompliance Reporting:..... | 29 |
| 7.12 | Inspection and Entry:..... | 29 |
| 8 | Compliance Responsibilities..... | 29 |
| 8.1 | Duty to Comply:..... | 29 |
| 8.2 | Penalties for Violations of Permit Conditions: | 30 |
| 8.3 | Need to Halt or Reduce Activity not a Defense: | 31 |

| | | |
|------|---|----|
| 8.4 | Duty to Mitigate: | 31 |
| 8.5 | Removed Substances:..... | 31 |
| 8.6 | Bypass of Treatment Facilities:..... | 32 |
| 8.7 | Upset Conditions:..... | 33 |
| 8.8 | Toxic Pollutants: | 33 |
| 8.9 | Discharge of Un-Permitted Toxic Pollutants: | 33 |
| 9 | General Requirements..... | 34 |
| 9.1 | Planned Changes: | 34 |
| 9.2 | Anticipated Noncompliance:..... | 35 |
| 9.3 | Permit Actions:..... | 35 |
| 9.4 | Duty to Reapply: | 35 |
| 9.5 | Duty to Provide Information: | 35 |
| 9.6 | Other Information:..... | 35 |
| 9.7 | Signatory Requirements: | 35 |
| 9.8 | Penalties for Falsification of Reports:..... | 37 |
| 9.9 | Availability of Reports: | 37 |
| 9.10 | Property Rights: | 37 |
| 9.11 | Severability:..... | 37 |
| 9.12 | Transfers: | 37 |
| 9.13 | Oil and Hazardous Substance Liability: | 38 |
| 9.14 | General Authorities: | 38 |
| 9.15 | Reopener Provision: | 38 |

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)

Active mining area means the area, on and beneath land, used or disturbed in activity related to the extraction, removal, or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas, and post-mining areas.

Alkaline mine drainage means mine drainage which, before any treatment, has a pH equal to or greater than 6.0 and total iron concentration of less than 10 mg/l.

Bond release means the time at which the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work (including, in the case of underground mines, mine sealing and abandonment procedures) has been satisfactorily completed.

Brushing and grubbing area means the area where woody plant materials that would interfere with soil salvage operations have been removed or incorporated into the soil that is being salvaged.

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.

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.

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

Mine drainage means any drainage, and any water pumped or siphoned, from an active mining area or a post-mining area.

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

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)

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)

Post-mining area means a reclamation area.

Reclamation area means the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.

Regraded area means the surface area of a coal mine that has been returned to required contour.

Sediment means undissolved organic and inorganic material transported or deposited by water.

Sediment yield means the sum of the soil losses from a surface minus deposition in macro-topographic depressions, at the toe of the hillslope, along field boundaries, or in terraces and channels sculpted into the hillslope.

Settleable solids is that matter measured by the volumetric method specified in 40 CFR § 434.64.

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))

Topsoil stockpiling area means the area outside the mined-out area where topsoil is temporarily stored for use in reclamation, including containment berms.

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))

Western coal mining operation means a surface or underground coal mining operation located in the interior western United States, west of the 100th meridian west longitude, in an arid or semiarid environment with an average annual precipitation of 26.0 inches or less.

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 (Table 1). 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.

The Permittee may request, in writing, a change to an outfall location provided all of the following conditions are met. EPA may approve or deny the request based on monitoring results and other information available without further public notice or major modification of the Permit.

1. The modified outfall location is within 1,000 feet of the existing outfall location;
2. The modified outfall location discharges to the same immediate receiving water;
3. The modified outfall location remains on the same coal seam and incorporates the same treatment processes;
4. Modification of the outfall location does not affect nearby landowners; and
5. Notification of the change in outfall location is provided at the address below to EPA, followed by EPA's approval, prior to any discharges to the modified outfall location.

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

Table 1. Description of Discharge and Monitoring Points

| Outfall Number | Latitude (°N) | Longitude (°W) | Description | Receiving Water |
|-----------------------|----------------------|-----------------------|---------------------------------------|--|
| 001 | 45.7617 | 107.0433 | Stormwater runoff and mine drainage | Middle Fork Sarpy Creek |
| 002 | 45.7567 | 107.0386 | Stormwater runoff and mine drainage | Unnamed Tributary to Middle Fork Sarpy Creek |
| 003 | 45.7558 | 107.0375 | Stormwater runoff and mine drainage | Unnamed Tributary to Middle Fork Sarpy Creek |
| 004 | 45.7542 | 107.0367 | Stormwater runoff and mine drainage | Middle Fork Sarpy Creek |
| 005 | 45.7522 | 107.0314 | Western Alkaline Coal Mining drainage | Unnamed Tributary to Middle Fork Sarpy Creek |
| 006 | 45.7508 | 107.0383 | Western Alkaline Coal Mining drainage | Unnamed Tributary to Middle Fork Sarpy Creek |
| 007 | 45.7553 | 107.0403 | Stormwater runoff and mine drainage | Unnamed Tributary to Middle Fork Sarpy Creek |
| 008 | 45.7575 | 107.0431 | Stormwater runoff and mine drainage | Unnamed Tributary to Middle Fork Sarpy Creek |
| 009 | 45.7614 | 107.0447 | Stormwater runoff and mine drainage | Middle Fork Sarpy Creek |
| 010 | 45.7461 | 107.0589 | Stormwater runoff and mine drainage | Unnamed Tributary to Sarpy Creek |

| Outfall Number | Latitude (°N) | Longitude (°W) | Description | Receiving Water |
|-----------------------|----------------------|-----------------------|---------------------------------------|----------------------------------|
| 011 | 45.7464 | 107.0669 | Stormwater runoff and mine drainage | Unnamed Tributary to Sarpy Creek |
| 012 | 45.7469 | 107.0703 | Stormwater runoff and mine drainage | Unnamed Tributary to Sarpy Creek |
| 013 | 45.7475 | 107.0733 | Stormwater runoff and mine drainage | Unnamed Tributary to Sarpy Creek |
| 014 | 45.7478 | 107.0800 | Stormwater runoff and mine drainage | Unnamed Tributary to Sarpy Creek |
| 015 | 45.7536 | 107.0728 | Stormwater runoff and mine drainage | Unnamed Tributary to Sarpy Creek |
| 016 | 45.7533 | 107.0672 | Stormwater runoff and mine drainage | Unnamed Tributary to Sarpy Creek |
| 017 | 45.7544 | 107.0681 | Stormwater runoff and mine drainage | Unnamed Tributary to Sarpy Creek |
| 018 | 45.7569 | 107.0694 | Stormwater runoff and mine drainage | Unnamed Tributary to Sarpy Creek |
| 019 | 45.7578 | 107.0733 | Western Alkaline Coal Mining drainage | Unnamed Tributary to Sarpy Creek |
| 020 | 45.7589 | 107.0739 | Western Alkaline Coal Mining drainage | Unnamed Tributary to Sarpy Creek |
| 021 | 45.7600 | 107.0731 | Stormwater runoff and mine drainage | Unnamed Tributary to Sarpy Creek |
| 022 | 45.7606 | 107.0747 | Stormwater runoff and mine drainage | Unnamed Tributary to Sarpy Creek |
| 023 | 45.7633 | 107.0792 | Western Alkaline Coal Mining drainage | Unnamed Tributary to Sarpy Creek |
| 024 | 45.7650 | 107.0792 | Stormwater runoff and mine drainage | Unnamed Tributary to Sarpy Creek |

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.

3.1 Active Mine Drainage (Outfalls 001, 002, 003, 004, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018, 021, 022, and 024)

These effluent limits apply to discharges of mine drainage, excluding mine drainage from areas that qualify for Western Alkaline Coal Mining drainage (i.e., reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas).

Table 2. Effluent Limitations for Outfalls 001, 002, 003, 004, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018, 021, 022, and 024

| Effluent Characteristic | 30-Day Average Effluent Limitations a/ | 7-Day Average Effluent Limitations a/ | Daily Maximum Effluent Limitations a/ |
|--|--|--|--|
| Flow, gallons per minute (gpm) | report only | N/A | report only |
| Total Suspended Solids (TSS), mg/L | 35 <u>b/</u> | N/A | 70 <u>b/</u> |
| Settleable Solids, mL/L <u>c/</u> | N/A | N/A | 0.5 |
| Oil and Grease (O&G), mg/L | N/A | N/A | 10 |
| Aluminum, dissolved, µg/L | 87 <u>b/</u> | N/A | 750 |
| Iron, total, mg/L | 1.0 <u>b/</u> | N/A | 6.0 <u>b/</u> |
| Lead, dissolved, µg/L | 10.9 <u>b/</u> | N/A | N/A |
| Arsenic, total recoverable, mg/L | report only | N/A | report only |
| Cadmium, total recoverable, mg/L | report only | N/A | report only |
| Chromium, total recoverable, mg/L | report only | N/A | report only |
| Copper, total recoverable, mg/L | report only | N/A | report only |
| Mercury, total recoverable, µg/L | report only | N/A | report only |
| Nickel, total recoverable, mg/L | report only | N/A | report only |
| Selenium, total recoverable, µg/L | report only | N/A | report only |
| Silver, total recoverable, mg/L | report only | N/A | report only |
| Zinc, total recoverable, mg/L | report only | N/A | report only |
| Total Dissolved Solids (TDS), mg/L | report only | N/A | report only |
| Hardness (as CaCO ₃), mg/L | report only | N/A | report only |
| Nitrate-Nitrite (as N), mg/L | report only | N/A | report only |
| Total Kjeldahl Nitrogen (TKN) (as N), mg/L | report only | N/A | report only |
| Total Nitrogen (as N), mg/L | report only | N/A | report only |
| Total Phosphorus, mg/L | report only | N/A | report only |
| pH, standard units | Must remain in the range of 6.5 to 9.0 <i>at all times</i> | | |
| Whole Effluent Toxicity at 25°C, Acute | Pass LC50 at 100% effluent (i.e., LC50 >100%) | | |

- a/ See section 1 of the Permit for definition of terms.
- b/ The effluent limitations for these pollutants do not apply to discharges caused by a single or series of precipitation or snowmelt events. The Permittee has the burden of proof that the discharge was caused by a precipitation or snowmelt event, and that the discharge was not commingled with non-precipitation based mine drainage. Data providing proof of precipitation and absence of commingling must be submitted with the discharge monitoring report per section 7.4. In cases where a discharge may be a mixture of mine drainage dewatering and precipitation-based runoff, the more stringent limitations would apply in all cases. See Table 3 for monitoring requirements associated with these pollutants.
- c/ The settleable solids effluent limitation only applies when the discharge is caused by a precipitation event. However, this limitation may be waived in discharges caused by a precipitation event greater than the 10-year, 24-hour precipitation event, defined here as a 24-hour rainfall event totaling 2.48 inches or more. This limitation may also be waived on a case-by-case basis for snowmelt events that cause an equivalent amount of runoff as the 10-year, 24-hour precipitation event. The Permittee has the burden of proof that these conditions are met and must submit supporting data with the discharge monitoring report per section 7.4. See Table 3 for monitoring requirements associated with these pollutants.

3.2 Western Alkaline Coal Mining Drainage (Outfalls 005, 006, 019, 020, and 023)

These effluent limits apply to discharges from areas that qualify for Western Alkaline Coal Mining drainage (i.e., reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas). Numeric effluent limitations and monitoring requirements in Tables 2 and 3 do not apply to discharges from these outfalls.

3.2.1 Sediment Control Plan and Sediment Control Best Management Practices (BMPs)

A Sediment Control Plan has been submitted to EPA. The Permittee must implement and maintain all procedures, design specifications, and BMPs in accordance with the Sediment Control Plan as a condition of the Permit. Additionally, the Permittee must comply with the sediment control BMPs listed in section 5.1 of the Permit.

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, section 7.4, for more details. A minimum of three (3) grab samples shall be taken during any discharge event lasting more than 24 hours (Table 3, footnote ‘d’).

Table 3. Monitoring and Reporting Requirements for Outfalls 001, 002, 003, 004, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018, 021, 022, and 024

| Effluent Characteristic | Monitoring Frequency | Sample Type <u>a/</u> | Data Value Reported on DMR <u>b/</u> |
|-----------------------------------|--|------------------------------|---|
| Flow, gpm <u>c/</u> | Daily | Grab <u>d/</u> | Daily Max. 30-Day Avg. |
| pH, standard units <u>e/</u> | Discharge | Grab <u>d/</u> | Minimum Maximum |
| TSS, mg/L <u>f/</u> | Discharge | Grab <u>d/</u> | Daily Max. 30-Day Avg. |
| Settleable Solids, mL/L <u>g/</u> | Discharge | Grab <u>d/</u> | Daily Max 30-Day Avg. |
| O&G, visual | Discharge | Visual | Narrative |
| O&G, mg/L | Immediately if visual sheen detected <u>h/</u> | Grab <u>d/</u> | Daily Max. |
| Aluminum, dissolved, µg/L | Discharge | Grab <u>d/</u> | Daily Max. 30-Day Avg. |
| Arsenic, total recoverable, mg/L | Discharge | Grab <u>d/</u> | Daily Max. 30-Day Avg. |
| Cadmium, total recoverable, mg/L | Discharge | Grab <u>d/</u> | Daily Max. 30-Day Avg. |
| Chromium, total recoverable, mg/L | Discharge | Grab <u>d/</u> | Daily Max. 30-Day Avg. |
| Copper, total recoverable, mg/L | Discharge | Grab <u>d/</u> | Daily Max. 30-Day Avg. |
| Iron, total, mg/L | Discharge | Grab <u>d/</u> | Daily Max. 30-Day Avg. |
| Lead, dissolved, µg/L | Discharge | Grab <u>d/</u> | Daily Max. 30-Day Avg. |

| Effluent Characteristic | Monitoring Frequency | Sample Type <u>a/</u> | Data Value Reported on DMR <u>b/</u> |
|---|----------------------|-----------------------|--------------------------------------|
| Mercury, total recoverable, $\mu\text{g/L}$ | Discharge | Grab <u>d/</u> | Daily Max. 30-Day Avg. |
| Nickel, total recoverable, mg/L | Discharge | Grab <u>d/</u> | Daily Max. 30-Day Avg. |
| Selenium, total recoverable, $\mu\text{g/L}$ | Discharge | Grab <u>d/</u> | Daily Max. 30-Day Avg. |
| Silver, total recoverable, mg/L | Discharge | Grab <u>d/</u> | Daily Max. 30-Day Avg. |
| Zinc, total recoverable, mg/L | Discharge | Grab <u>d/</u> | Daily Max. 30-Day Avg. |
| TDS, mg/L | Discharge | Grab <u>d/</u> | Daily Max. 30-Day Avg. |
| Hardness (as CaCO_3), mg/L | Discharge | Grab <u>d/</u> | Daily Max. 30-Day Avg. |
| Nitrate + nitrite (as N), mg/L | Discharge | Grab <u>d/</u> | Daily Max. 30-Day Avg. |
| Total Kjeldahl Nitrogen (TKN) (as N), mg/L | Discharge | Grab <u>d/</u> | Daily Max. 30-Day Avg. |
| Total Nitrogen (as N), mg/L | Discharge | Calculated <u>i/</u> | Daily Max. 30-Day Avg. |
| Total Phosphorus, mg/L | Discharge | Grab <u>d/</u> | Daily Max. 30-Day Avg. |
| WET at 25 °C, Acute <u>j/</u> | Discharge | Grab <u>d/</u> | Pass/Fail |

a/ See section 1 for definition of terms.

b/ *Daily Max.* – Report the highest daily maximum value for the DMR period.

30-Day Avg. – Calculate and report the 30-Day average for each calendar month. If multiple 30-Day averages are available for a reporting period, report the average of the 30-Day averages.

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.

Pass/Fail – Report “Fail” if any WET test failed during the reporting period; report “Pass” if all WET tests passed during the reporting period. A “passing” WET test is defined as no whole effluent toxicity at 100% effluent.

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 gallons per minute (gpm) during the reporting period and the maximum flow rate observed, in gpm, shall be reported.

d/ A minimum of three (3) grab samples shall be taken during any discharge event lasting more than 24 hours. A sample shall be taken at or near the beginning, middle, and end of

the discharge if the discharge is less than one week in duration. If a single, continuous discharge is greater than one week in duration, three (3) samples shall be taken during the first week and one (1) during each following week. All of the samples collected during the reporting period are to be used in determining the reported values – they can either be reported as a composite value, or reported and averaged separately.

- e/ This sample must be analyzed within 15 minutes of collection per 40 CFR Part 136. Typically, these samples are measured in situ using a meter that records an instantaneous measurement.
- f/ Although TSS effluent limitations are waived for discharges caused by precipitation events, TSS monitoring and reporting is required in all cases.
- g/ “Settleable solids” is that matter measured by the volumetric method specified in 40 CFR. §434.64. The settleable solids monitoring requirement is waived if either of the following conditions apply: 1) the discharge is not caused by a precipitation event, or 2) the discharge is caused by a precipitation event greater than the 10-year, 24-hour precipitation event, defined here as a 24-hour rainfall event totaling 2.48 inches or more (or a snowmelt event that causes an equivalent amount of runoff as the 10-year, 24-hour precipitation event). In either case, the Permittee has the burden of proof that these conditions are met.
- h/ If a visible sheen or floating oil is observed in the discharge, a grab sample shall be taken immediately, analyzed and recorded 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.
- i/ For the purposes of this Permit, the term “Total Nitrogen (TN)” is defined as the calculated sum of analytical results from “Total Kjeldahl Nitrogen (TKN)” plus “Nitrate+Nitrite.”
- j/ See section 5.2 for more details regarding WET requirements.

4.1 Precipitation Monitoring

Upon the effective date of the Permit, the Permittee is required to monitor and record precipitation in a location that is representative of where active mining is occurring. Daily precipitation shall be monitored and recorded using a precipitation gauge which meets the standards (i.e., parameters, range, resolution, measurement accuracy, etc.) provided in section 5 of National Weather Service Instructional Bulletin 10-1302 (revised April 20, 2018). Data from monitoring of precipitation shall be summarized and included as part of the annual report submittals for the mine (see section 7.5).

5 **Special Conditions**

5.1 Sediment Control BMPs

The following BMPs are required to be implemented and maintained by the Permittee. However, this list does not supersede the requirement to comply with the Sediment Control Plan (see section 3.2.1).

- 5.1.1 Prohibition of Off-site Sediment Ponds. Control of surface water runoff and associated sedimentation will be accomplished without the use of off-site sediment pond dams.

- 5.1.2 Stream Buffer Zones. With the exception of three road and dragline crossings, a minimum distance of 100 feet from the stream channel must be maintained as undisturbed and demarcated with appropriate signs along the Middle Fork of Sarpy Creek.
- 5.1.3 Waste, Garbage, and Floatable Debris. All areas within the Middle Sarpy Creek buffer zone shall be kept free of waste, garbage, and floatable debris. Waste, garbage, and floatable debris shall not be discharged beyond the limits of disturbance for the mine.
- 5.1.4 Roadway Conveyances. Conveyance structures shall be constructed to route the 10-year, 24-hour storm event to sediment traps and/or along and under roads during mining.
- 5.1.5 Road Crossings. Where a conveyance crosses a road, pipe should be of a suitable size to ensure that design capacity can be maintained.
- 5.1.6 Unlined Ditch Design and Maintenance. Unlined ditches designed for conveyance shall only be used where flow velocities are anticipated to be less than five (5) feet-per-second. Ditches shall be regularly maintained to preserve the design capacity. Where ditch erosion occurs at higher flow velocities, more frequent maintenance may be required. Ditches shall be inspected periodically for blockages and erosion. Blockage shall be removed and the ditch restored to its design depth. Erosion and sedimentation that compromises the ability of the ditch to convey its design flow shall be addressed by reconstructing the ditch to its design geometry.
- 5.1.7 Ditch Transitions. Ditch transitions from triangular to trapezoidal shall be made over a distance of ten (10) feet or more. If a transition is required because of an intersecting ditch, the transition shall be made above, rather than below the intersection.
- 5.1.8 Intersecting Ditches. Intersecting ditches serving drainage areas should merge with parallel flow lines to the extent possible to minimize erosion.
- 5.1.9 Establishment of Sediment Traps. In smaller watersheds, which range in size from less than 10 to about 160 acres, ditching and sediment traps established to convey and contain the 2-year, 24-hour event plus annual sediment yield for three (3) years shall be established prior to clearing, grubbing, and soil stockpiling. Sediment traps or other appropriate BMPs shall be used where drainage flows from disturbed to undisturbed or reclaimed areas.
- 5.1.10 Establishment of Sediment Control Measures for Site-Specific Control. Sediment control measures such as contour scarification, straw dikes, rip rap, check dams, and erosion control products shall be used when necessary to minimize erosion and sediment transport in areas requiring site-specific erosion control. In cases where erosion is observed, other control measures such as gradient alterations and/or more frequent inspections shall be required as a site-specific control.

- 5.1.11 Maintenance of Sediment Traps. Sediment accumulation in sediment traps designed to contain the 2-year, 24-hour event plus annual sediment yield for three (3) years shall be cleaned out when the design depth is reduced by more than 25%.
- 5.1.12 Maintenance of Sediment Control BMPs. Sediment traps and site-specific BMPs (e.g., ponds, traps, erosion control products) shall be maintained in effective operating condition during the active mining phase. During reclamation, sediment traps and ponds shall be converted to small depressions designed for vegetation diversity and wildlife habitat enhancement in addition to short-term sediment capture. Control measures for site-specific control (e.g., straw dikes, rip rap) shall be removed or converted to small depressions during reclamation. Depressions for short-term sediment capture shall be maintained until vegetation achieves good hydrologic condition, defined as 75 percent or greater ground cover, similar to pre-mining vegetative cover. Sediment control conveyances shall be maintained in a manner to reduce sediment accumulation from ditch erosion from steep slopes. Appendix B of the revised erosion and sediment control plan (2012) defines design guidelines for drainage for mine impacted areas and includes specific restrictions on triangular and trapezoidal conveyance channel slopes which should be followed to reduce internal ditch erosion.
- 5.1.13 Soil Salvage Areas. In soil salvage areas, drainage shall be intercepted at the soil salvage edge using a combination of ditching and traps sized to contain runoff from at least a 2-year, 24-hour runoff event and a one (1) year sediment yield.
- 5.1.14 Soil Preparation on the Contour. Spoil scarification, soil placement, soil preparation and seeding shall be done on the contour, provided safety of equipment operators is not compromised.
- 5.1.15 Establishment of Vegetation. Seedbed preparation techniques that create a roughened surface to retard surface runoff and increase infiltration shall be used. Reclaimed vegetative cover must be similar to pre-mining vegetative cover. Permanent vegetation cover appropriate for the site shall be established by the end of the third growing season following initial seeding. From a hydrologic perspective the objective is 75 percent cover, including litter, which defines “good” hydrologic condition for runoff and sediment modeling purposes.
- 5.1.16 Minimizing Potential for Erosion During Reclamation. Slope lengths shall be reduced by constructing complex slope topography. With the exception of agricultural areas, regraded landscapes shall be left in a roughened condition to minimize compaction. Coarse textured substrates, including soils with high coarse fragment content shall be used, particularly on sites with increased erosion potential, or where establishment of woody species is desired.
- 5.1.17 Maintenance of Depressions During Reclamation. During the reclamation process, small depressions shall be established on an opportunistic basis within the reclaimed area to enhance vegetative diversity, wildlife habitat, recharge and short-term sediment control. Small depressions will meet the following criteria:

- Each depression on the interior of the reclaimed area will be one acre foot or less in capacity;
- Each depression at the margin of the reclaimed area will be two acre feet or less in capacity;
- No depression will be deeper than three feet;
- Depressions will be soiled and revegetated; and
- Maximum slopes will be 5:1 on the uphill (inflow) side and 3:1 on the lateral and downhill (outflow) sides.

5.1.18 Reclamation of Rills and Gullies. Rills and gullies developed post-construction shall be remediated on a site-specific basis if they adversely impact the establishment of vegetation, disrupt post-mine land use and/or cause or contribute to a violation of a water quality standard. Unless otherwise permitted, any rill or gully greater than 30 inches in depth will be considered disruptive and shall be remediated.

5.1.19 Spill Prevention and Response Procedures. The Permittee must develop and maintain a Spill Prevention Control and Countermeasure (SPCC) Plan to minimize the potential for leaks, spills, and other releases that may be exposed to stormwater and to provide for an effective response to spills when they occur.

5.2 Whole Effluent Toxicity (WET)

5.2.1 Acute WET Effluent Limitations and Monitoring

Beginning with the effective date of this Permit, acute Whole Effluent Toxicity (WET) sampling shall be performed once per discharge per outfall by the Permittee. The Permittee shall take a composite sample of the discharge from the discharging outfall, chill it to between 0 and 6 °C, and send it to the WET laboratory to start analysis within the 36-hour holding time, unless otherwise specified in 40 CFR § 136. For each acute test, a minimum of three (3) grab samples shall be taken during any discharge event (see requirement in footnote d) of Table 3 in the Permit).

The acute static-renewal toxicity tests shall be conducted in accordance with the procedures set out in the latest revision of the EPA WET manual¹. The Permittee shall ensure that the laboratory conducts a 48-hour acute static-renewal toxicity test with renewals at each 24-hr interval using *Ceriodaphnia dubia*, Method 2002.0, a 96-hour acute static-renewal toxicity test with renewals at each 24-hr interval using *Pimephales promelas*, Method 2000.0. The following minimum dilution series shall be used: 100%, 50%, 25%, 12.5%, 6.25% and a 0% control. The dilution water used for the test shall be “moderately hard” synthetic laboratory grade water, consistent with EPA WET manual laboratory specifications. Tests shall be run at 25 °C. 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 shall result in a violation of the Permit for failure to monitor.

¹Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, EPA-821-R-02-012. Fifth Edition, October 2002. U.S. EPA

WET test results shall be reported on the DMR submitted for the reporting period when the monitoring was conducted (e.g., WET results for the calendar quarter ending March 31 shall be reported with the DMR due April 28, etc.).

A laboratory reporting form consistent with the Region 8 Toxicity Test Report Format for Acute Whole Effluent Toxicity, including all chemical and physical data and reference toxicant results as specified shall also be submitted to the Permitting issuing authority along with the DMR. Copies of the format may be downloaded from the Region 8 web page at <https://www.epa.gov/npdes-permits/about-region-8s-npdes-permit-program#wet>. DMR reporting requirements are found in section 7.4.

Acute toxicity is present in the effluent when an acute WET test demonstrates that the LC50 is at any effluent concentration less than or equal to the instream waste concentration (IWC). The IWC for this Permit has been determined to be 100% Effluent. If acute toxicity occurs in a WET test, the Permittee shall do the following:

1. Notify the EPA (within 24 hours) as indicated in Permit section 7.10.2 of the initial test failure;
2. Promptly take all reasonable measures necessary to immediately reduce toxicity; and
3. Conduct an additional WET test within two (2) weeks of the date of when the Permittee learned of the WET test failure. The retesting shall be done using the same dilution series and the species that failed the test.

Should toxicity occur in the second WET retest, the Permittee shall provide written notification to the Regional WET Coordinator within 14 calendar days of the Permittee receiving notice of the WET testing results. Such notification should detail the test failures (e.g. two consecutive failures of a single endpoint).

The Permittee shall also perform a toxicity identification evaluation/toxicity reduction evaluation (TIE/TRE), as required by Permit section 5.2.2 (below), to establish the cause of the toxicity, locate the source(s) of the toxicity, and develop control for the source of toxicity or treatment for the source of the toxicity.

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

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

5.2.2.1 Where the source of toxicity is known, the Permittee shall:

- 5.2.2.1.1 Submit a TRE plan and schedule to reduce toxicity in the effluent and demonstrate no toxicity is present at or below the IWC. 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.

- 5.2.2.1.1.1 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.
- 5.2.2.1.1.2 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.
- 5.2.2.1.1.3 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.
- 5.2.2.1.2 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.
- 5.2.2.2 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:
 - 5.2.2.2.1 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 re-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

- 5.2.2.2.2 The Regional WET Coordinator may review the TRE plan and schedule and provide written comments to the Permittee.
- 5.2.2.2.3 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.
- 5.2.2.2.4 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.
- 5.2.2.3 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.
- 5.2.2.4 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 sections 5.2.2.1 and/or 5.2.2.2 above, 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.
- 5.2.2.5 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;
- 5.2.2.6 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
- 5.2.2.7 Upon successful completion of the TIE/TRE and approval by the Permitting Authority, the Permittee shall return to once per outfall per discharge whole effluent toxicity monitoring and reporting as specified in section 4 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 section 7.4 of the Permit, and to the following address:

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

5.3 Per- and Polyfluoroalkyl Substances (PFAS) Discharge Reduction BMP

The Permittee must make an effort to prevent the discharge of any PFAS-containing compounds (including Aqueous Film-Forming Foam, or AFFF) to receiving waters. As a first step, the Permittee should consider the use and storage of alternatives to PFAS-containing compounds for fire suppression activities. For any activity where AFFF is used, including emergency firefighting and training activities, the Permittee must immediately clean up the AFFF as best as possible, including diversions and other measures that prevent discharges to receiving waters. The Permittee must also report the use of AFFF, and any discharges of AFFF, to EPA at the address in section 7.6 within 14 days following the event.

6 **Inspections, Corrective Actions, and Operation and Maintenance**

6.1 Logs and Documentation:

This section requires activities for inspections, corrective actions, and maintenance to be documented in a paper or electronic log(s). The Permittee may have one log or multiple logs to document these activities. The Permittee shall maintain the log(s) of inspections, corrective actions, and maintenance in either paper or electronic format in accordance with record-keeping requirements in section 7.8 and shall make the log(s) available for inspection, upon request, by authorized representatives of the U.S. Environmental Protection Agency.

6.2 Inspection Requirements:

6.2.1 On at least a quarterly basis – and after significant storm events – unless otherwise approved by the Permit issuing authority, the Permittee shall inspect its facility. Quarterly inspections are required to ensure that the limitations and monitoring requirements are met. Records of these inspections shall be maintained and summarized in the annual report (see section 7.5). The quarterly inspection should entail, at a minimum, a “walk-through” and visual observation of all process treatment units (including sediment traps, retention ponds, etc.), sampling and flow monitoring equipment, outfalls, areas where vegetation has been established for less than two years, and the receiving stream. The Permittee should specifically:

6.2.1.1 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 sections 4 and 7.4 of this Permit if it has not been completed.);

- 6.2.1.2 Determine if all BMPs (see section 5.1) are being implemented and maintained; and
- 6.2.1.3 Determine if proper operation and maintenance procedures are being undertaken at the facility.
- 6.2.2 The Permittee shall maintain a log in either paper or electronic format recording information obtained during inspection activities. At a minimum, the notebook shall include the following:
 - 6.2.2.1 Date and time of the inspection;
 - 6.2.2.2 Name of the inspector(s);
 - 6.2.2.3 The condition or status of all aspects required to be inspected in section 6.2.1;
 - 6.2.2.4 Identification of operational problems and/or maintenance problems;
 - 6.2.2.5 Corrective actions, as appropriate, to remedy identified problems, the planned date for each corrective action, and the actual date each corrective action was taken; and,
 - 6.2.2.6 Other information, problems identified, or observations, as appropriate.
- 6.2.3 Problems identified during the inspection including, but not limited to, those associated with section 6.2.1 of the Permit, shall be corrected at the time of inspection, if possible. If they cannot be corrected at the time of the inspection, the inspector must identify and document a corrective action to remedy the problem(s), as well as a timeline for completion of the remedy. The corrective action shall be completed by the time specified. Corrective actions to remedy problem(s) shall be in line with and addressed through proper operation and maintenance (section 6.3 of the Permit). All problems identified during inspections, as well as associated corrective actions and timelines, shall be documented in the inspection log.

6.3 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.

- 6.3.1 Operation and Maintenance Program: The Permittee shall complete the following as part of the operation and maintenance program for their facility:

- 6.3.1.1 Have a current Operation and Management Manual(s) (O&M Manual(s)) that describes the proper operational procedures and maintenance requirements of the facility, as required by the previous permit, and make any necessary updates as soon as possible, but no later than six (6) months after the effective date of this Permit. Maintain and implement the O & M Manual(s);
 - 6.3.1.2 Have the O&M Manual(s) readily available (e.g., on-site) to the operator of the facility and require that the operator become familiar with the manual(s) and any updates;
 - 6.3.1.3 Have a documented schedule(s) for routine operation and maintenance activities at the facility; and,
 - 6.3.1.4 Require the operator to perform the routine operation and maintenance requirements in accordance with the schedule(s) and document in a log them in accordance with 6.1.4.
- 6.3.2 Operation and Maintenance Log: The Permittee shall maintain a log in either paper or electronic format containing a summary record of all operation and maintenance activities at the facility. Activities shall be recorded within 48 hours of completing the activity. At a minimum, the log shall include the following information:
- 6.3.2.1 Date and time;
 - 6.3.2.2 Name and title of person(s) making the log entry;
 - 6.3.2.3 Name of the persons(s) performing the activity;
 - 6.3.2.4 A brief description of the activity; and,
 - 6.3.2.5 Other information, as appropriate.
- 6.3.3 Staff and Funding: The Permittee shall provide adequate staff and funding to carry out the operation, maintenance, repair, and testing functions required to ensure compliance with the terms and conditions of this Permit. The level of staffing needed, in numbers, training and experience, shall be determined taking into account the work involved in operating the system, conducting maintenance, and complying with this Permit. The Permittee may be required to provide EPA documentation on the sources of revenue, annual budgets, annual expenses, and staffing.

7 Monitoring, Record Keeping, and Reporting Requirements

7.1 Representative Sampling:

All samples taken in compliance with the monitoring requirements established under section 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. Any receiving water samples shall be collected in a representative location of the receiving stream. 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.

7.2 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.

7.3 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.

7.4 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 4, below.

Table 4. DMR Compliance Monitoring Periods and Due Dates

| Compliance Monitoring Period | Due Date |
|-------------------------------------|-----------------|
| January through March | April 28 |
| April through June | July 28 |
| July through September | October 28 |
| October 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 9.7). 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 the 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 quarterly should be reported on a quarterly basis. Each quarter, 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 4. For parameters collected more frequently than monthly (e.g., daily or weekly), 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 as “report only” in Table 2 (Effluent Limitations).

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 section 4, Table 3.
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.

7.5 Annual Reporting Requirements:

An annual report shall be prepared for each year of the permit term. Each report shall be signed in accordance with the Signatory Requirements (see section 9.7). A copy of the report shall be submitted to both EPA and the Crow Tribe using the addresses provided in section 7.6 (Other Reporting Requirements). Each annual report shall be submitted by the following 28th of January. Contents of the annual report shall include:

1. A table or tables listing the long-term average monthly precipitation values, the observed monthly precipitation values for that year, and the quantity of precipitation received and date of rainfall for events exceeding the 10-year, 24-hour precipitation event;
2. A table or list of all outfalls (see section 2) that discharged during the year, including dates of discharge, estimated duration, volumes or flowrate, and estimated cause of discharge;

3. A general description of the extent of the active mining area, including proposed areas for expansion during the following year;
4. A narrative description of the general effectiveness of each of the specific BMPs which includes notes of BMP failures and procedures for remediation;
5. A narrative description of any pertinent findings during the quarterly inspections performed that year;
6. A narrative description of any proposed or planned changes to outfall design, BMP design, or maintenance programs to address significant erosion or sedimentation associated with rainfall events exceeding the 10-year, 24-hour event; and
7. A section indicating whether any Aqueous Film Forming Foam (AFFF) was 1) used at the Facility for fire suppression or other purposes or 2) discharged from the Facility during the year. If AFFF was used or discharged at the Facility during the calendar year, provide the date, location, and estimated volume of AFFF used and/or volume discharged.

7.6 Other Reporting Requirements:

All reports shall be signed and certified in accordance with the Signatory Requirements (see section 9.7). 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 Tribe at the addresses given below:

original to:

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

copy to:

Environmental Director
Crow Tribe
52 Arapoosh
Crow Agency, Montana 59022

Prior to December 21, 2025, all other reports required herein (e.g., sections 7.10 and 7.11) as well as sewer overflow event reports, shall be signed and certified in accordance with the Signatory Requirements (see section 9.7), and submitted to EPA Region 8 and the 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.

7.7 Additional Monitoring by the Permittee:

If the Permittee monitors any pollutant in accordance with section 7.1 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.

7.8 Monitoring Records Contents:

Records of monitoring information shall include:

- 7.8.1 The date, exact place, and time of sampling or measurements;
- 7.8.2 The name(s) of the individual(s) who performed the sampling or measurements;
- 7.8.3 The date(s) analyses were performed;
- 7.8.4 The time(s) analyses were initiated;
- 7.8.5 The name(s) of individual(s) who performed the analyses;
- 7.8.6 References to and, when available, written procedures for the analytical techniques or methods used; and,
- 7.8.7 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.

7.9 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.

7.10 Twenty-Four Hour Notice of Noncompliance Reporting:

- 7.10.1 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) the Tribe at (406) 697-4765.
- 7.10.2 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 the Tribe at (406) 697-4765 within 24 hours of the Permittee becoming aware of the circumstances:
- 7.10.2.1 Any unanticipated bypass which exceeds any effluent limitation in the Permit (see section 8.6, Bypass of Treatment Facilities);
- 7.10.2.2 Any upset which exceeds any effluent limitation in the Permit (see section 8.7, Upset Conditions);
- 7.10.2.3 Violation of a maximum daily discharge limitation for any of the pollutants listed in the Permit to be reported within 24 hours;
- 7.10.2.4 Sanitary sewer overflows;
- 7.10.2.5 Combined sewer overflows; and
- 7.10.2.6 Acute toxicity in a WET test.
- 7.10.3 For any noncompliance notification required under sections 7.10.1 or 7.10.2, a written report shall also be provided to the EPA, Office of Enforcement and Compliance Assurance Division, Water Enforcement Branch, and to the Tribe within five days of the time that the Permittee becomes aware of the circumstances. Reports shall be submitted to the addresses in section 7.6, Other Reporting Requirements.
- 7.10.4 The written report shall contain:
- 7.10.4.1 A description of the noncompliance and its cause;
- 7.10.4.2 The period of noncompliance, including exact dates and times;
- 7.10.4.3 The estimated time noncompliance is expected to continue if it has not been corrected;
- 7.10.4.4 Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance; and,

7.10.4.5 The signed certification statement required by the Signatory Requirements (see section 9.7).

7.10.5 An EPA delegated representative may waive the written report on a case-by-case basis for an occurrence of noncompliance listed under section 7.10.1 or 7.10.2 above, if the incident has been orally reported in accordance with the requirements of those sections.

7.11 Other Noncompliance Reporting:

Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for section 7.4 are submitted. The reports shall contain the information listed in section 7.10.4, and, if applicable, when the Permittee failed to comply with any applicable long-term combined sewer overflow control plan or other permit requirements.

7.12 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:

7.12.1 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;

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

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

7.12.4 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.

8 Compliance Responsibilities

8.1 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.

8.2 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 6, 2023 (88 Fed. Reg. 986-990). 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:

- 8.2.1 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 \$64,618 per day for each violation.
- 8.2.2 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.
- 8.2.3 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.

- 8.2.4 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.
- 8.2.5 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 \$25,847 per violation, with a maximum amount not to exceed \$64,618. Where an administrative enforcement action is brought for a Class II civil penalty, the assessed penalty may not exceed \$25,847 per day for each day during which the violation continues, with the maximum amount not to exceed \$323,081.

8.3 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.

8.4 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.

8.5 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.

8.6 Bypass of Treatment Facilities:

8.6.1 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 sections 8.6.2 and 8.6.3.

8.6.2 Notice:

8.6.2.1 Anticipated bypass: If the Permittee knows in advance of the need for a bypass, it shall submit prior notice in accordance with section 7.6, 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 Tribe.

8.6.2.2 Unanticipated bypass: The Permittee shall submit notice of an unanticipated bypass as required under section 7.10, Twenty-four Hour Notice of Noncompliance Reporting, to the EPA Region 8, Enforcement and Compliance Assurance Division, Water Enforcement Branch, and the Tribe.

8.6.3 Prohibition of bypass

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

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

8.6.3.1.2 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,

8.6.3.1.3 The Permittee submitted notices as required under section 8.6.2.

8.6.3.2 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 section 8.6.3.1.

8.7 Upset Conditions:

- 8.7.1 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 section 8.7.2 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 in an enforcement action brought for noncompliance with technology-based permit effluent limitations).
- 8.7.2 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:
- 8.7.2.1 An upset occurred and that the Permittee can identify the cause(s) of the upset;
 - 8.7.2.2 The permitted facility was at the time being properly operated;
 - 8.7.2.3 The Permittee submitted notice of the upset as required under section 7.10, Twenty-four Hour Notice of Noncompliance Reporting; and,
 - 8.7.2.4 The Permittee complied with any remedial measures required under section 8.4, Duty to Mitigate.
- 8.7.3 Burden of proof: In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

8.8 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.

8.9 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:

- 8.9.1 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":
- 8.9.1.1 One hundred micrograms per liter (100 µg/L);

- 8.9.1.2 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;
 - 8.9.1.3 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,
 - 8.9.1.4 The level established by the EPA in accordance with 40 CFR § 122.44(f).
- 8.9.2 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":
- 8.9.2.1 Five hundred micrograms per liter (500 µg/L);
 - 8.9.2.2 One milligram per liter (1 mg/L) for antimony;
 - 8.9.2.3 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,
 - 8.9.2.4 The level established by the EPA in accordance with 40 CFR § 122.44(f).

9 General Requirements

9.1 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 (see section 9.7) 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:

- 9.1.1 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 nor is it subject to the notification requirements for the discharge of toxic pollutants in section 8.9;

- 9.1.2 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,
- 9.1.3 The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a New Source.

9.2 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.

9.3 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.

9.4 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.

9.5 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.

9.6 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.

9.7 Signatory Requirements:

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

- 9.7.1 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.
- 9.7.2 For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or
- 9.7.3 For a municipality, State, Federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, 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).
- 9.7.4 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:
- 9.7.4.1 The authorization is made in writing by a person described above and is submitted to the EPA; and,
- 9.7.4.2 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.)
- 9.7.5 Changes to authorization: If an authorization under section 9.7.4 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 section 9.7.4 must be submitted to the EPA prior to or together with any reports, information, or applications to be signed by an authorized representative.
- 9.7.6 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."

9.8 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.

9.9 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.

9.10 Property Rights:

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

9.11 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.

9.12 Transfers:

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

- 9.12.1 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;

- 9.12.2 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;
- 9.12.3 The notice includes the signed certification statement required by the Signatory Requirements (see section 9.7); and,
- 9.12.4 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 section 9.12.2.

9.13 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.

9.14 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.

9.15 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:

- 9.15.1 **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.
- 9.15.2 **Wasteload Allocation:** A wasteload allocation is developed and approved by the Tribe and/or the EPA for incorporation in this Permit.
- 9.15.3 **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.

- 9.15.4 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.
- 9.15.5 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):
- 9.15.5.1 Toxicity was detected late in the life of the Permit near or past the deadline for compliance.
 - 9.15.5.2 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.
 - 9.15.5.3 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.
 - 9.15.5.4 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.
 - 9.15.5.5 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.